

AMENDED IN SENATE AUGUST 19, 2009

AMENDED IN SENATE JULY 15, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 526**

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**Introduced by Assembly Member Fuentes**

February 25, 2009

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An act to add and repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as amended, Fuentes. Public Protection and Physician Health Program Act of 2009.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards, as specified, and a designee of the State Department of Alcohol and Drug Programs. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees. The Medical Practice Act establishes in the Department of Consumer Affairs the Medical Board of California, which provides for the licensure and regulation of physicians and surgeons.

This bill would enact the Public Protection and Physician Health Program Act of 2009, which would, until January 1, 2021, establish ~~within the State and Consumer Services Agency~~ the Public Protection and Physician Health *Oversight* Committee, consisting of 14 members appointed by specified entities, would require the committee to be ~~appointed~~ *formed* and to hold its first meeting by March 1, 2010, and would require ~~agency adoption of related~~ *the committee to adopt* rules and regulations *necessary to implement these provisions* by June 30, 2010. The bill would ~~require the committee to recommend to the agency one or more physician health programs, and would authorize the agency committee to contract, including on an interim basis, as specified, with any qualified physician health program for purposes of care and rehabilitation of physicians and surgeons, including applicants enrolled in an approved postgraduate training program, with alcohol or drug abuse or dependency problems or mental disorders, as specified. The bill would impose requirements on the physician health program relating to, among other things, monitoring the status and compliance of physicians and surgeons, as defined, who enter treatment for a qualifying illness, as defined, pursuant to written, voluntary agreements, and would require the agency and committee to monitor compliance with these requirements. The bill would provide that a voluntary agreement to receive treatment would not be subject to public disclosure or disclosure to the Medical Board of California, except as specified. The bill would require the board to increase physician and surgeon and applicant licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.~~

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

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

- 1 SECTION 1. The Legislature hereby finds and declares that:
- 2 (a) California has long valued high quality medical care for its
- 3 citizens and, through its regulatory and enforcement system,
- 4 protects health care consumers through the proper licensing and
- 5 regulation of physicians and surgeons to promote access to quality
- 6 medical care. The protection of the public from harm by physicians

1 and surgeons who may be impaired by alcohol or substance abuse  
2 or dependence or by a mental disorder is paramount.

3 (b) Nevertheless, physicians and surgeons experience  
4 health-related problems at the same frequency as the general  
5 population, and many competent physicians and surgeons with  
6 illnesses may or may not immediately experience impairment in  
7 their ability to serve the public. It has been estimated that at least  
8 10 percent of the population struggles with alcohol or substance  
9 abuse or dependence during their lifetime, which may, at some  
10 point, impact approximately 12,500 of the state's 125,000 licensed  
11 physicians and surgeons.

12 (c) It is in the best interests of the public and the medical  
13 profession to provide a pathway to recovery for any licensed  
14 physician and surgeon that is currently suffering from alcohol or  
15 substance abuse or dependence or a mental disorder. The American  
16 Medical Association has recognized that it is an expression of the  
17 highest meaning of professionalism for organized medicine to take  
18 an active role in helping physicians and surgeons to lead healthy  
19 lives in order to help their patients, and therefore, it is appropriate  
20 for physicians and surgeons to assist in funding such a program.

21 (d) While nearly every other state has a physician health  
22 program, since 2007 California has been without any state program  
23 that monitors physicians and surgeons who have independently  
24 obtained, or should be encouraged to obtain, treatment for alcohol  
25 or substance abuse or dependence or for a mental disorder, so that  
26 they do not treat patients while impaired.

27 (e) It is essential for the public interest and the public health,  
28 safety, and welfare to focus on early intervention, assessment,  
29 referral to treatment, and monitoring of physicians and surgeons  
30 with significant health impairments that may impact their ability  
31 to practice safely. Such a program need not, and should not  
32 necessarily, divert physicians and surgeons from the disciplinary  
33 system, but instead focus on providing assistance before any harm  
34 to a patient has occurred.

35 (f) Therefore, it is necessary to create a program in California  
36 that will permit physicians and surgeons to obtain referral to  
37 treatment and monitoring of alcohol or substance abuse or  
38 dependence or a mental disorder, so that they do not treat patients  
39 while impaired.

1 SEC. 2. Article 14 (commencing with Section 2340) is added  
2 to Chapter 5 of Division 2 of the Business and Professions Code,  
3 to read:

4  
5 Article 14. Public Protection and Physician Health Program

6  
7 2340. This article shall be known and may be cited as the Public  
8 Protection and Physician Health Program Act of 2009.

9 2341. For purposes of this article, the following terms have  
10 the following meanings:

11 ~~(a) "Agency" means the State and Consumer Services Agency.~~

12 ~~(b)~~

13 (a) "Board" means the Medical Board of California.

14 ~~(c)~~

15 (b) "Committee" means the Public Protection and Physician  
16 Health *Oversight* Committee established pursuant to Section 2342.

17 ~~(d)~~

18 (c) "Impaired" or "impairment" means the inability to practice  
19 medicine with reasonable skill and safety to patients by reason of  
20 alcohol abuse, substance abuse, alcohol dependency, any other  
21 substance dependency, or a mental disorder.

22 ~~(e)~~

23 (d) "Participant" means a physician and surgeon enrolled in the  
24 program pursuant to an agreement entered into as provided in  
25 Section 2345.

26 ~~(f)~~

27 (e) "Physician health program" or "program" means the program  
28 for the prevention, detection, intervention, monitoring, and referral  
29 to treatment of impaired physicians and surgeons, and includes  
30 vendors, providers, or entities contracted with by the ~~agency~~  
31 *committee* pursuant to this article.

32 ~~(g)~~

33 (f) "Physician and surgeon" means a holder of a physician's  
34 and surgeon's certificate. *For the purposes of this article only,*  
35 *"physician and surgeon" shall also include a graduate of a medical*  
36 *school approved or recognized by the board while enrolled in a*  
37 *postgraduate training program approved by the board.*

38 ~~(h)~~

39 (g) "Qualifying illness" means "alcohol or substance abuse,"  
40 "alcohol or chemical dependency," or a "mental disorder" as those

1 terms are used in the Diagnostic and Statistical Manual of Mental  
2 Disorders, Fourth Edition (DSM-IV) or subsequent editions.

3 ~~(i) “Secretary” means the Secretary of State and Consumer  
4 Services.~~

5 ~~(j)~~

6 ~~(h) “Treatment program” or “treatment” means the delivery of  
7 care and rehabilitation services provided by an organization or  
8 persons authorized by law to provide those services.~~

9 2342. (a) (1) There is hereby established ~~within the State and  
10 Consumer Services Agency~~ the Public Protection and Physician  
11 Health ~~Committee Oversight Committee~~, which shall have the  
12 responsibilities and duties set forth in this article. The committee  
13 may take any reasonable actions to carry out the responsibilities  
14 and duties set forth in this article, including, but not limited to,  
15 hiring staff and entering into contracts. The committee shall be  
16 appointed ~~formed~~ and hold its first meeting no later than March  
17 1, 2010. The committee shall be comprised of ~~14 members who  
18 shall be appointed as follows~~ the following members:

19 ~~(A) Eight members appointed by the secretary, including the  
20 following:~~

21 ~~(i)~~

22 ~~(A) Two members who are selected by the California Psychiatric  
23 Association, unless that entity chooses not to exercise this right of  
24 selection. These members shall be licensed mental health  
25 professionals with knowledge and expertise in the identification  
26 and treatment of substance abuse and mental disorders. With  
27 respect to the initial members selected pursuant to this  
28 subparagraph, one member shall serve a term of two years and  
29 one member shall serve a term of three years.~~

30 ~~(ii) Six members who are physicians and surgeons with  
31 knowledge and expertise in the identification and treatment of  
32 alcohol dependence and substance abuse. One member shall be a  
33 designated representative from a panel recommended by a nonprofit  
34 professional association representing physicians and surgeons  
35 licensed in this state with at least 25,000 members in all modes of  
36 practice and specialties. The secretary shall fill one each of the  
37 remaining appointments from among those individuals as may be  
38 recommended by the California Society of Addiction Medicine,  
39 the California Psychiatric Association, and the California Hospital  
40 Association.~~

1 (B) (i) Three members selected by a nonprofit professional  
2 association representing physicians and surgeons licensed in this  
3 state with at least 25,000 members in all modes of practice and  
4 specialties, unless that entity chooses not to exercise this right of  
5 selection. With respect to the initial members selected pursuant to  
6 this clause, one member shall serve a term of two years, one  
7 member shall serve a term of three years, and one member shall  
8 serve a term of four years.

9 (ii) Two members selected by the California Society of Addiction  
10 Medicine, unless that entity chooses not to exercise this right of  
11 selection. With respect to the initial members selected pursuant to  
12 this clause, one member shall serve a term of two years and one  
13 member shall serve a term of three years.

14 (iii) One member selected by the California Hospital  
15 Association, unless that entity chooses not to exercise this right of  
16 selection. The initial member selected shall serve a term of three  
17 years.

18 (iv) The members selected pursuant to this subparagraph shall  
19 be physicians and surgeons with knowledge and expertise in the  
20 identification and treatment of alcohol dependence and substance  
21 abuse.

22 ~~(B)~~

23 (C) Four members of the public appointed by the Governor, at  
24 least one of whom shall have experience in advocating on behalf  
25 of consumers of medical care in this state. With respect to the  
26 initial appointees, the Governor shall appoint two members for a  
27 two-year term, and two members for a four-year term.

28 ~~(C)~~

29 (D) One member of the public appointed by the Speaker of the  
30 Assembly. The initial appointee under this subparagraph shall  
31 serve a term of three years.

32 ~~(D)~~

33 (E) One member of the public appointed by the Senate  
34 Committee on Rules. The initial appointee under this subparagraph  
35 shall serve a term of three years.

36 (2) (A) For the purpose of this subdivision, a public member  
37 may not be any of the following:

38 (i) A current or former physician and surgeon or an immediate  
39 family member of a physician and surgeon.

1 (ii) Currently or formerly employed by a physician and surgeon  
2 or business providing or arranging for physician and surgeon  
3 services, or have any financial interest in the business of a licensee.

4 (iii) An employee or agent or representative of any organization  
5 representing physicians and surgeons.

6 (B) Each public member shall meet all of the requirements for  
7 public membership on ~~the~~ a board as set forth in Chapter 6  
8 (commencing with Section 450) of Division 1.

9 (b) Members of the committee shall serve without compensation,  
10 but shall be reimbursed for any travel expenses necessary to  
11 conduct committee business.

12 (c) ~~Committee~~ *Except as provided in subdivision (a), committee*  
13 *members shall serve terms of four years, and may be reappointed.*  
14 ~~With respect to the initial appointees, the Governor shall appoint~~  
15 ~~two members for a two-year term, one member for a three-year~~  
16 ~~term, and one member for a four-year term. The Senate Committee~~  
17 ~~on Rules and the Speaker of the Assembly shall each initially~~  
18 ~~appoint one member for a three-year term. The secretary shall~~  
19 ~~initially appoint four members for a two-year term, two members~~  
20 ~~for a three-year term, and two members for a four-year term.~~

21 (d) The committee shall be subject to the Bagley-Keene Open  
22 Meeting Act (Article 9 (commencing with Section 11120) of  
23 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government  
24 Code), ~~and shall prepare any additional recommended and the~~  
25 *California Public Records Act (Chapter 3.5 (commencing with*  
26 *Section 6250) of Division 7 of Title 1 of the Government Code).*  
27 *The committee shall adopt any rules and regulations necessary or*  
28 *advisable for the purpose of implementing this article, subject to*  
29 *the Administrative Procedure Act (Chapter 3.5 (commencing with*  
30 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*  
31 *Code). The rules and regulations shall include appropriate*  
32 *minimum standards and requirements for referral to treatment, and*  
33 *monitoring of participants in the physician health program, and*  
34 *shall be written in a manner that provides clear guidance and*  
35 *measurable outcomes to ensure patient safety and the health and*  
36 *wellness of physicians and surgeons. The agency shall adopt*  
37 *regulations for the implementation of this article, taking into*  
38 *consideration the regulations recommended by the committee. and*  
39 *surgeons.*

- 1 (e) The rules and regulations required by this section shall be  
2 adopted not later than June 30, 2010, and shall, at a minimum, be  
3 consistent with the uniform standards adopted pursuant to Section  
4 315, and shall include all of the following:
- 5 (1) Minimum standards, criteria, and guidelines for the  
6 acceptance, denial, referral to treatment, and monitoring of  
7 physicians and surgeons in the physician health program.
- 8 (2) Standards for requiring that a physician and surgeon agree  
9 to cease practice to obtain appropriate treatment services.
- 10 (3) Criteria that must be met prior to a physician and surgeon  
11 returning to practice.
- 12 (4) Standards, requirements, and procedures for random testing  
13 for the use of banned substances and protocols to follow if that  
14 use has occurred.
- 15 (5) Worksite monitoring requirements and standards.
- 16 (6) The manner, protocols, and timeliness of reports required  
17 to be made pursuant to Section 2345.
- 18 (7) Appropriate requirements for clinical diagnostic evaluations  
19 of program participants.
- 20 (8) Requirements for a physician and surgeon's termination  
21 from, and reinstatement to, the program.
- 22 (9) Requirements that govern the ability of the program to  
23 communicate with a participant's employer or organized medical  
24 staff about the participant's status and condition.
- 25 (10) Group meeting and other self-help requirements, standards,  
26 protocols, and qualifications.
- 27 (11) Minimum standards and qualifications of any vendor,  
28 monitor, provider, or entity contracted with by the ~~agency~~  
29 *committee* pursuant to Section 2343.
- 30 (12) A requirement that all physician health program services  
31 shall be available to all licensed physicians and surgeons with a  
32 qualifying illness.
- 33 (13) A requirement that any physician health program shall do  
34 all of the following:
- 35 (A) Promote, facilitate, or provide information that can be used  
36 for the education of physicians and surgeons with respect to the  
37 recognition and treatment of alcohol dependency, chemical  
38 dependency, or mental disorders, and the availability of the  
39 physician health program for qualifying illnesses.

1 (B) Offer assistance to any person in referring a physician and  
2 surgeon for purposes of assessment or treatment, or both, for a  
3 qualifying illness.

4 (C) Monitor the status during treatment of a physician and  
5 surgeon who enters treatment for a qualifying illness pursuant to  
6 a written, voluntary agreement.

7 (D) Monitor the compliance of a physician and surgeon who  
8 enters into a written, voluntary agreement for a qualifying illness  
9 with the physician health program setting forth a course of  
10 recovery.

11 (E) Agree to accept referrals from the board to provide  
12 monitoring services pursuant to a board order.

13 (F) Provide a clinical diagnostic evaluation of physicians and  
14 surgeons entering the program.

15 (14) Rules and procedures to comply with auditing requirements  
16 pursuant to Section 2348.

17 (15) A definition of the standard of “reasonably likely to be  
18 detrimental to patient safety or the delivery of patient care,” relying,  
19 to the extent practicable, on standards used by hospitals, medical  
20 groups, and other employers of physicians and surgeons.

21 (16) Any other provision necessary for the implementation of  
22 this article.

23 2343. (a) On and after July 1, 2010, upon adoption of the rules  
24 and regulations required by Section 2342, the committee ~~shall~~  
25 ~~recommend one or more physician health programs to the agency,~~  
26 ~~and the agency~~ may contract with any qualified physician health  
27 program. The physician health program shall be a nonprofit  
28 corporation organized under Section 501(c)(3) of Title 26 of the  
29 United States Code. The chief executive officer shall have expertise  
30 in the areas of alcohol abuse, substance abuse, alcohol dependency,  
31 other chemical dependencies, and mental disorders. In order to  
32 expedite the delivery of physician health program services  
33 established by this article, the ~~agency~~ *committee* may contract with  
34 an entity meeting the minimum standards and requirements set  
35 forth in subdivision (e) of Section 2342 on an interim basis prior  
36 to the adoption of ~~any additional~~ *the* rules and regulations required  
37 to be adopted pursuant to ~~subdivision (d)~~ *subdivisions (d) and (e)*  
38 of Section 2342. The ~~agency~~ *committee* may extend the contract  
39 when the rules and regulations are adopted, provided that the

1 physician health program meets the requirements in those rules  
2 and regulations.

3 (b) Any contract entered into pursuant to this article shall comply  
4 with all rules and regulations required to be adopted pursuant to  
5 this article. No entity shall be eligible to provide the services of  
6 the physician health program that does not meet the minimum  
7 standards, criteria, and guidelines contained in those rules and  
8 regulations.

9 (c) The contract entered into pursuant to this article shall also  
10 require the contracting entity to do both of the following:

11 (1) Report annually to the committee statistics, including the  
12 number of participants served, the number of compliant  
13 participants, the number of participants who have successfully  
14 completed their agreement period, and the number of participants  
15 reported to the board for suspected noncompliance *by the physician*  
16 *health program pursuant to subdivision (c) of Section 2345;*  
17 provided, however, that in making that report, the physician health  
18 program shall not disclose any personally identifiable information  
19 relating to any physician and surgeon participating in a voluntary  
20 agreement as provided in this article.

21 (2) Agree to submit to periodic audits and inspections of all  
22 operations, records, and management related to the physician health  
23 program to ensure compliance with the requirements of this article  
24 and its implementing rules and regulations.

25 (d) In addition to the requirements of Section 2348, ~~the agency,~~  
26 ~~in conjunction with the committee,~~ *committee* shall monitor  
27 compliance of the physician health program with the requirements  
28 of this article and its implementing regulations, including making  
29 periodic inspections and onsite visits with any entity contracted  
30 to provide physician health program services.

31 2344. ~~The agency committee~~ has the sole discretion to contract  
32 with a physician health program for licensees of the board and no  
33 provision of this article may be construed to entitle any physician  
34 and surgeon to the creation or designation of a physician health  
35 program for any individual qualifying illness or group of qualifying  
36 illnesses.

37 2345. (a) In order to encourage voluntary participation in  
38 monitored alcohol or chemical dependency or mental disorder  
39 treatment programs, and in recognition of the fact that mental  
40 disorders, alcohol dependency, and chemical dependency are

1 illnesses, a physician and surgeon, certified or otherwise lawfully  
2 practicing in this state, may enter into a voluntary agreement with  
3 a physician health program. The agreement between the physician  
4 and surgeon and the physician health program shall include a  
5 jointly agreed upon treatment program and mandatory conditions  
6 and procedures to monitor compliance with the treatment program,  
7 including, but not limited to, an agreement to cease practice, as  
8 defined by the rules and regulations adopted pursuant to Section  
9 2342. Except as provided in subdivisions (b), (c), (d), and (e), a  
10 physician and surgeon's participation in the physician health  
11 program pursuant to a voluntary agreement shall be confidential  
12 unless waived by the physician and surgeon.

13 (b) (1) Any voluntary agreement entered into pursuant to this  
14 section shall not be considered a disciplinary action or order by  
15 the board, shall not be disclosed to the board, and shall not be  
16 public information if all of the following are true:

17 (A) The voluntary agreement is the result of the physician and  
18 surgeon self-enrolling or voluntarily participating in the physician  
19 health program.

20 (B) The board has not referred a complaint against the physician  
21 and surgeon to a district office of the board for investigation for  
22 conduct involving or alleging an impairment adversely affecting  
23 the care and treatment of patients.

24 (C) The physician and surgeon is in compliance with the  
25 treatment program and the conditions and procedures to monitor  
26 compliance.

27 (2) (A) Each participant, prior to entering into the voluntary  
28 agreement described in paragraph (1), shall disclose to the  
29 committee whether he or she is under investigation by the board.  
30 If a participant fails to disclose such an investigation, upon  
31 enrollment or at any time while a participant, the participant shall  
32 be terminated from the program. For those purposes, the committee  
33 shall regularly monitor recent accusations filed against physicians  
34 and surgeons and shall compare the names of physicians and  
35 surgeons subject to accusation with the names of program  
36 participants.

37 (B) Notwithstanding subparagraph (A), a participant who is  
38 under investigation by the board and who makes the disclosure  
39 required in subparagraph (A) may participate in, and enter into a  
40 voluntary agreement with, the physician health program.

1 (c) (1) If a physician and surgeon enters into a voluntary  
2 agreement with the physician health program pursuant to this  
3 article, the physician health program shall do both of the following:

4 (A) In addition to complying with any other duty imposed by  
5 law, report to the committee the name of and results of any contact  
6 or information received regarding a physician and surgeon who is  
7 suspected of being, or is, impaired and, as a result, whose  
8 competence or professional conduct is reasonably likely to be  
9 detrimental to patient safety or to the delivery of patient care.

10 (B) Report to the committee if the physician and surgeon fails  
11 to cooperate with any of the requirements of the physician health  
12 program, fails to cease practice when required, fails to submit to  
13 evaluation, treatment, or biological fluid testing when required, or  
14 whose impairment is not substantially alleviated through treatment,  
15 or who, in the opinion of the physician health program, is unable  
16 to practice medicine with reasonable skill and safety, or who  
17 withdraws or is terminated from the physician health program prior  
18 to completion.

19 (2) Within 48 hours of receiving a report pursuant to paragraph  
20 (1), the committee shall make a determination as to whether the  
21 competence or professional conduct of the physician and surgeon  
22 is reasonably likely to be detrimental to patient safety or to the  
23 delivery of patient care, and, if so, refer the matter to the board  
24 consistent with rules and regulations adopted by the ~~agency~~  
25 *committee*. Upon receiving a referral pursuant to this paragraph,  
26 the board shall take immediate action and may initiate proceedings  
27 to seek a temporary restraining order or interim suspension order  
28 as provided in this division.

29 (d) Except as provided in subdivisions (b), (c), and (e), and this  
30 subdivision, any oral or written information reported to the board  
31 pursuant to this section, including, but not limited to, any physician  
32 and surgeon's participation in the physician health program and  
33 any voluntary agreement entered into pursuant to this article, shall  
34 remain confidential as provided in subdivision (c) of Section 800,  
35 and shall not constitute a waiver of any existing evidentiary  
36 privileges under any other provision or rule of law. However, this  
37 subdivision shall not apply if the board has referred a complaint  
38 against the physician and surgeon to a district office of the board  
39 for investigation for conduct involving or alleging an impairment  
40 adversely affecting the care and treatment of patients.

1 (e) Nothing in this section prohibits, requires, or otherwise  
2 affects the discovery or admissibility of evidence in an action  
3 against a physician and surgeon based on acts or omissions within  
4 the course and scope of his or her practice.

5 (f) Any information received, developed, or maintained by the  
6 ~~agency committee~~ regarding a physician and surgeon in the program  
7 shall not be used for any other purpose.

8 2346. The committee shall ~~report to the agency~~ *compile the*  
9 *statistics received from the physician health program pursuant to*  
10 ~~Section 2343, and the agency shall, thereafter, report to the~~  
11 ~~Legislature the 2343, and shall report to the Legislature, on or~~  
12 ~~before March 1, 2011, and annually thereafter, the~~ number of  
13 individuals served, the number of compliant individuals, the  
14 number of individuals who have successfully completed their  
15 agreement period, and the number of individuals reported to the  
16 board ~~for suspected noncompliance pursuant to subdivision (c) of~~  
17 *Section 2345*; provided, however, that in making that report the  
18 ~~agency committee~~ shall not disclose any personally identifiable  
19 information relating to any physician and surgeon participating in  
20 a voluntary agreement as provided herein.

21 2347. (a) A physician and surgeon participating in a voluntary  
22 agreement shall be responsible for all expenses relating to chemical  
23 or biological fluid testing, treatment, and recovery as provided in  
24 the written agreement between the physician and surgeon and the  
25 physician health program.

26 (b) In addition to the fees charged for the initial issuance or  
27 biennial renewal of a physician and surgeon's certificate pursuant  
28 to Section 2435, and at the time those fees are charged, the board  
29 shall include a surcharge of not less than twenty-two dollars (\$22),  
30 or an amount equal to 2.5 percent of the fee set pursuant to Section  
31 2435, whichever is greater, and which shall be expended solely  
32 for the purposes of this article. The board shall collect this  
33 surcharge and cause it to be transferred monthly to the trust fund  
34 established pursuant to subdivision (c). This amount may be  
35 separately identified on the fee statement provided to physicians  
36 and surgeons as being imposed pursuant to this article. The board  
37 may include a conspicuous statement indicating that the Public  
38 Protection and Physician Health Program is not a program of the  
39 board and the collection of this fee does not, nor shall it be

1 construed to, constitute the board’s endorsement of, support for,  
 2 control of, or affiliation with, the program.

3 (c) There is hereby established in the State Treasury the Public  
 4 Protection and Physician Health Program Trust Fund into which  
 5 all funds collected pursuant to this section shall be deposited. These  
 6 funds shall be used, upon appropriation in the annual Budget Act,  
 7 only for the purposes of this article.

8 (d) Nothing in this section is intended to limit the amount of  
 9 funding that may be provided for the purposes of this article. In  
 10 addition to funds appropriated in the annual Budget Act, additional  
 11 funding from private or other sources may be used to ensure that  
 12 no person is denied access to the services established by this  
 13 program due to a lack of available funding.

14 (e) All costs of the committee and program established pursuant  
 15 to this article shall be paid out of the funds collected pursuant to  
 16 this section.

17 2348. (a) ~~The agency committee~~ shall biennially contract to  
 18 perform a thorough audit of the effectiveness, efficiency, and  
 19 overall performance of the program and its vendors. ~~The agency~~  
 20 ~~committee~~ may contract with a third party to conduct the  
 21 performance audit, except the third party may not be a person or  
 22 entity that regularly testifies before the board. This section is not  
 23 intended to reduce the number of audits ~~the agency committee~~ or  
 24 board may otherwise conduct.

25 (b) The audit shall make recommendations regarding the  
 26 continuation of this program and this article and shall suggest any  
 27 changes or reforms required to ensure that individuals participating  
 28 in the program are appropriately monitored and the public is  
 29 protected from physicians and surgeons who are impaired due to  
 30 alcohol or drug abuse or dependency or mental disorder. Any  
 31 person conducting the audit required by this section shall maintain  
 32 the confidentiality of all records reviewed and information obtained  
 33 in the course of conducting the audit and shall not disclose any  
 34 information that is identifiable to any program participant.

35 (c) If, during the course of an audit, the auditor discovers that  
 36 a participant has harmed a patient, or a patient has died while being  
 37 treated by a participant, the auditor shall include that information  
 38 in his or her audit, and shall investigate and report on how that  
 39 participant was dealt with by the program.

1 (d) A copy of the audit shall be made available to the public by  
2 posting a link to the audit on the ~~agency's~~ *committee's* Internet  
3 Web site homepage no less than 10 business days after publication  
4 of the audit. Copies of the audit shall also be provided to the  
5 Assembly and Senate Committees on Business and Professions  
6 and the Assembly and Senate Committees on Health within 10  
7 business days of its publication.

8 2349. This article shall remain in effect only until January 1,  
9 2021, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, 2021, deletes or extends that date.

O