

Highlights from the Medical Board of California Sunset Review Oversight Report for 2020

Insights

02.18.21

As required by law, the Medical Board of California (“MBC”) submitted its 2020 Sunset Oversight Report to the California Legislature. The report highlights the work the Board has done over the past two years to fulfill its primary mandate of consumer protection. The Board’s 387 page report provides information related to a variety of issues including performance and consumer satisfaction measures, the Board’s fiscal health updates, as well as policy and legislative updates. The Sunset Report also provides updates regarding both the Board’s Licensing and Enforcement Divisions—the division responsible for issuing licensees and then discipline.

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Postgraduate Training License & Applications

At the start of 2020, several changes to licensing laws went into effect following the passage of SB 798. Starting on January 1, 2020 all physician applicants are required to complete 36 months of approved postgraduate training, with 24 months in a single program. (Bus & Prof. Code §2065.) Additionally, all medical school graduates are required to obtain a Postgraduate Training License (“PTL”) in order to practice medicine within 180 days of enrollment in a Board-approved training program. (Bus. & Prof. Code § 2064.5.) The PTL will be valid for up to 39 months; but the Board has issued several waivers related to the [PTL program and its licensing program](#) due to the COVID-19 pandemic.

The Sunset Report also notes that the Board expects to respond to all applications for licensure, including PTL’s, within 45 days from the date it receives the application. During 2020, Board received 836 to 970 PTL applications, which is most likely attributed to the new PTL laws. Initial applications for physicians also increased by 74% in the fourth quarter of Fiscal Year (“FY”) 2019/2020, totaling 2,861 new applications for licensure. The Board issued approximately 6,072 licenses and 71,024 renewals in FY 2019/2020. (Report at Table 7a.) Overall, the Board reported an increase of 2,031 license applications (both PTL and Physician’s and Surgeon’s Certificates) in FY 2019/2020 as compared to the previous fiscal year. (Report at p. 120, ¶60.)

Complaints & Investigation Activities

The Sunset Report also details the Board’s enforcement activities from the prior FY, which “are the core of the Board’s mission of consumer protection.” (Report at p. 90, ¶ 34.) The Board expects a non-complex investigation to be complete within 180 days from the receipt of the complaint, however the current average time frame is 202 days. The Board determined the increased investigation time

period is due to an increased number of complaints coupled with increased staff vacancies. The Board reported 8,679 complaints in FY 2015/2016 with those numbers steadily increasing each FY to 11,407 complaints in FY 2018/2019. (*Id.* at p. 91, ¶ 35.) While there was a drop in complaints in the fourth quarter of 2019/2020, the Board determined that drop was due to the state-wide shut-down and predicts the complaint level to return to similar pre-COVID complaint numbers.

Prior to January 1, 2019, Board investigations were processed through a Vertical Enforcement (“VE”) model that allowed investigators to work cooperatively with the Attorney General’s Office. Following the end of the VE program due to a change in the law, the length of field investigations increased from 547 days (FY 2018/2019) to 572 days (FY 2019/2020). There were also no administrative hearings held from mid-March to June 30, 2020 due to COVID-19 slowing down the Enforcement arm. The Board did report, that of all the cases prosecuted by the Attorney General’s Office in FY 2019/2020, 84% resulted in a settlement agreement, 11% resolved following an administrative hearing, and 5% were the result of a default decision and order. (*Id.* at p. 103, ¶39(c).)

Remote Work & Paper-Less Systems

During the COVID-19 pandemic, the Board reported that many of its employees were working remotely, which highlighted its over-reliance on paper-based systems. It is currently working on several programs to update its processes in order to transition to a paper-less/reduced paper system utilizing cloud based systems. This would encompass all of its systems from licensing to complaint processing to investigations. Related specifically to the licensing program, the Board deployed the DOCS portal this past year allowing medical schools and residency program registered with the Board to submit the required application materials electronically, speeding up the licensing process.

The COVID-19 pandemic also highlighted the Board’s practice of monitoring physicians who have “online practices” and/or telehealth practices, with complaints regarding these practices increasing as a result. (Report at p. 118, ¶ 59.) The Board still requires physicians practicing online and using telehealth platforms to have an active California Physician’s and Surgeon’s Certificate if treating patients inside California, while also complying with applicable standards of practice. (Bus. & Prof. Code §2290.5.)

Actions Taken in Response to COVID-19

The Sunset Report also addresses the following Board actions taken in direct response to COVID-19:

- Board staff continue to work remotely either on a full or part time basis with staggered work shifts for those in the Board offices;
- the Board moved its quarterly Board meeting to a virtual online platform and will continue to do so until the Governor lifts the State of Emergency;
- the enforcement and investigation units are incorporating video or telephonic methods to conduct investigations and probation monitoring activities;
- the Board and the Attorney General’s Office have improved information sharing systems to allow for electronic transmission of information;
- [Executive Order N-40-20](#) permits the Department of Consumer Affairs director to waive any statutory or regulatory licensing requirements which include the following waivers ([a full list of waivers can be found here](#)):
 - [Waiver DCA-20-50](#) and [DCA-20-100](#) (Postgraduate Training License Deadlines);
 - [DCA-20-65](#) (Physician’s and Surgeon’s License Deadlines for new licenses);
 - [DCA-20-04](#), [DCA-20-05](#), [DCA 20-06](#), and [DCA-20-83](#) (Physician Supervision of Nurse-Midwives, Physician Assistants, and Nurse Practitioners);
 - [DCA-20-53](#) (Examination Requirements); and
 - [DCA-20-57](#) (License Restoration Requirements).

Update on Legislation and Board Action

Another aspect of the Sunset Report is to provide an update on legislation with Board input, as well as information related to various program changes. This includes legislations relating to the Podiatric Medical Board (SB 1039, SB 798), the creation of a Physician and Surgeon Health and Wellness Program, Board approval of specialty board certification programs (SB 798), the corporate practice of medicine ban should remain in place, the reinstatement of cost recovery in physician discipline cases, and many other topics. The Report also identified several topics for possible legislative changes to its finances and to both the enforcement and licensing programs.

For further information, please contact [Emily Brinkman](#) in San Francisco, [Jennifer Hansen](#) in San Diego, [Alicia Macklin](#) or [Linda Kollar](#) in Los Angeles, or your regular Hooper, Lundy & Bookman contact.

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