



June 27, 2023

Assemblymember Marc Berman, Chair
Assembly Business & Professions Committee
Legislative Office Building, Room 379
Sacramento, CA 95814

RE: SB 815 (ROTH) – SUPPORT – Reform Medical Board to Improve Patient Safety

Dear Chair Berman:

We write in strong support of SB 815 (Roth) which contains critically needed reforms to improve physician oversight at the Medical Board of California and protect patients.

The Medical Board of California's mission is public protection. For years, it has failed in that undertaking.

We work with families from across the state who have lost loved ones or been harmed themselves by preventable medical negligence. Dozens of these families have shared their stories with this committee and at other legislative hearings, Medical Board meetings and in media stories decrying what an investigation by the *Los Angeles Times* found was a "pattern of lenient discipline imposed by the board."

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. 83% of last year's complaints were closed in the Board's triage unit, where patient and family interviews do not occur.¹
- It takes an average of three and a half years for the Board to file charges when a doctor is accused of harm. Throughout these delays, patients are left in the dark about the progress of their complaint.
- Just 3.4% of complaints in the last decade resulted in any discipline, and those enforcement decisions consistently fell below the Board's own disciplinary guidelines.² Families are prohibited from sharing with the Board how a doctor's errors impacted their lives.

¹ Medical Board of California Annual Report 2021-2022. <https://www.mbc.ca.gov/Download/Reports/Annual-Report-2021-2022.pdf>

² "Botched Surgeries and Death: How the California Medical Board keeps negligent doctors in business," *Los Angeles Times*, July 14, 2021. <https://www.latimes.com/california/story/2021-07-14/how-california-medical-board-keeps-negligent-doctors-in-business>

- Patients are kept in the dark about a doctor's history. Probation for causing patient harm is not disclosed before an appointment, and even doctors' criminal charges are hidden from view. This places more Californians at risk.

SB 815 is your opportunity to begin restoring public trust in the Board and give it the resources and tools it needs to do a better job for California patients.

SB 815 would require an interview of the patient, or family member, before their quality of care complaint is closed.

The Board dismisses most complaints before interviewing the affected patient or conducting an investigation. This lack of an interview is the most common criticism we receive about the Board. The public does not know when they submit a complaint that the Board will probably never contact them. They are also very unlikely to know what information the Board needs to determine whether a complaint has merit. A patient or family interview when a complaint involves serious harm or death will ensure the Board has the information it needs to fairly determine whether a case needs investigation.

The lack of an interview frequently results in Board complaints being closed prematurely. For example: The Board told a Grover Beach resident that her complaint regarding her husband's death was dismissed because the doctor met the standard of care for a particular disease. Her complaint, however was about lack of treatment for a different condition, a fact the Board missed without an interview. The sister of a developmentally disabled San Jose resident was unable to provide the Board evidence of the fatal, preventable drug interaction that caused her brother's death, because she was never interviewed. A Studio City woman's complaint was dismissed because, without an interview, she had no opportunity to prove to the Board her doctor had altered records to falsely claim she gave consent.

Because complaint information is not made public it is impossible to know how many times the Board erroneously closes a complaint. Anecdotally, however, it is clear that by not interviewing patients the Board misses out on important evidence and information that should be considered before determining the merits of a case.

On a human level, patients expect and deserve an opportunity to share their side of the story with the state entity charged with their protection.

SB 815 would fully fund the Medical Board.

Physician licensing fees have increased just \$80 dollars in the last 17 years. A fee increase is desperately needed and long overdue. Both patients and physicians will benefit when the Board has the resources it needs to reduce crippling enforcement delays.

The Legislature punted the fee question most recently during the 2021 sunset review, and created an Enforcement Monitor to review the Board's enforcement program and make recommendations

on fees. The Enforcement Monitor reported in March that there is a “Lack of sufficient funding for MBC operations.”

The Enforcement Monitor urged both a licensing fee increase to \$1350 biennially *AND* automatic periodic adjustments of the fee for inflation to ensure the Board does not find itself insolvent again a few years from now. SB 815 represents a reasonable compromise with a proposed fee increase to just \$1289 and no inflation adjustment. This is the bare minimum the Board needs to escape insolvency, pay off the debts it incurred because of past failures to increase its funding, and begin to improve patient protections.

SB 815 would change the balance of power at the Board by giving it a public member majority.

SB 815 would increase to 9 the number of public members on the Medical Board. A public member majority would go far toward restoring public trust in the Board.

The change is not symbolic. Volunteer members of any Board have a point of view based on their personal and professional experiences. They are chosen for these points of view. At the Medical Board, doctor members are likely to put themselves in a doctor’s shoes when considering a problem, while public members are more likely to come at a problem from the average patient’s perspective. Both viewpoints have value, however a Board under fire for doctor protectionism must demonstrate its commitment to prioritizing patient safety.

A public member majority will increase the diversity of perspectives at the Board and simultaneously demonstrate the Legislature’s commitment to centering patient protection.

Importantly, the bill ensures that the Board will maintain its professional medical expertise by retaining 8 physician members. The Medical Board itself supports a shift to a public member majority, a change that won unanimous support from every doctor member of the Board, including a past-president of the California Medical Association.

SB 815 would give patients a greater voice by allowing them to make a victim impact statement the Board, and creating a Complainant Liaison Unit.

Second to the lack of an interview, top of the list of concerns we hear from members of the public is the inability to get answers from the Board as to the status of a complaint. SB 815 includes a Board-sponsored Complainant Liaison Unit to help fill that gap and facilitate the sharing of information between the complainant, investigators, and prosecutors.

Members of the Board who make enforcement decisions are also currently barred from receiving any communication from a patient whose complaint has reached the accusation stage. Much as the victim of a crime is offered the opportunity to make a victim impact statement, an injured patient should have the right to share their experience with the Board. SB 815 would allow an injured patient, or the family of a patient who lost their life, to submit an impact statement to the Board to be considered before a final disciplinary order is issued in a case.

SB 815 would adjust California’s standard of proof for doctor discipline to match that used by 41 other state medical boards. This change would enable the Board to complete investigations more quickly and issue discipline, short of revocation, to better protect patients from harm.

Finally, SB 815 would streamline many procedures at the Board that cause delays and unnecessary costs, including: consequences for doctors who refuse interviews or coerce patients into not testifying; requiring doctors to wait longer before petitioning to have a revoked license reinstated, or to end probation; requiring reimbursement to the Board for the cost of such petitions; and, a pause on the statute of limitations when doctors fight subpoenas.

We urge you to also consider amending the bill to include a critical patient protection that is missing from SB 815: Increased transparency of doctors’ records.

A recent case in San Diego County – of a doctor now charged with murder for a patient’s death – illustrates how patients are harmed when they are kept in the dark about a doctor’s history. At least 7 other women were harmed by this doctor, most in the four and a half years following the initial patient’s death. None of them were informed of the Medical Board investigation, District Attorney investigation, initial manslaughter charges, or ultimate Medical Board accusation. The doctor still has his license and may continue to practice. Only as a condition of bail did the criminal court require the doctor to tell patients of the pending murder charges; the Board has placed no restrictions on his license.

California law does not require doctors to inform patients about criminal charges, even if those criminal charges involve sexual assault or the death of a patient. It does not require the Medical Board to publish information about criminal charges on its website. Even if the Board has placed a doctor on probation for causing the death of a patient, new patients have no right to be told of this fact when they walk into a doctor’s office. We urge the committee to consider expanding disclosure of doctors’ safety records. No one should be kept in the dark about criminal or Medical Board charges against their doctor.

We invite you to meet some of the families impacted by that doctor, and many other Californians who did not feel heard, valued or protected in their interactions with the Medical Board charged with their safety. Find their [profiles and interviews here](#).

Each element of SB 815 is a critical piece of meaningful reform patients have been seeking from the legislature for decades. We urge your support for SB 815 to make every Californian safer.

Sincerely,



Carmen Balber
Consumer Watchdog