January 27, 2022

The Honorable Toni Atkins
Senate President Pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Richard Roth
Chair, Senate Business, Professions & Economic Development Committee
State Capitol, Room 2053
Sacramento, CA 95814

The Honorable Marc Berman
Chair, Assembly Business & Professions Committee
1020 N. Street, Room 379
Sacramento, CA 95814

Dear Senate Pro Tem Atkins, Speaker Rendon, Chair Roth and Chair Berman:

We start the new year with a deep record of California’s many failures to protect patients from harm at the hands of physicians. The choices you make this year - to hold dangerous doctors accountable or protect the status quo - will determine whether patients are protected or more innocent lives are lost.

The Medical Board was supposed pick up the slack and protect the public from dangerous doctors when lawmakers took away patients’ legal rights by enacting a medical malpractice cap in 1975. Instead, California patients are kept in the dark about physicians’ misconduct and are ignored by regulators and blocked in the legal system when they seek to hold doctors accountable when they have been harmed. This utter lack of consequences means patients face unknown and unacceptable risks every time they seek medical care.

As a Los Angeles Times investigation found, less than 0.5% of all complaints reviewed over a ten-year period resulted in a doctor losing their license. An average of just 3.5% of complaints about physician misconduct get investigated at all in an average year. A member of the Medical Board has testified that the Board deviates from its own disciplinary guidelines more than 90% of the time. Doctors with long histories of Board discipline for causing patients serious harm are nevertheless allowed to continue practicing.

Demands from the public, media, whistleblowers and among your fellow lawmakers for patient safety reform continue to build, most recently in this week’s Los Angeles Times editorial: “A Push to Get Rid of Bad Doctors: Lawmakers should embrace sweeping reforms that prioritize the safety of patients in California.” (A copy of this editorial is enclosed.)
Dozens of injured families have responded to this crisis with hours of testimony before the legislature and the Medical Board of California advocating for reform to protect other families from harm. You can meet many of these families at www.PatientsforFairness.org.

Reform proposals recently floated by the Medical Board of California are good start and should be embraced. But they do not go far enough to prioritize the problems patients, not the Board’s regulators, suffer because of California’s failed systems of physician oversight.

On behalf of injured families and California consumers, we urge you to make three issues also raised by the Medical Board a priority this legislative session:

- Change the composition of the Medical Board to establish a public board member majority.
- Change the evidentiary standard from “clear and convincing” to “preponderance of evidence” in disciplinary actions to match the standard in 41 other states.
- Raise physician licensing fees to adequately fund oversight.

Ultimately however, the legislature must do much more to repair the state’s dysfunctional physician oversight system and protect patients from harm.

Another Los Angeles Times investigation found that more than half the doctors who lost their licenses because of sexual misconduct had their licenses reinstated by the Board. Assemblymember Weber’s AB 1636 would reject this abhorrent practice and ban physicians convicted of sexually abusing their patients from ever again practicing medicine in California. The proposal deserves your whole-hearted support, yet it barely scratches the surface of the problem.

We urge you to enact a Patient Bill of Rights developed with the input of families who have been harmed by, or lost loved ones to, medical negligence. (A copy of the Patient Bill of Rights is attached.) In addition to the reforms above, the Patient Bill of Rights prioritizes increased transparency and accountability to improve patient care:

- Ensure public input by adding three steps to the enforcement process:
  - Board must interview complainant/family member before a complaint is dismissed.
  - Board must contact complainant/family member following the physician interview to allow them to provide additional information.
  - Board or the Deputy Attorney General must contact the complainant/family member prior to a settlement offer, or give the complainant the opportunity to provide a victim impact statement at the ALJ hearing.
- Amend AB 1636 to also prohibit a doctor who commits multiple acts of negligence resulting in serious patient injuries or death from practicing in California.
• Amend 2018’s Patient Right to Know law, which requires disclosure of physician probation for drug abuse or sexual misconduct, to also require doctors to disclose when they are on probation for gross negligence that caused patient harm.

• Expand disclosure on the Board’s website to include pending investigations into a complaint of physician misconduct if that conduct resulted in serious harm to a patient or death, or the physician is a repeat offender.

• Inform patients of physicians’ financial conflicts of interest (payments by drug and device manufacturers) as proposed in Assemblymember Nazarian’s AB 1278.

• Restore patients’ ability to seek accountability in court when they are harmed by updating the state’s nearly 50-year-old cap on compensation in medical negligence cases.

Injured families and California consumers are calling for change now to reform the Board, hold dangerous doctors accountable, and improve patient safety in California. These patients and families have borne the weight of this crisis and it is time to join them in making patient safety a top legislative priority this year.

Sincerely,

Carmen Balber

Michele Monserratt-Ramos