

**Assembly Bill No. 1392**

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Passed the Assembly    September 2, 2003

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*Chief Clerk of the Assembly*

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Passed the Senate    August 27, 2003

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Section 2220.05 of the Business and Professions Code, relating to medical services.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1392, Bermudez. Medical Board of California: prosecutorial and investigative resources.

Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Under the act, the board is responsible through its Division of Medical Quality for the regulation of the practice of physicians and surgeons. The act requires the board to prioritize its investigative and prosecutorial resources of specified cases in a certain manner, and authorizes the board to prioritize cases that are not specified as long as those cases are given lower priority.

This bill would authorize the board to determine that certain information and complaints cannot be pursued without detriment to the investigation and prosecution of the specified priority cases. The bill would require the board to provide the requester with a written notice to that effect which contains information about other agencies to contact.

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

SECTION 1. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources so that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.



(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) (1) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(2) To ensure that the resources of the board are available for expenditure in a manner consistent with the protection of the public specified in this section, the board may determine that information or complaints relative to cases not listed in subdivision (a) cannot be investigated or prosecuted without detriment to the purpose of this section.

(3) If the board finds that a case cannot be investigated or prosecuted pursuant to paragraph (2), if the case involves information or a complaint from an individual who is not otherwise required by law to report that information to the board, the board shall provide notice to that individual in writing as follows:

“The board finds that this case cannot be investigated or prosecuted at this time without detriment to higher priority cases involving death, serious bodily injury, repeated and unauthorized prescribing of controlled substances, sexual misconduct with a



patient, or practicing medicine while under the influence of drugs or alcohol.

If you believe that you have additional information that might change the priority of your case, you may request another review by writing a letter to the board describing the specific areas of concern. Please include the additional information, such as subsequent physician findings or medical information not previously provided, with your letter. You may wish to contact other agencies for further consideration, including the following:

1. The Department of Managed Health Care for matters regarding managed health care or the Department of Insurance for matters regarding insurance.
2. The local or county medical association in your region that may provide mediation in disputes between physicians and patients.
3. An attorney who can assess whether or not the circumstances of your case may result in civil remedies.
4. Other state boards, local agencies, or regulatory commissions that may have jurisdiction.”

The board shall specify in the notice, when possible, the particular agency that has jurisdiction over the allegations in the complaint and provide other information it deems necessary. In no event shall this notice render an opinion or assessment of the merits of the information or complaint.

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).



Approved \_\_\_\_\_, 2003

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*Governor*

