



Policy Alert

New Laws Impacting Physicians and Surgeons in 2023

Licensing Laws

AB 657 (Cooper) Expedite Abortion Provider Applications

This bill would require the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), the California Board of Registered Nursing (BRN), and the Physician Assistant Board of California (PAB) to expedite the licensure process of an applicant who can demonstrate that they intend to provide abortions within their scope of practice and would specify the documentation an applicant would be required to provide to demonstrate their intent. The documentation is a letter from employer that specifies that the applicant is intending to provide abortion services. Business and Professions Code (BPC) Section 2253. Effective date: This was an urgency bill that went into effect immediately upon signing, on September 27, 2022.

SB 731 (Durazo and Bradford) Criminal Records: Relief

This bill would continue recent legislative criminal justice reforms by expanding felonies that are eligible for automatic record sealing to include convictions for certain felonies that resulted in incarceration, as long as the individual has completed their sentence and has not been convicted of a new felony offense for four years. Effective date: January 1, 2023.

SB 1237 (Newman) Licensees: Military Service: Out of State

Current law requires the Osteopathic Medical Board of California (OMBC) to waive the renewal fees, continuing education requirements and other renewal requirements of any licensee who is called to active duty as a member of the United States Armed Forces or the California National Guard. This bill defines the phrase “called to active duty” to include active duty in the United States Armed Forces or on duty in the California National Guard even if they are serving out of state. Business and Professions Code (BPC) Section 114.3. Effective date: January 1, 2023.

SB 1443 Elimination of OMBC’s Prorated License Fee and Birth Month Initial Licensure Cycle

Specific to the Osteopathic Medical Board of California (OMBC), this bill eliminates the birth month issuance of a license and the prorated initial license fee. All licenses issued after January 1, 2023, will be charged the full initial license fee \$447 and will expire two years later. This change will resolve the compliance issue with SB 806 and eliminate the added workload delays caused by having the fee change each month and expiration

date being less than 24 months. Business and Professions Code (BPC) Section 2456.1. Effective Date: January 1, 2023.

Mandatory Training in Risks of Addiction Associated with Use of Schedule II drugs

This is an existing CME requirement that is required for every renewal. It is included in this policy alert to remind licensees of this ongoing requirement. The legislative intent behind this continuing medical education training requirement is to combat the opioid crisis. This CME requirement is an ongoing and physicians and surgeons must meet this requirement for each renewal cycle. The CME requirement requires licensed osteopathic physicians and surgeons to complete a course on the risks of addiction associated with the use of Schedule II drugs. BPC Section 2454.5.

Enforcement Laws

AB 1120 (Irwin) Clinical laboratories: blood withdrawal

This bill allows a certified phlebotomy technician to perform a blood draw through a peripheral venous catheter under the general supervision of a physician or registered nurse. Business and Professions Code (BPC) Section 1246. Effective date: January 1, 2023.

AB 1278 (Nazarian) Consumer notice of Open Payments Database

The intention of this bill is to provide patients with notice of a website that they could check to see if their physician received any payment(s) from pharmaceutical companies or durable medical companies.

This bill requires physicians and surgeons to provide each patient, at their initial visit, a written or electronic notice of the "Open Payments Database." The disclosure, which must include a link to the database website, must be signed by the patient and kept in their medical records. The bill also requires physicians to conspicuously post an Open Payments Database notice in each location where they practice and, beginning January 1, 2024, on their website.

BPC Sections 660, 661 and 663 require physicians and surgeons to provide their patients notice of the Open Payments Database and the link to it in multiple places: in patient records, posted conspicuously in each office in which the physician practices and on the internet. The notice for patients can be a written or electronic notice of the Open Payments Database with link to the database. The written notice must include a signature and date signed from the patient or patient representative acknowledging receipt of the written or electronic notice. The notice can be on a separate form or document or added to electronic medical records that are printed out for the patient or patient representative. This notice is to be given to each patient at their initial visit.

BPC Section 661 requires the written notice must include the following text:

“The Open Payments database is a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals. It can be found at <https://openpaymentsdata.cms.gov>.”

BPC Section 661 also requires that this signed notice be included each patient’s electronic medical record. If the physician does not maintain electronic medical records, the notice must be filed with the written medical records. The physician must give each patient a copy of the signed and dated notice.

BPC Section 663 requires the physician to post the notice of this Open Payments Database in each location where the physician and surgeon practices, in an area in the office that is likely to be seen by all persons who enter the office. The text for posting the notice must include the following text:

- **“For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web page is provided here. The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public.”**
- The internet link to the database

BPC 663 also requires the same text of the notice that is posted in the office location be posted on an internet website that is used for the physician and surgeon’s practice in a conspicuous location on the website. The effective date for this internet posting requirement is January 1, 2024. If a physician and surgeon is employed by a health care employer, it is the responsibility of the employer to comply with the requirements of BPC sections 660, 661, 663. This posting requirement can be placed within the same notice posted in accordance with BPC Sections 138 and 2026.

BPC 664 provides that violation of this article shall constitute unprofessional conduct.

BPC Section 665 exempts a physician and surgeon working in an emergency room.

Business and Professional Code (BPC) Sections 660, 663, 664, 665 and United States Code (USC) Title 42, Sections 1320a-7h. Effective date when this law goes into

effective is January 1, 2023. The effective date for the website posting provision is January 1, 2024.

AB 1636 (Weber) Physician and Surgeons: Sex Offenders

This bill prohibits the Osteopathic Medical Board of California (Board) from reinstating the license of a physician and surgeon that had their license revoked or surrendered because they committed certain sex offenses or engaged in sexual misconduct with a patient. It expands current automatic revocation requirements to also include certain out-of-state convictions for sex offenses. This bill also allows the Board to deny a license to an applicant who was disciplined by another licensing board for sexual misconduct with a patient regardless of when the discipline occurred, removing the current sever- year limitation. BPC Sections 480, 2232, 2307. Effective January 1, 2023.

AB 2098 (Low) Physician and Surgeon: Unprofessional Conduct: Related to COVID-19 misinformation

This bill specifies that the dissemination of misinformation or disinformation related to COVID-19, from physicians to their patients, constitutes unprofessional conduct. BPC Section 2270. Effective January 1, 2023.

AB 2626 Medical Board of California: licensee discipline: abortion.

This bill prohibits the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC) the California Board of Registered Nursing (BRN), and the Physician Assistant Board of California (PAB) from imposing discipline on a license or denying a license application for certain licensees solely for performing an abortion that is legal under California law. Specifically, this bill would prohibit the Medical Board of California and the Osteopathic Medical Board of California from suspending or revoking the certificate of a physician and surgeon solely for performing an abortion if they performed the abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act. This bill amends Business and Professions Code (BPC) Section 2253. Effective Date: This was an urgency bill that went into effect immediately upon signing, on September 27, 2022.

AB 1954 (Quirk) Physician and Surgeons: Treatment and Medication of Patients Using Medicinal Cannabis

This bill would prohibit a physician and surgeon from denying treatment or medication to a qualified patient based solely on a positive drug screening test for tetrahydrocannabinol (THC) or report of medical cannabis use without first completing a case-by-case evaluation of the patients that includes a determination that the qualified patient's use of medical cannabis is medically significant to the treatment or medication. The bill would provide the use of medical cannabis that has been recommended by a license physician and surgeon shall not constitute the use of an illicit substance in such an evaluation. The bill would provide that a physician and surgeon shall not be

punished, or denied any right or privilege, for having administered treatment or medical to a qualified patient pursuant to the bill and consistent with the standard of care. BPC Section 2228.5. Effective date: January 1, 2023.

SB 923 (Wiener)

The intention of this bill is to provide culturally competent care that includes gender affirming care. This bill expands cultural competency requirements for continuing medical education (CME) related to lesbian, gay, bisexual, transgender, queer, questioning, asexual, or gender diverse, and intersex patients. These new CME topics are added to the list of acceptable topics for physician and surgeons to meet their CME requirements. Business and Professions Code (BPC) Section 2190.1. Effective Date: January 1, 2023.

SB 1443 Elimination of OMBC's Prorated License Fee and Birth Month Initial Licensure Cycle

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California Department of Public Health Alerts

SUBJ: CAHAN Disease Notification – Updated Health Alert: Reminder to Lower Barriers to Prescribing COVID-19 Therapeutics to Mitigate Impact of COVID-19 Updated December 1, 2022



Once an individual is diagnosed with COVID-19, early treatment with COVID-19-specific agents is the only existing strategy to markedly decrease risk of serious illness. There is ample supply of COVID-19 therapeutic agents, but they have been underused – especially among populations disproportionately impacted by COVID-19, including communities of color, low-income communities, and residents of long-term care facilities.

This **update** from the November 28, 2022, Health Advisory:

- Emphasizes the recommendation that providers have a low threshold to prescribe COVID-19 therapeutics given the broad range of individuals who are at higher risk for severe COVID-19 and can benefit from COVID-19 treatment.
- Emphasizes that vaccination status and prior infection with COVID-19 should not be reasons to withhold COVID-19 treatment.
- Reflects the FDA's 11/30/22 announcement that bebtelovimab is no longer an authorized agent against SARS-CoV-2 given resistance of the currently circulating Omicron subvariants.

Please see the full **updated** health alert here:

<https://www.cdph.ca.gov/Programs/OPA/Pages/CAHAN/Reminder-to-Prescribe-COVID-19-Therapeutics-to-Mitigate-Impact-of-Winter-Respiratory-Surge.aspx>

Temporary Fluoroscopy Permit

The California Department of Public Health, Radiologic Health Branch (CDPH-RHB) is pleased to announce that effective **December 15, 2022**, the CDPH-RHB will provide a pathway for eligible Physicians and Surgeons and Doctors of Podiatric Medicine to receive a **Temporary Fluoroscopy Permit (TFP)** prior to passing the California Licentiate Supervisor and Operator Fluoroscopy Permit examination administered by the American Registry of Radiologic Technologists (ARRT®).

An official notice is visible to the public on the Radiologic Health Branch, Radiologic & Nuclear Medicine Technology Certification & Permitting website at <https://www.cdph.ca.gov/Programs/CEH/DRSEM/Pages/RHB-Certification/XRayNucMed.aspx>

A list of frequently asked questions (FAQs), "Temporary Fluoroscopy Permit (TFP) for Supervisors and Operators - Frequently Asked Questions (FAQs)", are visible to the public on the Radiologic Health Branch website at <https://www.cdph.ca.gov/Programs/CEH/DRSEM/Pages/RHB-Certification/FTPfaq.aspx>.

For questions regarding requirements and the application process, please contact: California Department of Public Health, Radiologic Health Branch at rhblisc@cdph.ca.gov or 916-327-5106.

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