


MEMORANDUM

DATE	May 6, 2016
TO	Board of Psychology
FROM	 Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #22 (a)(9) – Legislative Update – SB 1033 (Hill) Medical Board: Disclosure of Probationary Status

Background:

The bill would require the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Naturopathic Medicine Committee, and the Acupuncture Board by July 1, 2018, to develop a standardized format for listing specified information related to the probation of a licensee and to provide that information to an inquiring member of the public, on any documents informing the public of probation orders, and on a specified profile Internet Web page of each licensee subject to probation, as specified.

Location: Senate Appropriations Committee

Status: From Senate Committee on Business Professions and Economic Development:
Do pass to Committee on Appropriations. (7-0)

Hearing: 05/16/2016 10:00 a.m., John L. Burton Hearing Room (4203)

Action Requested:

No action is requested at this time. Staff will continue to watch SB 1033 (Hill).

Attachment A is the language of SB 1033 (Hill)

Attachment B is the Senate Business, Professions and Economic Development
Committee Analysis of SB 1033 (Hill)



California LEGISLATIVE INFORMATION

SB-1033 Medical Board: disclosure of probationary status. (2015-2016)

AMENDED IN SENATE MARCH 17, 2016

CALIFORNIA LEGISLATURE— 2015-2016 REGULAR SESSION

SENATE BILL

No. 103

Introduced by Senator Hill

February 12, 2016

An act to amend Sections 803.1, 2027, ~~and 2228 of 2221, 2221.05, 2228, and 3663 of~~, and to add *Sections 1006 and 4962 to*, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as amended, Hill. Medical Board: disclosure of probationary status.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. *Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Medical Practice Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee in the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture and Acupuncture Licensure Act, establishes the Acupuncture Board for the licensing and regulation of acupuncturists.* Existing law authorizes ~~the board~~ each of these regulatory agencies to discipline ~~a physician or a surgeon~~ its licensee by placing her or him on ~~probation, which may include requiring the physician or surgeon to complete specified training examinations, or community service or restricting the extent, scope, or type of practice,~~ probation, as specified.

This bill would require ~~the board~~ these regulatory entities to require a ~~physician or surgeon~~ licensee to disclose on a *separate document* her or his probationary status to ~~patients before each a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order while the physician or surgeon~~ licensee is on probation under specified circumstances, including ~~the board~~ an accusation alleging, a statement of issues indicating, or an administrative law judge's legal conclusion finding the ~~physician or surgeon~~ licensee committed gross negligence or the ~~physician or surgeon~~ licensee having been on probation ~~repeatedly, more than once,~~ among others. The bill would require the ~~board, by July 1, 2018, to adopt related regulations that include~~ requiring the ~~physician or surgeon~~ licensee to obtain from the patient a signed receipt containing specific information following the disclosure. *The bill would exempt a licensee from disclosing her or his probationary status prior to a visit or treatment if the patient is unable to comprehend the disclosure or sign an acknowledgment and a guardian or health care surrogate is unavailable. The bill would require in that instance that the doctor disclose her or his status as soon as either the patient can comprehend and sign the receipt or a guardian or health care*

surrogate is available to comprehend the disclosure and sign the receipt.

Existing law requires the ~~board~~ *Medical Board of California, the Osteopathic Medical Board of California, and California Board of Podiatric Medicine* to disclose to an inquiring member of the public and to post on ~~its t/~~ Internet Web ~~site sites~~ specified information concerning each ~~physician and surgeon~~, licensee including revocatic suspensions, probations, or limitations on practice.

This

The bill would require ~~the board~~, *the Medical Board of California, the Osteopathic Medical Board of California, California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, the Naturopathic Medical Committee, and the Acupuncture Board* by July 1, 2018, to ~~include in each order of probation a written summ~~ *contain specified information develop a standardized format for listing specified information related to probation* and to ~~include the summary in the disclosure~~ *provide that information* to an inquiring member of public, on any ~~board~~ documents informing the public of probation orders, and on a specified profile ~~web Inter Web~~ page of each ~~physician and surgeon~~ licensee subject to ~~probation~~, *probation, as specified.*

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to inquiring member of the public information regarding any enforcement actions taken against a licensee, including former licensee, by the board or by another state or jurisdiction, including all of the following:

- (1) Temporary restraining orders issued.
- (2) Interim suspension orders issued.
- (3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.
- (4) Public letters of reprimand issued.
- (5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine and the Physician Assistant Board shall disclose to an inquiring member of the public all of the following:

- (1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering unauthorized professional services.
- (2) (A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in low-risk category if there are three or more settlements for that licensee within the last 10 years, except settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars (\$30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialties certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 20. By July 1, 2018, the Medical Board of ~~California~~ *California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* shall include the ~~summary of each probation order as written pursuant to information described in subdivision (e)~~ *(f)* of Section 2228.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's privileges for medical disciplinary cause or reason, unless a court finds, in a final judgment, that the peer review resulting in the disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. In addition, any exculpatory or explanatory statements submitted by the licensee electronically pursuant to subdivision (f) of that section shall be disclosed. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall disclose to an inquiring member of the public information received regarding felony convictions of a physician and surgeon or doctor of podiatric medicine.

(d) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall include the following statement when disclosing information concerning a settlement:

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, or above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have more settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. At

January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. The doctors may have malpractice settlement histories that are higher than average because they specialize in cases with patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

(e) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the Physician Assistant Board shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one or more of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems, self-insured physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, *and* the Physician Assistant Board shall provide each licensee, including a former licensee under subdivision (a), with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

(i) By July 1, 2018, the ~~board~~ *Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* shall include ~~each licensee's probation summary written pursuant to subdivision (e)~~ *the information listed in subdivision (f) of Section 2228 on any board documents informing the public of probation orders, orders and probationary licenses*, including, but not limited to, newsletters.

SEC. 2. *Section 1006 is added to the Business and Professions Code, to read:*

1006. *(a) Except as provided by subdivision (c), the State Board of Chiropractic Examiners shall require a licensee to disclose on a separate document her or his probationary status to a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation in any of the following circumstances:*

(1) The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented.

medical records.

(D) Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(F) Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice medicine.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a third-party chaperone be present when the licensee examines patients as a result of sexual misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(D) Restricting the licensee totally or partially from prescribing controlled substances.

(3) The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation more than once.

(b) The licensee shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's probation on the board's Internet Web site.

(c) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision (a) if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt. In that instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

(d) By July 1, 2018, the board shall develop a standardized format for listing the following information pursuant to subdivision (e):

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date.

(3) All practice restrictions placed on the licensee by the committee.

(e) By July 1, 2018, the board shall provide the information listed in subdivision (d) as follows:

(1) To an inquiring member of the public.

(2) On any board documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters.

(3) Upon availability of a licensee's BreEZe profile Internet Web page on the BreEZe system pursuant to Section 210, in plain view on the BreEZe profile Internet Web page of a licensee subject to probation or a probation license.

SEC. 2. SEC. 3. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on its Internet Web site the following information on the current status of the licensee for all current and former licensees:

(1) Whether or not the licensee is presently in good standing.

(2) Current American Board of Medical Specialties certification or board equivalent as certified by the board.

(3) Any of the following enforcement actions or proceedings to which the licensee is actively subjected:

(A) Temporary restraining orders.

(B) Interim suspension orders.

(C) (i) Revocations, suspensions, probations, or limitations on practice ordered by the board or the board of another state or jurisdiction, including those made part of a probationary order or stipulated agreement.

(ii) By July 1, 2018, the ~~board~~ *board, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine* shall include, in plain view on the BreEZe profile ~~web~~ *Internet Web* page of each licensee subject to ~~probation, the summary of each probation order as written pursuant to~~ *probation or a probationary license, information described in* subdivision ~~(e)~~ *(f)* of Section 2228. For purposes of this subparagraph, a BreEZe profile ~~web~~ *Internet Web* page is a profile ~~web~~ *Internet Web* page on the BreEZe system pursuant to Section 210.

(D) Current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(E) Citations issued that have not been resolved or appealed within 30 days.

(b) The board shall post on its Internet Web site all of the following historical information in its possession, custody, or control regarding all current and former licensees:

(1) Approved postgraduate training.

(2) Any final revocations and suspensions, or other equivalent actions, taken against the licensee by the board or the board of another state or jurisdiction or the surrender of a license by the licensee in relation to a disciplinary action or investigation, including the operative accusation resulting in the license surrender or discipline by the board.

(3) Probation or other equivalent action ordered by the board, or the board of another state or jurisdiction, completed or terminated, including the operative accusation resulting in the discipline by the board.

(4) Any felony convictions. Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

(5) Misdemeanor convictions resulting in a disciplinary action or accusation that is not subsequently withdrawn or dismissed. Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

(6) Civil judgments issued in any amount, whether or not vacated by a settlement after entry of the judgment that were not reversed on appeal, and arbitration awards issued in any amount, for a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or his or her rendering of unauthorized professional services.

(7) Except as provided in subparagraphs (A) and (B), a summary of any final hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. The posting shall provide any additional explanatory or exculpatory information submitted by the licensee pursuant to subdivision (f) of Section 805. The board shall also post on its Internet Web site a factsheet that explains and provides information on the reporting requirements under Section 805.

(A) If a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, information pertaining to the termination or revocation of those privileges shall remain posted on the Internet Web site for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed.

(B) If a court finds, in a final judgment, that peer review resulting in a hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding, the information concerning that hospital disciplinary action posted on the Internet Web site shall be immediately removed. For purposes of this subparagraph, "peer review" has the same meaning as defined in Section 805.

(8) Public letters of reprimand issued within the past 10 years by the board or the board of another state or jurisdiction, including the operative accusation, if any, resulting in discipline by the board.

(9) Citations issued within the last three years that have been resolved by payment of the administrative fine or compliance with the order of abatement.

(10) All settlements within the last five years in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years.

years, and for a licensee in the high-risk category if there are four or more settlements for that licensee within last five years. Classification of a licensee in either a "high-risk category" or a "low-risk" category depends upon specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty the board pursuant to subdivision (f) of Section 803.1.

(A) For the purposes of this paragraph, "settlement" means a settlement in an amount of thirty thousand dollars (\$30,000) or more of any claim or action for damages for death or personal injury caused by the physician or surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(B) For the purposes of this paragraph, "settlement" does not include a settlement by a licensee, regardless of amount paid, when (i) the settlement is made as a part of the settlement of a class claim, (ii) the amount paid in settlement of the class claim is the same amount paid by the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case for which the complaint alleges class liability on behalf of the licensee also alleged a products liability class action cause of action.

(C) The board shall not disclose the actual dollar amount of a settlement, but shall disclose settlement information in the same manner and with the same disclosures required under subparagraph (B) of paragraph (2) of subdivision (b) of Section 803.1.

(11) Appropriate disclaimers and explanatory statements to accompany the information described in paragraphs (10), inclusive, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(c) The board shall provide links to other Internet Web sites that provide information on board certifications that meet the requirements of subdivision (h) of Section 651. The board may also provide links to any other Internet Web sites that provide information on the affiliations of licensed physicians and surgeons. The board may provide links to other Internet Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities.

SEC. 4. *Section 2221 of the Business and Professions Code is amended to read:*

2221. (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her ~~license; or,~~ *license.*

(b) The board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

(10) Disclosing probationary license status to patients, pursuant to subdivision (b) of Section 2228.

~~(b)~~

(c) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee; however, the provisions of subdivision (b) of Section 2228 are mandatory with any probationary licensee. The board may assign the petition to an administrative law judge designated under Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

~~(e)~~

(d) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

~~(d)~~

(e) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion, for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial.

SEC. 5. *Section 2221.05 of the Business and Professions Code is amended to read:*

2221.05. (a) Notwithstanding ~~subdivision~~ *subdivisions* (a) and (b) of Section 2221, the board may issue a physician's and surgeon's certificate to an applicant who has committed minor violations that the board deems, in its discretion, do not merit the denial of a certificate or require probationary status under Section 2221, and may concurrently issue a public letter of reprimand.

(b) A public letter of reprimand issued concurrently with a physician's and surgeon's certificate shall be purged three years from the date of issuance.

(c) A public letter of reprimand issued pursuant to this section shall be disclosed to an inquiring member of the public and shall be posted on the board's Internet Web site.

(d) Nothing in this section shall be construed to affect the board's authority to issue an unrestricted license.

~~SEC. 3.~~ SEC. 6. *Section 2228 of the Business and Professions Code is amended to read:*

2228. (a) The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(1) Requiring the licensee to obtain additional professional training and to pass an examination upon completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

(2) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(3) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

(4) Providing the option of alternative community service in cases other than violations relating to quality of care.

(b) The ~~board~~ *board or the California Board of Podiatric Medicine* shall require a licensee to disclose *on a separate document* her or his probationary status to ~~patients before each visit a patient, the patient's guardian, or her care surrogate prior to the patient's first visit following the probationary order~~ while the licensee is on probation under any of the following circumstances:

(1) The ~~board made a finding in the probation order~~ *accusation alleges, the statement of issues indicates, or legal conclusions of an administrative law judge finds* that the licensee ~~committed~~ *is implicated* in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.

(D) Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(F) Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice medicine.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a ~~third-party~~ *third-party* chaperone be present when the licensee examines patients as a result of sex misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(D) Restricting totally or partially the licensee from prescribing controlled substances.

~~(E) Suspending the licensee from practice in cases related to quality of care.~~

(3) The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation ~~repeatedly~~ *more than once*.

~~(c) The board shall adopt regulations by July 1, 2018, to implement subdivision (b). The board shall include these regulations a requirement that the licensee shall obtain from each patient a signed receipt following disclosure that includes a written explanation of how the patient can find further information on the licensee discipline probation on the board's Internet Web site.~~

(d) A licensee shall not be required to provide the disclosure prior to a visit as required by subdivision (b) if patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt pursuant subdivision (c) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign receipt. In that instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

~~(d)~~

~~(e) Section 2314 shall not apply to subdivision (b) or (c).~~ (b), (c), or (d).

~~(e)~~

~~(f) By July 1, 2018, the board shall include, in the first section of each order of probation, a standardized, single paragraph, plain language summary that contains the accusations that led to the licensee's probation, the develop a standardized format for listing the following information pursuant to paragraph (5) of subdivision (b) of Section 803.1, subdivision (i) of Section 803.1, and clause (ii) of subparagraph (C) of paragraph (1) of subdivision (a), Section 2027:~~

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date, and all date.

(3) All practice restrictions placed on the licensee by the board.

SEC. 7. *Section 3663 of the Business and Professions Code is amended to read:*

3663. (a) The committee shall have the responsibility for reviewing the quality of the practice of naturopathic medicine carried out by persons licensed as naturopathic doctors pursuant to this chapter.

(b) The committee may discipline a naturopathic doctor for unprofessional conduct. After a hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), the committee may deny, suspend, revoke, or place on probation the licensee, or reprimand, censure, or otherwise discipline a naturopathic doctor in accordance with Division 3 (commencing with Section 475).

(c) Except as provided by subdivision (e), the committee shall require a naturopathic doctor to disclose on a separate document her or his probationary status to a patient, the patient's guardian, or health care surrogate prior to the patient's first visit following the probationary order while the naturopathic doctor is on probation in any of the following circumstances:

(1) The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge

find that the naturopathic doctor is implicated in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.

(D) Drug or alcohol abuse that threatens to impair a naturopathic doctor's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.

(E) Felony conviction arising from or occurring during patient care or treatment.

(F) Mental illness or other cognitive impairment that impedes a naturopathic doctor's ability to safely practice medicine.

(2) The committee ordered any of the following in conjunction with placing the naturopathic doctor on probation:

(A) That a third-party chaperone be present when the naturopathic doctor examines patients as a result of sex misconduct.

(B) That the naturopathic doctor submit to drug testing as a result of drug or alcohol abuse.

(C) That the naturopathic doctor have a monitor.

(D) Restricting the naturopathic doctor totally or partially from prescribing controlled substances.

(3) The naturopathic doctor has not successfully completed a clinical training program or any associated examinations required by the committee as a condition of probation.

(4) The naturopathic doctor has been on probation more than once.

(d) The naturopathic doctor shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the naturopathic doctor's probation on the committee's Internet Web site.

(e) The naturopathic doctor shall not be required to provide the disclosure prior to the visit as required in subdivision (c) if the patient is unconscious or otherwise unable to comprehend the disclosure or sign the receipt pursuant to subdivision (d) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt. In such an instance, the naturopathic doctor shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

(f) By July 1, 2018, the committee shall develop a standardized format for listing the following information pursuant to:

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date.

(3) All practice restrictions placed on the naturopathic doctor by the committee.

(g) By July 1, 2018, the committee shall provide the information listed in subdivision (f) as follows:

(1) To an inquiring member of the public.

(2) On any committee documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters.

(3) In plain view on the BreEZe profile Internet Web page of a naturopathic doctor subject to probation on a probationary license.

SEC. 8. Section 4962 is added to the Business and Professions Code, to read:

4962. (a) Except as provided by subdivision (c), the board shall require a licensee to disclose on a separate document her or his probationary status to a patient, the patient's guardian, or health care surrogate prior to

patient's first visit following the probationary order while the licensee is on probation in any of the following circumstances:

(1) The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:

(A) Gross negligence.

(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.

(C) Drug or alcohol abuse that threatens to impair a licensee's ability to practice acupuncture safely, including practicing under the influence of drugs or alcohol.

(D) Felony conviction arising from or occurring during patient care or treatment.

(E) Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice acupuncture.

(2) The board ordered any of the following in conjunction with placing the licensee on probation:

(A) That a third-party chaperone be present when the licensee examines patients as a result of sexual misconduct.

(B) That the licensee submit to drug testing as a result of drug or alcohol abuse.

(C) That the licensee have a monitor.

(3) The licensee has not successfully completed a training program or any associated examinations required by the board as a condition of probation.

(4) The licensee has been on probation more than once.

(b) The licensee shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's probation on the board's Internet Web site.

(c) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision (a) if the patient is unconscious or otherwise unable to comprehend the disclosure or sign the receipt pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure or sign the receipt. In such an instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

(d) Section 4935 shall not apply to subdivision (a) or (b).

(e) By July 1, 2018, the committee shall develop a standardized format for listing the following information pursuant to subdivision (f):

(1) The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.

(2) The length of the probation and the end date.

(3) All practice restrictions placed on the licensee by the committee.

(f) By July 1, 2018, the board shall provide the information listed in subdivision (e) as follows:

(1) To an inquiring member of the public.

(2) On any board documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters.

(3) Upon availability of a licensee's BreEZe profile Internet Web page on the BreEZe system pursuant to Section 210, in plain view on the BreEZe profile Internet Web page of a licensee subject to probation or a probation license.

**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**

Senator Jerry Hill, Chair

2015 - 2016 Regular

Bill No: SB 1033

Hearing Date: April 11, 2016

Author: Hill

Version: March 17, 2016

Urgency: No

Fiscal: Yes

Consultant: Sarah Mason

Subject: Medical Board: disclosure of probationary status

SUMMARY: Requires physicians and surgeons, osteopathic physicians and surgeons, podiatrists, acupuncturists, chiropractors and naturopathic doctors to notify patients of their probationary status before visits take place.

Existing law:

- 1) Requires health care licensing boards to create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority. Requires the central file to be created and maintained to provide an individual historical record for each licensee and must include specified information including the following: any conviction of a crime, any judgment or settlement in excess of \$3,000, any public complaints as specified, and any disciplinary information, as specified. States that the content of the central file that is not public record under any other provision of law is confidential. Allows a licensee to submit any exculpatory or explanatory statements or other information to be included in the central file. (Business and Professions Code (BPC) § 800)
- 2) Requires reporting of settlements over \$30,000 and arbitration awards or civil judgments of any amount to the Medical Board of California (MBC), Osteopathic Medical Board of California (OMBC), California Board of Podiatric Medicine (BPM) and Physician Assistant Board (PAB). Specifies the report must be filed within 30 days by either the insurer providing professional liability insurance to the licensee, the state or local government agency that self-insures the licensee, the employer of the licensee, or the licensee if not covered by professional liability insurance and that failure to provide the report is a public offense punishable by a fine of \$500, not to exceed \$5,000. (BPC § 801.01)
- 3) Requires a physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant to report the bringing of an indictment or information charging a felony against the licensee or conviction of the licensee, including any guilty verdict or guilty or no contest plea for a felony or misdemeanor to the licensee's licensing board within 30 days and provides that failure to make a report shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000). (BPC § 802.1)
- 4) States that when a coroner receives information that is based on findings that were reached by, or documented and approved by a board-certified or board-eligible

pathologist indicating that a death may be the result of a physician and surgeon's, podiatrist's, or physician assistant's gross negligence or incompetence, the coroner must file a report with MBC, OMBC, BPM or PAB. Requires the report to include the name of the decedent, date and place of death, attending physicians or podiatrists, and all other relevant information available and be followed within 90 days by copies of the coroner's report, autopsy protocol, and all other relevant information. Establishes confidentiality for a report filed pursuant to this section. Grants immunity from damages in any civil action to any coroner, physician and surgeon, or medical examiner, or any authorized agent, for complying with this section and grants immunity from damage in any civil action to a board-certified or board-eligible pathologist, or any authorized agent, for providing the report. (BPC § 802.5)

- 5) Requires the clerk of a court that renders a judgment that a licensee of a health care licensing board has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by the licensee's negligence, error or omission in practice, or his or her rendering of unauthorized professional services, to report that judgment to MBC for physicians or surgeons, OMBC for osteopathic physicians and surgeons, BPM for podiatrists and PAB for physician assistants. (BPC § 803)
- 6) Provides for the professional review of specified healing arts licentiates by a peer review body, as defined, including a medical or professional staff of any licensed health care facility or clinic, health care service plan, specified health professional societies, or a committee organized by any entity that functions as a body to review the quality of professional care provided by specified health care practitioners. (BPC § 805)
- 7) Requires a report to be filed by a peer review body to an agency having regulatory jurisdiction over healing arts licentiates if a licentiate's application for staff privileges is denied or rejected, has had his or her membership, staff privileges, or employment terminated or revoked for medical disciplinary reasons; or if restrictions are imposed, or voluntarily accepted, on staff privileges, membership or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason (Commonly referred to as an "805 report" pursuant to BPC § 805.)
- 8) Requires a peer review body to file a report with the relevant agency within 15 days after a peer review body makes a final decision or recommendation regarding the disciplinary action to be taken against a licentiate if it is determined, based on the investigation of the licentiate, that the licentiate was involved in the use of, or prescribing for or administering to himself or herself, any controlled substance; or the use of any dangerous drug or alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licentiate, any other person, or to the public, or to the extent that such use impairs the ability of the licentiate to practice safely. (BPC § 805.01)
- 9) Provides for the licensure and regulation of physicians and surgeons by MBC pursuant to the Medical Practice Act (Act). (BPC § 2000 *et. seq.*)

- 10) Requires the MBC to disclose on the Internet specified information in its possession, custody, or control regarding licensed physicians and surgeons, including: any felony convictions reported to the MBC after January 3, 1991; or, any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed. (BPC § 2027)
- 11) Requires MBC to investigate complaints from the public, other licensees, health care facilities or from others as specified. (BPC § 2220)
- 12) Requires MBC to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. (BPC §2220.05)
- 13) Sets forth what the MBC may do in disciplining a physician (e.g., revoke or suspend a license, place a physician on probation, etc); further states that a licensee can "Have any other action taken in relation to discipline as part of an order as the board or administrative law judge may deem proper." (BPC § 2227)
- 14) Requires the automatic suspension of a physician and surgeon's certificate during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Requires the MBC, immediately upon receipt of the certified copy of the record of conviction, to determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. Requires the MBC to notify the physician and surgeon of the license suspension and of his or her right to elect to have the issue of penalty heard, as provided. (BPC § 2236.1)

This bill:

- 1) Requires MBC, OMBC, BPM, Acupuncture Board (CAB), Board of Chiropractic Examiners (BCE) and the Naturopathic Medicine Committee (NMC) by July 1, 2018, to include a standardized, single paragraph, plain-language summary that contains the listing of causes that led to the licensee's probation, the length of the probation and the end date, and all practice restrictions placed on the licensee in a disclosure regarding the status of a licensee's license made to an inquiring member of the public as well as on any documents informing the public of probation orders and probation licenses, including but not limited to newsletters. Requires the summary to be posted on the BreEZe profile web page of each licensee subject to probation.
- 2) Requires licensees of the MBC, OMBC, BPM, CAB, BCE and NMC to disclose their probationary status to patients or their guardians or health care surrogates prior to the patient's first visit while the licensee is on probation under any of the following circumstances:
 - a) The licensee's licensing board made a finding in the probation order of:
 - i. Gross negligence;

- ii. Repeated negligent acts involving a departure from the standard of care with multiple patients;
 - iii. Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records;
 - iv. Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol;
 - v. Felony conviction arising from or occurring during patient care or treatment; and
 - vi. Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice.
- b) The licensee's licensing board ordered any of the following in conjunction with placing the licensee on probation:
- i. That a third party chaperone be present when the licensee examines patients as a result of sexual misconduct;
 - ii. That the licensee submit to drug testing as a result of drug or alcohol abuse;
 - iii. That the licensee have a monitor;
 - iv. Restricting totally or partially the licensee from prescribing controlled substances; or
 - v. Suspending the licensee from practice in cases related to quality of care.
- c) The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.
- d) The licensee has been on probation repeatedly.
- 3) Provides an exemption to this requirement if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt of disclosure and if a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt of disclosure. Specifies that the licensee shall disclose his or her status as soon as either the patient or a guardian or health care surrogate is available to comprehend and sign the disclosure.
- 4) Requires boards to develop a standardized format for the summary in #1 above.

FISCAL EFFECT: Unknown. This bill is keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this bill and notes that SB 1033 will only require additional disclosure for patients served by 500 - 600 licensed physicians in the state. According to the Author, patients deserve to be proactively informed if their doctor has been placed on probation by the Medical Board, Osteopathic Medical Board, Board of Podiatric Medicine, Acupuncture Board, or Board of Chiropractic Examiners or Naturopathic Medicine Committee for serious offenses such as sexual misconduct, substance abuse, gross negligence, or a felony conviction related to patient care and treatment. The Author states that on average, only up to 0.6 percent of the over 137,000 licensed professionals in the state are on probation at any given time and that while this bill will not affect many practitioners, these practitioner's actions affect tens of thousands of patients.

The Author notes that physicians, osteopathic physicians and podiatrists are already required to inform hospitals and malpractice insurers of their probation status, but their patients have to seek out the information for themselves on the state's licensee database. The Author adds that while California licensing boards post information on their websites related to licensee discipline, patients may not know about this resource or have the ability to check the databases. The Author notes that these websites are difficult to navigate and often people have to review complicated legal documents to find out why their doctor was placed on probation. SB 1033 would ensure that patients receive an easy to understand document prior to their visit and require the regulatory boards to make their websites more user friendly and easier for patients to determine why their physician is on probation.

The Author notes that misconduct cases undergo rigorous scrutiny by multiple state entities and are not taken lightly. MBC's expert physicians review cases to determine if they have merit. They are investigated by Department of Consumer Affairs investigators and reviewed by the state Attorney General's Office for the filing of a charging document called "an accusation." The case then goes to a hearing before an administrative law judge, if the physician disputes the accusation. According to the Author, ultimately, the outcome of the hearing or of an undisputed case is decided by MBC, which determines whether to accept findings and impose discipline. Discipline could range from a letter of reprimand, probation with specified terms and conditions, or license revocation.

2. **Background.**

- a) **Probation.** According to information provided by the Author and in a petition filed before the MBC by Consumers' Union Safe Patient Project calling on MBC to amend its Manual of Model Disciplinary Orders and Disciplinary Guidelines and require physicians on probation to inform their patients of this, physicians are routinely placed on probation by MBC for multiple years. Generally, while on probation these physicians are allowed to continue practicing medicine, often with limitations and requirements, but most commonly they are not required to provide any information to their patients regarding their MBC discipline. As of September 29, 2015, according to information provided by MBC, nearly 500 California physicians - among 102,000 California physicians in active practice -

were on probation. According to the MBC information provided at a 2013 Enforcement Committee meeting, during fiscal years 2011-2012 and 2012-2013, 444 of 561 physicians on probation were actively practicing in California.

Physicians are placed on probation following the Attorney General making an accusation for a variety of reasons, for example, gross negligence/incompetence (the most common reason for probation), substance abuse, inappropriate prescribing, sexual misconduct, conviction of a felony or other miscellaneous violations.

A November 2008 report issued by The California Research Bureau (CRB), *Physician Misconduct and Public Disclosure Practices at the Medical Board of California*, reported that physicians who have received serious sanctions in the past are far more likely to receive additional sanctions in the future. According to the CRB report, "These findings strongly imply that disciplinary histories provide patients with important information about the likely qualities of different physicians." The CRB cited research that examined physician discipline data from the Federation of State Medical Boards. The researchers split their sample into two periods, Period A 1994 - 98 and Period B 1999 - 2002. They classified physicians by whether they had no sanctions in the period, or had been assessed with one or more mild, medium or severe sanctions. Severe sanctions encompassed disciplinary actions that resulted in the revocation, suspension, surrender, or mandatory retirement of a license or the loss of privileges afforded by that license. The medium sanctions included actions that resulted in probation, limitation, or conditions on the medical license or a restriction of license privileges. The study found that less than 1 percent of physicians who were unsanctioned during Period A were assessed a disciplinary action during Period B. However, physicians sanctioned during the earlier period were much more likely to be assessed additional sanctions in the second period; for example, 15.7% of those who received a medium sanction in Period A went on to receive either a medium or a severe sanction in Period B; physicians who received a medium sanction in Period A were 28 percent more likely to receive a severe sanction in Period B than someone who received no sanction in period A; and, physicians who received a medium sanction in Period A were 32 percent more likely to receive another medium sanction in Period B than someone who received no sanction in Period A.

MBC data from a 2013 Enforcement Committee meeting also showed that in FY 2011-2012 and FY 2012-2013, 17 percent of 444 actively-practicing California physicians on probation (77 doctors total) either required subsequent discipline or surrendered their licenses while on probation.

- b) **Disclosures.** When the MBC places physicians on probation, generally they continue to practice medicine and see patients under restricted conditions. The MBC posts information regarding probation on its website and distributes the information to its email list which includes media and interested persons who have signed up to receive it.

A 2011 Consumer Reports National Research Center telephone survey of a nationally representative sample revealed that only one-quarter of respondents

(26 percent) said they would know where to file a complaint about a medical error they experienced at a hospital.

According to a recent Pew Research Center U.S. analysis, seniors who are the most likely to seek healthcare, are also the group most likely to say they never go online. About four-in-ten adults ages 65 and older (39 percent) do not use the internet, compared with only 3 percent of 18- to 29-year-olds. One-in-five African Americans, 18 percent of Hispanics and 5 percent of English-speaking Asian-Americans do not use the internet, compared with 14 percent of whites.

In October, 2012 MBC staff made a proposal to the MBC to require physicians to inform their patients when the physician is on probation and required to have a monitor. In its recommendation staff said, "This would insure the public has the ability to make informed decisions regarding their healthcare provider." The Board did not approve the staff proposal.

c) **Amendments Requested to MBC's Manual of Model Disciplinary Orders and Disciplinary Guidelines.** The following changes were requested in the petition outlined above as a standard condition of probation:

- Physicians who continue to see patients would be required to inform their patients of their probationary status;
- Patients are notified of the physician's probationary status when the patient contacts the physician's office to make an appointment;
- Disclosure provided in writing and signed at the time of the patient's appointment by each patient the physician sees while on probation to acknowledge the notice;
- Disclosure posted in the physician's office in a place readily apparent to patients;
- Disclosures include at least a one-paragraph description of the offenses that led the MBC to place the physician on probation and include a description of any practice restrictions placed on the physician;
- Patient referral for more details to online MBC documents related to the physician's probation;
- Physician maintains a log of all patients to whom the required oral notification was made. The log should contain the following: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date notification was made; 5) a copy of the notification given; and 6) a signed attestation by the patient that notification was received. Respondent shall keep this log in a separate file or ledger, in chronological order, and shall make the log available for immediate inspection and

copying on the premises at all times during business hours by the board or its designee, and shall retain the log for the entire term of probation.

3. **MBC Disclosure Discussions.** MBC voted to deny the petition outlined above and instead established a task force to explore a variety of suggestions for enhancing and improving the public's awareness of MBC's regulation of physicians. At the January 2016 MBC meeting, the task force discussed improving MBC's online license lookup function, modifying the consumer notice posted in physician waiting rooms, increasing public outreach regarding physicians on probation and revising MBC's disciplinary guidelines. MBC did not take action on the option for health care providers on probation to notify their patients.
4. **Arguments in Support.** Californians for Patients Rights writes in support of this bill, citing the example of a patient who died following elective surgery performed by a physician with a long arrest record, including violations for controlled substances, noting that the underserved and most critically ill Californians should be kept in mind. The organization notes that rather than approve a petition requiring disclosure to patients a standard of probation, MBC focused on website enhancements and believes this is important legislation to improve physician accountability, transparency and public participation.

The Center for Public Interest Law (CPIL) supports this bill, writing that patients deserve to know critical information such as if their doctor is practicing while on probation. CPIL notes when MBC places a physician on probation for serious offenses, it often places certain conditions upon that physician but that patients are typically unaware of such conditions or the fact that their doctor is on probation at all. CPIL also states that because MBC's probation unit has struggled to keep up with its incredibly large case load and petitions to revoke probation based on documented probation violations have not been filed properly, this bill's notification requirement is even more important. According to CPIL, MBC's paramount priority is public protection yet each time the MBC's probation unit fails to act promptly on probation violations, patients are at risk which makes it even more compelling that patients be affirmatively notified that their doctors are on probation so they can make an informed choice about their physician.

According to Consumers Union's Safe Patient Project (CUSPP), this legislation is necessary, as MBC declined to require notification to patients, particularly necessary as physicians on probation are allowed to continue practicing medicine, in order to fully inform California patients. CUSPP and CALPIRG, which also supports this bill, cite information from published research and the MBC's own data that show physicians who receive serious sanctions like probation are more likely to receive additional sanctions. According to CUSPP and CALPIRG, the bill and disclosure of probationary status are particularly important and cites the Pew study above indicating that seniors, most likely to utilize healthcare, would not be able to access information from MBC's website. CUSPP notes that even though information about physicians on probation is on the MBC's website, it is likely that most patients do not know the board exists, let alone that they post information about physician discipline and that even those who do find their way to the website will find obscure, lengthy documents in legalese.

The Consumer Federation of California (CFC) believes that the requirements in this bill for direct reporting to patients are essential in light of the varied availability of the internet in California and note that information relating to a doctor's probationary status should be provided affirmatively. CFC states that consumers deserve to feel safe and confident in their medical care and should be empowered to make informed choices regarding their health.

Consumer Watchdog writes in support of this bill, stating that "within the last week, the Medical Board issued notice that it had placed two physicians on probation for improper prescribing of narcotics without a legitimate medical purpose or even conducting a medical exam and that another doctor was placed on probation for seeing patients while suffering from a mental illness that impaired his ability to practice medicine safely." Consumer Watchdog believes that this is the kind of information every patient deserves to know about their doctor before they receive medical care and that patients of these doctors deserve to be notified proactively. According to Consumer Watchdog, patients expect their doctors are operating with a clean record and if this is not the case, they deserve a proactive warning. The group believes that this information is important enough to patient safety that doctors are required to report it to hospitals where they practice as well as to their malpractice insurers and it is clearly also important enough to require them to inform their patients.

Consumer Attorneys of California states that, on average, only up to 0.6 percent of these licensed professionals are on probation at any given time. The group believes this bill is a common sense consumer protection measure that will help consumers make informed medical decisions.

5. **Arguments in Opposition.** The California Chapter of the American College of Emergency Room Physicians (California ACEP) is opposed to this bill unless amended, noting that the bill presents a challenge for patients being treated in the emergency department and that during the course of emergency treatment, a patient may receive treatment from a number of physicians and in some cases, be transferred to another hospital. California ACEP believes that due to the unique nature of treating patients in the emergency department, the bill should be amended to exempt emergency medical services.

According to the California Medical Association (CMA), the notification requirements in this bill and requiring a signed receipt of notification will result, in some cases, in the patient seeking another provider without seeking additional information. CMA states that in other cases, the patient may seek to get additional information from the physician and it is "unrealistic to think a patient will not pose questions to the licensee." CMA believes that this conversation will take time and inevitably expand into time in which patient care can be provided, severely impacting the physician's ability to practice. According to CMA, the practical impacts of the notice requirement on a practice make probation substantially similar to suspension by significantly constraining the physician's ability to practice and add that the impacts will influence a physician's decisions about his or her defense against an MBC accusation. CMA is also concerned about the liability created by the exemption in this bill for circumstances when the patient is unconscious. CMA argues that this bill will discourage stipulated settlement and encourage more physicians to pursue

a hearing on the matter, which will slow the disciplinary process for all cases. CMA states that the bill would permit probation based upon unsubstantiated allegations in an accusation, arguments and bare conclusions in a statement of issues, or speculation based on what an administrative law judge's ultimate legal conclusions might be.

SUPPORT AND OPPOSITION:Support:

Californians for Patients' Rights
CALPIRG
Center for Public Interest Law
Consumer Federation of California
Consumers Union's Safe Patient Project
Consumer Watchdog
One individual

Opposition:

California Chapter of the American College of Emergency Room Physicians
California Medical Association

-- END --