

The New Medical Board: Your License Fees Are Going Up, But Will You Get Any Value For The Increase?

by Raymond McMahon

Sitting on Governor Schwarzenegger's desk is a broad revamp of the rules governing the Medical Board of California.

Believe it or not, the Medical Board is not a permanent fixture guaranteed to be in existence indefinitely, and without legislative intervention, the Board will cease to exist. Barring a veto, the changes proposed by the Legislature (encompassed in Senate Bill 231) will impact every physician with a California license.

These changes can be categorized into three broad categories: (1) Financial Impact; (2) Potential Policy Changes; and (3) Investigation and Disciplinary Changes. Hopefully, the only impact will be the increased license fees, but for many of you, that will be the least of your concerns.

The License Fee is Going Up, but there is a Potential of a Decrease in Cost Recovery if a Physician is Investigated by the Board.

Physician license fees on a biannual rate will be increased from \$610 to \$790 (\$345 per year), an effective increase of \$90 per year. The California Medical Association vigorously fought the imposition of a rate increase, and the relatively minimal increase can be viewed as somewhat of a victory for physicians. Indeed, the new fee rate for physicians will equal the rate paid by California attorneys, who had been paying higher fees for several years.

While fee increases are undeniably uncomfortable, this increase will be offset by an important alteration in the assignment

- **Biannual fee increase from \$690 to \$790**
- **Elimination of investigation and prosecution cost recoveries**
- **Review and possible discontinuation of diversion program**
- **Increased reporting requirements by physicians**
- **Enhances investigatory control against physicians by the DOJ**

of Medical Board investigatory costs. Previously, if a physician had an Accusation filed against his or her license and thereafter reached a resolution, the Board would typically demand a recovery of its investigation and prosecutory costs. Those costs invariably ran into the thousands or tens of thousands of dollars, and the imposition of a cost recovery as part of a settlement often posed a serious hardship to a physician. That is especially true as there are frequently several other costs (separate and apart from the physician's own legal expenses) which are incurred at the time of a case resolution.

The new law anticipates that the investigation and prosecution costs will be covered by the license fees, which is a main reason for the fee increase. The elimination of cost recovery against individual physicians greatly improves the fairness of the system, as individuals will now be able to focus on the merits of an action as opposed to worrying about the Board hitting them with a significant financial hammer.

The Board's Diversion Program Which Serves Individuals with Drug or Alcohol Abuse Problems is Under Close Scrutiny.

Presently, the Medical Board has an active, confidential diversion program for its licensees who are confronting addictions to drugs or alcohol. Some have challenged the efficacy of the diversion program, with calls for a severe reduction and/or elimination of the program in its entirety.

The new laws provide a "sunset" of the diversionary program to occur on January 1, 2009. Effectively, this gives the Legislature two more years to determine whether or not to modify or continue the program, and there will be further study during that time. It should be noted that, according to the Medical Board itself, 60% of the participants in the diversion program are self referred and were unknown to the Board's Enforcement Program. Without the diversion program it is unknown how many physicians will continue in the drug and alcohol dependency without assistance.

The Board has Further Strengthened its Investigatory and Prosecutory Power vis-a-vis Individual Physicians.

The most significant change is a move toward "vertical prosecution" between the Medical Board and the Department of Justice (DOJ), which prosecutes actions on behalf of the Board. The new law seeks to have DOJ attorneys involved during the investigatory phase, as opposed to receiving the file upon completion of the investigation. The stated goal is to allow the attorneys to screen out frivolous complaints, but the

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ultimate effect could amount to more disciplinary actions because the counsel becomes vested in cases that ordinarily would not have made it to the attorney's desk.

In order to expedite reviews, the Board has been granted additional sanction power against physicians who do not turn over records within 15 days of its request. Also, if a physician has an open investigation and a new complaint is received, that complaint will now be forwarded directly to the investigator.

Perhaps the most dramatic procedural change, and it is a detriment to individual physicians, is the new requirement that the physician must disclose far more information about any supportive expert before

that expert may testify at the hearing. This requirement not only will allow the DOJ to further strengthen its ability to win at hearing, it also will increase the costs that must be borne by individual physicians when defending themselves from charges brought by the Board.

Overall, with the primary exception of the removal of cost recovery, the new rules governing the Medical Board create a further wedge between the Board and its licensees. As a consequence, the need for quality legal representation when dealing with the Board is even more imperative. While the new laws could be worse, they certainly could have been better.

This article highlights the most significant proposed changes to the Board. To obtain a comprehensive breakdown, log on to <http://info.sen.ca.gov>.

For more information regarding this article, contact Raymond McMahon at 714.480.2540 or rmcmahon@bonnebridges.com.

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3699 Wishire Boulevard, 10th Floor
Los Angeles, CA 90010-2719
150 E. Fourth Street, Suite 450
Santa Ana, CA 92705-3930
3403 10th Street, Suite 800
Riverside, CA 92501-0747
3441 S. Eastern Avenue, Suite 402
Las Vegas, NV 89109-3314

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