

Date of Hearing: June 19, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 1448 (Hill) – As Amended June 11, 2018

SENATE VOTE: 29-3

SUBJECT: Healing arts licensees: probation status: disclosure

SUMMARY: Enacts the Patient's Right to Know Act of 2018 to require healing arts licensees on probation for certain offenses to provide their patients with information about their probation status prior to the patient's first visit following the probationary order beginning July 1, 2019.

EXISTING LAW:

- 1) Establishes the Medical Board of California (MBC), a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, including 7 public members. (Business and Professions Code (BPC) § 2001)
- 2) Requires the MBC to post on its Internet Web site the current status of its licensees; any revocations, suspensions, probations, or limitations on practice, including those made part of a probationary order or stipulated agreement; historical information regarding probation orders 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; and other information about a licensee's status and history. (BPC § 2027)
- 3) Establishes the Osteopathic Medical Board of California (OMBC), which regulates osteopathic physicians and surgeons that possess effectively the same practice privileges as those regulated by the MBC but with a training emphasis on diagnosis and treatment of patients through an integrated, whole-person approach. (BPC § 2450)
- 4) Establishes the California Board of Podiatric Medicine (BPM) within the jurisdiction of the MBC, which regulates health practitioners whose scope of practice is restricted to the foot and ankle. (BPC §§ 2460 et seq.)
- 5) Establishes the California Acupuncture Board (CAB) to regulate licensed acupuncturists in the state. (BPC § 4928)
- 6) Establishes the Board of Chiropractic Examiners to license and regulate the practice of chiropractic. (The Chiropractic Initiative Act of California, an uncodified initiative act approved by electors November 7, 1922)
- 7) Establishes the Naturopathic Medicine Committee (NMC) within the OMBC to enforce and administer the Naturopathic Doctors Act. (BPC § 2450.3)
- 8) Requires healing arts boards to each create and maintain a central file of the names of all persons who hold a license or similar authority from the board confidentially containing an individual historical record for each licensee containing, among other things, disciplinary information. (BPC § 800)

- 9) Requires the MBC, the OMBC, the BPM, and the Physician Assistant Board to disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including probationary status and limitations on practice. (BPC § 803.1)

THIS BILL:

- 1) Requires podiatrists regulated by the BPM; acupuncturists regulated by the CAB; chiropractors regulated by the BCE; and naturopathic doctors regulated by the NMC to disclose to their patient or their patient's guardian or health care surrogate before the patient's first visit following a probationary order made on and after July 1, 2019, the following information:
 - a) The licensee's probation status;
 - b) The length of the probation;
 - c) The probation end date;
 - d) All practice restrictions placed on the licensee by the licensee's board;
 - e) The board's telephone number; and
 - f) An explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's license information website.
- 2) Requires physicians and surgeons regulated by the MBC or the OMBC to provide the above disclosure only when a final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establish that the physician and surgeon did any of the following:
 - a) The commission of any act of sexual abuse, misconduct, or relations with a patient or client.
 - b) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.
 - c) Criminal conviction involving harm to patient safety or health.
 - d) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.
- 3) Requires physicians and surgeons regulated by the MBC or the OMBC to provide a disclosure to their patients under the above circumstances following a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact when an accusation or statement of issues alleged any of the acts and the settlement includes an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.
- 4) Requires a licensee subject to any of the above disclosures to obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

- 5) Exempts from all of the disclosure requirements described above any of the following circumstances:
- a) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure;
 - b) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities;
 - c) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit;
 - d) The licensee does not have a direct treatment relationship with the patient.
- 6) On and after July 1, 2019, requires the aforementioned boards to provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's website:
- a) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.
 - b) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.
 - c) For a licensee granted a probationary license, the causes by which the probationary license was imposed.
 - d) The length of the probation and end date.
 - e) All practice restrictions placed on the license by the board.
- 7) States that a violation of any of the above requirements shall not be punishable as a crime.

FISCAL EFFECT: According to the Senate Committee on Appropriations, likely ongoing costs in the low hundreds of thousands of dollars per year for increased enforcement costs and disciplinary hearings for physicians licensed by the MBC and additional costs to the other affected boards and programs; precise amounts are unknown but are expected to be absorbable within existing resources.

COMMENTS:

Purpose. This board is sponsored by the author. According to the author:

SB 1448 requires that physicians disciplined by their regulatory board for the following offenses will have to notify their patients prior to their visit:

- 1. Sexual misconduct with a patient*
- 2. Drug abuse that can harm patients*

3. *Criminal conviction involving harm to patients*

4. *Inappropriate prescribing resulting in patient harm*

These categories include the most egregious probation cases. The bill has been amended to exclude less serious offenders.

Currently doctors have to notify their insurer and their hospital or clinic about their probation status, but patients receive no notice – they are left in the dark and susceptible to future abuse.

Background. The probation disclosure requirements contained within this bill were previously proposed by the author in prior legislative vehicles, including Senate Bill 798, the sunset extension vehicle for the MBC and the OMBC. The proposal stems from a concern that many health practitioners are able to actively practice on patients or clients despite being guilty of misconduct, including certain egregious offenses such as sex or drug-related crimes. In many of these instances, a licensee accepts or receives probationary status and continues to practice with certain conditions, such as practice restrictions, monitoring requirements, or mandatory substance abuse counseling. Attention to these concerns was partly heightened by public awareness surrounding the victimization of star athletes, including Olympic gymnasts, by licensed health practitioners in other states.

Efforts to include probation disclosure requirements in the sunset vehicle for the MBC and OMBC were stalled by stakeholder opposition and reservations within the committee that adequate due process was not safeguarded for physicians and surgeons where the serious offense was not proven through an adjudication or settlement stipulation. This bill has been amended to address those concerns by including language in the MBC and OMBC provisions that in the event a settlement for probation did not feature any stipulations or admissions but the underlying accusation alleged one of the included crimes, the settlement must include an express acknowledgment that the disclosure requirements will apply in order to serve to protect the public interest.

For physicians and surgeons regulated by the MBC and OMBC, the disclosure requirements only apply to licensees on probation for serious offenses including sexual abuse, misconduct, or relations with a patient or client; drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely; criminal convictions involving harm to patient safety or health; and inappropriate prescribing resulting in harm to patients and a probationary period of five years or more. For other regulatory entities included in the provisions of this bill, all licensees on probation would be required to disclose their probation status.

Information regarding many licensees' probation status is already available on the board's website. The MBC is finalizing development of a mobile application that would further enable patients to learn about new disciplinary actions against their physician. However, there is a belief that the majority of patients will not proactively research their practitioner prior to a visit. This bill would provide the information for physicians and other healing arts licensees automatically at the beginning of a visit, allowing patients to make their own determination about whether to see a licensee who is allowed to practice but on probation following an offense.

Current Related Legislation. AB 505 (Caballero) would prohibit the MBC from entering into any stipulation for disciplinary action if the stipulation places a licensee on probation and the operative accusation includes a felony conviction involving harm to patient safety or health; drug or alcohol abuse directly resulting in harm to patient safety or health; or sexual act or sexual exploitation as defined. *This bill is pending in the Senate Business, Professions and Economic Development Committee.*

Prior Related Legislation. SB 763 (Hill) of 2015 would have required the MBC, the OMBC, and the BPM to disclose to an inquiring member of the public and to post on their websites specified information concerning each licensee including revocations, suspensions, probations, or limitations on practice. *This bill died in Assembly Rules following substantial amendments.*

SB 1033 (Hill) of 2016 would have required physicians and surgeons, podiatrists, acupuncturists, chiropractors, and naturopathic doctors to notify patients of their probationary status before visits take place. *This bill failed passage on the Senate Floor.*

SB 798 (Hill, Chapter 775, Statutes of 2017) originally contained language that would have required physicians and surgeons to notify patients of their probationary status. *This bill was chaptered with the provisions regarding probation status disclosure removed.*

ARGUMENTS IN SUPPORT:

The Consumer Attorneys of California (CAOC) writes in support. CAOC states that “the recent case against Olympic team doctor Larry Nasser, who was convicted after decades of abusing young athletes under his care, highlights the need to protect patients when regulators fail to act. Even more recently, Dr. George Tyndall, a USC gynecologist, was accused of conducting inappropriate pelvic exams on young students.” CAOC further states that “SB 1448 would help ensure that health care consumers are informed of a doctor’s previous misconduct, thereby improving patient safety and putting an end to a system that facilitates abuse.”

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Center for Public Interest Law
Consumer Attorneys of California
Consumer Federation of California
Consumer Watchdog
Consumers Union

REGISTERED OPPOSITION:

None on file.

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