



March 12, 2021

Senator Richard Roth, Chair and Members
Senate Committee on Business, Professions and Economic Development
State Capitol, Room 2053
Sacramento, CA 95814

Assembly Member Evan Low, Chair and Members
Assembly Committee on Business and Professions
State Capitol, Room 379
Sacramento, CA 95814

Re: Medical Board of California Sunset Review

Dear Senator Roth, Assembly Member Low and Committee Members:

A Senate Rules Committee confirmation hearing last month for physician nominees to the Medical Board of California drove home the issue that should be at the heart of the sunset review: The public does not trust the Medical Board to protect them from dangerous doctors, or to hold doctors accountable when they have been harmed.

At the Rules Committee hearing, Senators questioned physician nominees to the Board about the breakdown in public trust. Statements made by two of those doctors at a subsequent Medical Board meeting show that neither understood the gravity of Senators' message to them about their responsibility to the public.

At the Medical Board meeting, Dr. Dev GnanaDev said, "We were before the Senate review committee and they were literally crucifying us." Dr. Richard Thorp said, "We took a lot of heat in the Senate Rules Committee yesterday. They were very aggressive with me and Dev and I am pretty sensitive about it."

For injured families who have suffered life-long injuries, lost loved ones, and been denied justice, these statements reflect the blinders worn by these doctor appointees to the Board who cannot fathom accountability to the public and have little sympathy for victims. Rather than learning from the Committee's questions about public trust, and reflecting on them, these two nominees took offense at the idea that they would have to answer for their failures and those of the Board.

Senator Atkins proposed a solution we wholeheartedly endorse. It is time to remove physician oversight from doctor control and give it to the public by adding public members to the Board to give it a public member majority.

How has the Medical Board failed the public? The Board fails to obtain basic facts from patients who submit complaints about harm, take years to conduct investigations, and negotiates settlements that fall far short of its own disciplinary guidelines. Even physicians with decades-long histories of gross negligence resulting in patient deaths rarely lose their license at the hands of this Board.

For example, at least sixteen different women and babies in the Bakersfield area have lost their lives or been traumatically harmed by the negligence of just two doctors, Dr. Arthur Park and Dr. Jason Helliwell, going back over two decades. The Medical Board has allowed both physicians to continue placing young women, primarily Latina and Black mothers, in this community at risk by failing to revoke their licenses despite numerous complaints, disciplinary actions, hospital revocations of privileges, criminal and civil legal actions against them. 23-year-old Demi Dominguez and her newborn son Malakhi are two of those who tragically lost their lives after Demi's symptoms of the common pregnancy complication preeclampsia were ignored. Her family was unaware of her doctor's long history of harm, or that he was under investigation for another young mother's death at the time Demi was his patient.

See her story at 17 News - NBC Bakersfield: <https://www.kget.com/news/familys-fight-for-justice-continues-for-young-mother-and-baby-attorney-general-files-negligence-accusation/>

The Medical Board has repeatedly failed to prevent these doctors from harming Bakersfield families, as it has failed to protect families across the state of California. The legal system has also failed them, because a law the legislature passed in 1975 and has never updated caps compensation for victims of medical negligence and prevents families from getting justice.

In support of these families, we offer the following recommendations for sunset review.

Public Member Majority:

- This is Civics 101: Don't let an industry regulate itself. As far back as 1995 Consumer Watchdog has backed legislation to create a public-majority board, a proposal killed by the medical lobby. Since then, California's physician-controlled Medical Board has only become more of a safe harbor for the state's worst physicians. To reshape the membership of the Medical Board in the public interest, we recommend the legislature reconstitute the board with a public member majority.

Consumer Complaint Process:

- The complaint process prioritizes due process for physicians but not for patients and complainants. As just one example, the Board does not interview the vast majority of consumers who submit a complaint of medical negligence to the Board. Consumers are only interviewed if a complaint is referred by the Central Complaint Unit (CCU) to a

District Office for further investigation. Last year, approximately 18% of complaints passed this first hurdle; in the prior year it was approximately 13%. The vast majority of complaints are closed by the CCU without a single consumer interview. We recommend the legislature require the Board to interview consumers prior to dismissal of a complaint, and give the complainant the opportunity to provide additional information and correct any misrepresentations after the physician is interviewed.

Enforcement Transparency:

- SB 1448 by then-Senator Hill in 2018 required physicians to disclose to patients when they are on probation for substance abuse, sexual misconduct, overprescribing or criminal convictions. Yet we know of at least one instance in which a physician's probation disclosure requirement is being blatantly ignored. We recommend the legislature require the Board to report on the implementation of this law, including how many times the Board has invoked its requirements, and how often disclosure does not occur because the charges against a physician are reduced.
- The legislature should also require the Board to expand SB 1448's probation disclosure requirement to include medical negligence cases. Medical negligence is the reason for the majority of public complaints to the Board – they should also be reflected in mandatory disclosures.
- Require the Board to create a tracking system (similar to Amazon or other package tracking systems) where consumers can log in and see where their complaint is in the enforcement process.
- At its February Board meeting Medical Board Chief of Enforcement Jenna Jones testified that just 3.5% of complaints received are ultimately referred to the Attorney General for enforcement action. We are concerned the Board is prematurely closing complaints without action in order to improve on enforcement timelines. As important as it is to shorten investigation timelines, the Board should not sacrifice the quality of investigations for speed. We recommend the legislature seek reporting from the Board on why so many complaints are closed without action. The thousands of consumers who submitted complaints of negligence, only to have them closed with no explanation, and the public in general deserve answers.

Physician and Surgeon Substance Abuse:

- The legislature should resist any effort to weaken the guidelines set by the legislature for monitoring of physicians with a history of substance abuse, known as Uniform Standards for Health Care Professionals. For example, the legislature should not reduce the frequency of testing for physicians required to undergo drug or alcohol testing, as has been proposed during sunset review of other boards.
- We also recommend the legislature require the Board to include the public in a working group for implementation of the Physician and Surgeon Health and Wellness Program, a program to allow physicians to seek treatment for substance abuse in lieu of facing enforcement action. The prior version of this program allowed secrecy to trump public protection.

Public Advocate/Ombudsperson

- The legislature should not have to micromanage the Board's relationship with the public. Yet the Board consistently demonstrates its inability to manage even the simplest interactions with the public in a respectful, informative manner. We work with patient advocates across the state of California. In speaking with these advocates, we cannot find one family that has been satisfied with the outcome of their Medical Board complaint. Consumers feel neither heard, valued nor protected.

To address these failures, we support the creation of a public ombuds office with a mandate to represent the public's concerns before the Board and proactively investigate potential threats to patient safety. To be effective, the office must have investigative authority, the ability to propose rules and legislation to the Board on its own initiative, and staff and budget to carry out its work. A partial list of the issues an ombuds office could address include:

- Consumer complaints are frequently dismissed due to lack of evidence because patients are not informed about what information they should submit. Require the Board to better educate the public about what to submit with their complaint, for example, by releasing existing medical expert training materials in a video for consumers.
- The Board rarely acknowledges, let alone responds to, public comment at Quarterly Board meetings. This problem was drawn into sharp relief at the recent Board meeting when a representative of the Senate Office of Research used the public comment period to ask the Board a question about its presentation of enforcement data. Board President Kristina Lawson was forced to repeat the question on her behalf because the current system is so unresponsive that Board members are barred from directly answering public inquiries at meetings.
- Require the Board to provide accurate minutes of public comment at board meetings. The minutes of public comments are currently so generalized that they do not include any facts provided in the meeting.
- Require the Board to email its newsletter to every consumer who has filed a consumer complaint; webcast enforcement panel meetings; and post the webcasts of public meetings on their website immediately following the conclusion of the meeting, instead of the current months-long delay.

Cost Recovery & Licensing Fee Increase:

- The board pays all of physicians' costs for administrative prosecutions for license surrender, revocation, and probation, while other boards -- including the Dental Board and the Board of Registered Nursing -- recover those costs. We recommend the legislature require the Board to implement cost recovery. The legislature should also approve the Board's recommendation for a licensing fee increase. The funds would eliminate financing as an excuse for the Board's failures. They would also reduce

enforcement timelines because there would be financial consequences for licensees who drag out unreasonable appeals.

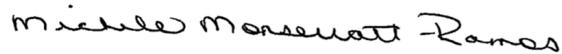
California's draconian \$250,000 cap on quality of life and survivor damages, unadjusted since 1975, virtually ensures that injured patients are denied effective legal counsel and access to the courts for a remedy. The cap is the lowest in America. The only other avenue for any kind of justice for an injured patient and their family is the Medical Board. If the Medical Board refuses to properly punish bad doctors, refuses to limit or remove them from their continued practice of bad medicine, then we have a health care system that prevents justice for medical malpractice and puts patients at risk.

Both problems – the lack of legal deterrence to medical negligence and better physician oversight – must be solved. It is time to turn physician oversight over to the public, and restore access to justice to injured patients. We look forward to working with you on solutions.

Sincerely,



Carmen Balber



Michele Monserratt-Ramos