

AMENDED IN ASSEMBLY MAY 31, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001
AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 487

Introduced by Assembly Member Aroner
(Coauthor: Assembly Member Runner)

February 21, 2001

~~An act to add Section 2241.7 to the Business and Professions Code,~~
An act to amend Section 2313 of, and to add Sections 2190.5 and 2241.6
to, the Business and Professions Code, and to amend Section 124961
of the Health and Safety Code, relating to medical practice.

LEGISLATIVE COUNSEL'S DIGEST

AB 487, as amended, Aroner. Medical professionals: conduct.

Existing law, the Medical Practice Act, provides for ~~the licensure~~
~~and, among other matters, the regulation of the practices of medicine~~
~~and podiatric medicine physicians and surgeons~~ by the Medical Board
of California. ~~Existing law requires any person who practices medicine~~
~~or podiatric medicine to obtain a license from the~~ *Under that act, the*
board's Division of Licensing of the Medical Board of California, and
~~requires the~~ *is required to adopt and administer standards for the*
continuing education of physicians and surgeons, and the board's
Division of Medical Quality of the board to take action against any
licensee is required to take disciplinary action against those who are
charged with committing unprofessional conduct and to report
annually to the Legislature regarding those actions. Under existing law,

a physician and surgeon who refuses to prescribe opiate medication for a patient with severe intractable pain is required to inform the patient that other physicians specialize in treating this condition with methods using opiate medications.

~~This bill would require impose a good faith duty upon the division to investigate, upon its receipt of a complaint, a physician and surgeon who fails to adequately prescribe, order, administer, or dispense pain control therapies. The bill would require the division, upon a finding of under medication or failure to adequately treat pain, to order the physician and surgeon to complete a pain management education program, as specified, within 180 days of the board's finding. Because a violation of the provisions of the bill would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason. to refer those patients to a physician who specializes in the treatment of severe intractable pain with methods that include the use of opiates. The bill would require the Division of Medical Quality to develop a protocol before June 1, 2002, for the investigation of complaints concerning the under-treatment and under-medication of pain and to include in its annual report to the Legislature a description of actions relating to that practice. The bill would also require physicians and surgeons to complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2241.7 is added to the Business and~~
- 2 *SECTION 1. Section 2190.5 is added to the Business and*
- 3 *Professions Code, to read:*
- 4 *2190.5. All physicians and surgeons shall complete a*
- 5 *mandatory continuing education course in the subjects of pain*
- 6 *management and the treatment of terminally ill and dying patients.*



1 SEC. 2. Section 2241.6 is added to the Business and
2 Professions Code, to read:

3 2241.6. The Division of Medical Quality shall develop a
4 protocol before June 1, 2002, for the investigation of complaints
5 concerning the under-treatment and under-medication of a
6 patient's pain. The division may consult with entities such as the
7 American Pain Society, the American Academy of Pain Medicine,
8 and any other medical entity specializing in pain control therapies
9 to develop the protocol utilizing, to the extent they are applicable,
10 current authoritative clinical practice guidelines.

11 SEC. 3. Section 2313 of the Business and Professions Code is
12 amended to read:

13 2313. The Division of Medical Quality shall report annually
14 to the Legislature, no later than October 1 of each year, the
15 following information:

16 (a) The total number of temporary restraining orders or interim
17 suspension orders sought by the board or the division to enjoin
18 licensees pursuant to Sections 125.7, 125.8 and 2311, the
19 circumstances in each case that prompted the board or division to
20 seek that injunctive relief, and whether a restraining order or
21 interim suspension order was actually issued.

22 (b) The total number and types of actions for unprofessional
23 conduct taken by the board or a division against licensees, the
24 number and types of actions taken against licensees for
25 unprofessional conduct related to prescribing drugs, narcotics, or
26 other controlled substances, *including those related to the*
27 *under-treatment or under-medication of pain.*

28 (c) Information relative to the performance of the division,
29 including the following: number of consumer calls received;
30 number of consumer calls or letters designated as
31 discipline-related complaints; number of calls resulting in
32 complaint forms being sent to complainants and number of forms
33 returned; number of Section 805 reports by type; number of
34 Section 801 and Section 803 reports; coroner reports received;
35 number of convictions reported to the division; number of criminal
36 filings reported to the division; number of complaints and referrals
37 closed, referred out, or resolved without discipline, respectively,
38 prior to accusation; number of accusations filed and final
39 disposition of accusations through the division and court review,
40 respectively; final physician discipline by category; number of



1 citations issued with fines and without fines; and number of public
2 reprimands issued; number of cases in process more than six
3 months from receipt by the division of information concerning the
4 relevant acts to the filing of an accusation; average and median
5 time in processing complaints from original receipt of complaint
6 by the division for all cases at each stage of discipline and court
7 review, respectively; number of persons in diversion, and number
8 successfully completing diversion programs and failing to do so,
9 respectively; probation violation reports and probation revocation
10 filings and dispositions; number of petitions for reinstatement and
11 their dispositions; and caseloads of investigators for original cases
12 and for probation cases, respectively.

13 “Action,” for purposes of this section, includes proceedings
14 brought by, or on behalf of, the division against licensees for
15 unprofessional conduct—~~which~~ *that* have not been finally
16 adjudicated, as well as disciplinary actions taken against licensees.

17 *SEC. 4. Section 124961 of the Health and Safety Code is*
18 *amended to read:*

19 124961. Nothing in this section shall be construed to alter any
20 of the provisions set forth in the California Intractable Pain
21 Treatment Act, Section 2241.5 of the Business and Professions
22 Code. This section shall be known as the Pain Patient’s Bill of
23 Rights.

24 (a) A patient suffering from severe chronic intractable pain has
25 the option to request or reject the use of any or all modalities in
26 order to relieve his or her severe chronic intractable pain.

27 (b) A patient who suffers from severe chronic intractable pain
28 has the option to choose opiate medications to relieve severe
29 chronic intractable pain without first having to submit to an
30 invasive medical procedure, which is defined as surgery,
31 destruction of a nerve or other body tissue by manipulation, or the
32 implantation of a drug delivery system or device, as long as the
33 prescribing physician acts in conformance with the provisions of
34 the California Intractable Pain Treatment Act, Section 2241.5 of
35 the Business and Professions Code.

36 (c) The patient’s physician may refuse to prescribe opiate
37 medication for the patient who requests a treatment for severe
38 chronic intractable pain. However, that physician shall inform the
39 patient ~~that there are physicians of,~~ *and shall have a good faith duty*
40 *to refer the patient to, a physician who* ~~specialize~~ *specializes* in the



1 treatment of severe chronic intractable pain with methods that
2 include the use of opiates.

3 (d) A physician who uses opiate therapy to relieve severe
4 chronic intractable pain may prescribe a dosage deemed medically
5 necessary to relieve severe chronic intractable pain, as long as that
6 prescribing is in conformance with the California Intractable Pain
7 Treatment Act, Section 2241.5 of the Business and Professions
8 Code.

9 (e) A patient may voluntarily request that his or her physician
10 provide an identifying notice of the prescription for purposes of
11 emergency treatment or law enforcement identification.

12 (f) Nothing in this section shall do either of the following:

13 (1) Limit any reporting or disciplinary provisions applicable to
14 licensed physicians and surgeons who violate prescribing
15 practices or other provisions set forth in the Medical Practice Act,
16 Chapter 5 (commencing with Section 2000) of Division 2 of the
17 Business and Professions Code, or the regulations adopted
18 thereunder.

19 (2) Limit the applicability of any federal statute or federal
20 regulation or any of the other statutes or regulations of this state
21 that regulate dangerous drugs or controlled substances.

22 ~~Professions Code, to read:~~

23 ~~2241.7. (a) The Division of Medical Quality shall~~
24 ~~investigate, upon its receipt of a complaint, a physician and~~
25 ~~surgeon who fails to adequately prescribe, order, administer, or~~
26 ~~dispense pain control therapies, including, but not limited to,~~
27 ~~opioid analgesics, for the relief or modulation of pain. The division~~
28 ~~shall review the complaint on a case-by-case basis, considering the~~
29 ~~current, authoritative clinical practice guidelines issued by~~
30 ~~professional medical societies, including, but not limited to, the~~
31 ~~Agency for Healthcare Policy and Research, the American~~
32 ~~Academy of Pain Medicine, and other professional medical~~
33 ~~associations that the division may adopt or incorporate by~~
34 ~~reference in its guidelines and policy statements.~~

35 ~~(b) Upon a finding of undermedication or a failure to~~
36 ~~adequately treat pain according to authoritative clinical practice~~
37 ~~guidelines, the division shall, at a minimum, order the physician~~
38 ~~and surgeon to complete a mandatory continuing education~~
39 ~~program on pain management that is provided by an approved~~
40 ~~education provider and is based on current, authoritative clinical~~



1 ~~practice guidelines for the appropriate treatment of pain. The~~
2 ~~physician and surgeon shall complete this program within 180~~
3 ~~days of the division's final decision. The physician and surgeon~~
4 ~~shall submit to the division certification from the provider that the~~
5 ~~mandatory continuing education program complies with the~~
6 ~~provisions of this section.~~

7 ~~SEC. 2.—No reimbursement is required by this act pursuant to~~
8 ~~Section 6 of Article XIII B of the California Constitution because~~
9 ~~the only costs that may be incurred by a local agency or school~~
10 ~~district will be incurred because this act creates a new crime or~~
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~
13 ~~the Government Code, or changes the definition of a crime within~~
14 ~~the meaning of Section 6 of Article XIII B of the California~~
15 ~~Constitution.~~

