July 9, 2025

Senator Tom Umberg, Chair
Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

**Re. AB 408 (Berman) – Oppose as Amended July 8th – Physician Drug and Alcohol Diversion Program**

Dear Chair Umberg,

Consumer Watchdog must oppose AB 408 as amended because it will put patients at risk of harm at the hands of doctors abusing drugs or alcohol.

We work with families who were harmed or lost loved ones to due preventable medical harm, some of whom suffer from lifelong trauma and loss due to the actions of physicians with substance use disorders. In seeking to help doctors, AB 408 sets aside the safety of their patients.

AB 408 would create a drug and alcohol diversion program run by the Medical Board so doctors with substance use problems could be sent into rehab in lieu of board disciplinary action.

The bill would repeat the mistakes of the past that led the Medical Board to shut down its prior diversion program. Five separate State Auditor General reports and an Enforcement Monitor at the Center for Public Interest Law at the University of San Diego repeatedly found that the program failed to help doctors recover or protect patients from harm. Doctors would enter the program to evade discipline, fail, yet be allowed to keep practicing. Patients were harmed as a result.

Roseville resident Tina Minasian is still dealing with the consequences of the harm she suffered at the hands of a doctor who continued abusing alcohol while he was secretly enrolled in the Medical Board's diversion program. She later learned her doctor had many other victims, some of whom lost their lives.[1]

[1] *Mercury News*, Harriet Blair Rowan, "Bill would create program for doctors with substance use, other disorders. Critics worry mistakes of the past are being repeated, and patients could be at risk," June 5, 2025. https://consumerwatchdog.org/in-the-news/mercury-news-bill-would-create-program-for-doctors-with-substance-use-other-disorders/

After the last diversion program was shuttered, the legislature acted to protect patients from another breakdown by creating oversight standards and accountability for any future program. Laws were passed[2] setting "Uniform Standards" for substance testing requirements and consequences for violations, and requiring any diversion program to follow those standards. AB 408 exempts its doctor diversion program from these standards and replaces them with nothing. Were AB 408 to pass, doctors licensed by the Medical Board would be the only health care professionals in the state with an exemption from these patient protection rules.

The goal of connecting doctors with treatment before their substance use poses a risk to patients is a laudable one. But doctors still hold lives in their hands. The Board has a responsibility to protect patient safety by acting when a doctor's problem has become enough of a risk to be reported to the Board, whether through a patient complaint, hospital report, arrest record or other method.

**The prior failed diversion program lacked standards for participating doctors. AB 408 overrides state laws enacted to correct that problem.**

Biological fluid testing is the primary way the prior diversion program identified relapses. The Enforcement Monitor found that its testing provisions routinely failed. Doctors were tested less frequently than required; went without testing for long periods; random tests were rescheduled to predictable times; results were not timely shared with those responsible for monitoring; test results were appended to the wrong physician; and test records were inconsistent or inaccurate. These failures routinely went undetected, and doctors continued practicing while abusing substances.[3]

After the old program was shut down the legislature acted to prevent these failures from happening again. SB 1441 was passed setting "Uniform Standards"[4] for substance testing requirements and consequences for violations, and SB 1177 was passed requiring any diversion program to follow those standards. The "Uniform Standards" require:

- Standards for drug and alcohol testing, such as making testing truly random;
- Reporting program violations, such as a failed drug test, to Board enforcement staff;
- Consequences for a doctor who is a danger to patients, such as license suspension if a doctor continues to use substances while practicing.

AB 408 Section 2341(b) frees the Medical Board's new diversion program from these requirements.

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[2] SB 1441 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200720080SB1441 and SB 1177 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1177

[3] Final Report, Medical Board of California Enforcement Program Monitor, Nov. 1, 2005. http://www.cpil.org/download/MBC_Final/MBC_Enf.Monitor_Final_Report.pdf

[4] *ProPublica*, Charles Ornstein & Tracy Weber, "California Adopts Stricter Rules for Drug Abusers in the Health Industry," Nov. 20, 2009. https://www.propublica.org/article/california-adopts-stricter-rules-for-drug-abusers-in-health-industry-1120

**A central reason for the prior program's failures was chronic underfunding, which led to severe understaffing. AB 408 does nothing to correct these problems.**

The danger posed by inadequate staffing in the old diversion program was most apparent in lapses of managing and monitoring biological fluid testing. The Enforcement Monitor found that both the diversion program employee [CSM] responsible for "the integrity of the collection system," and the case managers charged with monitoring participants and ensuring compliance, could not keep up with the work.

As the Enforcement Monitor reported:

> …because of other Program responsibilities and a shortage of staff, the CSM was only able to devote two hours per month to her CSM duties; all she was able to do within that timeframe was generate the random schedule and send it to collectors.

And:

> The CMs were burdened by excessive caseloads and could barely respond to positive tests much less track whether each participant was being tested as often as required and on the random dates generated by the CSM.

These problems are extensively documented in the Medical Board Enforcement Monitor report issued in 2004-2005 before the diversion program was shut down.[5]

By not identifying any funding source, or even a funding plan, AB 408 sets the program up for the same staffing shortages.

Instead AB 408 eliminates funding by repealing a provision of SB 1177 that requires participating doctors in any future diversion program to pay a fee "sufficient to cover all costs for participating in the program, including any administrative costs incurred by the board to administer the program." (B&P Section 2340.8(b)) By eliminating those fees AB 408 defunds the tens of millions it will cost for doctors to participate in the program.

In 2016 the fiscal analysis of SB 1177 identified additional state costs to the Board for oversight staff and contracting to run a diversion program could be up to $550,000 a year. That would be $745,000 today, adjusted for inflation. Without that funding, the board will either not have staff to oversee the program, or it will have to take staff away from other priorities – including licensing and enforcement – to do it.

[5] Enforcement Monitor Final Report.
http://www.cpil.org/download/MBC_Final/MBC_Enf.Monitor_Final_Report.pdf

**The prior diversion program and an unaccountable advisory committee made decisions without input or approval of Board management or enforcement staff. AB 408 recreates the same unaccountable committee to make decisions for the Board.**

In the Enforcement Monitor's view, the power of the "Liaison Committee to the Diversion Program" (LCD), a group of unaccountable outside advisors from the addiction field, was another reason Board oversight of the prior program failed.

> Although the LCD was intended to be an advisory body that could offer clinical expertise on addiction issues to DMQ and MBC staff who administered the Diversion Program, over the years it had been delegated responsibility for or had inserted itself into operational, legal, and other issues that do not require clinical expertise.

AB 408 reproduces this unaccountable advisory committee of addiction specialists (bill Section 2348), and charges them with carrying out every Board oversight function, including deciding whether doctors should be diverted into the program. Under this structure the committee is set up to become the de facto overseer for the Board, just as in the prior failed program.

We would also like to correct several misconceptions about the bill.

**Proponents have said confidentiality only applies to doctors entering the program voluntarily. This is false.** The bill's Orwellian definitions define doctors who choose diversion so they can escape discipline, after for example they are reported to the Board by a hospital for substance use on the job, as "voluntary participants" in bill Section 2340(b)(16). Choosing diversion only after being caught is clearly not joining the program voluntarily.

**Proponents have said that the bill does not change any requirements if a patient has been harmed. This is true, but doctors who have already harmed someone are not the only ones who pose a risk to patient safety.** For example: A San Francisco doctor suspected of stealing drugs from her hospital was recently arrested after she was found passed out in an operating room shortly after she was scheduled to participate in a toddler's surgery.[6] AB 408 would send that doctor into diversion in lieu of the disciplinary investigation, treatment oversight and consequences that are all mandatory under current law. And because the bill does not require reporting of a positive drug test to the Board, the doctor could continue treating patients while keeping her diversion program violations secret and place patients in harm's way.

**AB 408 does not require a doctor's positive drug test, skipped drug test, or other diversion program violation be reported back to Medical Board enforcement staff for review and action.** The Medical Board has claimed that "this program would be required to report non-

[6] *San Francisco Chronicle*, Megan Cassidy, "A UCSF doctor found unconscious was accused of stealing drugs. Records show a string of suspected thefts," April 25, 2025. https://www.sfchronicle.com/crime/article/ucsf-doctor-drug-propofol-20279982.php

compliant licensees to the Board so that we can discipline them."[7] This is false. The bill leaves it to the program and the doctors who enter treatment to decide if a doctor's program violations ever get reported to the Board (bill Section 2345(e)). The only required report of failure is when a doctor quits or is booted from the program completely. The Uniform Standards were created because leaving those decisions to the program allowed doctors to relapse and continue practicing with impunity.

The prior diversion program failed doctors and patients and AB 408 will repeat its mistakes. Even for those who support the creation of a diversion program at the Board in concept, this bill does not do it right. At minimum, AB 408 should be amended to ensure the Uniform Standards – including a report to board enforcement staff when a doctor fails a drug test – are maintained for any doctor referred to the program by the board. Without these amendments, we urge your NO vote.

Sincerely,

Carmen Balber

Carmen Balber

[7] *San Diego Union-Tribune*, Paul Sisson, "Should doctors with addictions be allowed to get confidential treatment?" May 5, 2025. https://consumerwatchdog.org/in-the-news/san-diego-union-tribune-should-doctors-with-addictions-be-allowed-to-get-confidential-treatment/