



July 7, 2021

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

Re: SB 806 - Medical Board Sunset Review - Oppose Unless Amended

Dear Assembly Member Low and Members:

I write on behalf of Consumer Watchdog to oppose SB 806 (Roth) unless it is amended to change the balance of power on the Medical Board to give public members the majority vote, and to restore the fee increase desperately needed to keep the Board operational.

As the *Los Angeles Times* notes in their editorial this week, making public members the majority on the Board, "could give the public more confidence that the board is focused on protecting healthcare consumers, not healthcare providers. That's what the law requires, but the public has to take it on faith that the board is complying because it does so much of its enforcement work in secret."

Read the editorial: <https://www.latimes.com/opinion/story/2021-07-06/california-medical-board-reform>

We work with families across the state of California who have lost loved ones or been harmed themselves by preventable medical negligence. None of these families has been satisfied with the outcome of their Medical Board complaint. Patients feel neither heard, valued nor protected at the Medical Board charged with their safety.

Among the ways the Medical Board of California fails to protect patients from dangerous doctors:

- The Board routinely closes complaints about a doctor's negligence without ever interviewing the patient who was injured.
- It takes an average of 3.5 years for the Board to act when a doctor is accused of harm.
- Less than 5% of complaints result in any discipline, and the Board's enforcement decisions fall below its own disciplinary guidelines as often as 90% of the time.
- Even repeat offenders found responsible for multiple patient deaths are allowed to continue practicing, placing California communities at risk.

One current public member of the Medical Board, Eserick "TJ" Watkins, put it bluntly in his testimony to the joint sunset review committee: "This Board's value is: We protect the doctors. And we will go over and above in order to do so."

It is time to change that balance of power at the Board. We urge you to reject the medical lobby's self-interested protectionism and restore a public member majority to SB 806 to begin rebuilding public accountability and trust in the Board.

As you know, the Medical Board has also requested the public member majority be restored to SB 806. At its discussion of the legislation on June 1, Medical Board President Kristina Lawson said the "trust and integrity and credibility of this Board" was at issue.

You can be responsible for beginning to restore accountability at the Board by creating a public member majority, or a further breakdown in public trust if that reform is not restored to SB 806. In addition to restoring the public member majority, we offer the following comments:

Licensing Fee Increase

- Physician licensing fees have not increased in nearly 15 years, and the Medical Board is verging on insolvency. That lack of funds plays a critical part in the Board's enforcement failures, particularly the extreme delays in processing and responding to consumer complaints of harm. SB 806's current proposed fee increase – just \$80 every two years – is laughably inadequate. This legislature cannot expect the Board to do better and simultaneously allow the medical lobby to starve it of resources. We urge you to restore the fee increase to the full \$1150 requested by the Board. The funds would eliminate financing as an excuse for the Board's failures.

Cost Recovery

- 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. Cost recovery will provide the Board with needed funds, and reduce enforcement timelines because there would be financial consequences for licensees who drag out unreasonable appeals. We support the provision in SB 806 that will allow the Board to implement cost recovery.

Enforcement Monitor

- The Medical Board is failing to adequately discipline dangerous doctors. In the 2000s, the legislature empowered an Enforcement Monitor to collect data, investigate the Board's enforcement procedures, and recommend needed reforms. Ongoing failures argue for the resurrection of this post, with full authority to peer under the rocks of every corner of the Board's operations. We support resurrecting the Enforcement Monitor. However, the creation of this investigatory arm does not relieve lawmakers of the responsibility to do something now to improve the Board's functions and restore public trust that it will protect them from bad doctors. In the absence of the other

reforms discussed here, specifically a new public member majority, the Enforcement Monitor is not enough to salvage this bill.

The only other avenue for any kind of justice for an injured patient and their family is the legal system, but 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. When the Medical Board also refuses to properly punish bad doctors, our entire health care and legal system prevents accountability for medical malpractice and puts patients at risk.

We urge you to amend SB 806 to restore the requested licensing fee increase and give citizens, not doctors, the majority vote on the Board. With those amendments, Consumer Watchdog would strongly support SB 806 to improve the Board's responsiveness and accountability to the public.

Sincerely,

A handwritten signature in black ink that reads "Carmen Balber". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Carmen Balber