



MEMORANDUM

DATE	May 11, 2023
TO	OMBC Board Members
FROM	Terri Thorfinnson, Administrative Services Manager
RE:	Agenda Item 15(A) - 2023 OMBC Bills for Board to Consider Taking Action or a Position

SB 544 (Laird) Open Meetings

Summary: This bill amends the Bagley-Keene Open Meetings Act to allow for a hybrid meeting approach that allows for virtual meetings with at least one in person location open to the public. The bill provides:

- Allow boards and bureaus to continue conducting single-site physical meetings without providing electronic public access.
- Allow boards and bureaus to conduct virtual meetings by either telephone or online platform under the following conditions:
 - Require one physical meeting location and the meeting must at least be audible at that location;
 - Require at least one board member or staff member to be present at the physical meeting location;
 - Require boards and bureaus to provide a way for the public to hear or observe the meeting remotely via a telephonic or online method that is equivalent to the method provided to board members;
 - Require the telephone number or online information, plus the physical site address, to be included in the meeting notice; and
 - No longer require agendas to: (1) identify separately all teleconference locations in the meeting notice, (2) post agendas at teleconference locations, and (3) provide public access to all teleconference locations, except for the one physical location.

This bill does not have a sunset date so unlike the current law, it will become permanent.

Analysis: This bill allows for boards to conduct meetings virtually with only one in person public meeting location. Among the benefits of this bill is that it removes the requirement of all in person meetings; the requirement that board members must post their virtual location and make it open to the public, which facilitates greater board member attendance if they have a choice of in person attendance or virtual. It is a significant savings in travel and meeting expenses attributed to hosting in person board meetings around the state. The board estimates that each meeting costs the Board between \$10,000 - \$15,000 in meeting location expenses, travel, food, per diem that are not otherwise incurred for hosting hybrid meetings that only has one in person location. With an average of 3 to 4 board meetings per year in rotating locations around the state, the Board estimates that this new law will save between \$30,000 to \$50,000 depending on the number of board meetings held each year. That is a significant savings for the board. The author specifically acknowledged the fiscal savings that this bill would provide.

The Board has observed that having meetings virtual and available to the public through web ex has had a significant increase in the number of public members attending and commenting at Board meetings virtually. Having to attend in person meetings tends to be too costly for members of the public and stakeholders to attend as well. The author specifically acknowledged that virtual meetings facilitate more public input and participation. It was expensive and inconvenient for members of the public to travel to attend in person board meetings.

Recommend: Support

AB 1707 (Pacheco) Reproductive Health Adverse Actions Out of State

Summary: This bill would prohibit a healing arts board under the Department of Consumer Affairs from denying an application for a license or imposing discipline upon a licensee on the basis of a civil judgment, criminal conviction, or disciplinary action in another state that is based on the application of another state's law that interferes with a person's right to receive sensitive services, as defined, that would be lawful in this state. The bill would similarly prohibit a health facility from denying staff privileges to, removing from medical staff, or restricting the staff privileges of a licensed health professional on the basis of such a civil judgment, criminal conviction, or disciplinary action imposed by another state. The bill also would also prohibit the denial, suspension, revocation, or limitation of a clinic or health facility license on the basis of those types of civil judgments, criminal convictions, or disciplinary actions imposed by another state. The bill would exempt from the above-specified provisions a civil judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state.

Analysis: This bill is a response to other states banning reproductive and “sensitive services” and then prosecuting physicians for providing these services that are legal in California. “Sensitive services” defined in Civil Code section [56.05](#) “means all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section.” This bill shields physicians from being denied licensure, employment, or other negative consequences as a result of out of state actions for laws that are otherwise legal in California.

Recommend: Support

SB 345 (Skinner) Reproductive Services Legal Protection for Boards and Physicians

Summary: This bill prohibits a state or local government employee or a person acting on behalf of the local or state government, among others, from providing information or expending resources in furtherance of an investigation that seeks to impose civil or criminal liability or professional sanctions on an individual for a legally protected health care activity that occurred in this state or that would be legal if it occurred in this state. The bill would require any out-of-state subpoena to include an affidavit or declaration under penalty of perjury that the discovery request is not in connection with an out-of-state proceeding relating to a legally protected health care activity, except as specified. By requiring an individual seeking to discovery under these provisions to declare certain conditions are present under penalty of perjury, this bill would expand the crime of perjury and impose a state-mandated local program. This bill would, except as required by federal law, prohibit the Governor from recognizing a demand for the extradition of a person charged with legally protected health care activity, as defined, unless the demanding state alleges that the person was physically present in the demanding state at the time of the commission of the alleged crime and then fled.

Analysis: This bill provides protections for health providers who perform abortions in California. It enhances the prohibition against disciplining doctors who provide reproductive health care services. This bill provides legal protection for physicians being prosecuted out of the state for providing reproductive services that would otherwise be legal in California from any discipline. It also provides protection through authorizing non-cooperation with out of state litigations against physicians for services that are legal in California but not legal in another state. This bill is needed to shield boards and their executive directors from being forced to cooperate or disclose any licensee or enforcement information that is part of a legal action against of physician for providing reproductive services. There was a fear that boards and their executive directors would be involuntarily pulled into out of state lawsuits against physicians providing reproductive health care services. This bill solves this problem.

Recommend: Support

AB 1369 (Bauer-Kahan) Telemedicine Out of State License Exemption

Summary: This bill proposes to allow out of state physicians through telemedicine to provide care to California patients without applying or needing to obtain a California license to practice medicine.

Analysis: The foundation of telemedicine in California was based on two main prerequisites:

1. Physicians providing care to California based patients must be licensed in California.
2. The conditions that were allowed to be provided through telemedicine were for conditions that the standard of care would not require the physician to see a patient in person to diagnose and treat or recommend treatment.

This bill violates both of the current foundations of telemedicine allowable in California. These two requirements were put in place to protect public safety of patients being treated through telemedicine. Both requirements are at the heart of protecting patient 's safety. Technically, the bill amends BPC section 2052 by adding a new subsection 2052.5. BPC section 2052 is the section of law that defines the scope of practice of medicine and requires a medical license to do so. By adding the proposed subsection 2052.5 it essentially adds a both a scope exemption and an exemption from the requirement that to practice medicine in California, one must be licensed to practice medicine from their respective regulatory boards. It exempts them from being criminally charged for unlicensed practice and fined up to \$10,000 and imprisonment not to exceed a year.

One of the scope changes this bill proposes is to allow these out of state unlicensed telemedicine physicians to provide care for life threatening conditions, which is currently prohibited and beyond the scope approved for telemedicine to provide. This dramatic scope expansion is not only a red flag, but also a significant threat to patient safety. Life threatening conditions require in person treatment not video chats level care. Life threatening conditions are when patients are most at risk of harm and would open them up to being victims of negligence precisely because the telemedicine physician is unable to provide the immediate level of care for a life-threatening condition.

As mentioned above, this bill amends BPC 2052 not the telemedicine law BPC section 2290.5. BPC section 2290.5 sets the standards for telemedicine, which should have been the logical choice to amend. Instead, the author is choosing to amend the bill that defines the scope of practice for physicians and surgeons in California. The choice of amending the BPC section 2052

has more sweeping impact on creating a blanket exemption to licensure and expanding the scope of what care is allowed to be provided through telemedicine than would be if it was amending the current telemedicine law BPC section 2290.5.

The sweeping scope change and the facts alleged as the justification for this bill are suspicious. The sponsors claim it is for California based patients with life threatening conditions, too sick to travel, not enrolled in a local clinical trial and that have the patient's physician's consent to get care from an out of state physician through telemedicine. If they are being cared for by a California license physician locally, why does the patient need to connect with telemedicine physician from out of state? Why does the patient need telemedicine if they have a local physician(s) who is caring for their condition? Why does the bill make a sweeping scope change in required licensure and telemedicine for a limited population of patients? There is no requirement that the telemedicine physician have the expertise of the condition being treated nor if the patient needs to be enrolled in an out of state clinical trial. If the patient were enrolled in an out of state clinical trial, the bill doesn't even require that the telemedicine doctor providing the care work actually work for the clinical trial or even be in the same state as the clinical trial. The facts are neither compelling nor make sense for not otherwise requiring telemedicine physicians to be licensed in California when caring for California patients.

The fact that this bill would allow telemedicine doctors to provide care without being licensed in California would mean that they are not regulated by the Board; the board would not have enforcement jurisdiction over them for purposes of pursuing disciplinary actions to protect public safety. This exemption would prevent OMBC and MBC from protecting patient safety. Patients harmed by these unlicensed out of state telemedicine physicians would have no recourse against them civilly or criminally or otherwise because the harm occurred in California and no entity in California has jurisdiction over these unlicensed out of state physicians. This would open a huge loophole in protecting patient safety and regulating physicians who provide care to patients in California.

It is worth emphasizing that licensure is not simply an administrative hassle for physicians to practice medicine in California. Licensure requirements are set by the Legislature to protect public safety and ensure competency and avoid fraudulent licensure so that every patient can feel confident that they are being cared for by a competent physician. Licensure also is the mechanism that provides the Board with enforcement jurisdiction to investigate and bring disciplinary actions against physicians who violate the law. Without licensure, there is no regulation of physicians who are allowed to practice in California without a license and there is no recourse for patient harm against the out of state unlicensed physician. Patients are left unprotected by this bill.

The lack of requirements and restrictions in this bill are out of step with the way California typically handles out of state business. All out of state businesses are required to consent

provide legal jurisdiction through registering with the Secretary of the State so in the event of lawsuit out of state businesses can be sued for business conducted in the state. To protect public safety in health care, the law must provide a legal connection to the state and that is licensure.

Recommend: Oppose

AB 765 (Wood) Physicians and Surgeons Title

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: The author’s intention with this bill is to clear up consumer confusion over physician titles. Among the amendments is to add a list of specialties that cannot be used unless the person is licensed. This bill was a benign bill with good intentions until the word “Osteopath” was removed from the list of titles that otherwise require licensure to use the title. The positive amendments include the addition of D.O, Doctor of Osteopathy, Osteopathic Physician. The concerning amendment was to remove “osteopath” from the list of title that can only be used if one is licensed. The removal of the title “osteopath” would be confusing to consumers who are already confused by the “osteopath or osteopathic.”

The removal of the title osteopath was to potentially facilitate a conversation about whether its ok to refer to unlicensed, foreign trained osteopaths as osteopaths. We are in conversation with the author’s office and part of this facilitated conversation. What is unknown to the author is that in the U.S., osteopathic training includes allopathic clinical training equivalent to the training received by M.D.s. Elsewhere in the world, osteopathic training does not include allopathic training and is limited to the patient centered philosophy and the use of osteopathic manipulation as a treatment modality. All osteopaths trained in the U.S. have allopathic and osteopathic training which prepares them to be licensed to practice as physicians and surgeons. All of the unlicensed osteopaths are foreign trained and lack the specific allopathic training of U.S. trained osteopaths and osteopathic physicians.

Foreign trained osteopaths vary substantially in their training and often lack any regulatory infrastructure and lack of allopathic training as part of their osteopathic training. The U.S. is the only country in which osteopathic training includes osteopathic principles and allopathic training. All other countries lack such extensive training and thus are ineligible in the U.S. to practice osteopathy. Additionally, to even entertain that it would be harmless to allow foreign trained osteopaths to practice unlicensed, ignores the fact that there are no national or state

exams to test competency for unlicensed foreign educated osteopaths. As such, they pose a public health risk because they are unlicensed and unregulated.

The law is clear that only U.S. trained osteopaths are eligible to become licensed osteopathic physician and surgeons. Additionally, the law is clear about the scope of licensed osteopathic medical services as defined in BPC section [2459.6](#).

(a) *For the purposes of Section 2459.5 and this section:*

(1) *“Osteopathic physician and surgeon” means a person defined in the Osteopathic Initiative Act.*

(2) *“Osteopathic manipulative treatment” means the therapeutic application of manually guided forces by an osteopathic physician and surgeon to alleviate somatic dysfunction.*

(3) *“Somatic dysfunction” means an impaired or altered function of related components of the somatic system.*

(4) *An “osteopathic aide” means an unlicensed person who assists an osteopathic physician and surgeon in the provision of osteopathic manipulative treatment provided that assistance is rendered under the supervision of an osteopathic physician and surgeon licensed pursuant to the Osteopathic Initiative Act. An aide is not authorized to perform osteopathic manipulative procedures.*

(5) *“Under the orders, direction and immediate supervision” means the evaluation of the patient by the osteopathic physician prior to the performing of an osteopathic manipulative treatment patient-related task by the aide, the formulation and recording in the patient’s record by the osteopathic physician and surgeon of an osteopathic manipulative treatment program based upon the evaluation, and any other information available to the osteopathic physician and surgeon prior to any delegation of a task to an aide. The osteopathic physician and surgeon shall assign only those patient-related tasks that can be safely and effectively performed by the aide. The supervising osteopathic physician and surgeon shall be responsible at all times for the conduct of the aide while he or she is on duty and shall provide continuous and immediate supervision of the aide. The osteopathic physician and surgeon shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks and shall be readily available at all times to provide advice or instructions to the aide.*

(6) *A “patient-related task” is restricted to assisting the osteopathic physician and surgeon in the rendering of osteopathic manipulative treatment.*

(b) *Osteopathic aides may not use roentgen rays and radioactive materials.*

(c) *The board shall require the supervising osteopathic physician and surgeon to conduct orientation of the aide regarding patient-related tasks.*

(d) No osteopathic physician and surgeon shall supervise more than two osteopathic aides at any one time.

This section defines the scope of osteopathic physician and surgeon practice. It specifies that “osteopathic manipulative treatment” is a therapeutic application by an osteopathic physician and surgeon to alleviate somatic dysfunction. Why this section is relevant to this discussion is that unlicensed, foreign trained osteopaths are likely providing osteopathic manipulative treatment, which this section specifies can only be performed by osteopathic physicians and surgeons. Furthermore, the section goes not to restrict even those entitled an “osteopathic aide” are “not authorized to perform osteopathic manipulation procedures. The section further specifies that only under orders, direct and immediate supervision by an osteopathic physician and surgeon who has already conducted the diagnostic and treatment evaluation, can the aide assist. The section goes on to further explain that “patient related task” is restricted to assisting the osteopathic physician and surgeon in rendering osteopathic manipulative treatment. These restrictions are current law created by the legislature to protect patient harm and public safety. The law is clear that non one that is unlicensed can perform osteopathic manipulative procedures. Therefore, unlicensed, foreign trained osteopaths should not be allowed to use the title osteopath and practice osteopathy or osteopathic manipulation without being a licensed osteopathic physician and surgeon.

Is there are risk to allowing foreign trained osteopaths to use that title and continue to offer their services without regulation? The answer is yes. All health professions need regulatory oversight to protect consumer and the public from risk of harm and misrepresentation of their skills, competence, and health care services.

There is a group of unlicensed, foreign trained osteopaths lobbying the author to allow them to use the title osteopath and remove it from the list of titles that otherwise require licensure. These unlicensed osteopaths claim that BPC sections 2053.5 and 2053.6 authorize them to practice and use the title osteopath. If the bill is not amended to include the title osteopath among the list of titles that require licensure, then they will be allowed to use the title if they comply with the requirements specified in BPC 2053.5 and 2053.6 reference above.

Recommend: Oppose