

New California Laws for Physicians and Surgeons for 2023

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By Michael H. Cohen

The Medical Board of California (MBC) recently discussed many of the new California laws that govern the practice of medicine in California. We summarize a few of those new laws here starting with – AB 2178 (Bloom) – Physicians and surgeons: special faculty permits: academic medical center. This law, according to MBC, updates how a medical center is defined and certain Board specific permit programs.

AB 2178 states that the Medical Practice Act generally prohibits physicians and surgeons from practicing medicine unless the physician/surgeon has a certificate issued by the Medical Board of California. The Medical Practice Act also authorizes a person who “*meets certain eligibility requirements to apply to the board for a special faculty permit.*” The special faculty permit authorizes the applicant to “*practice medicine without a physician’s and surgeon’s certificate only within:*

- *The medical school itself*
- *Any affiliated institution of the medical school, or*
- *An academic medical center, and*
- *Any affiliated institution in which the permit holder is providing instruction as part of the medical school’s or academic medical center’s educational program and for which the medical school or academic medical center has assumed direct responsibility.”*

Current California law defines an “*academic medical center*” for these purposes as a facility that meets specific requirements, including:

- Training a minimum of 250 residents and postdoctoral fellows annually
- Having foreign medical graduates in clinical research, and
- Offering clinical observership training.

AB 2178 changes the definition of “*academic medical center*” by:

- “*Requiring the facility to train a minimum of 250 resident physicians in specified residencies*
- *Removing the requirement that the research of the foreign medical graduates be clinical, and*
- *Requiring the facility to instead offer clinical observer experiences.”*

AB 2168 specifically updates the definition of the term “academic medical center” as follows:

- “A facility licensed by the State of California.
- The facility conducts both internal and external peer review of the faculty for the purpose of conferral of academic appointments on an ongoing basis.
- The facility conducts clinical and basic research for the purpose of advancing patient care.
- The facility trains a minimum of 250 resident physicians in Accreditation Council for Graduate Medical Education accredited residencies on an annual basis commencing each January 1.
- The facility has more than 100 research students or postdoctoral researchers annually.
- The facility has foreign medical graduates in research.
- The facility offers clinical observer experiences.
- The facility is accredited by the Western Association of Schools and Colleges and the Accreditation Council for Graduate Medical Education.”

The time that a special faculty permit holder spends in a faculty position is **not** “counted toward the postgraduate training required for licensure and shall not qualify the holder of the permit for waiver of any written examination required for licensure.”

The medical school or academic medical center shall **not** “appoint the holder of a special faculty permit to a position as a division chief or head of a department without express written authorization from the board.”

California Medical Board lowers supervision threshold for medspa and cosmetics affiliated physicians

California law now lowers the threshold of supervision of nurses and other appropriate licensed healthcare practitioners in medical spas. In recent rule-making the Medical Board of California [...]

Other physician and surgeon laws summarized by the Medical Board of California

Other California laws (effective in 2023) that MBC suggests physicians and doctors understand include the following:

- AB 852: (Wood) – Health Care Practitioners: Electronic Prescriptions. This law governs when healthcare providers must provide electronic prescriptions, what exemptions may apply, the obligations of the pharmacies to fill electronic prescriptions, and the need for prescribers who qualify for an exemption to register with the Board of Pharmacy.
- AB 1102: (Low) – Telephone Medical Advice Services. This law addresses the requirements for providing telephone medical advice services from an out-of-state location.
- AB 1120: (Irwin) – Clinical Laboratories: Blood Withdrawal. This California explains how a certified phlebotomy technician can collect blood including the requirement that the “blood collection procedure is performed under the general supervision of a physician and surgeon and the blood collection procedure is performed using a device or devices approved by the United States Food and Drug Administration.”
- AB 1278: (Nazarian) – Physicians and Surgeons: Payments: Disclosure: Notice. AB 1278 requires written, office, and website notice requirements that physicians must provide “informing patients of the federal Centers for Medicare and Medicaid Services Open Payments online database.” “Physicians working in a hospital emergency room are exempted from these requirements.”
- AB 1636: (Weber) – Physician’s and Surgeon’s Certificate: Registered Sex Offenders. This law explains the Board’s authority regarding a physician and surgeon (P&S) license who is convicted or disciplined for acts of sexual misconduct.
- AB 1797: (Weber) – Immunization Registry. This law provides for the disclosure of certain patient information (such as race and ethnicity) that must be disclosed to certain local, regional, or state health departments regarding immunization information.

- AB 1954: (Quirk) – Physicians and Surgeons: Treatment and Medication of Patients Using Cannabis. This law prohibits physicians and surgeons “from automatically denying treatment or medication to a qualified patient based solely on a positive drug screen for tetrahydrocannabinol (THC) or report of medical cannabis use without first completing a case-by-case evaluation of the patient that includes a determination that the qualified patient’s use of medical cannabis is medically significant, as defined, to the treatment or medication.” Other conditions also apply.
- AB 2098: (Low) – Physicians and Surgeons: Unprofessional Conduct. AB 2098 “establishes that it is unprofessional conduct for a physician and surgeon to share mis/disinformation to a patient under their care in the form of treatment or advice, as defined.”
- AB 2176: (Wood) – Live Birth Registration. Changes the deadline to register live births.
- AB 2288: (Choi) – Advance Health Care Directives: Mental Health Treatment. “Clarifies that advance health care directives include mental health and treatment” and other provisions.
- AB 2338: (Gipson) – Health Care Decisions: Decisionmakers and Surrogates. “Creates a list of relatives who can make medical decisions for an incapacitated adult who does not otherwise have a legally recognized health care decisionmaker.”
- AB 2436: (Bauer-Kahan) – Death Certificates: Content. Updates the information that should be included.
- SB 189: (Committee on Budget and Fiscal Review) – State Government. Addresses MBC public meeting requirements.
- SB 528: (Jones) – Juveniles: Medication Documentation. “Requires certain forms related to the provision of psychotropic medications be included within a foster youth’s case plan.”

Other new California laws of concern to physicians and surgeons include:

- SB 872: (Dodd) – Pharmacies: Mobile Units
- SB 923: (Wiener) – Gender-affirming Care
- SB 1029: (Hurtado) – One Health Program: Zoonotic Diseases
- SB 1184: (Cortese) – Confidentiality of Medical Information Act: School-linked Services Coordinators
- SB 1237: (Newman) – Licenses: Military Service
- SB 1259: (Laird) – Pharmacists: Furnishing Opioid Antagonists
- SB 1346: (Becker) – Surplus Medication Collection and Distribution
- SB 1440: (Roth) – Licensed Midwifery Practice Act of 1993: Complaints

A summary of recent MBC enforcement actions

The MBC’s recent newsletter also discusses its enforcement actions for 2022. The MBC stated that:

- For the fiscal year 2021-2022, nearly 10,00 complaints were filed with the Board. More than 82% of these complaints were closed. Administrative actions were taken on 438 complaints.
- “A physician who fails to provide the requested records may be subject to a civil penalty of \$1,000 a day for each day the records have not been provided, up to \$10,000.”

“In FY 2021-2022 (pg.17), the following case types had administrative action taken:

- *Gross Negligence/Incompetence – 211 Licensees*
- *Inappropriate Prescribing – 44 Licensees*
- *Unlicensed Activity – 1 Licensees*

- *Sexual Misconduct – 14 Licensees*
- *Mental/Physical Illness – 15 Licensees*
- *Self Abuse of Drugs/Alcohol – 64 Licensees*
- *Fraud – 10 Licensees*
- *Conviction of a Crime – 14 Licensees*
- *Unprofessional conduct – 65 Licensees”*

California enacted many laws in 2022 that are now effective including AB 2178 which explains licensing requirements and issues for physicians and surgeons who work at academic medical centers. AB 2178 updated the definition of an academic center. Other new California laws address many other licensing, treatment, practice, and do's and don'ts of the medical profession.

Physicians and other healthcare providers should contact Cohen Healthcare Law Group, PC to discuss the newest federal, state, and medical board laws and requirements. Our experienced healthcare attorneys advise doctors and other types of healthcare providers about healthcare compliance laws and regulations.

Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.