



November 20, 2024

Reji Varghese, Executive Director  
Kristina Lawson, President  
Medical Board of California  
2005 Evergreen Street, Ste. 1200  
Sacramento, CA. 95815

Dear Mr. Varghese and President Lawson:

Consumer Watchdog has reviewed the legislative proposal to overturn existing law, SB 1177 (Galgiani), which requires the Board to adhere to Uniform Standards for Substance Abusing Health Care Professionals, SB 1441 (Ridley-Thomas) while creating a new Physician Health and Wellness Program (PHWP). With your proposal removing the accountability and transparency that current law provides, the Medical Board of California (MBC) is taking Californians backwards to a secret Diversion Program that numerous audits proved failed, and a previous board unanimously voted to terminate. Any new program should not allow doctors facing discipline to divert into a secret program. Maintaining Board oversight of physicians with substance abuse problems is the only way to protect patients.

The previous diversion program failed all five audits it faced. Physicians that failed drug tests or cheated on drug tests were allowed to continue to skip and/or fail testing and the findings were kept confidential from the Board. The program was used as a revolving door by repeat offenders to avoid discipline indefinitely. It failed because it lacked enforceable rules or standards to which participants and personnel were consistently held. The Galgiani and Ridley-Thomas bills resolved these issues by providing standards for participants to follow and for the Board to uphold. With this legislative proposal the MBC is reversing those laws, giving up its right to protect consumers, and patients' rights to transparency and accountability are lost in the process.

ProPublica's report titled "When Caregivers Harm: California Adopts Stricter Rules for Drug Abusers in the Health Industry" can be found [here](https://www.propublica.org/article/california-adopts-stricter-rules-for-drug-abusers-in-health-industry-1120).<sup>1</sup>

The idea that a confidential program will encourage voluntary participation is a myth. Over its three-decade history, the Medical Board's Diversion Program was never successful in enticing self-referrals into voluntary treatment.

As the Medical Board Enforcement Monitor noted:

"When I audited the Program, we analyzed the files of 60 different Program participants (fully one-quarter of the entire Program population), including the 20 most recent intakes into the Program. Of those 20 physicians, only one was a true self-referral. About half were initially classified as self-referrals, but they had actually been prompted to "self-

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<sup>1</sup> <https://www.propublica.org/article/california-adopts-stricter-rules-for-drug-abusers-in-health-industry-1120>

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refer” because they knew the Board would soon learn of (and these examples are from actual cases) their arrest for DUI or crack cocaine possession, an adverse report from their employer under section 805 or 821.5, or a complaint from a registered nurse who observed them practicing while under the influence. From my direct observation, I would estimate that no more than 10% of the population of the Diversion Program were true self-referrals; the vast majority of participants were ordered to be there by the Medical Board as a condition of probation or were referred there by enforcement staff in lieu of disciplinary action."

Every other health care professional in the state must comply with the Uniform Standards for substance abusing providers. This legislative proposal would eliminate disclosure and consequences for participants who do not comply with the program.

The Uniform Standards currently require reporting of all violations of a participant's contract to the MBC, not just program withdrawals and terminations as the new proposal would allow. The Uniform Standards also created consequences for violations. These critical consumer protections include a requirement the Board be notified when a physician in the program fails a drug or alcohol test, that the Board issue a cease practice order, and that the Board require clean drug or alcohol testing for a minimum of 30 days before a physician returns to work to ensure patient safety. Such consequences do not appear in this legislative proposal.

This legislative proposal overturns a compromise that our legislature made years ago to balance the interests of the public and physicians.

This Board is taking a lack of accountability a step further. In the current proposal, the Board is establishing that the program "Advocate on behalf of participants, with their consent, to the board to allow them to participate in the program as an alternative to disciplinary action, when appropriate." It also directs the program to "offer guidance on participants' fitness for duty with current or potential workplaces, when appropriate."

Who is left to advocate for the patient?

Certainly not the Medical Board of California. Although the mission of the Medical Board of California is to protect healthcare consumers and prevent harm through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professionals, this proposal is taking every action conceivable to keep health care consumers in the dark and limit consumer protection.

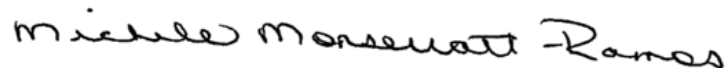
Finally, this board has completely gutted transparency with their plan to enter into a multiyear contract with the administering vendor without having to obtain the approval of the Department of General Services, the Office of Legal Services, or other state entities to justify a multiyear term. How long does this Board consider a multiyear term – 10 years, 20 years? The legislative proposal states that the Board shall contract for the program's administration with a 501 c (3) non-profit third-party administering entity. In 2009, following the termination of the old

Diversion Program, the California Medical Association created the non-profit California Public Protection & Physician Health Inc (CPPPH). The MBC's legislative proposal provides an opportunity for the CPPPH to enter into a multiyear contract for this program. If this Board truly wants to seek best practices, then it should seek a vendor that does not have ties with the old Diversion Program and should set the standard contract for the administering vendor as other California programs.

Consumer Watchdog urges the Board to withdraw the proposed PHWP legislative proposal and focus on issues that will ensure access to quality medical care for all Californians. Hundreds of programs exist today for doctors who choose to voluntarily seek substance abuse treatment. If the Board creates a program, it will be addressing cases of physician substance abuse that would otherwise lead to an enforcement investigation. In such cases the Board must be fully informed of a physician's progress. If the MBC makes a decision to proceed with creating a physician rehabilitation program, the Board is required to place the protection of patients and the public above all else. This legislative proposal does not.

As always, we will continue to work with the Board and the Executive Staff on changes that will ensure consumer protection and are available to respond to any questions or concerns. I can be reached at 310-977-6393 or by email at [michele@consumerwatchdog.org](mailto:michele@consumerwatchdog.org).

Sincerely,

A handwritten signature in black ink that reads "michele monserratt-Ramos". The signature is written in a cursive, lowercase style.

Michele Monserratt-Ramos  
Kathy Olsen Patient Safety Advocate  
Consumer Watchdog