

May 25, 2021

Senator Richard D. Roth
State Capitol, Room 2053
Sacramento, CA 95814

Re: SB 806 (Roth) – SUPPORT

Dear Senator Roth:

The Center for Public Interest Law (CPIL) strongly supports recent amendments to SB 806 (Roth), the sunset legislation for the Medical Board of California (MBC). The amendments, many of which CPIL recommended in its [written](#) and oral testimony at the Board’s Joint Sunset Review Oversight hearing on March 19, 2021, are critical steps to restoring the public’s trust in MBC’s ability to protect the public from unethical and incompetent physicians and surgeons.

About the Center for Public Interest Law

CPIL is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For over 40 years, CPIL has studied occupational licensing and monitored California agencies that regulate business, professions, and trades, including the Medical Board and other Department of Consumer Affairs (DCA) health care boards. CPIL has focused heavily on MBC since 1989 when it published *Physician Discipline in California: A Code Blue Emergency* (“Code Blue”), a 100-page report based on three years of research which revealed the minimal output, fragmented structure, and questionable priorities of the Medical Board’s enforcement program. Based on that report, the Legislature passed at least five MBC enforcement program reform bills between 1990 and 2000.¹ After continuing reports of problems at MBC’s enforcement program were published in 2002, the Legislature passed SB 1950 (Figueroa) in 2002, which required the DCA Director to appoint a “Medical Board Enforcement Monitor.” After a competitive bidding process, the Director appointed CPIL’s then Administrative Director, Julianne D’Angelo Fellmeth, to that position in October 2003. Over a two-year period, she directed an in-depth investigation and review of MBC’s enforcement and diversion programs, culminating in two reports containing 65 concrete recommendations for reform.² At least five pieces of reform legislation (SB 231 in 2005; SB 1438 in 2006; AB 1127 in 2011; SB 304 in 2013; AB 1886 in 2014) have been enacted in response to these reports, mirroring many of the recommendations.

¹ SB 2375 (Presley) (Chapter 1597, Statutes of 1990); SB 916 (Presley) (Chapter 1267, Statutes of 1993); SB 609 (Rosenthal) (Chapter 708, Statutes of 1995); AB 103 (Figueroa) (Chapter 359, Statutes of 1997); SB 16 (Figueroa) (Chapter 614, Statutes of 2000).

² Julianne D’Angelo Fellmeth and Thomas A. Papageorge, *Initial Report of the Medical Board Enforcement Monitor* (November 1, 2004) (hereinafter “*Initial Report*”); Julianne D’Angelo Fellmeth and Thomas A. Papageorge, *Final Report of the Medical Board Enforcement Monitor* (November 1, 2005).

Increase in Public Member Representation on the Board

CPIL wholeheartedly supports the proposed amendment to section 2001 of the Business and Professions Code to add two public members to the Board, giving the public—and not physicians—the majority of the Board. Such a composition will provide a much needed shift in perspective as to how to best achieve the Board’s statutory paramount priority of protecting the public. It will also send an important message to the public about the Board’s commitment in this regard.

Additionally, as we mentioned at the Sunset Review Oversight Committee Hearing, this is a recommendation for which we at CPIL have been advocating for decades—particularly following the U. S. Supreme Court’s decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S.494 (2015). This holding included the bold general rule that where a regulatory board is controlled by active market participants in the occupation the board regulates, it lacks state sovereignty and thus is subject to federal antitrust liability unless the state can show that it is actively supervising these boards. Changing the Board’s composition to a public member majority is not only the right thing to do for public protection, but it will decrease the Board’s risk of exposure to lawsuits.

Appointment of an Enforcement Monitor to Assess the Existing Program and Recommend Improvements for Public Protection

We also strongly support the intent language regarding the appointment of an enforcement monitor to monitor and evaluate the enforcement efforts of the Medical Board of California, with specific concentration on the handling and processing of complaints and timely application of sanctions or discipline imposed on licensees and persons in order to protect the public. As mentioned above, CPIL’s then-Administrative Director, Julie Fellmeth, was appointed to serve as the Board’s last enforcement monitor in 2005, and we have observed first-hand the benefit to the public of having an independent monitor assess the Board’s functioning and make recommendations to improve public protection.

To maximize impact, we recommend that the monitor should focus on and make recommendations as to at least the following key issues:

- **Complaint Process:** recommendations regarding an infrastructure to address the existing frustration that complainants experience when interacting with the Board, such as an independent ombuds office or a victims’ advocate.
- **Metrics:** it has become apparent that the Legislature, the Board, the Attorney General’s office, and the public often operate with different data sets when it comes to the assessing the Board’s performance and adherence to disciplinary guidelines. The enforcement monitor should assess and recommend a set of meaningful metrics with respect to complaint processing, investigation times, from which all stakeholders operate.
- **Efficiency of Investigations and Prosecutions:** As we discussed in detail in our March 3 letter, the Board’s reversion to the “handoff” model of investigations to prosecutors at the Attorney General’s office is not efficient and is directly impacting patient safety. This should be a key priority for the monitor to study.

- **Mandated Reporting:** MBC's sunset report details several instances in which the Board does not believe it is receiving legislatively mandated reports designed to assist it in protecting the public. The monitor should collect data as to these insufficiencies and make recommendations as to enforcing the noncompliance.

Increase in Licensing Fees

We also strongly support the proposed increase in licensing fees. It has been 15 years since any kind of fee increase has occurred. The Board has more than justified its need for additional funds—funds which are critical to enhancing the enforcement program so that it may achieve the Board's paramount priority of public protection.

Two Year Sunset Extension

CPIL agrees that a two year extension of the Board's sunset date makes sense in light of the current environment of discord between patient advocates and the Board. It appears that the Board, under the leadership of its President Kristina Lawson, is committed to repairing the Board's relationship with the public, and thinking creatively about ways to improve the Board's performance. Two years is a good span of time to allow new reforms to take hold, and for the Legislature to consider the recommendations of the enforcement monitor.

We are deeply grateful for your consideration of CPIL's recommendations during MBC's sunset review process, and fully support and applaud your efforts to ensure that the Board is achieving its statutory mission of public protection.

Sincerely,



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

cc Kristina Lawson, President, Medical Board of California
William Prasifka, Executive Director, Medical Board of California
Kimberly Kirchmeyer, Director, Department of Consumer Affairs
Hon. Toni Atkins, Senate President pro Tempore
Hon. Anthony Rendon, Speaker of the Assembly