

**PROPOSED LACBA RESOLUTION
RESOLUTION [LACBA-01-2024]**

TEXT OF RESOLUTION

RESOLVED that the conference of California Bar Associations recommends that legislation be sponsored to amend Section 801.01 of the California Business and Professions Code to read as follows, amending for the current circumstances:

1 § 801.01

2 The Legislature finds and declares that the filing of reports with the applicable
3 state agencies required under this section is essential for the protection of the public. It is
4 the intent of the Legislature that the reporting requirements set forth in this section be
5 interpreted broadly in order to expand reporting obligations.

6 (a) A complete report shall be sent to the Medical Board of California, the
7 Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or
8 the Physician Assistant Board with respect to a licensee of the board as to the following:

9 (1) A settlement over ~~thirty thousand dollars (\$30,000)~~ one hundred
10 thousand dollars (\$100,000) or arbitration award of any amount or a civil
11 judgment of any amount, whether or not vacated by a settlement after entry of the
12 judgment, that was not reversed on appeal, of a claim or action for damages for
13 death or personal injury caused by the licensee’s alleged negligence, error, or
14 omission in practice, or by the licensee’s rendering of unauthorized professional
15 services.

16 (2) A settlement over ~~thirty thousand dollars (\$30,000)~~ one hundred
17 thousands dollars (\$100,000), if the settlement is based on the licensee’s alleged
18 negligence, error, or omission in practice, or on the licensee’s rendering of
19 unauthorized professional services, and a party to the settlement is a corporation,
20 medical group, partnership, or other corporate entity in which the licensee has an
21 ownership interest or that employs or contracts with the licensee.

22 (b) The report shall be sent by any of the following:

23 (1) The insurer providing professional liability insurance to the licensee.

24 (2) The licensee, or the licensee’s counsel.

25 (3) A state or local governmental agency that self-insures the licensee. For
26 purposes of this section, “state governmental agency” includes, but is not limited
27 to, the University of California.

28 (c) The entity, person, or licensee obligated to report pursuant to subdivision (b)
29 shall send the complete report if the judgment, settlement agreement, or arbitration award
30 is entered against or paid by the employer of the licensee and not entered against or paid
31 by the licensee. “Employer,” as used in this paragraph, means a professional corporation,

32 a group practice, a health care facility or clinic licensed or exempt from licensure under
33 the Health and Safety Code, a licensed health care service plan, a medical care
34 foundation, an educational institution, a professional institution, a professional school or
35 college, a general law corporation, a public entity, or a nonprofit organization that
36 employs, retains, or contracts with a licensee referred to in this section. Nothing in this
37 paragraph shall be construed to authorize the employment of, or contracting with, any
38 licensee in violation of Section 2400.

39 (d) The report shall be sent to the Medical Board of California, the Osteopathic
40 Medical Board of California, the California Board of Podiatric Medicine, or the Physician
41 Assistant Board as appropriate, within 30 days after the written settlement agreement has
42 been reduced to writing and signed by all parties thereto, within 30 days after service of
43 the arbitration award on the parties, or within 30 days after the date of entry of the civil
44 judgment.

45 (e) The entity, person, or licensee required to report under subdivision (b) shall
46 notify the claimant or the claimant's counsel, if the claimant is represented by counsel,
47 that the report has been sent to the Medical Board of California, the Osteopathic Medical
48 Board of California, the California Board of Podiatric Medicine, or the Physician
49 Assistant Board. If the claimant or the claimant's counsel has not received this notice
50 within 45 days after the settlement was reduced to writing and signed by all of the parties
51 or the arbitration award was served on the parties or the date of entry of the civil
52 judgment, the claimant or the claimant's counsel shall make the report to the appropriate
53 board.

54 (f) Failure to substantially comply with this section is a public offense punishable
55 by a fine of not less than five hundred dollars (\$500) and not more than five thousand
56 dollars (\$5,000).

57 (g) (1) The Medical Board of California, the Osteopathic Medical Board of
58 California, the California Board of Podiatric Medicine, and the Physician Assistant Board
59 may develop a prescribed form for the report.

60 (2) The report shall be deemed complete only if it includes the following
61 information:

62 (A) The name and last known business and residential addresses of every
63 plaintiff or claimant involved in the matter, whether or not the person received an
64 award under the settlement, arbitration, or judgment.

65 (B) The name and last known business and residential addresses of every
66 licensee who was alleged to have acted improperly, whether or not that person
67 was a named defendant in the action and whether or not that person was required
68 to pay any damages pursuant to the settlement, arbitration award, or judgment.

69 (C) The name, address, and principal place of business of every insurer
70 providing professional liability insurance to any person described in subparagraph
71 B, and the insured's policy number.

72 (D) The name of the court in which the action or any part of the action was
73 filed, and the date of filing and case number of each action.

74 (E) A description or summary of the facts of each claim, charge, or
75 allegation, including the date of occurrence and the licensee's role in the care or
76 professional services provided to the patient with respect to those services at issue
77 in the claim or action.

78 (F) The name and last known business address of each attorney who
79 represented a party in the settlement, arbitration, or civil action, including the
80 name of the client the attorney represented.

81 (G) The amount of the judgment, the date of its entry, and a copy of the
82 judgment; the amount of the arbitration award, the date of its service on the
83 parties, and a copy of the award document; or the amount of the settlement and
84 the date it was reduced to writing and signed by all parties and a copy of the
85 settlement agreement. If an otherwise reportable settlement is entered into after a
86 reportable judgment or arbitration award is issued, the report shall include both a
87 copy of the settlement agreement and a copy of the judgment or award.

88 (H) The specialty or subspecialty of the licensee who was the subject of
89 the claim or action.

90 (I) Any other information the Medical Board of California, the
91 Osteopathic Medical Board of California, the California Board of Podiatric
92 Medicine, or the Physician Assistant Board may, by regulation, require.

93 (3) Every professional liability insurer, self-insured governmental agency, or
94 licensee or the licensee's counsel that makes a report under this section and has received
95 a copy of any written or electronic patient medical or hospital records prepared by the
96 treating physician and surgeon, podiatrist, or physician assistant, or the staff of the
97 treating physician and surgeon, podiatrist, or hospital, describing the medical condition,
98 history, care, or treatment of the person whose death or injury is the subject of the report,
99 or a copy of any deposition in the matter that discusses the care, treatment, or medical
100 condition of the person, shall include with the report, copies of the records and 99
101 depositions, subject to reasonable costs to be paid by the Medical Board of California, the
102 Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or
103 the Physician Assistant Board. If confidentiality is required by court order and, as a
104 result, the reporter is unable to provide the records and depositions, documentation to that
105 effect shall accompany the original report. The applicable board may, upon prior
106 notification of the parties to the action, petition the appropriate court for modification of
107 any protective order to permit disclosure to the board. A professional liability insurer,
108 self-insured governmental agency, or licensee or the licensee's counsel shall maintain the
109 records and depositions referred to in this paragraph for at least one year from the date of
110 filing of the report required by this section.

111 (h) If the board, within 60 days of its receipt of a report filed under this section,

112 notifies a person named in the report, that person shall maintain for the period of three
113 years from the date of filing of the report any records that person has as to the matter in
114 question and shall make those records available upon request to the board to which the
115 report was sent.

116 (i) Notwithstanding any other provision of law, no insurer shall enter into a
117 settlement without the written consent of the insured, except that this prohibition shall not
118 void any settlement entered into without that written consent. The requirement of written
119 consent shall only be waived by both the insured and the insurer.

120 (j) (1) A state or local governmental agency that self-insures licensees shall, prior
121 to sending a report pursuant to this section, do all of the following with respect to each
122 licensee who will be identified in the report:

123 (A) Before deciding that a licensee will be identified, provide written
124 notice to the licensee that the agency intends to submit a report in which the
125 licensee may be identified, based on the licensee's role in the care or professional
126 services provided to the patient that were at issue in the claim or action. This
127 notice shall describe the reasons for notifying the licensee. The agency shall
128 include with this notice a reasonable opportunity for the licensee to review a copy
129 of records to be used by the agency in deciding whether to identify the licensee in
130 the report.

131 (B) Provide the licensee with a reasonable opportunity to provide a written
132 response to the agency and written materials in support of the licensee's position.
133 If the licensee is identified in the report, the agency shall include this response
134 and materials in the report submitted to a board under this section if requested by
135 the licensee.

136 (C) At least 10 days prior to the expiration of the 30-day reporting
137 requirement under subdivision (d), provide the licensee with the opportunity to
138 present arguments to the body that will make the final decision or to that body's
139 designee. The body shall review the care or professional services provided to the
140 patient with respect to those services at issue in the claim or action and determine
141 the licensee or licensees to be identified in the report and the amount of the
142 settlement to be apportioned to the licensee.

143 (2) Nothing in this subdivision shall be construed to modify either the
144 content of a report required under this section or the timeframe for filing that
145 report.

146 (k) For purposes of this section, "licensee" means a licensee of the Medical Board
147 of California, the Osteopathic Medical Board of California, the California Board of
148 Podiatric Medicine, or the Physician Assistant Board.

PROPOSERS: Robert Bitonte M.D., J.D., Grace Haddad

STATEMENT OF REASONS

The Problem: From 1975 until 2023, Civil Code Section 3333.2 limited non-economic damages in medical negligence causes of action to \$250,000. In 2023, AB 35 increased the limits on non-economic damages in medical negligence causes of action from \$250,000 to \$350,000. It additionally increases limits on non-economic damages by \$40,000 per year until a cap of \$750,000 is reached for non-economic damages in medical negligence causes of action. In wrongful death causes of action, AB 35 changed the limits on non-economic damages from \$250,000 to \$500,000 in 2023, and allows for increases of \$50,000 each year until a cap of \$1 million is reached for non-economic damages in wrongful death causes of action.

This increase in cap limitations has already increased the number of medical negligence filings by about 8% and will probably have a similar effect going forward as the non-economic caps are raised annually. This raising of the limitations will likely require increased settlement costs to resolve medical negligence cases going forward. At the same time, physicians are required to be reported to the Medical Board of California under California Business and Professions Codes Section 801.01 for settlements of \$30,000 or more. This reporting requirement to the Medical Board is a serious impediment to structure settlements with the increase in cap limitations.

While AB 35 increased non-economic damages in medical negligence cases, it did not modify the reporting requirements under California Business and Professions Code Section 801.01. The minimum reporting threshold for physicians to the Medical Board of California remains \$30,000 and as discussed above, will be an impediment to settling medical negligence and wrongful death cases in the future under these new cap limitations.

The Solution: We recommend increasing the reporting requirement under Business and Profession Codes Section 801.01 to \$100,000 for medical negligence and wrongful death causes of action, to allow plaintiffs and defendants better opportunity to structure a settlement without the difficulty and burden of getting physician consent with the lower reporting requirement of \$30,000. AB 35 ultimately increases the limitations for non-economic damages by threefold for medical negligence claims and fourfold for wrongful death causes of actions once the legislation reaches its full effect. We are proposing a proportionate increase in the reporting requirement to the California Medical Board to be increased by threefold from \$30,000 to \$100,000. We feel this will enable plaintiffs, defendants, and physicians greater ability to agree to a reasonable settlement without the onerous reporting to the Medical Board and all of its secondary ramifications. Additionally, the proposed amendment raising reporting requirements to the Medical Board will most likely lead to an increased number of settlements with the new limits on non-economic damages, and therefore reduce the burden on the courts and decongest their dockets.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule as far as we can determine.

CURRENT OR PRIOR RELATED LEGISLATION

This resolution pertains to AB 35 and California Civil Code Section 3333.2.

AUTHORS AND/OR PERMANENT CONTACT:

Robert Bitonte, M.D., J.D., Los Angeles, rbitonte@aol.com

Grace Haddad, B.S., MPH, gah68@case.edu

RESPONSIBLE FLOOR DELEGATE: Robert Bitonte, M.D., J.D., Los Angeles,
rbitonte@aol.com