

**Resolution** 501-08

**TITLE:** DISCLOSURE OF INFORMATION ORIGINATING FROM B&P SECTION 805 REPORTS

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**Introduced by:** Ben Schwachman, MD; Susan Hansen, MD

**Endorsed by:**

Reference Committee

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October 4-6, 2008

*This resolution constitutes a proposal for consideration by the California Medical Association House of Delegates and does not represent official CMA policy.*

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1 **WHEREAS**, some health care entities appear to make it a practice to summarily suspend  
2 physicians clinical privileges from their hospital, irrespective of any risk to patients, before any  
3 hearing, adjudication or due process of law; and  
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5 **WHEREAS**, any such summary suspension and any related inappropriate public filing disrupts  
6 the patient-physician relationship, thereby putting at risk both patient welfare and continuity of  
7 care; and  
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9 **WHEREAS**, physicians can suffer professional defamation and public humiliation from false,  
10 manipulative, incorrect, misleading or stale administrative and public filings by health care  
11 entities, followed by adverse consequences, including destruction of their medical careers; and  
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13 **WHEREAS**, hospitals must report any summary suspension of a physician of more than 14  
14 days duration to the Medical Board of California, as mandated by California Business and  
15 Professions Code section 805; and  
16  
17 **WHEREAS**, hospitals and some health care entities must report any summary suspension of a  
18 physician of more than 30 days duration to the National Practitioner Data Bank, as mandated by  
19 federal law; and  
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21 **WHEREAS**, adverse professional consequences including loss of all privileges at other  
22 hospitals/health care entities, loss of the physician's relationships with insurance carriers, such  
23 as contracts as a provider of medical services, and loss of professional liability insurance  
24 coverage can result from an adverse 805 Report of a summary suspension, irrespective of its  
25 validity; and  
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27 **WHEREAS**, the Medical Board of California automatically circulates, immediately, notice of a  
28 summary suspension without any verification, and later posts such information on its website,  
29 even if the Board's own investigation finds no wrongdoing by the physician, and the Board  
30 refuses to remove any such report in almost all cases; therefore be it  
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32 **RESOLVED:** That CMA support legislation and seek an author to amend California  
33 Business and Professions Code section 2027, and add or amend other  
34 appropriate state laws that regulate the circulation of information by the  
35 Medical Board of California (MBC), such as Business and Professions

1 Code 800 *et seq.*: (1) to preclude circulation and posting of any 805  
2 Report of a summary suspension until confirmation by an MBC's  
3 independent investigation that such an 805 Report is supported by at least  
4 substantial evidence of risk to patients warranting a summary suspension,  
5 irrespective of any determination by the governing board of the  
6 responsible health care entity; (2) to require removal of any such 805  
7 Report in the event any court reverses any adverse disciplinary action by  
8 any health care entity, or to require removal of any such 805 Report in the  
9 event MBC's independent investigation exonerates the physician from the  
10 alleged charges; (3) to require MBC to afford any physician subject to  
11 any 805 Report, including an 805 Report due to a summary suspension or  
12 any other disciplinary action, the right to contest and respond to the  
13 charges in a writing of reasonable length, and to have that response  
14 posted in the same place in the records and postings of the MBC as the  
15 805 Report or other disciplinary action contested; and be it further  
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17 **RESOLVED:** That the California Delegation to the AMA submit a similar resolution to  
18 amend the Health Care Quality Improvement Act, codified in Title 42 of  
19 the United States Code, and any other applicable federal law regulating  
20 the circulation or posting of reports by the National Practitioner Data  
21 Bank.  
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24 **Current CMA Policy:**

25 CMA has policy: to continue to support the preservation of confidentiality of MBC investigations and the filing of  
26 805 reports only after a physician has the opportunity to conclude a hearing with full due process protections  
27 provided by Business & Professions Code §809 *et seq.* (BOT Min 1-19-01:3c; BOT Min 5-7-93:19, HOD703a-99,  
28 HOD507-90); to negotiate with MBC a policy mandating that the MBC remove from the Internet any and all public  
29 documents and any mention of an accusation against any physician whose accusation(s) is/are dropped or  
30 withdrawn or who has been exonerated of any wrongdoing, misconduct, or breach (HOD705-99); to sponsor and  
31 support legislation to track, streamline and improve the peer review process and 805 reporting (BOT Min 1-19-  
32 01:2b); and to work with the MBC to develop a process whereby no postings are made upon the MBC website until  
33 the accuracy of the proposed posting is verified by the named physician (HOD616-02). CMA opposes disclosure to  
34 the public by the MBC of open investigations, suspensions from Medicare or Medi-Cal programs, loss of DEA  
35 privileges or complaints from the public (BOT Min 5-7-93:19d). CMA supports tracking of cases closed "with  
36 merit" by the MBC, but not the disclosure of any information regarding those cases to the public (BOT Min 5-7-  
37 93:19a). CMA strongly supports the necessity of confidentiality of physician peer review records (HOD815a-96)  
38 and a physician's fundamental right to an unbiased jury (HOD813-97). CMA opposes the release of National  
39 Practitioner Data Bank Reports to the public. (BOT Min 9-24-94:8a).  
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41 **Fiscal Impact:**

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43 First resolved: The potential cost of legislative activity is speculative and dependent on many factors over which  
44 CMA has no control, such as the extent of external opposition or support for the proposal, communications, and  
45 commitment of resources by opponents and proponents. The cost of CMA sponsoring or opposing a bill could be  
46 \$92,000 or more; in individual legislative actions, costs can be much higher. Endorsement or support of bills  
47 sponsored by others requires less effort and less cost. Second resolved: Within budget to refer for national action.