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April 16, 2018

Honorable Jerry Hill, Chair, and Members  
Senate Committee on Business, Professions and Economic Development  
State Capitol, Room 2053  
Sacramento, CA 95814

**Re: SB 1448 (Hill)—SUPPORT**

Dear Chair Hill and Committee Members:

The Center for Public Interest Law strongly supports SB 1448 (Hill), The Patients' Right to Know Act of 2018. If successful, this bill would make California the first state in the nation to require physicians, and other specified health professionals, to inform their patients if they are practicing while on probation. As the courageous victims of physician misconduct so eloquently stated at a recent press conference, patients deserve to know this critical information.

CPIL is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For nearly 40 years, CPIL has studied occupational licensing and monitored California agencies that regulate business, professions, and trades, including the Medical Board of California (MBC) and other Department of Consumer Affairs (DCA) health care boards. CPIL's expertise has long been relied upon by the Legislature, the executive branch, and the courts where the regulation of licensed professions is concerned. For example, after numerous reports of problems at MBC's enforcement program were published in 2002, the DCA Director appointed CPIL's then Administrative Director, Julianne D'Angelo Fellmeth, to the position of MBC Enforcement Monitor. Over a two-year period, she directed an in-depth investigation and review of MBC's enforcement and diversion programs. In two exhaustive reports,<sup>1</sup> CPIL made 65 concrete recommendations to strengthen the Board's enforcement program. Since then, several pieces of reform legislation (SB 231 in 2005, SB 1438 in 2006, AB 1127 in 2011, SB 304 in 2013, and AB 1886 in 2014) have been enacted, mirroring many of our recommendations.

Patients place their lives in the hands of their health professionals every day. When MBC places a physician on probation for serious offenses, it often places certain conditions upon that physician's ability to continue practicing medicine. For example, if a male physician is disciplined for sexual misconduct with a patient, the Board may require a female chaperone to be present during all examinations with female patients as a condition of allowing that physician to continue practicing.

Yet patients are typically unaware of any such conditions or the fact that their doctor is on probation at all. While the Medical Board does post disciplinary information on its website (and some of the boards subject to this bill are NOT required to post the same information required of MBC), that information is useful only if (1) the patient knows of the existence of the Medical Board, and that it is the state agency that licenses and regulates physicians; and (2) the Medical Board posts information about physicians on its website; and (3) the Medical Board posts disciplinary decisions on its website;

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<sup>1</sup> Julianne D'Angelo Fellmeth and Thomas A. Papageorge, *Initial Report of the Medical Board Enforcement Program Monitor* (Nov. 1, 2004); Fellmeth and Papageorge, *Final Report of the Medical Board Enforcement Program Monitor* (Nov. 1, 2005).

and (4) the patient has a computer and is computer-literate, and is able to access this information (consider patients in nursing home facilities, who might be in most need of this information); and (5) the patient is willing and able to parse a 50-page decision that is replete with legal jargon and eventually (on page 45 of a 50-page decision) lists the terms and conditions of the physician's probationary status. And even if patients are aware of the Board's website, they cannot be expected to consistently check for new disciplinary actions, particularly when they have an existing relationship with their physician.

SB 1448 would rightly require specified licensees, including doctors, to disclose to their patients that their license has been placed on probation before the first visit following the probationary order. Additionally, licensees must provide patients with such critical information as the licensee's probation status, the length of the probation and the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and 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 online license information. The bill also carefully specifies the information that each board must place on its website pertaining to its licensees on probation.

Public protection is the "paramount priority" for the boards subject to this bill, including MBC.<sup>2</sup> This 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.

We at CPIL sincerely applaud Senator Hill's tremendous commitment to this critically important matter of public protection, and his repeated efforts to introduce this legislation in the face of immense opposition from the industry. The events of the past year have solidified that now is the time for California to take the lead, and pass this necessary and long-overdue legislation.

For all of these reasons, CPIL urges your "YES" vote on SB 1448.

Sincerely,



Bridget Fogarty Gramme  
Administrative Director  
Center for Public Interest Law  
University of San Diego School of Law

cc: Kimberly Kirchmeyer, Executive Director, Medical Board of California  
Dean Grafilo, Director, Department of Consumer Affairs

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<sup>2</sup> See, e.g., Business and Professions Code section 2001.1 ("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.").