BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
1300 National Drive, Suite 150, Sacramento, CA 95834
P (916) 928-8390 | F (916) 928-8392 | www.ombc.ca.gov

MEMORANDUM

DATE	May 16, 2024
TO	OMBC Board Members
FROM	Terri Thorfinnson, Administrative Services Manager
RE:	Agenda Item 15 2024 Legislation for Board Consideration and Possible Action

2024 Legislation for Board Consideration and Possible Action

SB 223 (Skinner) Arizona Physician Registration to Perform Arizona Abortions: Temporary License Exemption

Summary: The purpose of this bill is to assist physicians and patients in need of an abortion in Arizona where it is banned. It allows with specific documentation, for Physicians licensed and in "good standing" in Arizona to perform abortions in California for women patients from Arizona who are in need of an abortion but are prohibited by Arizona law from receiving an abortion. This bill is intended to assist both physicians and their patients in need of reproductive health care temporarily. The Department of Consumer Affairs (DCA) is assisting in creating the physician registration data base which will be operative June 8, 2024. This provision of law allowing this registration in lieu of licensure will in effect for the rest of 2024 and then after it is repealed. The bill creates Business and Professions Code (BPC) section 2076.6. The same day the Governor held a press conference announcing this bill and action, the Arizona legislature repealed the ban on abortion. The repeal will be signed by the Arizona Governor when it reaches her desk. As will the SB 223 (Skinner) bill be signed by Governor Newsom when it reaches his desk.

Analysis: This bill is in response to Arizona's ban on abortion. The Governor and the Women's Caucus held a news conference at the Capitol April 23, 2024, announcing this bill and action to assist Arizona physicians and their patients in need of abortions but physicians prohibited by state law from providing abortions. This bill is working its way through the legislature and includes an urgency clause that will require 2/3 vote of the legislature and the Governor has stated that he will sign it into law. If passed with the urgency clause, the bill will become effective immediately upon the Governor signing it.

While the bill essentially exempts licensure temporarily for this specific situation, the exemption is limited to Arizona physicians and Arizona patients in need of an abortion. The registration once

obtained by the Board will expire November 30th, 2024. The statutory provision will be repealed January 1, 2025. The bill requires registration and specific required documents. If physicians applying for registration do not provide the required documents, they will not be approved for providing abortions to Arizona abortion patients. The Board must process their registration within 15 days of receipt if it is complete. The Board cannot charge a fee. The Board does have enforcement jurisdiction over these Arizona physicians. There is a severe penalty for providing false information on the registration:

"(c) Any person who provides false information in the affidavit required pursuant to paragraph (5) of subdivision (b) is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment."

The bill balances the public safety needs regarding license exemption with the need to provide a way for Arizona physicians to continue to provide abortions to their patients despite the state law banning it. It is consistent with the Governor's commitment to provide a sanctuary for physicians and patients in need of reproductive health care services who work and live in states that ban abortions and make it a crime for physicians to provide reproductive health care.

Recommendation:

AB 765 (Wood) Osteopathic Physician and Surgeon Title Protection

Summary: This bill prohibits anyone who is not otherwise licensed as a physician and surgeon to use the title "M.D." or "D.O." or abbreviations to indicate specialty. This bill would apply to anyone who is unlicensed, not licensed, suspended, or revoked license from using any physician or specialty title. Violation of this statutory section would be a misdemeanor.

Analysis: This bill originally included the title "Osteopath" as a title that could only be used by a licensed Osteopathic Physician and Surgeon. However, An amendment after the bill was introduced, deleted "Osteopath," which removes its title protection. The Board oppose this bill last legislative session. The bill has subsequently died as a result of the author's promotion. It may come up by another author, but for now it is dead.

Board position: Oppose.

SB 1451 (Ashby) Professions and Vocations) Healing Art Professions Changes

Summary: This bill takes off where AB 765 left off. This bill makes amendments for various healing arts boards and professions. New amendments add in title protection language for M.D.s and D.O.s protecting the usage of the word doctor, physician and physician and surgeon. It does

not fix the unique issue related to the title usage of "osteopath," which was removed from AB 765 (Wood). The intention of the bill is to be a title protection bill that solves the issue of patient confusion around titles.

Analysis: Given the bill's intention, the bill fails in its goal of solving patient confusion around the use of the title "osteopath" by unlicensed, foreign trained health practitioners. Additionally, given the intention of the bill, there is no policy reason not to also include the word "osteopath" as also title protected to avoid patient confusion. All unlicensed, foreign trained health practitioners can use health practitioner or some variation on that title and disclose that they are unlicensed, and not an osteopath or osteopathic physician and surgeon as BPC 2053.6 requires. The fact that it remains so difficult to resolve this problem means that the Board needs to put some muscle into articulating the problem and solution to the legislature.

Why an oppose instead of a oppose unless amended position? The reason for the "oppose" position recommendation is because the bill carelessly or intentionally ignores the problem caused by not recognizing "osteopath" as a title in need of protection otherwise it creates a huge unlicensed practice loophole in the law that will continue to confuse patients. Given the history of this issue, the board needs a strong, unequivocal position that "oppose" provides. The position "oppose unless amended" is a milder position that signals adding the word "osteopath" would remove the Board's opposition but could be ignored by the author. Both positions allow the board to negotiate better language in the bill. From a strategy perspective a strong position will be more effective in getting the author to respond appropriately to resolve the issue for the Board.

Recommendation: Oppose.

AB 2164 (Berman) License Applications Conditions Causing Impairment to Practice Medicine Safely

Summary: This bill seeks to force the Board to modify its license application question regarding conditions that that impair or limit applicant's ability to practice medicine safely. The bill references BPC section 2425 that requires:

(a) The Division of Licensing may prepare and provide electronically or mail to every licensed physician at the time of license renewal a questionnaire containing any questions as are necessary to establish that the physician currently has no disorder that would impair the physician's ability to practice medicine safely.

This is the statutory authorization for the Boards to ask this question on their license applications.

Analysis: First, wording for applications is typically the jurisdiction of the board and done through regulation. So, it is unusual for the legislature to create a bill to essentially edit OMBC's and MBC's license applications. The most recent amendment that shaped the bill's intention is vague and

maybe difficult to interpret. Additionally, it leaves the interpretation up to the applicant whether they have condition that would require disclosure in their license application. The bill's current language that says that applicants do not have to disclose any conditions that do not cause impairment to practice medicine still leaves the interpretation to the applicant. The Board's current language already does that. What it comes down to is what wording would allow applicants to not disclose conditions that do not impair their ability to practice medicine safely and still allow disclosure of condition that would impair their ability to practice medicine safely? I think the Board's current wording already strikes the correct balance.

The sponsors of the bill (CMA) portray the MBC as insensitive to the issue and wording in the current application. So far, the criticism has been directed at MBC. However, OMBC adopted the similar language as MBC designed to address this issue.

The problem at the heart of this bill is to whether the wording on the Board's license applications stigmatize applicants who may have conditions related to mental health or substance abuse. As a regulatory board whose mission is to protect the public safety it is the board's duty to ensure all licensees are competence and not otherwise impaired. The question on the Board's license application is worded not to ask if they have a mental health or substance abuse condition in general; rather, it is asked whether they have "a condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety." A fair interpretation of this question is that if whatever condition the applicant has does not impair their ability and skills to practice medicine safely, then the answer would be no.

The sponsors of the bill are misrepresenting the harm or misinterpretation of this question. And the board is obligated to ask about any impairment that would not allow an applicant to practice medicine safely. It is unreasonable for the sponsors to request the Board change wording that has already been revised to accommodate the perception of stigma around mental health or other related issues and is in fact does not stigmatize mental health or other conditions; the board's wording is very specific in only asking for conditions that impair one's ability to practice medicine safely. The ability to practice safely is the core of the current question and it is a reasonable question for regulatory boards to ask applicants.

To illustrate my point, if a resident has a mental health diagnosis that they are being treated or untreated for and they are practicing medicine without impairment, then it is not a condition that qualifies for disclosure under our current application's wording.

The issue as stated by sponsors of the bill is that the question about impairment is stressful and causes stigmatize around having a condition such as mental or substance abuse. Years ago, when this issue was raised and studied by Federal of State Medical Boards (FSMB), the MBC revised their language for this question and the revised version was lauded around the country as much better wording. At the same time, this issue was also raised by former OMBC Board members and President years old. Since it was being discussed and studied at the national level, the OMBC

board waited for the resulting language recommendation. So, both Boards have been sensitive to the issue, open to revisiting the language and have in fact revised the wording of this question.

This bill raises the issue of what is in the interest of the profession and not necessarily furthering the goal of protecting public safety. The question about conditions that impair the ability to practice medicine safely is a reasonable competency question that the Board has placed on the license applications to protect the public from knowingly licensing individuals that have conditions that impair their ability to practice medicine safely. And is required by current law to ask. So, the policy question is not to remove the question from the license applications, but to ensure that it is worded in a way to both protects the public safety and is not stigmatizing to applicants. So, there has been no recognition for the work that MBC has done to address this issue. Additionally, MBC has committed to sponsoring a series of stakeholder meetings around the state to do just that-listen to stakeholders and be open to consider possible changes in the wording.

This issue is a shared issue for OMBC because we share the same impairment language in our license applications. For this reason and past Board discussion on the issue, I am recommending this bill for Board discussion and consideration of taking a position on the bill. Among the possible options is to be open to possible revised language presented by the sponsors or legislature. Another option could be to include explaining the sentence syntax that utilizes the noun "condition" that is modified by the verbs "impairs" or "limits," that would exclude any condition that does not impair or limit the safe practice of medicine. Taking a closer look at the interpretation of the current language to understand that it not trying to capture mental health conditions in general, but only conditions that impair the safe practice of medicine are disclosable.

One additional point is that OMBC does not have a "limited License" type like MBC does. MBC allows a license that is limited, whereas OMBC only allows for full licensure. There is language in the bill that would incorrectly apply to OMBC that would need to be amended to clarify that it would only apply to MBC and not OMBC:

(c) If an applicant discloses that they currently have a condition or disorder that impairs their ability to practice medicine safely, the board shall provide the applicant with information on the availability of a probationary or limited practice license.

Recommendation:

AB 1991 (Bonta) HCAI Survey: Healing Arts: Workforce Data

Summary: This bill would require certain healing arts boards to collect workforce data from their licensees at the time of renewal as a condition of renewal. It would prohibit boards from denying a

renewal solely because a licensee failed to provide workforce data as required.

Analysis: The board already has an HCAI survey that licensees must complete at their renewal. In fact, licensees can complete the HCAI survey at any time and not wait until their renewal time. It appears that this bill is focused on boards that do not have a workforce survey so they would be required to offer one that their licensees are required to complete. The bill initially seems confusing with respect to whether it impacts boards with an existing HCAI survey, so there is clarifying language in the bill that states that this section does not alter or affect the mandatory reporting requirements for licensees established in BPC section 2455.2. This bill should be on our watch list in case anything changes.

Recommendation: Watch

AB 2862 (Gipson) Expedite license for African American Applicants

Summary: This bill would require the Osteopathic Medical Board and other boards to prioritize African American applicants seeking licenses under these provisions, especially applicants who are descended from a person enslaved in the United States. The bill would repeal those provisions on January 1, 2029.

Analysis: This bill is sponsored by the author as part of a package of bills introduced by members of the California Legislative Black Caucus. According to the author:

"AB 2465 would provide an imperative initiative of the prioritization of African Americans when seeking occupational licenses, especially those who are descendants of slaves. There has been historical long-standing deficiencies and internal barriers to African Americans seeking professional work, and by prioritizing their applications, we are bridging the gap of professional inequities of under representation and under compensation."

According to the Assembly Committee on Business and Professions (April 16, 2024) analysis:

"In 2020, the Legislature enacted Assembly Bill 3121 (Weber), which established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States. The bill's findings and declarations acknowledged that "more than 4,000,000 Africans and their descendants were enslaved in the United States and the colonies that became the United States from 1619 to 1865." The bill further found that as "a result of the historic and continued discrimination, African Americans continue to suffer debilitating economic, educational, and health hardships," including, among other hardships, "an unemployment rate more than twice the current white unemployment rate."

"The Task Force created by AB 3121 was given responsibility for studying and developing reparation proposals for African Americans as a result of slavery and numerous subsequent forms of discrimination based on race. The Task Force was then required to recommend appropriate remedies in consideration of its findings, which were submitted as a report to the Legislature on June 29, 2023. The California Reparations Report, drafted with staff assistance from the California Department of Justice, totals over a thousand pages and provides a comprehensive history of the numerous past injustices and persistent inequalities and discriminatory practices. The report also includes a number of recommendations for how the state should formally apologize for slavery, provide compensation and restitution, and address the pervasive effects of enslavement and other historical atrocities."

"Chapter 10 of the Task Force's report, titled "Stolen Labor and Hindered Opportunity," addresses how African Americans have historically been excluded from occupational licenses. As discussed in the report, "state licensure systems worked in parallel to exclusion by unions and professional societies in a way that has been described by scholars as "particularly effective" in excluding Black workers from skilled, higher paid jobs. White craft unions implemented unfair tests, conducted exclusively by white examiners to exclude qualified Black workers."

"The report additionally describes how as the use of licensure to regulate jobs increased beginning in the 1950s, African American workers continued to be excluded from economic opportunity, in large part due to laws disqualifying licenses for applicants with criminal records, which disproportionately impacted African Americans. This specific issue was previously addressed in California through the Legislature's enactment of Assembly Bill 2138 (Chiu/Low) in 2018, which reduced barriers to licensure for individuals with prior criminal histories by limiting the discretion of most regulatory boards to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with nonviolent offenses older than seven years no longer eligible for license denial."

"In its discussion of issues relating to professional licensure, the Task Force concludes by stating that "while AB 2138 represents progress, other schemes remain in California which continue to have a racially discriminatory impact." The Task Force then provides several recommendations on how the Legislature could "expand on AB 2138." This includes a recommendation in favor of "prioritizing African American applicants seeking occupational licenses, especially those who are descendants [of slavery]."

"On January 31, 2024, the California Legislative Black Caucus announced the introduction of the 2024 Reparations Priority Bill Package, consisting of a series of bills introduced by members of the caucus to implement the recommendations in the Task Force's report. As part of that package, this bill seeks to implement the Task Force's recommendation by requiring boards to prioritize African American applicants seeking licenses, especially applicants who are descended

from a person enslaved in the United States. This requirement would be similar to existing expedited licensure processes for military families, refugee applicants, and abortion providers. While this bill would only represent a single step in what could be considered a long journey toward addressing the malignant consequences of slavery and systemic discrimination, the author believes it would meaningfully address the specific impact those transgressions have had on African Americans seeking licensure in California."

This bill would require the Board to expedite all applicants for licensure of African American decent. The Board currently has five expedite categories of applicants that it must expedite processing for licensure. This would be the sixth. From a policy perspective, at some point the number of expedited categories for expedite licensure dilutes the purpose of expedited licensure. Additionally, expedited licensure requires the board enforce the provisions of eligibility to avoid everyone falsely claiming to be eligible for expedited licensure. This is a current issue for current expedited license categories. There is an additional workload associated with processing expedited licensure applications that require extra communication and outreach to applicants to explain the requirements of licensure and required documentation to demonstrate eligibility for expedited licensure. In light of this trend to add expedited license categories, the Board should consider requesting additional staff to handle expedites and can provide a concierge like service to those applicants.

The policy question for the Board is whether this proposed category of applicants needs to be designated for expedited licensure. A second policy related question is what type of documentation should be required for the Board to verify that applicants are African Americans and eligible for expedited licensure. Unlike the other expedited categories, documentation verifying eligibility was straightforward. In this case, the documentation would be to verify race. And would it apply to mixed races? What document would provide the Board proof of eligibility? The documentation concern has been raised by other boards about this bill.

Recommendation:

AB 2270 (Maienschaein) Menopausal and Mental and Physical Health CME

Summary: The purpose of this bill is to encourage physicians to take continuing medical education course work on the topics of menopausal and mental or physician health of older women. The bill amends BPC section 2191 to add*:*

(l)"in determining its continuing education requirements, the board shall consider including a course in menopausal mental or physician health."

Analysis: This bill adds menopausal and mental and physical health training to the list of approved CME topics. It is optional, not mandatory. Adding a CME topic does not have any fiscal or workload impact for the Board.

Historically, very little research and medical training related to women's health and in particular older women's health has been done or been available. The purpose of this bill is this to correct this lack of training and knowledge by adding this topic to acceptable CME topics. According to the author's fact sheet:

"According to the National Library of Medicine (2023), it is crucial that individuals who experience menopause and health professionals understand perimenopausal transition. Symptoms and treatment issues can be addressed with effective education, as most every individual with a female reproductive system will go through this transition. However, there is a misconception surrounding menopause, resulting in a considerable lack of knowledge in the general population and a lack of training in medical schools. This means that many people who will go through menopause are anxious about menopause, associating it with negativity, and doctors may not immediately recognize symptoms as menopause related to leading to a delay in care. This is a major concern, as those who experience menopausal symptom may have a significantly low health-related quality of life."

Recommendation:

AB 2581 (Maienschaein) CME: Maternal Mental Health

Summary: This bill requires "*boards, in determining their continuing education requirements, to consider including a course in maternal mental health*." Originally, this bill applied to MBC and OMBC, but the requirement for OMBC and MBC was removed in committee 4.5.2024. So, this bill applies to other Boards who do not have this continuing education requirement.

Analysis: This bill originally included MBC and OMBC in the bill but upon further committee analysis was amended to remove MBC and OMBC because there is an existing statutory requirement that includes maternal mental health BPC section 2196.9.

Recommendation: Watch

AB 2442 (Zbur) License Expedite: Gender Affirming Care or Mental Health

Summary: This bill would also require those boards to expedite the licensure process for an applicant who demonstrates that they intend to provide gender-affirming health care and gender-affirming mental health care, as defined, within the scope of practice of their license, and would specify the manner in which the applicant would be required to demonstrate their intent. The bill would repeal its provisions on January 1, 2029.

Analysis:
This bill seeks to support increased access to health professions who commit to providing. gender-affirming care by replicating existing expedited licensure processes. Similarly, to how

applications for abortion providers are currently expedited, applicants would demonstrate their intent to provide gender-affirming health care or gender-affirming mental health care by providing documentation, including a letter from an employer, or contracting entity indicating that the applicant has accepted employment or entered into a contract to provide that care. The respective healing arts boards would then prioritize the processing of those applications. The author and sponsors of this bill believe that this expedited processing will help California more quickly deliver health care providers to communities in urgent need of gender affirming care.

The Assembly Committee on Business and Professions (April 9, 2024) analysis states:

"In recent years, there has been a growing recognition of the importance of addressing the systemic barriers and discrimination faced by transgender, non-binary, and gender-diverse individuals in accessing appropriate healthcare. Studies have demonstrated that social stigma and a lack of access to support systems has led to healthcare avoidance by transgender individuals:1 these patients also report a higher rate of negative interactions with healthcare providers.2 As acceptance of the communities grows, there has also been a corresponding backlash within reactionary conservative movements, leading to an even greater increase in trauma and oppression for those simply seeking to live as their authentic selves. One of the central aspects of transgender healthcare is access to gender-affirming care. Gender-affirming care encompasses medical interventions such as hormone therapy, surgical procedures, and mental health support aimed at aligning an individual's physical body with their gender identity. For many transgender individuals, these interventions are not merely elective but are necessary for alleviating gender dysphoria and improving overall well-being. Ensuring access to gender-affirming care is critical for affirming transgender identities and reducing the psychological distress associated with gender dysphoria."

The author and sponsors of the bill cite the need to designate providers who provide gender affirming care to be eligible for expedited licensure with documentation from employer of their intention to provide such care.

The policy question for the Board is whether this proposed category of applicants needs to be designated for expedited licensure.

The Board currently has five expedite categories of applicants that it must expedite processing for licensure. This would be the sixth. From a policy perspective, at some point the number of expedited categories for expedite licensure dilutes the purpose of expedited licensure. Additionally, expedited licensure requires the board enforce the provisions of eligibility to avoid everyone falsely claiming to be eligible for expedited licensure. This is a current issue for current expedited license categories. There is an additional workload associated with processing expedited licensure applications that require extra communication and outreach to applicants to explain the requirements of licensure and required documentation to demonstrate eligibility for

expedited licensure. In light of this trend to added expedited license categories, the Board should consider requesting additional staff to handle expedites and can provide a concierge like service to those applicants.

Recommendation:

AB 3119 (Low) Long Covid Continuing Medical Education

Summary: This bill requires the board to consider including Long COVID in its continuing education requirements. The bill amends BPC section 2191.6 to add:

"In determining its continuing education requirements, the board shall consider including a course in Long COVID."

Analysis: This bill adds "Long COVID" training to the list of approved CME topics. It is optional, not mandatory. Adding a CME topic does not have any fiscal or workload impact for the Board. According to the Assembly Committee on Business and Professions (April 9, 2024) analysis:

"Long COVID. Approximately 7.2 percent of adults in California are currently experiencing Long COVID,3 which the Centers for Disease Control and Prevention (CDC) refers to as "the new, returning, or ongoing health problems people can experience four or more weeks after initial infection with the SARS-CoV-2 virus." Long COVID can include an array of health conditions and potentially affect multiple systems of the body. People with Long COVID commonly report experiencing fatigue, fever, cough, chest pain, brain fog, changes in smell or taste, diarrhea, stomach pain, joint or muscle pain, rash, or changes in menstrual cycles, among other symptoms. The CDC reports that some people have unexplained symptoms that healthcare providers do not understand which can delay diagnosis and treatment."

The intention of the bill is to address the lack of knowledge and understanding about long COIVD through continuing education requirements to empower doctors to enhance their comprehension and proficiency in supporting and treating individuals with long COVID.

Recommendation:

AB 3030 (Calderon) Health Care Services: AI disclosure.

Summary: This bill would require an entity, including a health facility, clinic, physician's office, or office of a group practice that uses a generative artificial intelligence tool to generate responses for health care providers to communicate with patients to ensure that those communications include both (1) a disclaimer that indicates to the patient that a communication was generated by artificial intelligence and (2) clear instructions for the patient to access direct communications

with a health care provider, as specified. The bill would prohibit an entity or health care provider from being subject to any disciplinary action related to licensure or certification solely because of the entity's or health care provider's failure to comply with these provisions.

Analysis: This bill regulating AI follows the trend of requiring disclosure to the public of AI use. The initial concern with AI has been its misuse to misrepresent people or statements. As a result, the focus of this bill is to preliminarily require disclosure whenever used. This bill focuses on physicians and health care facilities. While it does require physician compliance, it does specifically shield physicians from discipline for failure to comply.

According to the author: "According to the author, across the state, pilot programs are testing the use of GenAI as a tool to assist clinicians with patient communications. As AI becomes increasingly integrated in our healthcare systems, it is important to maintain the trust between a patient and their provider, while ensuring the accuracy of information being communicated to patients. This bill would require healthcare providers who use this technology to provide a disclaimer that the communication was AI-generated, along with clear instructions for how a patient can directly communicate with a healthcare provider."

According to Assembly Committee on Privacy and Consumer Protection (April 23, 2024) analysis this bill is author sponsored:

"Unlike artificial intelligence (AI), which has existed for more than 50 years, generative artificial intelligence (GenAI) is more or less a fundamentally new technology. As such, its quirks and limitations are still being actively explored. One such limitation – the capacity of GenAI systems to hallucinate, or create convincing but ultimately untrue "facts" out of whole cloth – can be amusing in certain situations and deadly serious in others. If a chatbot misspells "Berenstain Bears," the hallucination is amusing. If a GenAI medical assistant directs an elderly patient to open their medicine cabinet and swallow thirty tablets of Tylenol, the hallucination becomes deadly serious. The latter situation has not yet occurred, but combining the known limitations of GenAI technology with its rapid adoption across industries will inevitably have unforeseen consequences."

"This bill seeks to combat such high-risk scenarios. It would require health care providers to disclose their use of GenAI when communicating with patients, so that patients are able to apply an appropriate degree of skepticism to any instructions provided or information requested. Committee amendments would expand the types of communications affected to include all written or verbal communications, and would specify how disclosure should be provided in a variety of common communication scenarios. Committee amendments also adjust the definition of "GenAI," insert definitions for "AI" and "health care provider," and remove liability exemptions from the language of the bill. "

Committee comments include:

"There are three primary risks related to the use of AI in healthcare:
1. Bias: broadly affects AI, including GenAI.
2. Memory: broadly affects AI, especially GenAI.
3. Hallucination: predominantly affects GenAI.

AI refers to the mimicking of human intelligence by artificial systems, such as computers. AI uses algorithms – sets of rules – to transform inputs into outputs. Inputs and outputs can be anything a computer can process: numbers, text, audio, video, or movement. AI that are trained on small, specific datasets in order to make recommendations and predictions are sometimes referred to as "predictive AI." This differentiates them from GenAI, which are trained on massive datasets in order to produce detailed text and images. When Netflix suggests a TV show to a viewer, the recommendation is produced by predictive AI that has been trained on the viewing habits of Netflix users. When ChatGPT generates text in clear, concise paragraphs, it uses GenAI that has been trained on the written contents of the internet. A hypothetical product that a healthcare provider might use to generate patient communications would be an example of GenAI."

The author's statement:
"Across the state, pilot programs are testing the use of generative Artificial Intelligence (GenAI) as a tool to assist clinicians with patient communications. As AI becomes increasingly integrated in our healthcare systems, it is important to maintain the trust between a patient and their provider, while ensuring the accuracy of information being communicated to patients. AB 3030 would require healthcare providers who use this technology to provide a disclaimer that the communication was AI-generated, along with clear instructions for how a patient can directly communicate with a healthcare provider."

According to the Assembly Committee on Health (April 9, 2024)) analysis: The California Privacy Protection Agency (CPPA) in draft regulations defines AI:

"AI means a machine-based system that infers, from the input it receives, how to generate outputs that can influence physical or virtual environments. The AI may do this to achieve explicit or implicit objectives. Outputs can include predictions, content, recommendations, or decisions. Different AI varies in its levels of autonomy and adaptiveness after deployment. For example, AI includes generative (GenAI) models, such as large language models (LLMs), that can learn from inputs and create new outputs, such as text, images, audio, or video; and facial- or speech-recognition or -detection technology."

"GenAI is a subset of AI that can be trained in a variety of ways and applied to a large and growing set of use cases in across economic sectors. GenAI uses a type of machine learning called "deep learning" that

uses multilayer neural networks, similar to the structure of a human brain, to process input and generate novel responses. LLMs are a type of GenAI model that has been specifically designed to understand, generate, and work with human language. These models are trained on vast quantities of text sourced from the internet and historical literature. GPT-4 and Copilot are examples of recently launched, publicly available interactive LLMs. Because of the extraordinary potential of novel GenAI applications, it will have enormous implications for industries across the economy and for labor and the workforce, as well as in daily life."

Governor Newsom issued an Executive Order September 2023 that requires the study of the development, use, and risks of AI technology throughout the state and to develop a deliberate and responsible process for evaluation and deployment of AI within state government. The Executive Order includes the following provisions:

"(1) Risk-Analysis Report: Direct state agencies and departments to perform a joint risk-analysis of potential threats to and vulnerabilities of California's critical energy infrastructure by the use of GenAI.

(2) Procurement Blueprint: To support a safe, ethical, and responsible innovation ecosystem inside state government, agencies will issue general guidelines for public sector procurement, uses, and required training for application of GenAI – building on the White House's Blueprint for an AI Bill of Rights and the National Institute for Science and Technology's AI Risk Management Framework. State agencies and departments will consider procurement and enterprise use opportunities where GenAI can improve the efficiency, effectiveness, accessibility, and equity of government operations.

(3) Beneficial Uses of GenAI Report: Direct state agencies and departments to develop a report examining the most significant and beneficial uses of GenAI in the state. The report will also explain the potential harms and risks for communities, government, and state government workers.

(4) Deployment and Analysis Framework: Develop guidelines for agencies and departments to analyze the impact that adopting GenAI tools may have on vulnerable communities. The state will establish the infrastructure needed to conduct pilots of GenAI projects, including California Department of Technology approved environments or "sandboxes" to test such projects.

(5) State Employee Training: To support California's state government workforce and prepare for the next generation of skills needed to thrive in the GenAI economy, agencies will provide trainings for state government workers to use state-approved GenAI to achieve equitable outcomes, and will establish criteria to evaluate the impact of GenAI to the state government workforce.

(6) GenAI Partnership and Symposium: Establish a formal partnership with the University of California, Berkeley, and Stanford University to consider and evaluate the impacts of GenAI on California and what

efforts the state should undertake to advance its leadership in this industry. The state and the institutions will develop and host a joint summit in 2024 to engage in meaningful discussions about the impacts of GenAI on California and its workforce.

(7) Legislative Engagement: Engage with Legislative partners and key stakeholders in a formal process to develop policy recommendations for responsible use of AI, including any guidelines, criteria, reports, and/or training.

(8) Evaluate Impacts of AI on an Ongoing Basis: Periodically evaluate for potential impact of GenAI on regulatory issues under the respective agency, department, or board's authority and recommend necessary updates as a result of this evolving technology."

"The administration is implementing the EO, including moving forward to evaluate procurement proposals by state agencies, two of which relate to health care: one AB 3030 Page 4 proposal to improve efficiency in inspections of health facilities by DPH, and another within the California Health and Human Services Agency to improve translations."

"California Privacy Protection Agency (CPPA) Pending Regulations. The CPPA is charged with protecting the privacy of Californians pursuant to landmark privacy-related ballot measures passed in 2018 and 2020. CPPA proposed draft regulations in December 2023, which would impose requirements for businesses using "automated decision-making technology" (ADMT) in any of the following ways:

(1) For decisions that tend to have the most significant impacts on consumers' lives. This would include, for example, decisions about their employment or compensation.

(2) Profiling an employee, contractor, applicant, or student. This would include, for example, using a keystroke logger to analyze their performance, and tracking their location.

(3) Profiling consumers in publicly accessible places, such as shopping malls, medical offices, and stadiums. This would include, for example, using facial recognition technology or automated emotion assessment to analyze consumers' behavior.

(4) Profiling a consumer for behavioral advertising. This would include, for example, evaluating consumers' personal preferences and interests to display advertisements to them.

For the above uses of ADMT, the draft regulations would provide consumers with specified protections. However, the draft CPPA regulations on ADMT do not appear to explicitly address the disclosure issue raised by this bill."

Note: The purpose of including such background detail is for educational reasons to understand AI and GenAI and what government actions are occurring and what agencies are regulating AI. AI is an emerging field, and the various legislative analyses for this bill provide excellent background information to understand this emerging field. I am not recommending any action on this bill.

Recommendation: Watch

SB 607 (Portantino) Controlled Substances: Patient Education: Adults

Summary: Existing law requires a prescriber, with certain exceptions, before directly dispensing or issuing for a minor the first prescription for a controlled substance containing an opioid in a single course of treatment, to discuss specified information with the minor, the minor's parent, or guardian, or another adult authorized to consent to the minor's medical treatment. This bill would extend that requirement for the prescriber by applying it to any patient, not only a minor, under those circumstances.

Analysis: The intention of this bill is to address the opioid crisis through patient counseling of the potential risk of taking opioids. The initial focus of the bill was minor patients, but the bill has expanded to include all patients. The bill initially had a provision requiring counseling include alternatives to opioids, but that language has been amended out of the bill.

According to the author who is the sponsor of this bill: "Existing law requires a prescriber to discuss specified opioid information when dispensing or issuing controlled substances. However, this requirement only applies when prescribing opioids to minors, not adults. Opioid overdoses are not exclusive to minors. The number of overdose deaths involving opioids, including prescription opioids, heroin, and synthetic opioids in 2021 was 10 times the number in 1999, which indicates that many measures to reduce opioid use have been unsuccessful. In an effort to mitigate the frequency of overdoses and reduce the number of opioid overdose deaths, SB 607 would expand the current requirement to include all patients, not just minors."

According to the Senate Committee on Business and Professions and Economic Development (January 4, 2024) analysis:

"In October of 2017, the White House declared the opioid crisis a national public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country.
The California Department of Public Health estimated that over 7,000 Californians died of an opioid overdose in 2022."

"The nature of the country's opioid crisis has evolved over the past several years as illicitly manufactured fentanyl has replaced prescribed pain management medication as the dominant source of opioid-related overdoses. Fentanyl is a synthetic opioid that is up to 100 times stronger than morphine. Fentanyl is often pressed into pills to imitate more common (and less potent) pharmaceutical products, and other drugs can be unknowingly "laced" with fentanyl. Over 70,000 Americans died of a fentanyl overdose in 2021, including 5,961 deaths in California – approximately 83% of all opioid-related deaths in California."

"The abuse of prescription drugs was historically viewed as a criminal concern analogous to street narcotics cases regularly investigated by law enforcement. In recent years, however, an expert consensus has evolved around the opinion that the opioid crisis must be addressed through the lens of public health policy. It is widely accepted that health professionals must continue to play a critical role in any meaningful solutions through safe-prescribing and the medication-assisted treatment of opioid use disorder."

Recommendation:

SB 636 (Cortese) Workers' Compensation Utilization Review

Summary: Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, and in the course of, employment. Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law prohibits any person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services from modifying, delaying, or denying requests for authorization of medical treatment for reasons of medical necessity to cure or relieve. It is the intent of the Legislature to require physicians performing utilization review regarding private California workers to be licensed in California and subject to the Medical Board of California.

This bill would, commencing January 1, 2025, for private employers, require the physician to be licensed by California state law.

Analysis: According to the Senate Committee on Labor, Public Employment and Retirement (April 10, 2023) analysis:

"Delays in obtaining treatment result in poorer outcomes, reduced return to work potential, and excessive costs to the system, none of which are good for injured workers. This bill would require,

for private employers, that utilization review (UR) be conducted by a medical professional licensed in California in order to ensure that the Medical Board of California can discipline medical professionals performing UR if they violate practice standards. According to the author, "When an insurance company steps in to deny a surgery or any medical treatment plan, it can be a nightmare scenario for the patient. Medical treatment is stressful enough without insurance stepping in to deny coverage. If insurance companies feel compelled to perform a utilization review, SB 636 would at least make sure the review doctor is licensed and accountable in California."

"The UR process is used by employers or claims administrators to have a doctor review a medical treatment plan to determine if the proposed treatment is medically necessary after consulting a schedule of uniform treatment guidelines. All employers, or their workers' compensation claims administrators, are required to have a UR program. This program is used to decide whether or not to approve medical treatment recommended by a physician, which must be based on medical treatment guidelines. These guidelines, referred to as the Medical Treatment Utilization Schedule, are adopted by the Division of Workers' Compensation and in most cases are consistent with treatment guidelines adopted by the American College of Occupational and Environmental Medicine. If the UR reviewer concludes a recommended treatment is not medically necessary, they may modify or deny the treatment request."

Supporters of the bill claim that Utilization Review is the means that insurance companies approve or deny recommended treatment based on what the insurance company considers to be medically necessary. Under current law, insurance companies may employ medical professional licensed in any state to perform UR. As a result, medical professionals not licensed in California are exempt from regulation and discipline by the Medical Board [and Osteopathic Medical Board]. When these medical professions not licensed in California wrongfully modify or deny claims, there is no regulatory structure to hold them accountable for malpractice.

Opponents of the bill claim that because the utilization review standards are nationally based, there is no scenario in which a California psychologist or physician would be more qualified to make a utilization review decision based solely on the fact that they are licensed in California. California psychologists and physicians do not have specific knowledge that would make this process any more fair or efficient. Conversely, a requirement that such professionals be licensed in California would only limit the number of doctors available to perform utilization review (UR) services, thereby creating a logjam of cases that need to be reviewed. Additionally, this limitation would likely drive up the cost of utilization review services because the demand for those services would increase relative to the number of providers who are legally able to perform them.

The legislative history for this concept of requiring licensed California physicians has been raised in bills that were vetoed: AB 2969 Lieber, 2008) vetoed by Governor Schwarzenegger; AB 933 (Fong, 2010) vetoed by Governor Schwarzenegger; AB 584 (Fong, 2011) vetoed by Governor Brown;

Recommendation: Watch

AB 3127 (McKinnor) Mandatory Reporting: Physicians: Crimes

Summary: This bill attempts to remove the requirement that physicians report injuries to their patients that may constitute domestic violence, sexual-abuse, or elder abuse. And eliminates the criminal liability for failing to report such patient harm.

Analysis: This is the third attempt at amending the reporting requirement for Physicians and Surgeons when their patients have harm or injury whose cause may be criminal. The "warm hand-off" wording is included in this version and further defined. What is missing is the detailed existing patient harm reporting trigger and a well-defined voluntary reporting versus involuntary reporting. The result removes some of the existing trigger instances of harm and does not build a new reporting system that incorporations the current reporting requirements with the new warm touch reporting exemptions.

Advocates in favor of the bill continue to push for warm handoff. The law enforcement community continues to oppose the amendments for the bill claiming they leave out key portions of existing reporting requirements that protect patients. This bill has a long way to go before it is ready for Board consideration. For this reason, it is recommended to be a watch bill.

Recommendation: Watch.

SB 1067 (Smallwood Cuevas) License Expedite for medically underserved areas within Healing Arts

Summary: This bill would require each healing arts board, as defined, to develop a process to expedite the licensure process by giving priority review status to the application of an applicant for a license who demonstrates that they intend to practice in a medically underserved area or serve a medically underserved population, as defined. The bill would authorize an applicant for a license to demonstrate their intent to practice in a medically underserved area or serve a medically underserved population by providing proper documentation, including, but not limited to, a letter from an employer, located in a medically underserved area or which serves a medically underserved population, indicating that the applicant has accepted employment and stating the start date.

Analysis: This bill only applies to healing arts boards. MBC and OMBC already have this requirement to expedite licenses for applicants who intend to practice in medically underserved areas **BPC section 2092.**

Recommendation: Watch

AB 2269 (Flora) Board Membership: Conflict of Interest

Summary: Existing law prohibits a public member, or a lay member appointed to a board, as defined, from, among other things, having a specified relationship with a licensee of that board within 5 years of the public member's or lay member's appointment.

This bill would prohibit a public member or a lay member of any board from having a specified relationship with a licensee of that board, for services provided pursuant to that license, within 3 years of the public member's or lay member's appointment. The bill would provide that these requirements apply to a public member or a lay member of a board upon appointment or reappointment on or after January 1, 2025.

Analysis: According to the author who is the sponsor of this bill: Public members serve a vital role on professional licensing boards, providing an important check and balance to the professional members in assuring that boards achieve their consumer protection goal. To that end, current law appropriately prohibits a public member from having had a significant recent employment or contractual relationship with a licensee. AB 2269 would update and simplify that statute by repealing an arbitrary exception to that prohibition for relationships not exceeding 2 percent of a licensee's employment or business."

According to the Assembly Committee on Business and Professions (April 2, 2024) analysis: This bill would update restrictions related to public members of boards holding employment or contractual relationships with licensees by repealing the "two-percent" standard imposed under current law, altogether prohibiting any sort of employment or contractual relationships with a licensee of the board, while shortening the window of time within which such relationships are considered a conflict of interest for a prospective public member. Additionally, in order to avoid disruption of the service of current public members of boards under DCA, provisions of this bill would only apply to public members appointed to a board on or after January 1, 2025.

Recommendation:

AB 3137 (Flora) DCA Clean-up Bill

Summary: This bill is still in spot bill form, which means that its substantive amendments are yet to be amended into the bill.

Analysis: Until we have substantive amendments, it is unclear the intention and focus of the bill.

Recommendation: Watch

SB 935 (Becker)Penal Code: Crime to distribute body parts or sexual digital images.

Summary: Existing law defines certain acts as disorderly conduct, punishable as a misdemeanor. Under existing law, it is disorderly conduct to intentionally distribute or cause to be distributed the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

This bill would make it a crime for a person to intentionally distribute or cause to be distributed any photo realistic image, digital image, electronic image, computer image, computer-generated image, or other pictorial representation of an intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates that was created in a manner that would cause a reasonable person to believe the image is an authentic image of the person depicted, under circumstances which in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Analysis: This bill creates a specific cause of action and crime to distribute the above defined digital material. The likely intention of this bill is to address the abusive effect that digital images being distributed on the internet. A recent supreme court decision allowed abusive stalking behavior by a man against a woman to be labeled free speech. Laws need to catch up to the digital age. This could be seen as good public health policy.

Recommendation: Watch

SB 1012 (Weiner) Psychedelic Facilitators: Establish Regulatory Body

Summary: According to the Senate Committee on Public Safety (April 23, 2024) analysis: The purpose of this bill is to establish the Regulated Psychedelic Facilitators Act (Facilitators Act) and Regulated Psychedelic-Assisted Therapy Act (Assisted Therapy Act) administered by new state entities, each of which is required to undertake regulatory efforts to determine, define, and establish standards for psychedelic facilitation in the state, and exempts from prosecution certain

conduct related to controlled substances when the conduct occurs lawfully under the Facilitators Act or the Assisted Therapy Act.

The division is proposed to be created with the Business, Consumer Services and Housing Agency, with DCA and the Director being responsible for facilitating the set up of a new Licensing Board and Committee within DCA. While the bill is very detailed, the scope and actual rules will be determined through regulation created by the new 14-member Board with one of the members being either a physician or advanced health practitioner. Among the uniqueness of this new board will be to not just set licensure standards, exam, and curriculum standards for its licensees but also to regulate the manufacture, distribution of these otherwise controlled substances similar to the Department of Cannabis Control within the Business, Consumer Services and Housing Agency.

This bill requires the Division to adopt regulations to establish categories of licensure and registration including, but not limited to:

- A cultivation, processing, or manufacture license that would allow solely for the provision and sale of regulated psychedelic substances at the premises of an approved location for use during the administration session of a regulated psychedelic facilitation at that approved location.

- A testing license for the testing of regulated psychedelic substances for quality, concentration, and contaminants.

This bill requires the Division to enforce laws related to the cultivation, producing, manufacturing, processing, preparing, delivery, storage, sale, and testing of regulated psychedelic substances.

Analysis: According to the Senate Business and Professions and Economic Development Committee (April 15, 2024) analysis: The purpose and intent of the Division is to establish a comprehensive system to control and regulate the provision of psychedelic facilitation; the production, distribution, transportation, storage, processing, manufacturing, testing, quality control, and sale of regulated psychedelic substances for use only in conjunction with regulated psychedelic facilitation at approved locations; the approval of locations where regulated psychedelic facilitation may take place and; the collection and publication of deidentified and aggregate data and information on the implementation and outcomes of the Act.

“The bill’s sponsor is the “Heroic Hearts Project.” According to the author:

“California is failing to provide residents with a safe, regulated program to access groundbreaking psychedelic-assisted therapy. As a result, many Californians are going abroad to access psychedelics or seeking out underground psychedelic facilitators and using unregulated substances. To ensure that Californians can access these substances as safely as possible, we must ensure Californians have the proper public education about the potential risks and harms

around these substances and access to a safe, supervised, and regulated setting to use these substances for healing. Additionally, when Californians use substances in conjunction with psychedelic facilitation, those substances should be produced and tested by a licensed, regulated provider in accordance with proper safety standards. In addition, there is no state-supported effort to promote the development of professional standards of care for psychedelic-assisted therapy or educate the public about safe practices and the potential risks and benefits. This bill will fill this gap in California. Current law lists psilocyn, psilocybin, mescaline, MDMA, and DMT as Schedule I Drugs. According to the Drug Enforcement Agency (DEA), Schedule I Drugs have "no accepted medical use and high potential for abuse." However, within the medical research community, these psychedelic substances are well documented as having therapeutic and medical benefits."

"A promising 2020 study showed MDMA could be used in combination with psychotherapy to reduce anxiety in patients facing life-threatening illnesses. Recent clinical trials studying MDMA as a treatment for depression, anxiety, and Post-Traumatic Stress (PTSD) led the FDA to distinguish MDMA-assisted psychotherapy treatment as a "Breakthrough Therapy." In 2018 and 2019, the FDA also issued the same distinction to psilocybin. Two different clinical trials showed psilocybin can reduce symptoms in patients with treatment-resistant depression. A Johns Hopkins study showed a significant decrease in depression and anxiety in cancer patients using psilocybin. These recent studies support decades of psychedelic research conducted in the medical field that demonstrates the potential of psychedelics to treat PTSD, anxiety, and depression. Observational studies have also documented the use of Ayahuasca (which contains DMT) to treat substance use disorder. When used in a safe and supervised setting, these substances have all been demonstrated to provide healing to their users and have documented medicinal use. For California's veterans and first responders, psychedelics have especially promising healing potential. Studies indicate that for veterans, many of whom live with PTSD, access to psychedelics can be effective in treating the acute trauma they face and may even save their lives. Veterans die by suicide at a rate of one and a half times the general public. Many veterans who have used psychedelic medicines to treat their PTSD report that without this treatment, they would have taken their life. In January 2024, the Department of Veterans Affairs announced it would fund studies on the benefits of psychedelic substances, such as MDMA and psilocybin, when used with psychotherapy for treating PTSD and depression in veterans."

"In recent years, a few states have acknowledged the healing potential of psychedelics and taken action to put a therapeutic framework in place for people to access these substances in a safe and controlled setting. In 2020, Oregon voters approved two ballot measures that decriminalized the personal use of all scheduled substances and authorized the creation of a state-licensed, psilocybin assisted therapy program over the next two years. In 2022, Colorado voters approved a two-prong ballot measure that allowed access to psilocybin and ibogaine, and later to DMT and mescaline in a regulated therapeutic context, and decriminalized the noncommercial, personal possession of those same substances. The state is developing rules and regulations and will begin licensing facilitators in late 2024."

Recommendation: Watch

AB 3146 (Essayli) Prohibition of Sex Re-Assignment for Minors

Summary: This bill prohibits any health care provider from providing gender affirming care to minors (under 18 years old).

Analysis: This bill does not have a lot of support, so will likely not proceed.

Recommendation: Watch.

SB 1385 (Roth) Professions and Vocations: Medi-Cal: Community Health Worker Supervisor Reimbursement: Claim Federal Financial Participation

Summary: This bill amends Welfare and Institutions Code (WIC) to mandate DHCS to amend their policy to allow for community worker supervisors to be reimbursable.

Analysis: This bill appears to be dedicated to Medical Cal policy related to reimbursement policy for community health care worker supervisors. Community health workers are typically unlicensed providers of health care services. Currently, only community health care workers are reimbursable. Without further amendments beyond Medi-Cal, this bill does not impact OMBC.

Recommendation: Watch

SB 1485 (Gonzalez) DCA: Consumer Complaints: Spot bill

Summary: This bill is still in spot bill form, which means that its substantive amendments are yet to be amended into the bill.

Analysis: Until we have substantive amendments, it is unclear the intention and focus of the bill.

Recommendation: Watch