

ASSEMBLY BILL

No. 507

Introduced by Assembly Member Hayashi

February 15, 2011

An act to amend Section 4301 of the Business and Professions Code, and to amend Sections 124960 and 124961 of, and to repeal Section 11453 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as introduced, Hayashi. Pain management.

(1) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacy technicians by the California State Board of Pharmacy.

Existing law requires the board to take action against any holder of a license who is guilty of unprofessional conduct, as defined, including, but not limited to, the clearly excessive furnishing of controlled substances in violation of prescribed statutory provisions relating to the prescription of a controlled substance.

This bill would exempt from this provision any holder of a license who has a medical basis for furnishing dangerous drugs or prescription controlled substances, including for pain or a condition causing pain.

(2) Existing law authorizes the Department of Justice to employ a physician to interview and examine any patient in connection with the prescription possession or use of a controlled substance, requires the patient to submit to the interview and examination, and authorizes the physician to testify in prescribed administrative proceedings.

This bill would repeal that provision.

(3) Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of

California, and the violation of specified provisions of the act is a crime. Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

This bill would conform findings and declarations and other references to severe chronic intractable pain and to the California Intractable Pain Treatment Act.

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. Section 4301 of the Business and Professions
 2 Code is amended to read:
 3 4301. The board shall take action against any holder of a license
 4 who is guilty of unprofessional conduct or whose license has been
 5 procured by fraud or misrepresentation or issued by mistake.
 6 Unprofessional conduct shall include, but is not limited to, any of
 7 the following:
 8 (a) Gross immorality.
 9 (b) Incompetence.
 10 (c) Gross negligence.
 11 (d) The clearly excessive furnishing of controlled substances
 12 in violation of subdivision (a) of Section 11153 of the Health and
 13 Safety Code. *Any holder of a license who has a medical basis for*
 14 *furnishing dangerous drugs or prescription controlled substances,*
 15 *including for pain or a condition causing pain, shall not be subject*
 16 *to disciplinary action pursuant to this section.*
 17 (e) The clearly excessive furnishing of controlled substances in
 18 violation of subdivision (a) of Section 11153.5 of the Health and
 19 Safety Code. Factors to be considered in determining whether the
 20 furnishing of controlled substances is clearly excessive shall
 21 include, but not be limited to, the amount of controlled substances
 22 furnished, the previous ordering pattern of the customer (including
 23 size and frequency of orders), the type and size of the customer,
 24 and where and to whom the customer distributes its product.
 25 (f) The commission of any act involving moral turpitude,
 26 dishonesty, fraud, deceit, or corruption, whether the act is

1 committed in the course of relations as a licensee or otherwise,
2 and whether the act is a felony or misdemeanor or not.

3 (g) Knowingly making or signing any certificate or other
4 document that falsely represents the existence or nonexistence of
5 a state of facts.

6 (h) The administering to oneself, of any controlled substance,
7 or the use of any dangerous drug or of alcoholic beverages to the
8 extent or in a manner as to be dangerous or injurious to oneself,
9 to a person holding a license under this chapter, or to any other
10 person or to the public, or to the extent that the use impairs the
11 ability of the person to conduct with safety to the public the practice
12 authorized by the license.

13 (i) Except as otherwise authorized by law, knowingly selling,
14 furnishing, giving away, or administering, or offering to sell,
15 furnish, give away, or administer, any controlled substance to an
16 addict.

17 (j) The violation of any of the statutes of this state, of any other
18 state, or of the United States regulating controlled substances and
19 dangerous drugs.

20 (k) The conviction of more than one misdemeanor or any felony
21 involving the use, consumption, or self-administration of any
22 dangerous drug or alcoholic beverage, or any combination of those
23 substances.

24 (l) The conviction of a crime substantially related to the
25 qualifications, functions, and duties of a licensee under this chapter.
26 The record of conviction of a violation of Chapter 13 (commencing
27 with Section 801) of Title 21 of the United States Code regulating
28 controlled substances or of a violation of the statutes of this state
29 regulating controlled substances or dangerous drugs shall be
30 conclusive evidence of unprofessional conduct. In all other cases,
31 the record of conviction shall be conclusive evidence only of the
32 fact that the conviction occurred. The board may inquire into the
33 circumstances surrounding the commission of the crime, in order
34 to fix the degree of discipline or, in the case of a conviction not
35 involving controlled substances or dangerous drugs, to determine
36 if the conviction is of an offense substantially related to the
37 qualifications, functions, and duties of a licensee under this chapter.
38 A plea or verdict of guilty or a conviction following a plea of nolo
39 contendere is deemed to be a conviction within the meaning of
40 this provision. The board may take action when the time for appeal

1 has elapsed, or the judgment of conviction has been affirmed on
2 appeal or when an order granting probation is made suspending
3 the imposition of sentence, irrespective of a subsequent order under
4 Section 1203.4 of the Penal Code allowing the person to withdraw
5 his or her plea of guilty and to enter a plea of not guilty, or setting
6 aside the verdict of guilty, or dismissing the accusation,
7 information, or indictment.

8 (m) The cash compromise of a charge of violation of Chapter
9 13 (commencing with Section 801) of Title 21 of the United States
10 Code regulating controlled substances or of Chapter 7
11 (commencing with Section 14000) of Part 3 of Division 9 of the
12 Welfare and Institutions Code relating to the Medi-Cal program.
13 The record of the compromise is conclusive evidence of
14 unprofessional conduct.

15 (n) The revocation, suspension, or other discipline by another
16 state of a license to practice pharmacy, operate a pharmacy, or do
17 any other act for which a license is required by this chapter.

18 (o) Violating or attempting to violate, directly or indirectly, or
19 assisting in or abetting the violation of or conspiring to violate any
20 provision or term of this chapter or of the applicable federal and
21 state laws and regulations governing pharmacy, including
22 regulations established by the board or by any other state or federal
23 regulatory agency.

24 (p) Actions or conduct that would have warranted denial of a
25 license.

26 (q) Engaging in any conduct that subverts or attempts to subvert
27 an investigation of the board.

28 (r) The selling, trading, transferring, or furnishing of drugs
29 obtained pursuant to Section 256b of Title 42 of the United States
30 Code to any person a licensee knows or reasonably should have
31 known, not to be a patient of a covered entity, as defined in
32 paragraph (4) of subsection (a) of Section 256b of Title 42 of the
33 United States Code.

34 (s) The clearly excessive furnishing of dangerous drugs by a
35 wholesaler to a pharmacy that primarily or solely dispenses
36 prescription drugs to patients of long-term care facilities. Factors
37 to be considered in determining whether the furnishing of
38 dangerous drugs is clearly excessive shall include, but not be
39 limited to, the amount of dangerous drugs furnished to a pharmacy
40 that primarily or solely dispenses prescription drugs to patients of

1 long-term care facilities, the previous ordering pattern of the
2 pharmacy, and the general patient population to whom the
3 pharmacy distributes the dangerous drugs. That a wholesaler has
4 established, and employs, a tracking system that complies with
5 the requirements of subdivision (b) of Section 4164 shall be
6 considered in determining whether there has been a violation of
7 this subdivision. This provision shall not be interpreted to require
8 a wholesaler to obtain personal medical information or be
9 authorized to permit a wholesaler to have access to personal
10 medical information except as otherwise authorized by Section 56
11 and following of the Civil Code. For purposes of this section,
12 “long-term care facility” shall have the same meaning given the
13 term in Section 1418 of the Health and Safety Code.

14 SEC. 2. Section 11453 of the Health and Safety Code is
15 repealed.

16 ~~11453. The Department of Justice may employ a physician to~~
17 ~~interview and examine any patient for whom any controlled~~
18 ~~substance classified in Schedule I, II, or III has been prescribed or~~
19 ~~to whom any such controlled substance has been furnished or~~
20 ~~administered, or who is an habitual user of such a controlled~~
21 ~~substance, or who has a previous addiction record to a substance~~
22 ~~listed as a controlled substance classified in Schedule I, II, or III.~~

23 ~~The patient shall submit to the interview and examination and~~
24 ~~shall not in any manner hinder or impede it.~~

25 ~~The physician employed by the Department of Justice to conduct~~
26 ~~the interview and examination shall report the results of the~~
27 ~~examination and interview to the department.~~

28 ~~The physician so employed may testify in any action brought~~
29 ~~under this division or in any administrative hearing conducted~~
30 ~~under the Medical Practice Act or the Osteopathic Act and his or~~
31 ~~her testimony is not privileged.~~

32 ~~Every person who violates any provision of this section is guilty~~
33 ~~of a misdemeanor.~~

34 SEC. 3. Section 124960 of the Health and Safety Code is
35 amended to read:

36 124960. The Legislature finds and declares all of the following:

37 (a) The state has a right and duty to control the illegal use of
38 opiate drugs.

1 (b) Inadequate treatment of acute and chronic pain originating
2 from cancer or noncancerous conditions is a significant health
3 problem.

4 (c) For some patients, pain management is the single most
5 important treatment a physician can provide.

6 (d) A patient suffering from ~~severe chronic intractable pain~~
7 *pain or a condition causing pain, including, but not limited to,*
8 *intractable pain* should have access to proper treatment of his or
9 her pain.

10 (e) Due to the complexity of their problems, many patients
11 suffering from ~~severe chronic intractable pain~~ *pain or a condition*
12 *causing pain, including, but not limited to, intractable pain* may
13 require referral to a physician with expertise in the treatment of
14 ~~severe chronic intractable pain~~ *pain or a condition causing pain,*
15 *including, but not limited to, intractable pain.* In some cases, ~~severe~~
16 ~~chronic intractable pain~~ *pain or a condition causing pain,*
17 *including, but not limited to, intractable pain* is best treated by a
18 team of clinicians in order to address the associated physical,
19 psychological, social, and vocational issues.

20 (f) In the hands of knowledgeable, ethical, and experienced
21 pain management practitioners, opiates administered for severe
22 acute and ~~severe chronic intractable pain~~ *pain or a condition*
23 *causing pain, including, but not limited to, intractable pain* can
24 be safe.

25 (g) Opiates can be an accepted treatment for patients in ~~severe~~
26 ~~chronic intractable pain~~ *pain or a condition causing pain,*
27 *including, but not limited to, intractable pain* who have not
28 obtained relief from any other means of treatment.

29 (h) A patient suffering from ~~severe chronic intractable pain~~
30 *pain or a condition causing pain, including, but not limited to,*
31 *intractable pain* has the option to request or reject the use of any
32 or all modalities to relieve his or her ~~severe chronic intractable~~
33 pain.

34 (i) A physician treating a patient who suffers from ~~severe~~
35 ~~chronic intractable pain~~ *pain or a condition causing pain,*
36 *including, but not limited to, intractable pain* may prescribe a
37 dosage deemed medically necessary to relieve ~~severe chronic~~
38 ~~intractable~~ pain as long as the prescribing is in conformance with
39 the provisions of the California Intractable Pain Treatment Act,
40 Section 2241.5 of the Business and Professions Code.

1 (j) A patient who suffers from severe chronic intractable pain
2 has the option to choose opiate medication for the treatment of the
3 severe chronic intractable pain as long as the prescribing is in
4 conformance with the provisions of ~~the California Intractable Pain~~
5 ~~Treatment Act~~, Section 2241.5 of the Business and Professions
6 Code.

7 (k) The patient's physician may refuse to prescribe opiate
8 medication for a patient who requests the treatment for ~~severe~~
9 ~~chronic intractable pain~~ *pain or a condition causing pain,*
10 *including, but not limited to, intractable pain.* However, that
11 physician shall inform the patient that there are physicians who
12 specialize in the treatment of ~~severe chronic intractable pain~~
13 *pain or a condition causing pain, including, but not limited to,*
14 *intractable pain* with methods that include the use of opiates.

15 SEC. 4. Section 124961 of the Health and Safety Code is
16 amended to read:

17 124961. Nothing in this section shall be construed to alter any
18 of the provisions set forth in ~~the California Intractable Pain~~
19 ~~Treatment Act~~, Section 2241.5 of the Business and Professions
20 Code. This section shall be known as the Pain Patient's Bill of
21 Rights.

22 (a) A patient suffering from ~~severe chronic intractable pain~~
23 *pain or a condition causing pain, including, but not limited to,*
24 *intractable pain* has the option to request or reject the use of any
25 or all modalities in order to relieve his or her ~~severe chronic~~
26 ~~intractable~~ pain.

27 (b) A patient who suffers from ~~severe chronic intractable pain~~
28 *pain or a condition causing pain, including, but not limited to,*
29 *intractable pain* has the option to choose opiate medications to
30 relieve ~~severe chronic intractable~~ *that* pain without first having to
31 submit to an invasive medical procedure, which is defined as
32 surgery, destruction of a nerve or other body tissue by
33 manipulation, or the implantation of a drug delivery system or
34 device, as long as the prescribing physician acts in conformance
35 with the provisions of the California Intractable Pain Treatment
36 Act, Section 2241.5 of the Business and Professions Code.

37 (c) The patient's physician may refuse to prescribe opiate
38 medication for the patient who requests a treatment for ~~severe~~
39 ~~chronic intractable pain~~ *pain or a condition causing pain,*
40 *including, but not limited to, intractable pain.* However, that

1 physician shall ~~inform~~ *refer* the patient ~~that there are~~ *to* physicians
2 who ~~specialize in the treatment of severe chronic intractable~~ *treat*
3 ~~pain with and whose methods that include the use of opiates.~~

4 (d) A physician who uses opiate therapy to relieve ~~severe~~
5 ~~chronic intractable pain~~ *pain or a condition causing pain,*
6 *including, but not limited to, intractable pain* may prescribe a
7 dosage deemed medically necessary to relieve ~~severe chronic~~
8 ~~intractable~~ *the patient's* pain, as long as that prescribing is in
9 conformance with ~~the California Intractable Pain Treatment Act,~~
10 Section 2241.5 of the Business and Professions Code.

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

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

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

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