

# MEDICAL BOARD OF CALIFORNIA

---

*Executive Director, William Prasifka: (916) 263-2389 ♦ License Verification, General Licensing, Application and Complaint Information (Toll-Free): 1-800-633-2322 ♦ Website: [www.mbc.ca.gov](http://www.mbc.ca.gov)*

*Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 2001.1

**T**he Medical Board of California (MBC) is a consumer protection agency within the state Department of Consumer Affairs (DCA). The primary purpose of MBC is to protect consumers from incompetent, grossly negligent, unlicensed, impaired, or unethical practitioners by responding to complaints from the public and reports from health care facilities and other mandated reporters. MBC reviews the quality of medical practice carried out by physicians and surgeons and enforces the disciplinary, administrative, criminal, and civil provisions of the Medical Practice Act, Business and Professions Code section 2000 et seq. MBC also provides public record information about physicians to the public via its website and individual requests and educates healing arts licensees and the public on health quality issues. The Board's regulations are codified in Division 13, Title 16 of the California Code of Regulations (CCR).

MBC is responsible for ensuring that all physicians licensed in California have adequate medical education and training. In this regard, the Board issues regular and probationary licenses and certificates under its jurisdiction, administers a continuing medical education program, and administers physician and surgeon examinations to some license applicants. MBC also oversees

the regulation of licensed midwives; polysomnographic technologists, technicians, and trainees; research psychoanalysts; and medical assistants.

The fifteen-member Board consists of eight physicians and seven public members. MBC members are appointed by the Governor (who appoints all eight physicians and five public members), the Speaker of the Assembly (one public member), and the Senate Rules Committee (one public member). Members serve a four-year term and are eligible for reappointment to a second term. Several standing committees and ad hoc task forces assist the Board.

On June 8, 2022, Governor Newsom [appointed](#) Michelle Anne Bholat, 64, of Redondo Beach to the Board. Bholat has been Professor for the Department of Family Medicine at the University of California, Los Angeles since 1999, and has been Executive Vice Chair since 2012. Bholat has been Editor at the Journal of Medical Regulation since 2019. She held multiple positions at the Harbor-University of California, Los Angeles Medical Center from 1995 to 1999, including Assistant Clinical Professor, Medical Director, Associate Program Director and OB Fellowship Director. Bholat was a Student Nurse at the Los Angeles County Department of Health Services General Hospital from 1979 to 1981. Bholat is a member of the Society of Teachers of Family Medicine, Society of Hospital Medicine and California Society of Association Medicine. She earned a Master of Public Policy degree from the University of California, Los Angeles School of Public Health and a Doctor of Medicine degree from University of California, Irvine School of Medicine.

At this writing, the Board has three vacancies—two physicians and one public member—to be filled by Governor Newsom.

# HIGHLIGHTS

## Medical Board of California Supports Law to Strengthen Punishment of Physicians Who Disseminate Misinformation

On June 1, 2022, in a [letter](#) to Assemblymember Low, MBC took a stance on [AB 2098 \(Low\)](#), stating it would “support if amended.” After its amendment on April 20, 2022, the bill largely reflected MBC’s desired changes. Governor Gavin Newsom signed AB 2098 into law on September 30, 2022 (Chapter 938, Statutes of 2022).

AB 2098 expressly provides that the dissemination of misinformation or disinformation related to COVID-19 by physicians and surgeons constitutes unprofessional conduct. The law targets three types of false or misleading information relating to the COVID-19 pandemic: nonfactual information regarding “the nature and risks of the virus”; false statements regarding its “prevention and treatment”; and misinformation or disinformation regarding “the development, safety, and effectiveness of COVID-19 vaccines.”

MBC is required to take action against any licensed physician and surgeon charged with unprofessional conduct. Thus, the law extends MBC’s obligation to COVID-19 misinformation cases.

The following statutory term definitions apply:

- “Disseminate” means the conveyance of information from the licensee to a patient under the licensee’s care in the form of treatment or advice.
- “Misinformation” means false information that is contradicted by contemporary scientific consensus contrary to the standard of care.

- “Disinformation” means misinformation that the licensee deliberately disseminated with malicious intent or an intent to mislead.

AB 2098 will make it easier for MBC to punish doctors who deliberately spread false information about COVID-19 and its treatments. The California Medical Association (CMA) and ProtectUS are co-sponsors of the bill. CMA supports the bill to protect against physicians who spread disinformation. ProtectUS supports the bill because physicians who choose to spread misinformation disproportionately affect the lives of the most vulnerable (i.e., the “sick”).

Opposition expressed concerns about the general “scientific consensus” terminology and the potential physician speech curtailment that could occur under it. Voice for Choice Advocacy opposes the bill, arguing MBC already has measures in place to discipline physicians who maliciously spread misinformation. Further, it believes AB 2098 is overly broad and will be impossible to implement. Californians for Good Governance opposes the bill because it is an unconstitutional restriction on free speech; it is not narrowly tailored to serve the compelling state interest of providing the public with accurate information about COVID-19.

On October 4, 2022, plaintiffs Mark McDonald and Jeff Barke, physicians licensed in California, filed a [complaint](#) against members of MBC and Attorney General Rob Bonta (*McDonald, et al. v. Kristina D. Lawson, et al.*, Case No. 8:22-cv-01805 (C.D. Cal.)). The complaint seeks declaratory and injunctive relief for violations of First Amendment rights. Plaintiffs state AB 2098 “chills the protected speech of medical professionals on the basis of viewpoint.” Further, plaintiffs state that AB 2098 imposes a government mandate to espouse only those ideas that the state deems acceptable.

In addition, plaintiffs allege that the bill, in violation of the Fourteenth Amendment, “does not define its terms with any specificity and therefore does not give regulated physicians adequate notice of what will run afoul of the law.”

## **Medical Board of California Supports Recently Passed Law Requiring Physicians Give Notice of Open Payments Database**

On September 29, 2022, Governor Gavin Newsom signed [AB 1278 \(Nazarian\) \(Chapter 750, Statutes of 2022\)](#) into law. MBC [supported](#) the bill.

AB 1278 is the first California law that requires physicians to disclose the payments they receive to their patients. AB 1278, a Consumer Protection Policy Center-[sponsored bill](#), states that “disclosure of financial conflicts of interest by doctors is a moral obligation not enforced by law.” AB 1278 addresses this and requires physicians and surgeons to provide written or electronic notice of the [Open Payments database](#) to patients at the initial office visit. [\[26:2 CRLR 58\]](#) The Open Payments database is a federal tool that tracks payments made by drug and device companies to physicians and teaching hospitals.

At its August 20, 2021, [meeting](#), MBC voted to support the final version of AB 1278. MBC continued to support the bill in its final form despite the removal of annual written disclosures to patients about actual payments or transfers. The Board deliberated over the bill’s efficacy after the removal and whether it was still valuable. Ultimately, MBC upheld its support, noting that the bill will still help bring awareness to the database and the payments by drug and device manufacturers to physicians. MBC believes this helps consumers make more informed choices, in partnership with their physicians, regarding their medical care and treatment.

The California Medical Association (CMA) opposed the previous iteration of the bill and advocated for the removal of the annual written disclosure. CMA supported the initial disclosure but argued that continued disclosure is unduly burdensome for physicians because it requires them to incur annual recordkeeping costs. CMA’s argument was effective, and the annual requirement was no longer present in the legislature’s final version signed by the Governor.

## **MAJOR PUBLICATIONS**

The following report has been conducted by MBC during this reporting period:

- [2021–2022 Annual Report](#), MBC, October 6, 2022 (provides a detailed look at the Board’s progress advancing its consumer protection mission during the Fiscal year of 2021–2022. Additionally, it highlights legislative proposals that MBC feels strengthen its ability to protect California healthcare consumers).

## **RULEMAKING**

The following is a status update on recent rulemaking proceedings that MBC has initiated:

- **Notice to Consumers:** On August 25, 2022, MBC [approved](#) the modified text of the Notice to Consumers [proposal](#) to amend sections 1355.4, 1378.5, 1379.4, and 1379.58, Title 16 of the CCR and authorize staff to finalize the rulemaking for submission to the Office of Administrative Law (OAL). The rulemaking intends to implement regulations to require its licensees and registrants to provide notice to their patients or clients that the Board licenses the provider. MBC staff noticed the proposed modified text for the minimum 15-day public comment period on June 27, 2022. The public comment period ended on July 15, 2022.

- **Physician and Surgeon Health and Wellness Program (PHWP):** On August 25, 2022, MBC [approved](#) the text of the [proposal](#) to amend sections 1357, 1357.1, 1357.9, and 1361.5(c)(3); repeal section 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8; and adopt sections 1357.10, 1357.11, 1357.12, 1357. 13, and 1357.14 of division 13, of Title 16 of the CCR for the implementation of the PHWP in its Quarterly Board Meeting. PHWP’s goal is to provide early identification of substance abuse to ensure physicians remain able to practice medicine in a manner that will not endanger the public and will maintain the integrity of the medical profession. Staff is now preparing the necessary regulatory documents to submit to the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for approval.

## **LEGISLATION**

- [AB 35 \(Reves\)](#), as amended April 27, 2022, amends section 6146 of the Business and Professions Code, section 3333.2 of the Civil Code, section 667.7 of the Code of Civil Procedure, and adds Chapter 3 to part 2 of division 103 of the Health and Safety Code to recast the provisions of the Medical Injury Compensation Reform Act of 1975 (MICRA). This bill adjusts the contingency fees attorneys can collect in an action against a health care provider, removes the \$250,000 limit on noneconomic damages, and expands the recast provisions to include an action for injury against a health care institution. According to the author, this bill revises California’s outdated medical malpractice statute, MICRA, and provides a balanced and equitable solution to protect patients and medical providers. Governor Newsom signed AB 35 on May 23, 2022 (Chapter 17, Statutes of 2022).

- [AB 657 \(Cooper\)](#), as amended August 11, 2022, adds Chapter 1.2, commencing with section 870, to Division 2 of the Business and Professions Code to require MBC to expedite

the licensure process of an applicant who can intends to provide abortions within their scope of practice. According to the author, this bill helps increase the availability of abortion providers so that timely care can be offered to women seeking abortions in California. Governor Newsom signed AB 657 on September 27, 2022 (Chapter 560, Statutes of 2022).

- [AB 852 \(Wood\)](#), as amended August 22, 2022, amends section 688 of the Business and Professions Code to prohibit health care practitioners authorized to dispense or furnish prescriptions from refusing to dispense or furnish an e-prescription coming from reputable software. This bill also denotes the exceptions when a practitioner could decline such a transmission. According to the author, this bill makes electronic transmission law clearer for prescribers. Governor Newsom signed AB 852 on September 25, 2022 (Chapter 518, Statutes of 2022).

- [AB 1102 \(Low\)](#), as amended August 16, 2022, amends section 4999.2 of the Business and Professions Code to ensure that all health care providers who provide telephone medical services from an out-of-state location are operating consistent with the laws governing their respective licenses. According to the author, this bill clarifies that telephone medical advice companies must comply with the directions and requests of licensing boards that have jurisdiction over the type of advice being provided. Governor Newsom signed AB 1102 on September 28, 2022 (Chapter 684, Statutes of 2022).

- [AB 1278 \(Nazarian\)](#), as amended August 25, 2022, adds Article 6.5 (commencing with section 660) to Chapter 1 of the Business and Professions Code. On September 29, 2022, Governor Gavin Newsom signed AB 1278 (Chapter 750, Statutes of 2022) into law. MBC [supported](#) the bill (see HIGHLIGHTS).



- [AB 1636 \(Weber\)](#), as amended April 20, 2022, amends sections 480, 2232, and 2307 of the Business and Professions Code to require MBC to automatically revoke a license if the licensee has been convicted of an offense that requires registration as a sex offender. According to the author, this bill protects patients from criminal sexual misconduct and ensures that any physician who violates a patient’s trust cannot be licensed in California. Governor Newsom signed AB 1636 on September 22, 2022 (Chapter 453, Statutes of 2022).

- [AB 2098 \(Low\)](#), as amended August 22, 2022, adds section 2270 to the Business and Professions Code and provides that the dissemination of misinformation or disinformation related to COVID-19 by physicians and surgeons constitutes unprofessional conduct. The law targets three types of false or misleading information relating to the COVID-19 pandemic: nonfactual information regarding “the nature and risks of the virus”; false statements regarding its “prevention and treatment”; and misinformation or disinformation regarding “the development, safety, and effectiveness of COVID-19 vaccines.” Governor Newsom signed AB 2098 on September 30, 2022 (Chapter 938, Statutes of 2022) (see HIGHLIGHTS).

- [AB 2178 \(Bloom\)](#), as amended June 14, 2022, amends section 2168 of the Business and Professions Code to require the academic medical center to train a minimum of 250 resident physicians, remove the clinical research requirement for foreign medical graduates, and require the facility to instead offer clinical observer experiences. According to the author, this bill further clarifies the language defining an academic medical center by accurately reflecting the types of trainees and learning experiences offered at these institutions to best attract top faculty from around the world. Governor Newsom signed AB 2178 on September 15, 2022 (Chapter 329, Statutes of 2022).

- [AB 2626 \(Calderon\)](#), as amended August 24, 2022, amends sections 2253 and 3502.4 and adds sections 2746.6 and 2761.1 to the Business and Professions Code. This bill prohibits MBC from suspending or revoking the certificate of a physician or surgeon for performing an abortion in accordance with the Medical Practice Act and Reproductive Privacy Act. Further, it prohibits MBC from denying an application, or otherwise discipline a physician or surgeon because they were disciplined or convicted for an offense related solely to the performance of an abortion in another state. According to the author, this bill protects California abortion providers and patients seeking care in California. Governor Newsom signed AB 2626 on September 27, 2022 (Chapter 565, Statutes of 2022).

- [SB 1440 \(Roth\)](#), as introduced February 18, 2022, amends section 2519.5 of the Business and Professions Code to authorize MBC to have medical experts review a midwife complaint if the Board does not receive the required information about the midwife’s quality of care within 10 business days. According to the author, this bill conforms the process used to evaluate midwifery quality of care complaints to the process used to evaluate physician and surgeon quality of care complaints. Governor Newsom signed SB 1440 on September 23, 2022 (Chapter 510, Statutes of 2022).

- [AB 1954 \(Quirk\)](#), as amended May 19, 2022, adds section 2228.5 to the Business and Professions Code to prohibit physicians and surgeons from denying treatment to a patient based on a positive drug test for THC unless, on a case-by-case basis, the doctor determines that the cannabis use is medically significant to the treatment. The bill prohibits doctors from being punished for providing treatment and specifies that doctor-recommended cannabis does not

constitute illicit substance use. Governor Newsom signed AB 1954 on September 02, 2022 (Chapter 232, Statutes of 2022).

- [AB 2178 \(Bloom\)](#), as amended June 14, 2022, amends section 2168 of the Business and Professions Code to revise the requirements of academic medical centers to train “fellows” rather than “postdoctoral fellows” and have foreign medical graduates in “research” rather than “clinical research.” According to the author, the bill clarifies the types of trainees and learning experiences offered at academic medical centers, which authorize trainees to practice medicine without a license by utilizing special faculty permits. Governor Newsom signed AB 2178 on September 15, 2022 (Chapter 329, Statutes of 2022).

- [SB 57 \(Wiener\)](#), as amended January 18, 2022, would have added and repealed section 11376.6 of the Health and Safety Code, as it relates to controlled substances, authorizing San Francisco, Los Angeles, and Oakland to approve entities to operate overdose prevention programs. These programs would provide a hygienic space supervised by trained staff where people can consume drugs, access sterile consumption supplies, access substance use disorder treatment, and access overdose reversal treatments. The bill would have exempted a person from civil liability, professional discipline, or existing criminal sanctions for good-faith conduct. On August 22, 2022, Governor Newsom [vetoed](#) the bill, stating that he was “acutely concerned about the operation of safe injection sites without strong, engaged local leadership and well-documented, vetted, and thoughtful operational and sustainability plans.”

- [AB 1341 \(Garcia\)](#), as amended on June 8, 2022, would have added section 110423.7 to the Health and Safety Code, prohibiting the sale of dietary supplements for weight loss and diet pills to anyone under 18 without a prescription. New section 110423.7 would have

also required retailers to develop health-related notices regarding products, post these notices at purchase counters, and fine retailers \$1,000 for violations. On September 29, 2022, Governor Newsom [vetoed](#) the bill, stating he commended the work of the author raising awareness of this important public health issue, but that “this measure would require CDPH to evaluate every individual weight loss and dietary supplement product for safety, which is beyond the scope of the department’s capabilities.”

- The following bills, reported in Volume 27, No. 2 (Spring 2022) died in committee or otherwise failed to be enacted in 2022: [AB 2060 \(Quirk\)](#), relating to establishing a public member majority on the Board; [AB 1662 \(Gipson\)](#), relating to disqualification from licensure for related criminal convictions; [AB 1767 \(Horvath\)](#), relating to establishing a California Board of Licensed Midwives within the DCA to take over duties and jurisdiction currently held by MBC; [SB 920 \(Hurtado\)](#), relating to increased transparency of physician records for inspection and investigation; [SB 1441 \(Roth\)](#), relating to updating MBC disciplinary policies and procedures annually; [SB 1031 \(Bogh\)](#), relating to reducing the renewal fee for an inactive license.

## LITIGATION

- *Hoeg v Newsom, Case No. 2:22-at-01119 (E.D. Cal.)*. On November 1, 2022, Five physicians filed a [complaint](#) against Governor Newsom, seeking to invalidate the recently passed legislation, AB 2098, for viewpoint discrimination under the First Amendment and due process violations under the Fourteenth Amendment. The complaint largely focuses on AB 2098’s lack of details about what constitutes “false or misleading information.”

- *McDonald, et al. v. Kristina D. Lawson, et al., Case No. 8:22-cv-01805 (C.D. Cal.)*. On October 4, 2022, plaintiffs Mark McDonald and Jeff Barke, physicians licensed in

California, filed a [complaint](#) against members of MBC and Attorney General Rob Bonta. The complaint seeks declaratory and injunctive relief for violations of First Amendment rights. Plaintiffs state AB 2098 “chills the protected speech of medical professionals on the basis of viewpoint.” Further, plaintiffs state that AB 2098 imposes a government mandate to espouse only those ideas that the state deems acceptable (see HIGHLIGHTS).