



OVERVIEW

Requires physicians, podiatrists, acupuncturists, and chiropractors on probation for serious offenses such as sexual misconduct, substance abuse, gross negligence, or a felony conviction related to patient care to notify patients of their probationary status before visits take place.

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.

Each year about 100 physicians are placed on probation by the Medical Board.

On average, 500 to 600 of the 137,000 licensed physicians in California are on probation at any given time for serious offenses. This is less than half of one percent of the total active licensee population. While this bill will not affect many practitioners, these doctors' actions affect tens of thousands of patients.

Physicians, podiatrists, acupuncturists, and chiropractors are gatekeepers for healthcare, and patients expect that these professionals are functioning with a clean license. Many patients may not know they can look up their provider's disciplinary history online, have the time to do so, or lack Internet access.

Physicians and podiatrists are already required to inform hospitals and malpractice insurers of their probation status, but their patients have to seek out the information for themselves on the state's license database.

Patients deserve to be proactively informed if their doctor has been placed on probation by the Medical Board, Osteopathic Board, Podiatry Board, Acupuncture Board, or Board of Chiropractic Examiners for serious offenses such as sexual misconduct, substance abuse, gross negligence, or a felony conviction related to patient care and treatment.

EDITORIAL SUPPORT

LA Times, SF Chron, SJ Merc, Oakland Tribune, Contra Costa Times

PROBATION EXAMPLES

Examples of doctor's currently on probation that would be required to notify patients if SB 1033 were in affect:

Doctor Van Vu runs the California Pain Center in Huntington Beach. In recent years 16 of his patients have died from drug overdoses. He was accused of gross negligence and placed on probation by the Medical Board after an exhaustive investigation.

A neurologist was found to have allowed unlicensed medical assistants to routinely give patients narcotic painkillers through infusion pumps; in one case, a woman was sent home after receiving more than four times the proper dose. She was found dead the next morning. This doctor is currently serving five years probation.

A family practice doctor was found to be excessively prescribing controlled substances to patients, including one who received over 1,000 oxycodone tablets at one time and another who filled prescriptions for more than 41,000 methadone tablets over a 28-month period. They also sold drugs for cash without labels, patient names, or adequate records; and provided free drugs to patients in exchange for sex. This doctor is currently serving 10 years probation.

An orthopedic surgeon while on probation for substance abuse and forging prescriptions for "highly addictive" drugs and fictitious patients, was "caught using a prosthetic penis and bladder" to circumvent urine testing as part of mandated drug testing. He is currently serving five years probation.

A pediatrician was charged with sexual misconduct for coercing over 30 mothers of his patients to allow him to examine their feet while in the office. During one exam, he took the patient's mother's foot and began rotating the foot so that [her] toes rubbed against his penis." He is currently serving nine years probation.

A primary care physician was found to have ordered more than 4 million tablets of prescription painkillers containing hydrocodone over a 15-month period, but investigators from the Drug Enforcement Agency

"could account for only 167,000 tablets." She is currently serving seven years probation.

A cardiologist was found to have performed gross negligence in treating four people with heart disease, including two who died. He was cited for exposing a patient to "extremely excessive radiation," failing to order appropriate follow-up tests, dictating a "fictitious history and physical" without seeing a patient, and dictating medical records weeks after patients died. He is currently serving five years probation.

HOW AN ACCUSATION IS MADE

The Medical Board first receives a complaint or information. This can be from a variety of sources including a patient, their family, a mandated reporter, another licensee or professional group, a governmental agency, a news article, etc. The complaint is sent to the Board's Central Complaint Unit (CCU) for triage. The triage includes if the complaint is in the Board's jurisdiction, if more information is needed, etc. If the complaint involves the care and treatment provided by the licensee, then medical records are obtained and a medical consultant (physician) reviews the complaint and medical records. If it appears following initial review that a violation may have occurred, the case is referred to the Department of Consumer Affairs' Division of Investigation, Health Quality Investigation Unit, for investigation. Investigations are jointly assigned to an investigator and a Deputy Attorney General (DAG) who work together until the investigation is closed for lack of sufficient evidence or charges (accusation) are filed. Once the investigation is completed (this includes an interview with the physician, the patient, gathering evidence, and a review by an expert physician in the same specialty/practice area as the subject physician) the case goes to the DAG for review. If the DAG believes the case can pass the legal standard, clear and convincing evidence to a reasonable certainty, a DAG drafts formal charges, the accusation, and a hearing is scheduled. The accusation is a legal document that lists the charges and/or the section(s) of law alleged to have been violated and is served on the physician. The accusation is a public document that is posted on the Board's website.

BACKGROUND

In November 2015, the Medical Board of California (MBC) voted down a petition by Consumers Union that would have required doctors placed on probation

to inform their patients verbally and in writing, of their probationary status. The MBC instead formed a task force to consider less "prescriptive" ways to notify patients when their doctor is on probation for medical misdeeds, including Web site enhancements and advertising campaigns, but not direct notification. On May 6th the Medical Board approved a "neutral" position on SB 1033.

On average, 500 to 600 of the 137,000 licensed physicians in California are on probation at any given time for serious offenses. This is less than half of one percent of the total active licensee population. The reasons for probation range from physicians whose mismanagement of medical records rose to the level of gross negligence to doctors whose treatment resulted in multiple patient deaths. One such case involved a physician whose practice was linked in a news investigation to fatal overdoses of 16 patients. The MBC pursued two overdose cases against the doctor, who did not contest the charges, and was placed on five years of probation.

There are currently 21 acupuncturists (0.1% of the total licensee population), 15 podiatrists (0.6%), and no naturopathic physicians on probation.

California licensing boards post information on their websites related to licensee discipline, but patients may not know about this resource or have the ability to check the databases. These websites are difficult to navigate and often people have to review complicated legal documents to find out why their doctor was placed on probation. SB 1033 would also require a straightforward listing of the reasons for the probation order to be included on the regulatory boards' websites.

CALIFORNIA RESEARCH BUREAU

A November 2008 report issued by The California Research Bureau (CRB), 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.

MBC 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.

SUPPORT

Consumers Union

Center for Public Interest Law

Consumer Federation of California

Californians for Patients Rights

Consumer Watchdog

California Public Interest Research Group

California Board of Chiropractic Examiners

EDITORIAL SUPPORT

Los Angeles Times: Do you want to know if your doctor is on probation?

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. 10-30-15

Contra Costa Times/Oakland Tribune: California Medical Board should stop shielding bad doctors

The California Medical Board should stop shielding bad doctors and instead require that those on probation tell their patients. But the president of the board made clear that he has no intention of making the change. Instead, he only wants to tweak the agency's website. The board president said that requiring patient notification could place too much of a burden on doctors, prompt more to demand administrative law judge hearings rather than agreeing to probation and -- here's our favorite -- affect the patient-physician relationship.

Of course it will affect the relationship. That's a good thing. Patients who keep going to the probationary doctor will have valuable information so that they can

take more responsibility for decisions about their own care. 1-30-16

San Jose Mercury News: Doctors' discipline should be made public

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. The medical board's answer is a clunky website where patients can look up their doctors, presumably before making every appointment. It's ridiculous. 2-26-16

Los Angeles Times: Patients need to know about doctor malpractice

When the California Medical Board puts doctors on probation for drug use, negligence, sexual harassment or other violations, it requires them to inform the hospitals where they practice and their malpractice insurers. Yet they are not required to inform the people most likely to be harmed if their misdeeds or mistakes continue — patients.

The state medical board seems intent on keeping it this way, leaving the burden on patients to find out for themselves the licensing status of their doctors.

If the medical board is unwilling to force wrongdoing doctors to inform their patients, then the state Legislature ought to step in. The inconvenience and discomfort of a small percentage of physicians must not trump what's in the best interest of patients. 2-6-16

San Francisco Chronicle: California patients deserve to know about bad doctors

<http://www.sfchronicle.com/opinion/editorials/article/California-patients-deserve-to-know-about-bad-7239383.php#article-signin>

Perhaps the most compelling testimony for SB1033 is contained in a March 31 letter to the Legislature from the California Medical Association, which opposes the bill. It drips with condescension, and contempt for patient communication.

Among the CMA arguments:

“In some cases, the patient will seek another provider without seeking additional information.”

“In other cases, the patient may seek to get additional information from the physician about the case and the circumstance.”

“It is unrealistic to think a patient will not pose questions to the licensee.”

“The conversation with the patient will take time.”
If too many patients ask questions, “the physician’s ability to practice will be severely impaired.”

To all of those CMA points we say: Thank you for making the case for SB1033.

Yes, that notice may chase away some patients. Some people might not want to be examined by a doctor with a history of sexual misconduct.

Yes, those conversations might take time, especially if the reason for probation is egregious. This is not an onerous burden on the medical profession. Keep in mind: Doctors on probation account for about 600 of the 137,000 licensed in the state.

The CMA has put out another flimsy argument: That the information is already available to the public on its website. In fact, as Consumers Union observed in a letter to legislators, patients trying to get that data will encounter “obscure, lengthy documents written in legalese.”

Patients deserve to be informed — in plain language — when their doctor is on probation for a serious offense. 4-9-16

TV COVERAGE

Proposed bill requires doctors to tell probation status to patients

<http://www.kcra.com/news/local-news/news-sacramento/proposed-bill-requires-doctors-to-tell-probation-status-to-patients/38159616>

Tina Manasian of Sacramento underwent a botched plastic surgery in 2002 and it wasn’t until after she went under the knife that she learned her doctor was on probation with the Medical Board of California.

“He was a drunk, an alcoholic, it was awful,”

Manasian said. “I would have never chosen him if I knew he had a substance abuse problem.”

She filed a complaint with the board and seven years after her surgery, that doctor’s license was revoked.

During the time he practiced, he never had to disclose his probation status to patients.

Last October, the board had a chance to make that kind of disclosure mandatory for doctors but opted against it. “We’re talking doctors with sexual misconduct, drug abuse, over-prescribing controlled substances,”

Manasian said. “Wouldn’t you want to know?”

State Sen. Jerry Hill, D-San Mateo, recently introduced SB 1033, a bill that would require doctors to disclose their probation status to patients.

Doctors are being disciplined by state medical boards for serious wrongdoing. Finding out who those doctors are can be very difficult.

<http://abc7news.com/health/7-on-your-sideconsumer-reports-obtains-list-of-calif-doctors-on-probation-/1278053/> 4-5-16

Nearly 500 doctors in California are on probation for dangerous doctoring or unprofessional behavior. Their offenses range from practicing medicine under the influence of illegal drugs to sexual misconduct with patients. Others have been charged with negligence leading to botched surgeries and wrongful deaths. State Senator Jerry Hill recently introduced legislation requiring patient notification of doctor misconduct.

Lawmaker wants doctor discipline disclosed to patients

<http://www.abc10.com/mb/news/local/lawmaker-wants-doctor-discipline-disclosed-to-patients/125117178> 4-11-16

They have grossly misdiagnosed drugs, sexually abused patients and in some cases their negligence have killed patients.

Only a small percentage of California doctors are put on probation; about 500 out of 100,000. About 30 of those are in the Sacramento, Stockton and Modesto areas.

Patients tell horror stories about doctors who operated on them after repeated Medical Board violations and while they were on probation.

It happened to Tina Minasian, who was left with permanent scars by a plastic surgeon who was on probation at the time of her surgery.

“What he left me with was open, gaping wounds,” Tina Minasian told ABC10 News. “I found out that during that time he was operating on me, he was actually on a diversion program.”

Minasian and other advocates want the state to make disciplined doctors inform patients in writing about their violations.

Doctors on probation may soon be outed

<http://www.abc10.com/news/doctors-on-probation-may-soon-be-outed/128781186> 4-11-16

Doctors who are on probation for these violations and others don’t have to tell their patients what they did something that could change by the end of the current legislative session.