

**Introduced by Senator Hill**

February 12, 2016

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An act to amend Sections 803.1, 2027, and 2228 of the Business and Professions Code, relating to healing arts.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1033, as introduced, Hill. Medical Board: disclosure of probationary status.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law authorizes the board to discipline a physician or a surgeon by placing her or him on probation, which may include requiring the physician or surgeon to complete specified trainings, examinations, or community service or restricting the extent, scope, or type of practice, as specified.

This bill would require the board to require a physician or surgeon to disclose her or his probationary status to patients before each visit while the physician or surgeon is on probation under specified circumstances, including the board finding the physician or surgeon committed gross negligence or the physician or surgeon having been on probation repeatedly, among others. The bill would require the board, by July 1, 2018, to adopt related regulations that include requiring the physician or surgeon to obtain from the patient a signed receipt containing specified information following the disclosure.

Existing law requires the board to disclose to an inquiring member of the public and to post on its Internet Web site specified information concerning each physician and surgeon, including revocations, suspensions, probations, or limitations on practice.

This bill would require the board, by July 1, 2018, to include in each order of probation a written summary containing specified information and to include the summary in the disclosure to an inquiring member of the public, on any board documents informing the public of probation orders, and on a specified profile web page of each physician and surgeon subject to probation.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 803.1 of the Business and Professions  
2     Code is amended to read:  
3     803.1. (a) Notwithstanding any other provision of law, the  
4     Medical Board of California, the Osteopathic Medical Board of  
5     California, the California Board of Podiatric Medicine, and the  
6     Physician Assistant Board shall disclose to an inquiring member  
7     of the public information regarding any enforcement actions taken  
8     against a licensee, including a former licensee, by the board or by  
9     another state or jurisdiction, including all of the following:  
10    (1) Temporary restraining orders issued.  
11    (2) Interim suspension orders issued.  
12    (3) Revocations, suspensions, probations, or limitations on  
13    practice ordered by the board, including those made part of a  
14    probationary order or stipulated agreement.  
15    (4) Public letters of reprimand issued.  
16    (5) Infractions, citations, or fines imposed.  
17    (b) Notwithstanding any other provision of law, in addition to  
18    the information provided in subdivision (a), the Medical Board of  
19    California, the Osteopathic Medical Board of California, the  
20    California Board of Podiatric Medicine, and the Physician Assistant  
21    Board shall disclose to an inquiring member of the public all of  
22    the following:  
23    (1) Civil judgments in any amount, whether or not vacated by  
24    a settlement after entry of the judgment, that were not reversed on  
25    appeal and arbitration awards in any amount of a claim or action  
26    for damages for death or personal injury caused by the physician  
27    and surgeon's negligence, error, or omission in practice, or by his  
28    or her rendering of unauthorized professional services.

1 (2) (A) All settlements in the possession, custody, or control  
2 of the board shall be disclosed for a licensee in the low-risk  
3 category if there are three or more settlements for that licensee  
4 within the last 10 years, except for settlements by a licensee  
5 regardless of the amount paid where (i) the settlement is made as  
6 a part of the settlement of a class claim, (ii) the licensee paid in  
7 settlement of the class claim the same amount as the other licensees  
8 in the same class or similarly situated licensees in the same class,  
9 and (iii) the settlement was paid in the context of a case where the  
10 complaint that alleged class liability on behalf of the licensee also  
11 alleged a products liability class action cause of action. All  
12 settlements in the possession, custody, or control of the board shall  
13 be disclosed for a licensee in the high-risk category if there are  
14 four or more settlements for that licensee within the last 10 years  
15 except for settlements by a licensee regardless of the amount paid  
16 where (i) the settlement is made as a part of the settlement of a  
17 class claim, (ii) the licensee paid in settlement of the class claim  
18 the same amount as the other licensees in the same class or  
19 similarly situated licensees in the same class, and (iii) the  
20 settlement was paid in the context of a case where the complaint  
21 that alleged class liability on behalf of the licensee also alleged a  
22 products liability class action cause of action. Classification of a  
23 licensee in either a “high-risk category” or a “low-risk category”  
24 depends upon the specialty or subspecialty practiced by the licensee  
25 and the designation assigned to that specialty or subspecialty by  
26 the Medical Board of California, as described in subdivision (f).  
27 For the purposes of this paragraph, “settlement” means a settlement  
28 of an action described in paragraph (1) entered into by the licensee  
29 on or after January 1, 2003, in an amount of thirty thousand dollars  
30 (\$30,000) or more.

31 (B) The board shall not disclose the actual dollar amount of a  
32 settlement but shall put the number and amount of the settlement  
33 in context by doing the following:

34 (i) Comparing the settlement amount to the experience of other  
35 licensees within the same specialty or subspecialty, indicating if  
36 it is below average, average, or above average for the most recent  
37 10-year period.

38 (ii) Reporting the number of years the licensee has been in  
39 practice.

1 (iii) Reporting the total number of licensees in that specialty or  
2 subspecialty, the number of those who have entered into a  
3 settlement agreement, and the percentage that number represents  
4 of the total number of licensees in the specialty or subspecialty.

5 (3) Current American Board of Medical Specialties certification  
6 or board equivalent as certified by the Medical Board of California,  
7 the Osteopathic Medical Board of California, or the California  
8 Board of Podiatric Medicine.

9 (4) Approved postgraduate training.

10 (5) Status of the license of a licensee. By January 1, 2004, the  
11 Medical Board of California, the Osteopathic Medical Board of  
12 California, and the California Board of Podiatric Medicine shall  
13 adopt regulations defining the status of a licensee. The board shall  
14 employ this definition when disclosing the status of a licensee  
15 pursuant to Section 2027. *By July 1, 2018, the Medical Board of*  
16 *California shall include the summary of each probation order as*  
17 *written pursuant to subdivision (e) of Section 2228.*

18 (6) Any summaries of hospital disciplinary actions that result  
19 in the termination or revocation of a licensee's staff privileges for  
20 medical disciplinary cause or reason, unless a court finds, in a final  
21 judgment, that the peer review resulting in the disciplinary action  
22 was conducted in bad faith and the licensee notifies the board of  
23 that finding. In addition, any exculpatory or explanatory statements  
24 submitted by the licensee electronically pursuant to subdivision  
25 (f) of that section shall be disclosed. For purposes of this paragraph,  
26 "peer review" has the same meaning as defined in Section 805.

27 (c) Notwithstanding any other provision of law, the Medical  
28 Board of California, the Osteopathic Medical Board of California,  
29 the California Board of Podiatric Medicine, and the Physician  
30 Assistant Board shall disclose to an inquiring member of the public  
31 information received regarding felony convictions of a physician  
32 and surgeon or doctor of podiatric medicine.

33 (d) The Medical Board of California, the Osteopathic Medical  
34 Board of California, the California Board of Podiatric Medicine,  
35 and the Physician Assistant Board may formulate appropriate  
36 disclaimers or explanatory statements to be included with any  
37 information released, and may by regulation establish categories  
38 of information that need not be disclosed to an inquiring member  
39 of the public because that information is unreliable or not  
40 sufficiently related to the licensee's professional practice. The

1 Medical Board of California, the Osteopathic Medical Board of  
2 California, the California Board of Podiatric Medicine, and the  
3 Physician Assistant Board shall include the following statement  
4 when disclosing information concerning a settlement:  
5

6 “Some studies have shown that there is no significant correlation  
7 between malpractice history and a doctor’s competence. At the  
8 same time, the State of California believes that consumers should  
9 have access to malpractice information. In these profiles, the State  
10 of California has given you information about both the malpractice  
11 settlement history for the doctor’s specialty and the doctor’s history  
12 of settlement payments only if in the last 10 years, the doctor, if  
13 in a low-risk specialty, has three or more settlements or the doctor,  
14 if in a high-risk specialty, has four or more settlements. The State  
15 of California has excluded some class action lawsuits because  
16 those cases are commonly related to systems issues such as product  
17 liability, rather than questions of individual professional  
18 competence and because they are brought on a class basis where  
19 the economic incentive for settlement is great. The State of  
20 California has placed payment amounts into three statistical  
21 categories: below average, average, and above average compared  
22 to others in the doctor’s specialty. To make the best health care  
23 decisions, you should view this information in perspective. You  
24 could miss an opportunity for high-quality care by selecting a  
25 doctor based solely on malpractice history.

26 When considering malpractice data, please keep in mind:

27 Malpractice histories tend to vary by specialty. Some specialties  
28 are more likely than others to be the subject of litigation. This  
29 report compares doctors only to the members of their specialty,  
30 not to all doctors, in order to make an individual doctor’s history  
31 more meaningful.

32 This report reflects data only for settlements made on or after  
33 January 1, 2003. Moreover, it includes information concerning  
34 those settlements for a 10-year period only. Therefore, you should  
35 know that a doctor may have made settlements in the 10 years  
36 immediately preceding January 1, 2003, that are not included in  
37 this report. After January 1, 2013, for doctors practicing less than  
38 10 years, the data covers their total years of practice. You should  
39 take into account the effective date of settlement disclosure as well

1 as how long the doctor has been in practice when considering  
2 malpractice averages.

3 The incident causing the malpractice claim may have happened  
4 years before a payment is finally made. Sometimes, it takes a long  
5 time for a malpractice lawsuit to settle. Some doctors work  
6 primarily with high-risk patients. These doctors may have  
7 malpractice settlement histories that are higher than average  
8 because they specialize in cases or patients who are at very high  
9 risk for problems.

10 Settlement of a claim may occur for a variety of reasons that do  
11 not necessarily reflect negatively on the professional competence  
12 or conduct of the doctor. A payment in settlement of a medical  
13 malpractice action or claim should not be construed as creating a  
14 presumption that medical malpractice has occurred.

15 You may wish to discuss information in this report and the  
16 general issue of malpractice with your doctor.”

17 (e) The Medical Board of California, the Osteopathic Medical  
18 Board of California, the California Board of Podiatric Medicine,  
19 and the Physician Assistant Board shall, by regulation, develop  
20 standard terminology that accurately describes the different types  
21 of disciplinary filings and actions to take against a licensee as  
22 described in paragraphs (1) to (5), inclusive, of subdivision (a). In  
23 providing the public with information about a licensee via the  
24 Internet pursuant to Section 2027, the Medical Board of California,  
25 the Osteopathic Medical Board of California, the California Board  
26 of Podiatric Medicine, and the Physician Assistant Board shall not  
27 use the terms “enforcement,” “discipline,” or similar language  
28 implying a sanction unless the physician and surgeon has been the  
29 subject of one of the actions described in paragraphs (1) to (5),  
30 inclusive, of subdivision (a).

31 (f) The Medical Board of California shall adopt regulations no  
32 later than July 1, 2003, designating each specialty and subspecialty  
33 practice area as either high risk or low risk. In promulgating these  
34 regulations, the board shall consult with commercial underwriters  
35 of medical malpractice insurance companies, health care systems  
36 that self-insure physicians and surgeons, and representatives of  
37 the California medical specialty societies. The board shall utilize  
38 the carriers’ statewide data to establish the two risk categories and  
39 the averages required by subparagraph (B) of paragraph (2) of  
40 subdivision (b). Prior to issuing regulations, the board shall

1 convene public meetings with the medical malpractice carriers,  
2 self-insurers, and specialty representatives.

3 (g) The Medical Board of California, the Osteopathic Medical  
4 Board of California, the California Board of Podiatric Medicine,  
5 the Physician Assistant Board shall provide each licensee, including  
6 a former licensee under subdivision (a), with a copy of the text of  
7 any proposed public disclosure authorized by this section prior to  
8 release of the disclosure to the public. The licensee shall have 10  
9 working days from the date the board provides the copy of the  
10 proposed public disclosure to propose corrections of factual  
11 inaccuracies. Nothing in this section shall prevent the board from  
12 disclosing information to the public prior to the expiration of the  
13 10-day period.

14 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision  
15 (b), the specialty or subspecialty information required by this  
16 section shall group physicians by specialty board recognized  
17 pursuant to paragraph (5) of subdivision (h) of Section 651 unless  
18 a different grouping would be more valid and the board, in its  
19 statement of reasons for its regulations, explains why the validity  
20 of the grouping would be more valid.

21 (i) *By July 1, 2018, the board shall include each licensee's*  
22 *probation summary written pursuant to subdivision (e) of Section*  
23 *2228 on any board documents informing the public of probation*  
24 *orders, including, but not limited to, newsletters.*

25 SEC. 2. Section 2027 of the Business and Professions Code is  
26 amended to read:

27 2027. (a) The board shall post on its Internet Web site the  
28 following information on the current status of the license for all  
29 current and former licensees:

- 30 (1) Whether or not the licensee is presently in good standing.  
31 (2) Current American Board of Medical Specialties certification  
32 or board equivalent as certified by the board.  
33 (3) Any of the following enforcement actions or proceedings  
34 to which the licensee is actively subjected:  
35 (A) Temporary restraining orders.  
36 (B) Interim suspension orders.  
37 (C) (i) Revocations, suspensions, probations, or limitations on  
38 practice ordered by the board or the board of another state or  
39 jurisdiction, including those made part of a probationary order or  
40 stipulated agreement.

1     (ii) *By July 1, 2018, the board shall include, in plain view on*  
2 *the BreEZe profile web page of each licensee subject to probation,*  
3 *the summary of each probation order as written pursuant to*  
4 *subdivision (e) of Section 2228. For purposes of this subparagraph,*  
5 *a BreEZe profile web page is a profile web page on the BreEZe*  
6 *system pursuant to Section 210.*

7     (D) Current accusations filed by the Attorney General, including  
8 those accusations that are on appeal. For purposes of this paragraph,  
9 “current accusation” means an accusation that has not been  
10 dismissed, withdrawn, or settled, and has not been finally decided  
11 upon by an administrative law judge and the board unless an appeal  
12 of that decision is pending.

13     (E) Citations issued that have not been resolved or appealed  
14 within 30 days.

15     (b) The board shall post on its Internet Web site all of the  
16 following historical information in its possession, custody, or  
17 control regarding all current and former licensees:

18     (1) Approved postgraduate training.

19     (2) Any final revocations and suspensions, or other equivalent  
20 actions, taken against the licensee by the board or the board of  
21 another state or jurisdiction or the surrender of a license by the  
22 licensee in relation to a disciplinary action or investigation,  
23 including the operative accusation resulting in the license surrender  
24 or discipline by the board.

25     (3) Probation or other equivalent action ordered by the board,  
26 or the board of another state or jurisdiction, completed or  
27 terminated, including the operative accusation resulting in the  
28 discipline by the board.

29     (4) Any felony convictions. Upon receipt of a certified copy of  
30 an expungement order granted pursuant to Section 1203.4 of the  
31 Penal Code from a licensee, the board shall, within six months of  
32 receipt of the expungement order, post notification of the  
33 expungement order and the date thereof on its Internet Web site.

34     (5) Misdemeanor convictions resulting in a disciplinary action  
35 or accusation that is not subsequently withdrawn or dismissed.  
36 Upon receipt of a certified copy of an expungement order granted  
37 pursuant to Section 1203.4 of the Penal Code from a licensee, the  
38 board shall, within six months of receipt of the expungement order,  
39 post notification of the expungement order and the date thereof on  
40 its Internet Web site.

1 (6) Civil judgments issued in any amount, whether or not  
2 vacated by a settlement after entry of the judgment, that were not  
3 reversed on appeal, and arbitration awards issued in any amount,  
4 for a claim or action for damages for death or personal injury  
5 caused by the physician and surgeon's negligence, error, or  
6 omission in practice, or by his or her rendering of unauthorized  
7 professional services.

8 (7) Except as provided in subparagraphs (A) and (B), a summary  
9 of any final hospital disciplinary actions that resulted in the  
10 termination or revocation of a licensee's hospital staff privileges  
11 for a medical disciplinary cause or reason. The posting shall  
12 provide any additional explanatory or exculpatory information  
13 submitted by the licensee pursuant to subdivision (f) of Section  
14 805. The board shall also post on its Internet Web site a factsheet  
15 that explains and provides information on the reporting  
16 requirements under Section 805.

17 (A) If a licensee's hospital staff privileges are restored and the  
18 licensee notifies the board of the restoration, the information  
19 pertaining to the termination or revocation of those privileges shall  
20 remain posted on the Internet Web site for a period of 10 years  
21 from the restoration date of the privileges, and at the end of that  
22 period shall be removed.

23 (B) If a court finds, in a final judgment, that peer review  
24 resulting in a hospital disciplinary action was conducted in bad  
25 faith and the licensee notifies the board of that finding, the  
26 information concerning that hospital disciplinary action posted on  
27 the Internet Web site shall be immediately removed. For purposes  
28 of this subparagraph, "peer review" has the same meaning as  
29 defined in Section 805.

30 (8) Public letters of reprimand issued within the past 10 years  
31 by the board or the board of another state or jurisdiction, including  
32 the operative accusation, if any, resulting in discipline by the board.

33 (9) Citations issued within the last three years that have been  
34 resolved by payment of the administrative fine or compliance with  
35 the order of abatement.

36 (10) All settlements within the last five years in the possession,  
37 custody, or control of the board shall be disclosed for a licensee  
38 in the low-risk category if there are three or more settlements for  
39 that licensee within the last five years, and for a licensee in the  
40 high-risk category if there are four or more settlements for that

1 licensee within the last five years. Classification of a licensee in  
2 either a “high-risk category” or a “low-risk” category depends  
3 upon the specialty or subspecialty practiced by the licensee and  
4 the designation assigned to that specialty or subspecialty by the  
5 board pursuant to subdivision (f) of Section 803.1.

6 (A) For the purposes of this paragraph, “settlement” means a  
7 settlement in an amount of thirty thousand dollars (\$30,000) or  
8 more of any claim or action for damages for death or personal  
9 injury caused by the physician and surgeon’s negligence, error, or  
10 omission in practice, or by his or her rendering of unauthorized  
11 professional services.

12 (B) For the purposes of this paragraph, “settlement” does not  
13 include a settlement by a licensee, regardless of the amount paid,  
14 when (i) the settlement is made as a part of the settlement of a  
15 class claim, (ii) the amount paid in settlement of the class claim  
16 is the same amount paid by the other licensees in the same class  
17 or similarly situated licensees in the same class, and (iii) the  
18 settlement was paid in the context of a case for which the complaint  
19 that alleged class liability on behalf of the licensee also alleged a  
20 products liability class action cause of action.

21 (C) The board shall not disclose the actual dollar amount of a  
22 settlement, but shall disclose settlement information in the same  
23 manner and with the same disclosures required under subparagraph  
24 (B) of paragraph (2) of subdivision (b) of Section 803.1.

25 (11) Appropriate disclaimers and explanatory statements to  
26 accompany the information described in paragraphs (1) to (10),  
27 inclusive, including an explanation of what types of information  
28 are not disclosed. These disclaimers and statements shall be  
29 developed by the board and shall be adopted by regulation.

30 (c) The board shall provide links to other Internet Web sites  
31 that provide information on board certifications that meet the  
32 requirements of subdivision (h) of Section 651. The board may  
33 also provide links to any other Internet Web sites that provide  
34 information on the affiliations of licensed physicians and surgeons.  
35 The board may provide links to other Internet Web sites on the  
36 Internet that provide information on health care service plans,  
37 health insurers, hospitals, or other facilities.

38 SEC. 3. Section 2228 of the Business and Professions Code is  
39 amended to read:

2228. (a) The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

~~(a)~~

(1) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.

~~(b)~~

(2) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

~~(c)~~

(3) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

~~(d)~~

(4) Providing the option of alternative community service in cases other than violations relating to quality of care.

*(b) The board shall require a licensee to disclose her or his probationary status to patients before each visit while the licensee is on probation in any of the following circumstances:*

*(1) The board made a finding in the probation order that the licensee committed any of the following:*

*(A) Gross negligence.*

*(B) Repeated negligent acts involving a departure from the standard of care with multiple patients.*

*(C) Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.*

*(D) Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.*

1     (E) *Felony conviction arising from or occurring during patient*  
2 *care or treatment.*

3     (2) *The board ordered any of the following in conjunction with*  
4 *placing the licensee on probation:*

5         (A) *That a third party chaperone be present when the licensee*  
6 *examines patients as a result of sexual misconduct.*

7         (B) *That the licensee submit to drug testing as a result of drug*  
8 *or alcohol abuse.*

9         (C) *That the licensee have a monitor.*

10        (D) *Restricting totally or partially the licensee from prescribing*  
11 *controlled substances.*

12        (E) *Suspending the licensee from practice in cases related to*  
13 *quality of care.*

14     (3) *The licensee has not successfully completed a clinical*  
15 *training program or any associated examinations required by the*  
16 *board as a condition of probation.*

17     (4) *The licensee has been on probation repeatedly.*

18     (c) *The board shall adopt regulations by July 1, 2018, to*  
19 *implement subdivision (b). The board shall include in these*  
20 *regulations a requirement that the licensee obtain from each*  
21 *patient a signed receipt following the disclosure that includes a*  
22 *written explanation of how the patient can find further information*  
23 *on the licensee's discipline on the board's Internet Web site.*

24     (d) *Section 2314 shall not apply to subdivision (b) or (c).*

25     (e) *By July 1, 2018, the board shall include, in the first section*  
26 *of each order of probation, a standardized, single paragraph,*  
27 *plain-language summary that contains the accusations that led to*  
28 *the licensee's probation, the length of the probation and the end*  
29 *date, and all practice restrictions placed on the licensee by the*  
30 *board.*