

Senate Bill 1448: The Patients' Right to Know Act of 2018

Senate Bill 1448 would make California the first state to require that doctors notify their patients if they are on probation by the Medical Board of California for wrongdoing, including sexual misconduct.

Hospitals and malpractice insurers are already notified when a doctor is placed on probation, but patients are left in the dark. The only way they can find out their doctor's probation status is if they have computer and internet access and try to navigate the Medical Board's website and read through lengthy legal documents.

82% of Americans favor the idea of doctors having to tell patients they are on probation, and why. *Source: 2016 Consumer Reports survey of 1,203 U.S. adults.*

On average about 124 doctors (out of 140,000 licensed physicians) are placed on probation each year by the California Medical Board for a variety of offenses (see chart on page 2).

SB 1448 breaks the silence on misconduct and ensures that future patients are fully informed.

Example of Patient Notification

Doctor: name

Probation Status: Placed on 5 years probation / probation end date.

Probation Terms: Completing a medical record keeping course, a professionalism program, obtaining a practice and billing monitor, and prohibited from engaging in the solo practice of medicine.

Website: www2.mbc.ca.gov/BreezePDL/default.licenseNumber=75451

Phone Number: Medical Board Consumer Information Unit 916-263-2382

In opposition, the California Medical Association argues that patient notice violates a doctors "due process." However, if patient notice were required, doctors who face probation in the future would continue to have a choice: Either pursue a hearing by an administrative law judge or agree to terms of probation with the Medical Board. SB 1448 would require that notifying patients of their status is a condition of accepting probation. This does not infringe on a doctor's due process.

CMA also points to its Assembly Bill 505 as an alternative to SB 1448. The measure would require that certain doctors go to an administrative law judge (ALJ) instead of negotiating terms of probation with the medical board. This would make the disciplinary process take longer and likely result in reduced sanctions for the doctor by the ALJ. The Medical Board often is able to negotiate stricter sanctions and terms for probation compared to an ALJ. Each year the Medical Board revokes the licenses of over 100 doctors. Under AB 505, patients would not be informed about the doctor's status while they are going through the ALJ process, which could take years meaning that doctors who are abusing patients could continue to do so. Furthermore, at the conclusion of the ALJ process, the judge might still recommend probation, which is why SB 1448 is necessary – if a judge ordered probation, SB 1448 would make sure that patients are informed of the doctors probation status.

CMA also argues that requiring doctors to notify their patients would put them out of business. The alternative, which is not telling them at all, is unacceptable. SB 1448 would only apply to future probation cases finalized after July 1, 2019.

Examples of news stories on the legislation:

<http://www.kpbs.org/news/2017/sep/13/california-protect-patients-bad-doctors/>

<http://www.nbcbayarea.com/investigations/Lawmakers-Pass-Bill-to-Renew-Medical-Watchdog-Agency-444567083.html>

Investigative reports:

<http://doctors.aic.com/>

<http://www.consumerreports.org/cro/health/doctors-and-hospitals/what-you-dont-know-about-your-doctor-could-hurt-you/index.htm>

Examples of California doctors disciplined for sexual misconduct:

Here's the list of all docs on probation in the state as of 2016. It starts on page 70:

<http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/MBC%20Background%20Paper%202017.pdf>

CALIFORNIA RESEARCH BUREAU

A November 2008 report issued by the California Research Bureau, "Physician Misconduct and Public Disclosure Practices at the Medical Board of California," reported that physicians who have received serious sanctions in the past are far more likely to receive additional sanctions in the future. According to the CRB report, "These findings strongly imply that disciplinary histories provide patients with important information about the likely qualities of different physicians." Physicians who received a medium sanction in Period A were 28 percent more likely to receive a severe sanction in Period B than someone who received no sanction in period A; and, physicians who received a medium sanction in Period A were 32 percent more likely to receive another medium sanction in Period B than someone who received no sanction in Period A.

Medical Board data from a 2013 Enforcement Committee meeting also showed that in FY 2011-2012 and FY 2012-2013, 17 percent of 444 actively-practicing California physicians on probation (77 doctors total) either required subsequent discipline or surrendered their licenses while on probation.

Data from the California Medical Board:

Probation

	FY 15/16	FY 14/15	FY 13/14	FY 12/13	FY 11/12	FY 10/11	FY 09/10
Gross Negligence/Incompetence	38	41	43	47	69	36	48
Inappropriate Prescribing	25	20	12	21	8	12	15
Unlicensed Activity	5	5	2	7	2	1	1
Sexual Misconduct	8	5	14	6	4	5	6
Mental/Physical Illness	2	11	4	3	5	1	3
Self-Abuse Drugs/Alcohol	30	30	15	25	19	14	13
Fraud	1	3	2	2	11	0	2
Conviction of a Crime	5	3	25	14	2	15	9
Unprofessional Conduct	15	18	20	8	6	9	4
Misc. Violations	0	0	0	5	4	4	5
Totals by Discipline Type	129	136	137	138	130	97	106

License Revocations & Surrenders

	FY 15/16	FY 14/15	FY 13/14	FY 12/13	FY 11/12	FY 10/11	FY 09/10
Gross Negligence/Incompetence	24	22	39	34	37	17	29
Inappropriate Prescribing	25	24	18	18	9	11	12
Unlicensed Activity	3	4	2	1	2	0	1
Sexual Misconduct	13	6	12	16	3	13	14
Mental/Physical Illness	21	25	14	21	18	8	13
Self-Abuse Drugs/Alcohol	10	17	13	17	20	4	16
Fraud	7	8	5	14	7	1	9
Conviction of a Crime	9	3	10	7	12	18	5
Unprofessional Conduct	24	21	15	10	9	12	6
Misc. Violations	0	0	0	0	0	0	0
Totals by Discipline Type	136	130	128	138	117	84	105

Sacramento Bee, August 15, 2017:

[Doctors and Nurses Unions Fight Disclosure. What They Don't Want You to Know](http://www.sacbee.com/opinion/editorials/article167413457.html)

<http://www.sacbee.com/opinion/editorials/article167413457.html>

In the vast majority of instances, Californians can trust their health to their doctors and nurses. Not so the organizations that represent doctors and nurses...

Los Angeles Times, July 27, 2017

[Patients Have a Right to Know When a Doctor is on Probation for a Serious Violation](http://www.latimes.com/opinion/editorials/la-ed-docs-probation-patient-notification-20170727-story.html)

<http://www.latimes.com/opinion/editorials/la-ed-docs-probation-patient-notification-20170727-story.html>

Before you schedule a physical for your teenage daughter, wouldn't you like to know if her physician has been put on probation by the state medical board for inappropriately touching young female patients? Similarly, wouldn't you want to know if the surgeon who's about to operate on you had been sanctioned for operating while under the influence of drugs? These shouldn't even be questions.

Bay Area News Group/East Bay Times, July 13, 2017

[Borenstein: Legislature Keeps Patients in the Dark About Bad Doctors](https://www.eastbaytimes.com/2017/07/13/borenstein-legislature-keeps-patients-in-the-dark-about-bad-doctors/)

<https://www.eastbaytimes.com/2017/07/13/borenstein-legislature-keeps-patients-in-the-dark-about-bad-doctors/>

The doctors' lobbyists like it that way. They know disclosure at physicians' offices would chase away patients. So they'd rather leave them in the dark...

San Francisco Chronicle, June 7, 2016

[State Senators Walk Away from Duty on Doctors' Misconduct](https://www.sfchronicle.com/opinion/editorials/article/State-senators-walk-away-from-duty-on-doctors-7968947.php)

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The measure by Sen. Jerry Hill, a San Mateo Democrat, needed a majority of the 40-member chamber but fell short last week with 15 senators in favor and 13 against. Where were the others? They were recorded as not voting, a feature of Sacramento lawmaking that allows elected representatives to dodge an issue even if they are in the Capitol chamber. The practice, known as "taking a walk," is used to hide from a tough choice — a dereliction of a legislator's duty

Mercury News February 25, 2016

[Doctors' Discipline Should Be Made Public](http://www.mercurynews.com/opinion/ci_29563203/mercury-news-editorial-police-doctors-discipline-should-be)

http://www.mercurynews.com/opinion/ci_29563203/mercury-news-editorial-police-doctors-discipline-should-be

Lawmakers need to put the public good ahead of special interests and require disclosure. Doctors are shielded from disclosure when they're placed on probation by the California Medical Board. They have to notify their employers and the hospitals where they practice, but not their patients.

Los Angeles Times, October 15, 2015

[Do You Want to Know If Your Doctor is on Probation?](http://www.latimes.com/opinion/editorials/la-ed--doctor-probation-20151030-story.html)

<http://www.latimes.com/opinion/editorials/la-ed--doctor-probation-20151030-story.html>

It's awkward, no doubt, for a doctor to inform patients when he or she is on probation. The California Medical Assn. predictably objects to notification, saying it would "put a burden on" the doctor-patient relationship. True, but that's the very point: Patients should be fully informed so that they can decide whether they want that relationship to continue. This would simply ensure they actually get the information to which they're already entitled.