Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 1033
Author: Senator Jerry Hill
Bill Version: Amended March 17, 2016
Subject: Medical Board: disclosure of probationary status
Sponsor: Author
Status of Bill: Re-referred to Com. on B., P. & E.D. Hearing set for April 11th.

Summary:

This bill would require various healing arts professionals including chiropractors, to disclose his or her probationary status to a patient prior to the patient's first visit following a probationary order.

Existing Law:

- Establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors.
- Authorizes various healing arts regulatory agencies to discipline its licensees by placing them on probation.

This Bill Would:

** Items highlighted are for discussion and possible amendment*

Amend Business and Professions Code Section 1006 to:

a) Require a licensee to disclose on a separate document his or her probationary status to a patient, patient guardian, or health care surrogate prior to the patient's first visit following the probationary order while the licensee is on probation in any of the following circumstances:
    1. The accusation alleges, the statement of issues indicates, or the legal conclusions of an administrative law judge find that the licensee is implicated in any of the following:
        A. Gross negligence.
        B. Repeated negligent acts involving a departure from the standard of care with multiple patients.
        C. Repeated acts of inappropriate and excessive prescribing of controlled substances, including, but not limited to, prescribing controlled substances without appropriate prior examination or without medical reason documented in medical records.
        D. Drug or alcohol abuse that threatens to impair a licensee's ability to practice medicine safely, including practicing under the influence of drugs or alcohol.
        E. Felony conviction arising from or occurring during patient care or treatment.

F. Mental illness or other cognitive impairment that impedes a licensee's ability to safely practice medicine.

2. The board ordered any of the following in conjunction with placing the licensee on probation:
   A. That a third-party chaperone be present when the licensee examines patients as a result of sexual misconduct.
   B. That the licensee submits to drug testing as a result of drug or alcohol abuse.
   C. That the licensee have a monitor.
   D. Restricting the licensee totally or partially from prescribing controlled substances.
3. The licensee has not successfully completed a clinical training program or any associated examinations required by the board as a condition of probation.
4. The licensee has been on probation more than once.

b) The licensee shall obtain from each patient a signed receipt following the disclosure that includes a written explanation of how the patient can find further information on the licensee's probation on the board's Internet Web site.

c) The licensee shall not be required to provide the disclosure prior to the visit as required by subdivision (a) if the patient is unconscious or otherwise unable to comprehend the disclosure and sign the receipt pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the receipt. In that instance, the licensee shall disclose her or his status as soon as either the patient can comprehend the disclosure and sign the receipt or a guardian or health care surrogate is available to comprehend the disclosure and sign the receipt.

d) By July 1, 2018, the board shall develop a standardized format for listing the following information pursuant to subdivision (e):
   1. The listing of the causes for probation alleged in the accusation, the statement of issues, or the legal conclusions of an administrative law judge.
   2. The length of the probation and the end date.
   3. All practice restrictions placed on the licensee by the committee.

e) By July 1, 2018, the board shall provide the information listed in subdivision (d) as follows:
   4. To an inquiring member of the public.
   5. On any board documents informing the public of probation orders and probationary licenses, including, but not limited to, newsletters
   6. Upon availability of a licensee's BreEZe profile Internet Web page on the BreEZe system pursuant to Section 210, in plain view on the BreEZe profile Internet Web page of a licensee subject to probation or a probationary license.

Background:

According to the author's office:

> In November 2015, the Medical Board of California (MBC) voted down a petition by Consumers Union that would have required doctors placed on probation to inform their patients verbally and in writing, of their probationary status. The MBC instead formed a task force to consider less

"prescriptive" ways to notify patients when their doctor is on probation for medical misdeeds, including Web site enhancements and advertising campaigns, but not direct notification.

On average, 500 to 600 of the 137,000 licensed physicians in California are on probation at any given time for serious offenses. This is less than half of one percent of the total active licensee population. The reasons for probation range from physicians whose mismanagement of medical records rose to the level of gross negligence to doctors whose treatment resulted in multiple patient deaths. One such case involved a physician whose practice was linked in a news investigation to fatal overdoses of 16 patients. The MBC pursued two overdose cases against the doctor, who did not contest the charges, and was placed on five years of probation.

Suggested amendments

The bill added Section 1006 to the Business and Professions Code to require patient notification for the chiropractic profession. However, it seems the language is modeled after the Medical Board language.

Therefore, amendments are necessary to ensure the language is accurate and applicable to chiropractic.

1. References to a licensee prescribing a controlled substance should be removed, as chiropractors do not have the authority to prescribe controlled substances.
2. References to the practice of medicine should be changed to the practice of chiropractic.
3. Reference to disclosure of probation to a patient that is unconscious or otherwise unable to comprehend the disclosure, should be discussed and considered for removal.
4. Reference to a licensee's BreEZe profile internet webpage as a place to disclose probationary information may need to be amended to more accurately reflect the current and future website and internet capabilities under control of the Board.

Fiscal Impact:

The BCE anticipates the fiscal impact would be minor and absorbable. Additional patient notification requirements would require promulgation of regulations, staff process changes, and minor modifications to the Board's website.

Support & Opposition:

Support:

Consumers Union

Opposition:

No opposition on file

Arguments:

Pro:

- Consumers Union has argued, "Protection of the public is the MBC's paramount responsibility and gives the MBC authority to discipline physicians, including placing them on probation. Further, the MBC should exercise its authority and fulfill its responsibility by requiring that physicians on probation disclose their probation status to their patients."
- According to the author, California licensing boards post information on their websites related to licensee discipline, but patients may not know about this resource or have the ability to check the databases. These websites can be difficult to navigate and often people have to review complicated legal documents to find out why their doctor was placed on probation. SB 1033 would require a straightforward listing of the reasons for the probation order to be included on the regulatory boards' websites.

Con:

- Though amendments to the bill may not impact the BCE's support of the bill, there are technical changes necessary to make the bill applicable to chiropractic. These amendments will need to be brought to the author's attention.
- While there is currently no opposition to SB 1033, the MBC has previously argued that the proposal is "too prescriptive" and that a more nuanced approach was possible with some additional work.
- The California Medical Association has voiced concern that a notification requirement would be bad for business. "This would put a burden on the physician-patient relationship and take time away from important patient appointments that are already limited," "This information is already public and available online and can be accessed by anyone. This is a duplicative burden that will interfere with patient care."

Committee's Recommended Position: SUPPORT IF AMENDED

The amended bill would further enhance consumer protection by requiring chiropractors to disclose their probationary status to a patient before the first visit following a probation order. However, the current version of the bill contains multiple provisions that are not applicable to the practice of chiropractic.

1. Bill language page 9:
    a. Lines 1-4 should be deleted
    b. Line 6, practice medicine should be amended to practice chiropractic
    c. Line 11, practice medicine should be amended to practice chiropractic
    d. Lines 19-20 should be deleted

e. Lines 29-38 should be deleted

2. Bill language page 10:
   a. Lines 16-19, since the BCE will likely not utilize the BreEZe system, more appropriate language would include some variation of "Board controlled online source for licensee information."