

SENATE THIRD READING

SB 815 (Roth)

As Amended September 8, 2023

Majority vote

SUMMARY

Extends the sunset date for the Medical Board of California (MBC) until January 1, 2028 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the MBC's sunset review oversight process.

Major Provisions

- 1) Extends the MBC's sunset date until January 1, 2028.
- 2) Establishes a Complainant Liaison Unit within the MBC, operative six months following the allocation of funding.
- 3) Provides that all postgraduate training licenses (PTLs) in an active status on or after January 1, 2020 shall be valid for a period of 36 months regardless of when the holder has received their approved postgraduate training and repeals language requiring graduates to pass the next licensure exam after their first year of postgraduate training.
- 4) Requires a complaint involving quality of care to include an interview of the complainant, patient, or patient representative, operative six months following the allocation of funding.
- 5) Changes the statute of limitations applicable to the filing of an accusation by the MBC against a licensee or a health care facility for failing or refusing to comply with a court order.
- 6) Requires the owner, corporate officer, or manager of an entity licensed by the Board of Pharmacy to provide the MBC with requested records within three business days.
- 7) Provides that convictions of a serious felony, a felony involving the unlawful sale of fentanyl, or specified sexual offenses by a licensee constitute cause for license revocation and do not require expert witness testimony to prove the relationship between the felony conviction and the practice of medicine.
- 8) Requires the MBC to suspend the license of a physician who has been convicted of a felony as described above until the time for appeal has elapsed if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the MBC, and that the license shall then be automatically revoked.
- 9) Adds the following acts to specified examples of unprofessional conduct:
 - a) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the MBC or the DCA, Health Quality Investigation Unit.
 - b) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

- 10) Provides that it is unprofessional conduct for a licensee under investigation to fail to attend and participate in an interview by the MBC within 30 calendar days after being notified.
- 11) Specifies that physicians and surgeons shall maintain adequate and accurate records relating to the provision of services to their patients for at least seven years.
- 12) Modifies the length of time that must have elapsed before a person may petition the MBC for reinstatement or modification of penalty.
- 13) Requires the MBC to automatically reject a petition for early termination or modification of probation if the board files a petition to revoke probation while the petition for early termination or modification of the probation is pending.
- 14) Authorizes the MBC to establish a fee to be paid by a person seeking a license reinstatement or modification of penalty, not exceed the board's reasonable costs.
- 15) Requires complainant statements to be considered, where relevant, for purposes of adjudicating the case to which the statement pertains.
- 16) Requires the exchange of information related to expert testimony to be completed no later than 90 calendar days prior to the originally scheduled commencement date of the hearing.
- 17) Allows the MBC to electronically provide the renewal questionnaire about a physician's ability to practice medicine safely and removes current language specifying that the objective to identify a disorder that is mental, physical, emotional, or behavioral.
- 18) Repeals provisions of current law that expressly designate the dissemination of misinformation or disinformation related to COVID-19 as unprofessional conduct.
- 19) Increases both the initial license fee and the biennial renewal fee for a physician's and surgeon's certificate from \$863 to \$1,151, and provides that these fees shall increase to \$1,255, effective January 1, 2027.
- 20) Requires the MBC to reduce its fees in the event that it has a surplus that exceeds its operating budget for the next six months.
- 21) Requires the MBC to issue a three-year nonrenewable license to an applicant for participation in the Licensed Physicians and Dentists from Mexico Pilot Program who has not provided an ITIN or SSN, if the MBC determines the applicant is otherwise eligible for that license, and requires that the applicant immediately seek a three-year visa and SSN within 14 days, during which time they are ineligible to practice medicine.
- 22) Authorizes the MBC to extend the three-year nonrenewable license period if, prior to January 30, 2024, the licensee was unable to practice more than 30 consecutive business days due to pregnancy of the licensee or their spouse or partner or delays caused by health plans or the United States Citizenship and Immigration services.
- 23) Transfers the responsibility for registering research psychoanalysts from the MBC to the Board of Psychology, effective January 1, 2025.
- 24) Extends the sunset date for the Osteopathic Medical Board until January 1, 2028.

25) Resolve potential chaptering conflicts with other proposed legislation that would amend the same code sections.

26) Makes various additional technical changes and clarifications to the Medical Practice Act.

COMMENTS

On a schedule averaging every four years, each entity under the Department of Consumer Affairs presents a report to the Legislature's policy committees, which in return hold a sunset oversight hearing and prepare a comprehensive background paper on the efficacy and efficiency of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then introduced extending the repeal date for the entity along with reforms identified during the sunset review process. The background paper for the MBC's sunset review oversight hearing contained a total of 18 issues and recommendations, each of which is eligible to result in statutory changes enacted through the MBC's sunset bill. Each of the following issues were discussed in that background paper and relate to proposals contained in this bill.

Issue #2: Research Psychoanalysts. Prior sunset review background papers for the MBC questioned whether it would be more appropriate for research psychoanalysts to be registered by the Board of Psychology, which has more expertise in the discipline. In its January 2022 letter to the Legislature and again in its 2023 Sunset Report, the MBC requested that the program be transferred to the Board of Psychology, citing that regulatory body as having appropriate resources and expertise to regulate this category of individuals. This bill would effectuate that request by transferring the program effective January 1, 2025.

Issue #4: Complainant Liaison. The MBC's sunset background paper proposed the creation of a formal program with dedicated staff and resources to assist patients as they navigate the enforcement process. The proposed Complainant Liaison Unit would respond to all communications from the public about the complaint review and enforcement process prior to the filing of a complaint. It would communicate with complainants throughout the enforcement process and assist the complainant through the various steps of any subsequent appeals of a disciplinary decision and the timing involved. This bill would establish the MBC's proposed Complainant Liaison Unit, operative six months from the allocation of funding in the Budget.

Issue #5: Fund Condition and Fees. The sunset background paper discussed the lengthy history of concern regarding the MBC's fund condition and the insufficient revenue it is currently receiving from license fees. The MBC's financial reserves have been drawn down to perilously low levels. In November 2019, the MBC contracted with a consulting firm to perform an independent fee study, which recommended that the initial and renewal fees charged to physicians be increased from \$790 to \$1,150; this increase was originally proposed in the MBC's 2021 sunset bill, but the amount was ultimately reduced to a much lower increase to \$863. This bill would increase these fees from \$863 to \$1,151. Beginning January 1, 2027, the fees would increase to \$1,255. This bill would require the MBC to reduce its fees in the event that it has a surplus that exceeds its operating budget for the next six months.

Issue #6: Application Inquiries. Currently, applicants for licensure as physicians and surgeons must respond to a questionnaire that asks whether they have a current physical or mental health condition that impacts their ability to practice medicine safely. Statute specifically requires that the questionnaire determine whether the individual has a "mental, physical, emotional, or

behavioral disorder." The background paper raised the concern that license applicants may be fearful of potential punitive and disciplinary action as a result of admitting to a disorder, and this fear could lead to them not seeking assistance for those issues. This bill would seek to address that concern by striking the terms "mental, physical, emotional, or behavioral."

Issue #7: Postgraduate License. Applicants for licensure as physicians and surgeons in California are required to complete at least 36 months of accredited postgraduate training; this aligns with the three years of training commonly required for board certification by various American Board of Medical Specialty boards. In 2017, the MBC's sunset bill required all medical school graduates who matched into an accredited postgraduate training program in California were required to obtain a PTL in order to practice medicine as part of their training program, which would be valid for up to 39 months and could not be renewed; however, the MBC had limited authority to grant an extension. This bill would provide that all PTLs shall be valid for a period of 36 months regardless of when the holder has received their approved postgraduate training and would repeal language requiring graduates to pass the next licensure exam after their first year of postgraduate training.

Issue #8: Mexico Pilot Program. The Legislature enacted Assembly Bill 1045 (Firebaugh) in 2002, which created the Licensed Physicians and Dentists from Mexico Pilot Program which allows a limited number of physicians and dentists to come to California and practice for a limited time under a three-year nonrenewable license. However, there have been reports of certain barriers in the process through which physicians from Mexico receive approval to participate in the pilot program. This bill would require the MBC to issue a license to applicants for participation in the pilot program who do not currently possess federal documentation but otherwise meet the pilot program's requirements, and would authorize the MBC to extend a pilot program participant's license under certain conditions.

Issue #11: Timeframe to Request Probation Modification. Current law allows for a person whose certificate has been surrendered or revoked for unprofessional conduct to petition the MBC for reinstatement or modification of penalty after at least three years, or two years if specified in the MBC in a revocation order. In light of the low petition approval rate and high costs associated with reviewing the requests, the MBC requested that the length of time that must elapse before a petition be increased. This bill would modify the length of time that must have elapsed before a person may petition the MBC for reinstatement or modification of penalty to require five years for a license surrendered or revoked for unprofessional conduct.

Issue #15: Enforcement Enhancements. The MBC requested various updates to statute to improve its ability to take swift disciplinary action when appropriate, which were discussed in its sunset background paper. This bill would effectuate many of those requests. This bill includes changes to provisions of the Medical Practice Act relating to statutes of limitations, participation by licensees in board investigations, and the exchange of expert witness testimony.

This bill would also require an interview of the complainant, patient, or patient representative to be included in the review that is required prior to referral to a field office for further investigation. The bill would require a complainant's statement to be considered, where relevant, for purposes of adjudicating the case to which the statement pertains. Another enforcement enhancement proposed by this bill relates to physicians who are convicted of certain felonies. Current law provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct. Under the

existing process, the MBC is required to obtain expert witness testimony to prove the relationship between the felony conviction and the practice of medicine. This bill would provide that the conviction of a serious felony by a licensee, a felony involving the unlawful sale of fentanyl, or certain felony sexual offenses, whether in the course of the licensee's actions as a physician and surgeon or otherwise, automatically constitutes cause for license suspension and revocation.

According to the Author

"This bill is necessary to make changes to MBC operations in order to improve oversight of licensees."

Arguments in Support

The *Consumer Protection Policy Center* (CPPC) at UC San Diego's Center for Public Interest Law supports this bill, writing: "The proposed reforms, many of which the Consumer Protection Policy Center (formerly the Center for Public Interest Law) recommended in its oral testimony at the Board's Joint Sunset Review Oversight hearing on March 16, 2023, are critical steps to restoring the public's trust in MBC's ability to protect the public from unethical and incompetent physicians and surgeons." In its letter, the CPPC further urges the Legislature to consider moving the DCA's investigators to the Office of the Attorney General and restoring the vertical enforcement method of investigation.

Arguments in Opposition

The *California Medical Association* (CMA) has submitted a letter opposing this bill unless amended, including several amendments that have since been made to the bill. The CMA continues to oppose several changes being made to enforcement processes and timelines. The CMA writes: "CMA is eager to discuss these issues and identify workable solutions where they exist."

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, the MBC estimates costs of \$1.47 million in fiscal year (FY) 2024-25 and \$1.40 million in FY 2025-26 for the new Complainant Liaison Unit and to conduct interviews on all complaints, with an increase in annual revenue of approximately \$5.3 million in FY 2023-24, \$21.6 million in FYs 2024-25 through 2025-26, \$22.6 million in FY 2026-27, and \$23.4 million in FY 2027-28 and ongoing resulting from the increase in initial license and renewal fees, and additional cost savings from the transfer of the Research Psychoanalyst program, as well as other provisions; the Osteopathic Medical Board estimates costs of \$504,000 in FY 2024-25 and \$480,000 in FY 2025-26 and ongoing to support the increased workload in the enforcement unit, complaint review, investigation, outreach, and other activities required by the bill; the Board of Psychology anticipates costs of \$162,000 per year to administer the Research Psychoanalyst Program; and the Department of Consumer Affairs Office of Information Services estimates total costs of \$99,000, of which \$80,000 is not absorbable, to create a new license expiration date, new fee and enforcement codes, and new record-specific data; to post updated forms to the web; and to transfer the Research Psychoanalyst License type.

VOTES**SENATE FLOOR: 32-1-7**

YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Newman, Niello, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener

NO: Dahle

ABS, ABST OR NV: Grove, Jones, Min, Nguyen, Ochoa Bogh, Seyarto, Wilk

ASM BUSINESS AND PROFESSIONS: 10-5-4

YES: Berman, Aguiar-Curry, Gipson, Irwin, Jackson, Lee, Lowenthal, McCarty, McKinnor, Ting

NO: Flora, Alanis, Chen, Dixon, Joe Patterson

ABS, ABST OR NV: Bains, Bonta, Grayson, Stephanie Nguyen

ASM APPROPRIATIONS: 11-3-2

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Wilson

NO: Megan Dahle, Mathis, Sanchez

ABS, ABST OR NV: Dixon, Soria

UPDATED

VERSION: September 8, 2023

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FN: 0002130