

ASSEMBLY BILL

No. 1267

Introduced by Assembly Member Halderman

February 18, 2011

An act to amend Section 2236.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, as introduced, Halderman. Physicians and surgeons: certificate.

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 that a physician and surgeon's certificate be suspended automatically when the holder of the certificate is incarcerated after a felony conviction.

This bill would additionally require that suspension when the holder of the certificate is incarcerated after a misdemeanor conviction. The bill would make other conforming and nonsubstantive, technical changes.

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 2236.1 of the Business and Professions
2 Code is amended to read:
3 2236.1. (a) A physician and surgeon's certificate shall be
4 suspended automatically during any time that the holder of the
5 certificate is incarcerated after conviction of a felony *or*

1 *misdemeanor*, regardless of whether the conviction has been
2 appealed. The ~~Division of Medical Quality~~ *board* shall,
3 immediately upon receipt of the certified copy of the record of
4 conviction, determine whether the certificate of the physician and
5 surgeon has been automatically suspended by virtue of his or her
6 incarceration, and if so, the duration of that suspension. The
7 ~~division~~ *board* shall notify the physician and surgeon of the license
8 suspension and of his or her right to elect to have the issue of
9 penalty heard as provided in this section.

10 (b) Upon receipt of the certified copy of the record of conviction,
11 if after a hearing it is determined therefrom that the felony *or*
12 *misdemeanor* of which the licensee was convicted was substantially
13 related to the qualifications, functions, or duties of a physician and
14 surgeon, the ~~Division of Medical Quality~~ *board* shall suspend the
15 license until the time for appeal has elapsed, if no appeal has been
16 taken, or until the judgment of conviction has been affirmed on
17 appeal or has otherwise become final, and until further order of
18 the ~~division~~ *board*. The issue of substantial relationship shall be
19 heard by an administrative law judge from the Medical Quality
20 Hearing Panel sitting alone or with a panel of the ~~division~~ *board*,
21 in the discretion of the ~~division~~ *board*.

22 (c) Notwithstanding subdivision (b), a conviction of any crime
23 referred to in Section 2237, or a conviction of Section 187, 261,
24 262, or 288 of the Penal Code, shall be conclusively presumed to
25 be substantially related to the qualifications, functions, or duties
26 of a physician and surgeon and no hearing shall be held on this
27 issue. Upon its own motion or for good cause shown, the ~~division~~
28 *board* may decline to impose or may set aside the suspension when
29 it appears to be in the interest of justice to do so, with due regard
30 to maintaining the integrity of and confidence in the medical
31 profession.

32 (d) (1) Discipline may be ordered in accordance with Section
33 2227, or the ~~Division of Licensing~~ *board* may order the denial of
34 the license when the time for appeal has elapsed, the judgment of
35 conviction has been affirmed on appeal, or an order granting
36 probation is made suspending the imposition of sentence,
37 irrespective of a subsequent order under Section 1203.4 of the
38 Penal Code allowing the person to withdraw his or her plea of
39 guilty and to enter a plea of not guilty, setting aside the verdict of

1 guilty, or dismissing the accusation, complaint, information, or
2 indictment.

3 (2) The issue of penalty shall be heard by an administrative law
4 judge from the Medical Quality Hearing Panel sitting alone or with
5 a panel of the ~~division~~ *board*, in the discretion of the ~~division~~
6 *board*. The hearing shall not be had until the judgment of
7 conviction has become final or, irrespective of a subsequent order
8 under Section 1203.4 of the Penal Code, an order granting
9 probation has been made suspending the imposition of sentence;
10 except that a licensee may, at his or her option, elect to have the
11 issue of penalty decided before those time periods have elapsed.
12 Where the licensee so elects, the issue of penalty shall be heard in
13 the manner described in this section at the hearing to determine
14 whether the conviction was substantially related to the
15 qualifications, functions, or duties of a physician and surgeon. If
16 the conviction of a licensee who has made this election is
17 overturned on appeal, any discipline ordered pursuant to this
18 section shall automatically cease. Nothing in this subdivision shall
19 prohibit the ~~division~~ *board* from pursuing disciplinary action based
20 on any cause other than the overturned conviction.

21 (e) The record of the proceedings resulting in the conviction,
22 including a transcript of the testimony therein, may be received in
23 evidence.

24 (f) The other provisions of this article setting forth a procedure
25 for the suspension or revocation of a physician and surgeon's
26 certificate shall not apply to proceedings conducted pursuant to
27 this section.