

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1267

Introduced by Assembly Member Halderman

February 18, 2011

An act to ~~amend Section 2236.1 of~~ *add Section 2236.2 to* the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, as amended, 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.~~ *require that a physician and surgeon's certificate be automatically placed on inactive status during any period of incarceration after a misdemeanor conviction. The bill would require the reason for this type of inactive status to be disclosed, as specified.*

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 2236.2 is added to the Business and
2 Professions Code, to read:

3 2236.2. (a) Notwithstanding Article 9 (commencing with
4 Section 700) of Chapter 1 of Division 2 or any other provision of
5 law, a physician and surgeon’s certificate shall be automatically
6 placed on inactive status during any period of time that the holder
7 of the certificate is incarcerated after conviction of a misdemeanor.

8 (b) The reason for the inactive status described in subdivision
9 (a) shall be disclosed on the board’s Internet Web site.

10 ~~SECTION 1. Section 2236.1 of the Business and Professions~~
11 ~~Code is amended to read:~~

12 ~~2236.1. (a) A physician and surgeon’s certificate shall be~~
13 ~~suspended automatically during any time that the holder of the~~
14 ~~certificate is incarcerated after conviction of a felony or~~
15 ~~misdemeanor, regardless of whether the conviction has been~~
16 ~~appealed. The board shall, immediately upon receipt of the certified~~
17 ~~copy of the record of conviction, determine whether the certificate~~
18 ~~of the physician and surgeon has been automatically suspended~~
19 ~~by virtue of his or her incarceration, and if so, the duration of that~~
20 ~~suspension. The board shall notify the physician and surgeon of~~
21 ~~the license suspension and of his or her right to elect to have the~~
22 ~~issue of penalty heard as provided in this section.~~

23 ~~(b) Upon receipt of the certified copy of the record of conviction,~~
24 ~~if after a hearing it is determined therefrom that the felony or~~
25 ~~misdemeanor of which the licensee was convicted was substantially~~
26 ~~related to the qualifications, functions, or duties of a physician and~~
27 ~~surgeon, the board shall suspend the license until the time for~~
28 ~~appeal has elapsed, if no appeal has been taken, or until the~~
29 ~~judgment of conviction has been affirmed on appeal or has~~
30 ~~otherwise become final, and until further order of the board. The~~
31 ~~issue of substantial relationship shall be heard by an administrative~~
32 ~~law judge from the Medical Quality Hearing Panel sitting alone~~
33 ~~or with a panel of the board, in the discretion of the board.~~

34 ~~(c) Notwithstanding subdivision (b), a conviction of any crime~~
35 ~~referred to in Section 2237, or a conviction of Section 187, 261,~~
36 ~~262, or 288 of the Penal Code, shall be conclusively presumed to~~
37 ~~be substantially related to the qualifications, functions, or duties~~
38 ~~of a physician and surgeon and no hearing shall be held on this~~

1 issue. Upon its own motion or for good cause shown, the board
2 may decline to impose or may set aside the suspension when it
3 appears to be in the interest of justice to do so, with due regard to
4 maintaining the integrity of and confidence in the medical
5 profession.

6 ~~(d) (1) Discipline may be ordered in accordance with Section
7 2227, or the board may order the denial of the license when the
8 time for appeal has elapsed, the judgment of conviction has been
9 affirmed on appeal, or an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent
11 order under Section 1203.4 of the Penal Code allowing the person
12 to withdraw his or her plea of guilty and to enter a plea of not
13 guilty, setting aside the verdict of guilty, or dismissing the
14 accusation, complaint, information, or indictment.~~

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

32 ~~(e) The record of the proceedings resulting in the conviction,
33 including a transcript of the testimony therein, may be received in
34 evidence.~~

35 ~~(f) The other provisions of this article setting forth a procedure
36 for the suspension or revocation of a physician and surgeon's
37 certificate shall not apply to proceedings conducted pursuant to
38 this section.~~

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