

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1127**

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**Introduced by Assembly Member Brownley**

February 18, 2011

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An act to amend Section 2234 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as amended, Brownley. Physicians and surgeons: unprofessional conduct.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to take action against any licensee who is charged with unprofessional conduct and describes acts constituting unprofessional conduct. Existing law makes a violation of that provision a crime.

This bill would provide that unprofessional conduct also includes; ~~among other things, the willful noncompliance by a certificate holder with the duty to cooperate with an investigation being conducted by the board~~ *the repeated failure, except for good cause, by a certificate holder who is the subject of a board investigation, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board.*

By changing the definition of a crime, the 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 board shall take action against any licensee who is  
4 charged with unprofessional conduct. In addition to other  
5 provisions of this article, unprofessional conduct includes, but is  
6 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.  
25 (e) The commission of any act involving dishonesty or  
26 corruption which is substantially related to the qualifications,  
27 functions, or duties of a physician and surgeon.  
28 (f) Any action or conduct which would have warranted the  
29 denial of a certificate.  
30 (g) The practice of medicine from this state into another state  
31 or country without meeting the legal requirements of that state or  
32 country for the practice of medicine. Section 2314 shall not apply  
33 to this subdivision. This subdivision shall become operative upon

1 the implementation of the proposed registration program described  
2 in Section 2052.5.

3 ~~(h) The willful noncompliance by a certificate holder with the~~  
4 ~~duty to cooperate with an investigation being conducted by the~~  
5 ~~board. For the purposes of this subdivision, “willful~~  
6 ~~noncompliance” includes, but is not limited to, repeated failure,~~

7 *(h) The repeated failure by a certificate holder, in the absence*  
8 *of good cause, to attend and participate in an interview scheduled*  
9 *by the mutual agreement of the certificate holder and the board.*

10 *This subdivision shall only apply to a certificate holder who is the*  
11 *subject of an investigation by the board.*

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