

Introduced by Senator CalderonFebruary 26, 2009

An act to amend Sections 2234, 2761, and 3541 of, the Business and Professions Code, and to amend Section 123462 of the Health and Safety Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 374, as introduced, Calderon. Health care providers: reasonable disclosure: reproductive choices.

Existing law provides that every person has the right to choose or refuse birth control and that every woman has the right to choose to bear a child or to obtain an abortion. Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, nurse practitioners by the Board of Registered Nursing, and physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law specifies conduct deemed unprofessional by physicians and surgeons, nurse practitioners, and physician assistants and provides for investigation and discipline of that conduct by the respective licensing boards.

This bill would provide that a patient is entitled to receive, and a physician and surgeon, nurse practitioner, and physician assistant are obligated to disclose, all information, including all available medical choices, reasonably necessary for the patient to give informed consent with respect to personal reproductive decisions. The bill would provide that failure to fulfill this duty constitutes unprofessional conduct, unless the licensee objects based on moral or religious grounds, advises the patient that other options may be available, and assists the patient in finding a licensee who will fully assist the patient, as specified.

Because the bill would specify additional requirements under the Medical Practice Act and the Nursing Practice Act, the violation of which would be a crime, this bill would impose a state-mandated local program.

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.

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

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

1 SECTION 1. Section 2234 of the Business and Professions
2 Code is amended to read:

3 2234. The Division of Medical Quality shall take action against
4 any licensee who is charged with unprofessional conduct. In
5 addition to other provisions of this article, unprofessional conduct
6 includes, but is not limited to, the following:

7 (a) Violating or attempting to violate, directly or indirectly,
8 assisting in or abetting the violation of, or conspiring to violate
9 any provision of this chapter.

10 (b) Gross negligence.

11 (c) Repeated negligent acts. To be repeated, there must be two
12 or more negligent acts or omissions. An initial negligent act or
13 omission followed by a separate and distinct departure from the
14 applicable standard of care shall constitute repeated negligent acts.

15 (1) An initial negligent diagnosis followed by an act or omission
16 medically appropriate for that negligent diagnosis of the patient
17 shall constitute a single negligent act.

18 (2) When the standard of care requires a change in the diagnosis,
19 act, or omission that constitutes the negligent act described in
20 paragraph (1), including, but not limited to, a reevaluation of the
21 diagnosis or a change in treatment, and the licensee’s conduct
22 departs from the applicable standard of care, each departure
23 constitutes a separate and distinct breach of the standard of care.

24 (d) Incompetence.

1 (e) The commission of any act involving dishonesty or
2 corruption which is substantially related to the qualifications,
3 functions, or duties of a physician and surgeon.

4 (f) Any action or conduct which would have warranted the
5 denial of a certificate.

6 (g) The practice of medicine from this state into another state
7 or country without meeting the legal requirements of that state or
8 country for the practice of medicine. Section 2314 shall not apply
9 to this subdivision. This subdivision shall become operative upon
10 the implementation of the proposed registration program described
11 in Section 2052.5.

12 (h) *Failure to fulfill the duty of reasonable disclosure to a*
13 *patient pursuant to subdivision (e) of Section 123462 of the Health*
14 *and Safety Code.*

15 SEC. 2. Section 2761 of the Business and Professions Code is
16 amended to read:

17 2761. The board may take disciplinary action against a certified
18 or licensed nurse or deny an application for a certificate or license
19 for any of the following:

20 (a) Unprofessional conduct, which includes, but is not limited
21 to, the following:

22 (1) Incompetence, or gross negligence in carrying out usual
23 certified or licensed nursing functions.

24 (2) A conviction of practicing medicine without a license in
25 violation of Chapter 5 (commencing with Section 2000), in which
26 event the record of conviction shall be conclusive evidence thereof.

27 (3) The use of advertising relating to nursing which violates
28 Section 17500.

29 (4) Denial of licensure, revocation, suspension, restriction, or
30 any other disciplinary action against a health care professional
31 license or certificate by another state or territory of the United
32 States, by any other government agency, or by another California
33 health care professional licensing board. A certified copy of the
34 decision or judgment shall be conclusive evidence of that action.

35 (5) *Failure of a nurse practitioner to fulfill the duty of*
36 *reasonable disclosure to a patient pursuant to subdivision (e) of*
37 *Section 123462 of the Health and Safety Code.*

38 (b) Procuring his or her certificate or license by fraud,
39 misrepresentation, or mistake.

- 1 (c) Procuring, or aiding, or abetting, or attempting, or agreeing,
2 or offering to procure or assist at a criminal abortion.
- 3 (d) Violating or attempting to violate, directly or indirectly, or
4 assisting in or abetting the violating of, or conspiring to violate
5 any provision or term of this chapter or regulations adopted
6 pursuant to it.
- 7 (e) Making or giving any false statement or information in
8 connection with the application for issuance of a certificate or
9 license.
- 10 (f) Conviction of a felony or of any offense substantially related
11 to the qualifications, functions, and duties of a registered nurse,
12 in which event the record of the conviction shall be conclusive
13 evidence thereof.
- 14 (g) Impersonating any applicant or acting as proxy for an
15 applicant in any examination required under this chapter for the
16 issuance of a certificate or license.
- 17 (h) Impersonating another certified or licensed practitioner, or
18 permitting or allowing another person to use his or her certificate
19 or license for the purpose of nursing the sick or afflicted.
- 20 (i) Aiding or assisting, or agreeing to aid or assist any person
21 or persons, whether a licensed physician or not, in the performance
22 of, or arranging for, a violation of any of the provisions of Article
23 12 (commencing with Section 2220) of Chapter 5.
- 24 (j) Holding oneself out to the public or to any practitioner of
25 the healing arts as a “nurse practitioner” or as meeting the standards
26 established by the board for a nurse practitioner unless meeting
27 the standards established by the board pursuant to Article 8
28 (commencing with Section 2834) or holding oneself out to the
29 public as being certified by the board as a nurse anesthetist, nurse
30 midwife, clinical nurse specialist, or public health nurse unless the
31 person is at the time so certified by the board.
- 32 (k) Except for good cause, the knowing failure to protect patients
33 by failing to follow infection control guidelines of the board,
34 thereby risking transmission of blood-borne infectious diseases
35 from licensed or certified nurse to patient, from patient to patient,
36 and from patient to licensed or certified nurse. In administering
37 this subdivision, the board shall consider referencing the standards,
38 regulations, and guidelines of the State Department of *Public*
39 ~~Health Services~~ developed pursuant to Section 1250.11 of the
40 Health and Safety Code and the standards, guidelines, and

1 regulations pursuant to the California Occupational Safety and
2 Health Act of 1973 (Part 1 (commencing with Section 6300),
3 Division 5, Labor Code) for preventing the transmission of HIV,
4 hepatitis B, and other blood-borne pathogens in health care settings.
5 As necessary, the board shall consult with the Medical Board of
6 California, the Board of Podiatric Medicine, the Dental Board of
7 California, and the Board of Vocational Nursing and Psychiatric
8 Technicians, to encourage appropriate consistency in the
9 implementation of this subdivision.

10 The board shall seek to ensure that licentiates and others
11 regulated by the board are informed of the responsibility of
12 licentiates to minimize the risk of transmission of blood-borne
13 infectious diseases from health care provider to patient, from
14 patient to patient, and from patient to health care provider, and of
15 the most recent scientifically recognized safeguards for minimizing
16 the risks of transmission.

17 SEC. 3. Section 3541 of the Business and Professions Code is
18 amended to read:

19 3541. ~~It~~*The following* shall constitute unprofessional conduct
20 and a violation of this chapter for any person licensed under this
21 chapter ~~to violate, attempt:~~

22 (a) *Violating, attempting* to violate, directly or indirectly, or
23 ~~assist assisting~~ *in or abet abetting* the violation of, or ~~conspire~~
24 *conspiring* to violate any provision or term of this article, the
25 Moscone-Knox Professional Corporation Act, or any regulations
26 duly adopted under those laws.

27 (b) *Failing to fulfill the duty of reasonable disclosure to a patient*
28 *pursuant to subdivision (e) of Section 123462 of the Health and*
29 *Safety Code.*

30 SEC. 4. Section 123462 of the Health and Safety Code is
31 amended to read:

32 123462. The Legislature finds and declares that every
33 individual possesses a fundamental right of privacy with respect
34 to personal reproductive decisions. Accordingly, it is the public
35 policy of the State of California that:

36 (a) Every individual has the fundamental right to choose or
37 refuse birth control.

38 (b) Every woman has the fundamental right to choose to bear
39 a child or to choose and to obtain an abortion, except as specifically
40 limited by this article.

1 (c) The state shall not deny or interfere with a woman's
2 fundamental right to choose to bear a child or to choose to obtain
3 an abortion, except as specifically permitted by this article.

4 (d) *Each person who seeks health care treatment, consultation,*
5 *or information pertaining to the person's personal reproductive*
6 *decisions from a physician and surgeon licensed pursuant to*
7 *Chapter 5 (commencing with Section 2000) of Division 2 of the*
8 *Business and Professions Code, a nurse practitioner licensed*
9 *pursuant to Article 8 (commencing with Section 2834) of Chapter*
10 *6 of Division 2 of the Business and Professions Code, or a*
11 *physician assistant licensed pursuant to Chapter 7.7 (commencing*
12 *with Section 3500) of Division 2 of the Business and Professions*
13 *Code shall be entitled to receive all information reasonably*
14 *necessary for the patient to give informed consent in determining*
15 *whether to submit to medical treatment, including disclosure of*
16 *all available medical choices.*

17 (e) *Each physician and surgeon, nurse practitioner, and*
18 *physician assistant described in subdivision (d) has an affirmative*
19 *duty of reasonable disclosure to his or her patient of all available*
20 *medical choices with respect to the patient's personal reproductive*
21 *decisions. Failure of a physician and surgeon, nurse practitioner,*
22 *or physician assistant to fulfill this duty shall constitute*
23 *unprofessional conduct and grounds for suspension of the*
24 *licensee's license, unless all of the following circumstances exists:*

25 (1) *The licensee refuses on moral or religious grounds to provide*
26 *disclosure pertaining to an available medical choice.*

27 (2) *The licensee immediately informs the patient, either orally*
28 *or in writing, that other medical choices may be available.*

29 (3) *The licensee promptly assists the patient in finding a licensee*
30 *who will fully fulfill the duty of reasonable disclosure to the patient.*

31 (f) *Each medical office or other health care facility that provides*
32 *obstetric or gynecological care shall display prominently a notice*
33 *of a patient's right pursuant to subdivision (d) and a licensee's*
34 *duty pursuant to subdivision (e).*

35 SEC. 5. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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