

ASSEMBLY THIRD READING

AB 408 (Berman)

As Amended April 21, 2025

Majority vote

SUMMARY

Revises the authority of the Medical Board of California (MBC) to establish a Physician Health and Wellness Program to enable the program to align with national best practices for helping physicians with substance use disorders and other conditions receive treatment so they can continue practicing safely.

Major Provisions

- 1) Repeals current law authorizing the MBC to establish a Physician and Surgeon Health and Wellness Program for physicians and surgeons with substance abuse issues.
- 2) Reestablishes the MBC's authority to establish a Physician and Surgeon Health and Wellness Program and broadens eligibility for participation in the program to include not only physicians and surgeons but also allied health care professionals licensed by the MBC, applicants, prospective applicants, trainees, and students.
- 3) Broadens the scope of the Physician and Surgeon Health and Wellness Program to provide assistance for individuals struggling with any impairing or potentially impairing physical or mental health conditions, including but not limited to substance use disorders.
- 4) Authorizes the MBC to establish one or more advisory committees to assist it in carrying out its duties related to the Physician Health and Wellness Program, as specified.
- 5) Provides that a Physician and Surgeon Health and Wellness Program established by the MBC shall do all of the following:
 - a) Educate the public, licensees, applicants, prospective applicants, trainees, students, health facilities, medical groups, health care service plans, health insurers, and other relevant organizations on specified topics relating to the program.
 - b) Enter into relationships supportive of the program with professionals experienced in working with health care providers to provide education, evaluation, monitoring, or treatment services.
 - c) Receive and assess reports of suspected impairment from any source.
 - d) Intervene in cases of verified impairment or suspected impairment, as well as in cases where the individual has a condition that could lead to impairment if left untreated.
 - e) Upon reasonable cause, refer participants for evaluation, treatment, monitoring, or other appropriate services.
 - f) Provide consistent and regular monitoring, care management support, or other appropriate services for program participants.

- g) Advocate on behalf of participants, with their consent, to the MBC to allow them to participate in the program as an alternative to disciplinary action, when appropriate.
 - h) Offer guidance on participants' fitness for duty with current or potential workplaces, when appropriate.
 - i) Perform other services as agreed between the program and the MBC.
- 6) Exempts voluntary participants from the requirements of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.
- 7) Requires participants on probation to comply with the terms of that probation, including a probation order imposing the Uniform Standards, and requires the Physician Health and Wellness Program to provide any required evaluations, treatment, monitoring, and reports to the MBC consistent with the participant's order of probation.
- 8) Authorizes the MBC to refer a licensee to the Physician Health and Wellness Program in lieu of disciplinary action if the MBC determines that the unprofessional conduct may be the result of an impairing or potentially impairing condition; however, prohibits referral to the program in lieu of disciplinary action if the unprofessional conduct involves allegations of patient or client harm or sexual misconduct with a patient, client, or any other person.
- 9) Requires the MBC to obtain the consent of the licensee prior to referring the licensee to the Physician Health and Wellness Program in lieu of disciplinary action, and provides that if the licensee does not consent or does not successfully complete the program, the MBC may take appropriate disciplinary action.
- 10) Authorizes the MBC to enter into a multiyear contract with an administering entity and places additional requirements for the administration of the Physician Health and Wellness Program.

COMMENTS

Medical Board of California. The MBC is primarily responsible for licensing and regulating physicians and surgeons, whose certificates authorize the plenary practice of all recognized fields of medicine. The MBC also has jurisdiction over special program registrants and organizations and special faculty permits, which allow those who are not MBC licensees but who meet certain licensure exemption criteria to perform duties in specified settings. The MBC also has authority over licensed midwives, medical assistants, and registered polysomnographic professionals. The MBC additionally approves accreditation agencies that accredit outpatient surgery settings and issues fictitious name permits to physicians practicing under a name other than their own.

Efforts to Address Physician Wellness and Burnout. Discussions have long persisted around how to support the mental and physical well-being of California's frontline health workers, including physicians. National studies have concluded that a significant percentage of physicians meet the diagnostic criteria for substance abuse or dependence compared to the general population. The increased prevalence of substance use disorders among physicians has been associated with the high-stress work environment of medical practice, access to prescription medications, and cultural factors that stigmatize mental health issues and discourage seeking care.

During the MBC's most recent sunset review, the background paper published by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development raised the following issue: "Under ordinary circumstances, frontline healthcare providers and first responders often face difficult situations that are mentally and emotionally challenging. Are there new issues arising from, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?"

In recognition of these concerns, the MBC's most recent sunset bill made changes to statute authorizing the MBC to require physicians to respond to a questionnaire intended to confirm that the physician "currently has no mental, physical, emotional, or behavioral disorder that would impair the physician's ability to practice medicine safely." Further changes were made in 2024 to further restrict the MBC's authority to require applicants and licensees to self-disclose conditions or disorders that do not impair their ability to practice medicine safely, including disorders for which they are receiving appropriate treatment.

Physician Health and Wellness Program. One effective mechanism for addressing substance use disorders within the medical profession is the use of programs for identifying, treating, and monitoring practitioners struggling with addiction or other potential impairments. The first such program in California was established in 1979 through legislation co-sponsored by the MBC (then known as the Board of Medical Quality Assurance) and the California Medical Association. The MBC's original Diversion Program was intended to facilitate the rehabilitation of physicians suffering from drug or alcohol abuse while allowing them to continue practicing medicine under a treatment program, which could be customized to include specific safeguards such as practice monitors and regular drug and alcohol testing. Physicians who failed to comply with their individual treatment plan would face license suspension or would be otherwise referred to the MBC's enforcement program for discipline.

Concerns were raised regarding the MBC's Diversion Program shortly following its implementation, with specific criticisms published in reports by the California State Auditor and during the Legislature's sunset review of the MBC. In November 2004, an Enforcement Monitor appointed pursuant to the MBC's sunset bill submitted their initial report with a chapter specifically focused on the Diversion Program. The report whether the MBC's administration of its Diversion Program was consistent with its statutory mandate to prioritize protection of the public. The Enforcement Monitor's final report in 2005 acknowledged that "the Board's Diversion Program has undergone a dramatic change in management and direction with the stated intent of 'reconstructing' the program to better protect the public, and significant operational improvements have been implemented despite continuing resource shortages." However, the Enforcement Monitor continued to raise "threshold issues" about whether the Diversion Program should be continued and whether it should be administered by the MBC, rather than through a contract with a third party.

In 2005, the MBC's sunset bill was amended to require an additional audit of the MBC's Diversion Program, with the program scheduled to sunset on January 1, 2009 unless extended. In June 2007, the California State Auditor released its report, which found that many of the Enforcement Monitor's recommendations had not been implemented and that the program still struggled to sufficiently monitor licensee participation and take action for violations of a participant's treatment plan. In response to this final audit, the MBC voted at its July 2007 meeting to abolish its Diversion Program, which was formally repealed on July 1, 2008.

Following the dissolution of the MBC's Diversion Program in 2008, the Legislature enacted Senate Bill 1441 (Ridley-Thomas), Chapter 548, Statutes of 2008, sponsored by the Center for Public Interest Law, whose Administrative Director had served as the MBC's Enforcement Monitor. Senate Bill 1441 established the Substance Abuse Coordination Committee within the DCA to formulate "consistent and uniform standards and best practices in dealing with substance-abusing licensees." This included 16 specific standards each healing arts board would be required to use in dealing with substance-abusing licensees, with or without a formal diversion program.

The intent of Senate Bill 1441 was to standardize programs seeking to rehabilitate health care licensees struggling with substance use problems across all of DCA's healing arts boards. The bill was intended to "continue a measure of self-governance," with committee analysis noting that "the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels." However, Senate Bill 1441 required any initiative by a healing arts board resembling the creation of a diversion program to comply with each of the requirements contained in the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

After several failed attempts to reestablish a program within the MBC, in 2016, the California Medical Association sponsored Senate Bill 1177 (Galgiani), Chapter 591, Statutes of 2016, to authorize the MBC to establish a Physician Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in their rehabilitation from substance abuse. The MBC had stated during its October 2015 meeting that it believed any program for physicians would have to comply with the DCA's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, and the bill specifically required the program to comply with those requirements. The bill was signed into law by Governor Brown, finally recodifying the authority for the MBC to establish a program for substance abusing physicians.

The MBC began its formal rulemaking process to implement Senate Bill 1177 shortly after Senate Bill 1177 was signed, voting in October 2016 to hold interested parties meetings in 2017 to obtain input on potential regulatory language. In October 2017, the MBC voted to move forward with noticing proposed regulations for a 45-day comment period and hearing; however, while this was underway, the Substance Abuse Coordination Committee within the DCA announced that it was meeting to make changes to the Uniform Standards, resulting in a pause in the MBC's rulemaking. In November 2019, the MBC voted to move forward with a modified regulatory proposal, which was submitted to the DCA; two years later, the MBC voted once again to move forward with another revised version of its regulations, which were formally noticed for public comment in September 2023.

After receiving public comments through November 2023, the MBC reviewed what it has described as "thoughtful feedback from stakeholders and experts who raised valid concerns about the effectiveness of our proposal and its potential unintended consequences." Specifically, the MBC determined that the Physician Health and Wellness Program authorized by Senate Bill 1177 would not align with national best practices for encouraging participation and achieving successful outcomes. One specific concern was that Senate Bill 1177 would still require the MBC's program to comply with the Uniform Standards, which would require the board to disclose information to the public on licensees participating in the program "regardless of whether the licensee is a self-referral or a board referral." Concerns were raised that this would

only serve to further stigmatize practitioners who seek care for disorders and disincentivize those who would otherwise consider voluntarily entering a program.

In response to these concerns, the MBC voted to withdraw its proposed regulations and instead move forward with legislation to revise its authority to establish a Physician Health and Wellness Program to allow it to implement a program that aligns with best practices. This bill, sponsored by the MBC, would make several important changes to the MBC's existing authority. First, it would provide that the Uniform Standards would not be mandated on any individual who is participating in the Physician Health and Wellness Program voluntarily. This would allow for that participation to occur confidentially, just as it would be were the individual to participate in any other treatment program not currently affiliated with a licensing board.

This bill would also expand eligibility to participate in the Physician Health and Wellness Program to include not just physicians, but also other professionals overseen by the MBC, such as licensed midwives or registered polysomnographic professionals, as well as license applicants and medical students. Under this bill, the program would also be broadened to include any impairing or potentially impairing physical or mental health conditions, which would include substance use disorders but could also include other conditions commonly associated with physician stress and burnout. The bill would also streamline the MBC's ability to enter into multi-year contracts with a program administrator, authorize the creation of advisory committees within the MBC, and provide for mandatory reporting by licensees of colleagues believed to have impairing conditions.

Nothing in the bill is intended to change the process for licensees who are required enter into the program as a form of discipline. Further, this bill would not change the requirements for any licensee who is found to have engaged in unprofessional conduct involving allegations of patient or client harm or sexual misconduct with a patient, client, or any other person. While the MBC already has authority to establish a Physician Health and Wellness Program, this bill would arguably enable it to establish a more successful program that can help more individuals receive help with a broader range of disorders while continuing to safely practice medicine.

According to the Author

"When our physicians struggle with substance use disorders, it is in the best interest of both patients and physicians to support them in seeking out help. AB 408 builds off California's longstanding efforts to destigmatize seeking treatment for substance use disorders. This bill is fundamentally about patient safety. Today, physicians struggling with substance use disorders can feel pressure to hide their condition and often never get the help they need. The creation of this program will help healthcare providers get the care they need, which will better protect patients in the end."

Arguments in Support

The *Medical Board of California* (MBC) is sponsoring this bill. According to the MBC: "Whether due to a substance use disorder, or another mental or physical health condition, impaired healthcare providers can cause devastating harm to the public. AB 408 authorizes the Board to establish a physician health and wellness program (program) that will coordinate treatment and monitoring services for the Board's current and future licensees consistent with national best practices so that they can get the help they need to stay healthy and provide the high-quality care that patients deserve. This proposal also includes reporting requirements so that the program and/or Board is aware of its licensees who are unsafe to practice, authorizes

program quality and compliance evaluations, and requires public disclosure of various program statistics."

Arguments in Opposition

The *Consumer Protection Policy Center* (CPPC) opposes this bill, writing: "CPPC urges the Legislature to reject the proposed PHWP legislation and instead encourage MBC to focus on matters that truly and appropriately concern the legitimate regulatory functions of MBC. When MBC seeks to create a rehabilitation program, it is the Board's burden to ensure that patients are protected above all else. This Board previously rejected similar PHWP proposal in the form of rulemaking and there are identical similarities to this new proposed PHWP legislation. There is no need for MBC to be concerned in physician and doctor rehabilitation in light of the Board's enforcement obligations."

FISCAL COMMENTS

According to the Assembly Committee on Appropriations, no state costs.

VOTES

ASM BUSINESS AND PROFESSIONS: 16-0-2

YES: Berman, Flora, Ahrens, Alanis, Bauer-Kahan, Caloza, Chen, Elhawary, Hadwick, Haney, Irwin, Jackson, Krell, Lowenthal, Nguyen, Pellerin

ABS, ABST OR NV: Bains, Macedo

ASM JUDICIARY: 10-0-2

YES: Kalra, Dixon, Bryan, Connolly, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

ABS, ABST OR NV: Bauer-Kahan, Macedo

ASM APPROPRIATIONS: 14-1-0

YES: Wicks, Sanchez, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache, Ta

NO: Tangipa

UPDATED

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