

SB 231 – Talking Points

- Fee Increase: We support a strong and effective Medical Board but the board must justify any fee increase with solid evidence of need.
 - Increased Expenses/Reduced Reserves: Where the MBC can demonstrate that expenses will continue to outpace reserves (including adequate revenue projections going forward and judicious use of existing resources) an appropriate fee increase will be supported.
 - Cost Recovery: We are in favor of eliminating enforcement cost recovery because it discourages legitimate exercise of a physician's due process right to have a fair hearing on any allegations of wrongdoing. However, we are willing to support a fee augmentation equal to the amount collected for investigation costs in order to maintain adequate funding for the Medical Board (\$28 biennially)
- Diversion Program: We support the Diversion Program and appropriate funding to allow it to continue its operation within the Medical Board. The program is extremely important to public protection because it attracts physicians with chemical dependency or mental health problems who might otherwise be practicing undetected.
- "Vertical Prosecution": The Medical Board does not need to transfer its investigators to the Attorney General's office, at considerable expense, to become more efficient and reduce the time it takes to handle discipline cases. Most MBC investigations are closed without disciplinary action (75%) and of those that result in formal charges, very few require a full hearing and trial attorney attention. The Enforcement Monitor suggests that investigations can be streamlined within the current structure. The Board should try that before adopting a new "solution" that is very costly, unproven, and practically irreversible. Furthermore, it is not appropriate to have prosecutors conducting investigations. Investigations should be handled fairly without a prosecutorial mentality. We believe investigations should continue to be handled by the Medical Board within its current structure.
- Venue for Challenges to Medical Board Decisions: Any action against a State Agency should be allowed to be filed in Sacramento, the seat of government. SB 231 would eliminate that option for court challenges against the Medical Board unless the case is centered in Sacramento. This singles out the Medical Board from all other Department of Consumer Affairs agencies for special limitations without good cause.
- Citation and Fine for Failure to Surrender Patient Records: We support and encourage physicians to submit patient records when presented with a signed patient release or a court order by the Medical Board. Without such documents, physicians have a fiduciary duty not to release such records.

Furthermore, often there are good reasons why records cannot be submitted within the 15 days allowed by statute (for example, if the physician is away from his/her office for an extended period or records are in off-site storage). Automatic imposition of citations or fines at the sole discretion of the Medical Board would be abusive, and the law should explicitly constrain such actions where a physician can timely document good cause for delay.