

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 17, 2012

SENATE BILL

No. 1483

Introduced by Senator Steinberg

February 24, 2012

An act to add Article 14 (commencing with Section 2340) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1483, as amended, Steinberg. Physicians and surgeons.

Existing law provides for the licensing and regulation of physicians and surgeons by the Medical Board of California.

This bill would create the Physician Health Program, administered by the Physician Health, Recovery, and Monitoring Oversight Committee, with 14 members to be appointed as specified. The purpose of the program would be to promote awareness and education relative to physician and surgeon health issues, including impairment due to alcohol or substance abuse, mental disorders, or other health conditions that could affect the safe practice of medicine. The bill would provide for referral by the program of physicians and surgeons, as defined, to certified monitoring programs on a voluntary basis, governed by a written agreement between the participant and the program. The bill would require the Department of Consumer Affairs to select a contractor to implement the program, with the committee serving as the evaluation body for submitted proposals. The bill would require the *program to report the name of a participant to the board and the committee when it learns of the participant's failure to meet the requirements of the program. The bill would require the committee to report to the*

department *certain statistics received from the program, would require the department to report to the Legislature on the ~~outcome~~ outcomes of the program, and would require regular audits of the program. The bill would enact other related provisions.*

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. The Legislature finds and declares all of the
 2 following:

3 (a) (1) It is in every patient’s interest to have physicians and
 4 surgeons that are healthy and well.

5 (2) Physicians and surgeons may have health conditions that
 6 interfere with their ability to practice medicine safely.

7 (3) In such cases, the most effective long-term protection for
 8 patients is early intervention to address health issues that have the
 9 potential to interfere with the safe practice of physicians and
 10 surgeons.

11 (b) While the Legislature recognizes that physicians and
 12 surgeons have a number of options for obtaining treatment, it is
 13 the intent of the Legislature in enacting this act to promote
 14 awareness among members of the medical community about health
 15 issues that could interfere with safe practice, to promote awareness
 16 that private early intervention options are available, to provide
 17 resources and referrals to ensure physicians and surgeons are better
 18 able to choose ~~high-quality~~ *high-quality* private interventions that
 19 meet their specific needs, and to provide a separate mechanism
 20 for monitoring treatment.

21 SEC. 2. Article 14 (commencing with Section 2340) is added
 22 to Chapter 5 of Division 2 of the Business and Professions Code,
 23 to read:

24

25 Article 14. Physician Health, Awareness, and Monitoring
 26 Quality
 27

28 2340. This article shall be known and may be cited as the
 29 Physician Health, Awareness, and Monitoring Quality Act of 2012.

30 2341. For purposes of this article, the following terms have
 31 the following meanings:

- 1 (a) “Board” means the Medical Board of California.
- 2 (b) “Committee” means the Physician Health, Awareness, and
3 Monitoring Quality Oversight Committee established pursuant to
4 Section 2343.
- 5 (c) “Department” means the Department of Consumer Affairs.
- 6 (d) “Impairment” means the inability to practice medicine with
7 reasonable skill and safety to patients by reason of alcohol or
8 substance abuse, a mental disorder, or another health condition as
9 determined by a clinical evaluation in individual circumstances.
- 10 (e) “Participant” means a physician and surgeon enrolled in the
11 program pursuant to an agreement entered into as provided in
12 Section 2346.
- 13 (f) “Physician Health Program” or “program” means the program
14 defined in Section 2342 and includes vendors, providers, or entities
15 that contract with the committee pursuant to this article. The
16 program itself shall not offer or provide treatment services to
17 physicians and surgeons.
- 18 (g) “Physician and surgeon” means a holder of a valid physician
19 and surgeon’s certificate. For the purposes of participating in the
20 program under this article, “physician and surgeon” shall also
21 mean a student enrolled in a medical school approved or recognized
22 by the board, a graduate of a medical school enrolled in a medical
23 specialty residency training program approved or recognized by
24 the board, or a physician and surgeon seeking reinstatement of a
25 license from the board.
- 26 (h) “Qualifying illness” means alcohol or substance abuse, a
27 mental disorder, or another health condition that a clinical
28 evaluation determines can be monitored and treated with private
29 clinical and monitoring programs.
- 30 2342. The Physician Health Program shall do all of the
31 following:
- 32 (a) Be available to all physicians and surgeons, as defined in
33 subdivision (g) of Section 2341.
- 34 (b) Promote awareness among members of the medical
35 community on the recognition of health issues that could interfere
36 with safe practice.
- 37 (c) Educate the medical community on the benefits of and
38 options available for early intervention to address those health
39 issues.

1 (d) Refer physicians and surgeons to monitoring programs
2 certified by the program by executing a written agreement with
3 the participant and monitoring the compliance of the participant
4 with that agreement.

5 (e) Provide for the confidential participation by physicians and
6 surgeons who have a qualifying illness and that are not on
7 probation with the board.

8 2343. (a) (1) There is hereby established the Physician Health,
9 Awareness, and Monitoring Quality Oversight Committee that
10 shall have the duties and responsibilities set forth in this article.
11 The committee may take any reasonable administrative actions to
12 carry out the responsibilities and duties set forth in this article,
13 including, but not limited to, hiring staff and entering into contracts.

14 (2) The committee shall be formed no later than ____.

15 (3) The committee composition shall be as follows:

16 (A) All of the members under this subparagraph shall be
17 appointed by the Governor and licensed in this state as physicians
18 and surgeons with education, training, and experience in the
19 identification and treatment of substance use or mental disorders,
20 or both.

21 (i) Two members recommended by a statewide association
22 representing psychiatrists with at least 3,000 members.

23 (ii) Two members recommended by a statewide association
24 representing addiction medicine specialists with at least 300
25 members.

26 (iii) Three members recommended by a statewide association
27 representing physician and surgeons from all specialties, modes
28 of practice, and practice settings with at least 25,000 members.

29 (iv) One member recommended by a statewide hospital
30 association representing at least 400 hospitals.

31 (v) For the purpose of the initial composition of the committee,
32 one member appointed under clause (i) shall be appointed for a
33 two-year term and the other member for a three-year term; one
34 member appointed under clause (ii) shall be appointed for a
35 two-year term and the other member for a three-year term; one
36 member appointed under clause (iii) shall be appointed for a
37 two-year term, one member for a shall be appointed for three-year
38 term, and one member shall be appointed for a four-year term; and
39 the member appointed under clause (iv) shall be appointed for a
40 four-year term.

1 (B) All members appointed under this subparagraph shall have
2 experience in a field related to mental illness, or alcohol or
3 substance abuse, or both.

4 (i) Four members of the public appointed by the Governor. For
5 the initial appointment to the committee, two members shall be
6 appointed to serve for two-year terms and two members shall be
7 appointed to serve for four-year terms.

8 (ii) One member of the public appointed by the Speaker of the
9 Assembly. The initial appointment shall be for a three-year term.

10 (iii) One member of the public appointed by the Senate
11 Committee on Rules. The initial appointment shall be for a
12 three-year term.

13 (4) For the purposes of this section, a public member may not
14 be any of the following:

15 (A) A current or former physician and surgeon or an immediate
16 family member of a physician and surgeon.

17 (B) A current or former employee of a physician and surgeon,
18 or a business providing or arranging for physician and surgeon
19 services, or having any financial interest in the business of a
20 physician and surgeon.

21 (C) An employee or agent or representative of any organization
22 representing physicians and surgeons.

23 (D) An individual or an affiliate of an organization who has
24 conducted business with or regularly appeared before the board.

25 (5) A public member shall meet all of the requirements for
26 public members on a board as set forth in Chapter 6 (commencing
27 with Section 450) of Division 1.

28 (b) Members of the committee shall serve without compensation.

29 (c) Except as provided for in subdivision (a), committee
30 members shall serve terms of four years and may be reappointed.

31 (d) The committee shall be subject to the Bagley-Keene Open
32 Meeting Act (Article 9 (commencing with Section 11120) of
33 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
34 Code), *the Administrative Procedure Act (Chapter 3.5*
35 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
36 *2 of the Government Code)*, and the California Public Records Act
37 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
38 Title 1 of the Government Code).

39 (e) The rules adopted by the committee shall be consistent with
40 *the Uniform Standards Regarding Substance-Abusing Healing*

1 *Arts Licensees as adopted by the Substance Abuse Coordination*
2 *Committee of the Department of Consumer Affairs pursuant to*
3 *Section 315, the guidelines of the Federation of State Physician*
4 *Health Programs, Inc., as well as community standards of practice,*
5 *including, but not limited to, criteria for acceptance of participants*
6 *into the program and the refusal to accept a person as a participant*
7 *into the program and the assigning of costs of participation and*
8 *associated financial responsibilities of participants. In the event*
9 *of any conflicts between—standards—established the Uniform*
10 *Standards Regarding Substance-Abusing Healing Arts Licensees*
11 *as adopted by the Substance Abuse Coordination Committee of*
12 *the Department of Consumer Affairs pursuant to Section 315 and*
13 *the guidelines of the Federation of State Physician Health*
14 *Programs, Inc., and community standards of practice, the Uniform*
15 *Standards Regarding Substance-Abusing Healing Arts Licensees*
16 *as adopted by the Substance Abuse Coordination Committee of*
17 *the Department of Consumer Affairs pursuant to Section 315 shall*
18 *prevail.*

19 2344. (a) The department shall select a contractor for the
20 Physician Health Program pursuant to a request for proposals, and
21 the committee shall contract for a five-year term with that entity.
22 The process for procuring the services for the program shall be
23 administered by the department pursuant to Article 4 (commencing
24 with Section 10335) of Chapter 2 of Part 2 of Division 2 of the
25 Public Contract Code. However, the committee shall serve as the
26 evaluation body for the procurement.

27 (b) The chief executive officer of the program vendor shall have
28 expertise in the areas of substance or alcohol abuse, and mental
29 disorders in health care professionals.

30 (c) The program vendor shall have a medical director to oversee
31 clinical aspects of the program's operations. The medical director
32 shall have expertise in the diagnosis and treatment of alcohol and
33 substance abuse and mental disorders in health care professionals.

34 (d) The program vendor shall have established relationships
35 with local medical societies and hospital well-being committees
36 for conducting education, outreach, and referrals for physician and
37 surgeon health.

38 (e) The program vendor shall monitor the monitoring entities
39 that participating physicians and surgeons have retained for

1 monitoring the participant’s treatment and shall provide ongoing
2 services to physicians and surgeons that resume practice.

3 (f) The program vendor shall have a system for promptly
4 *immediately* reporting physicians and surgeons ~~unable to practice~~
5 ~~safely to the board when, contrary to agreements with the Physician~~
6 ~~Health Program, they continue to practice unsafely~~ *who fail to*
7 *meet the requirements of the program as provided in subdivision*
8 *(e) of Section 2346.* This system shall ensure absolute
9 confidentiality in the communication to the enforcement division
10 of the board, and shall not provide this information to any other
11 individual or entity unless authorized by the enrolled physician
12 and surgeon.

13 (g) The contract entered into pursuant to this article shall also
14 require the program vendor to do both of the following:

15 (1) Report annually to the committee statistics related to the
16 program, including, but not limited to, the number of participants
17 currently in the program, the number of participants referred by
18 the board as a condition of probation, the number of participants
19 who have successfully completed their agreement period, the
20 number of participants terminated from the program, and the
21 number of participants reported by the program pursuant to
22 subdivision ~~(e)~~ *(e)* of Section 2346. However, in making that report,
23 the program shall not disclose any personally identifiable
24 information relating to any participant.

25 (2) Submit to periodic audits and inspections of all operations,
26 records, and management related to the program to ensure
27 compliance with the requirements of this article and its
28 implementing rules and regulations, ~~if any.~~

29 (h) In addition to the requirements of Section 2349, the
30 committee shall monitor compliance of the program with the
31 requirements of this article. The committee or its designee may
32 make periodic inspections and onsite visits with the vendor
33 contracted to provide Physician Health Program services.

34 (i) Copies of the audits referenced in paragraph (2) of
35 subdivision (g) shall be published and provided to the appropriate
36 policy committees of the Legislature within 10 business days of
37 publication. A copy shall also be made available to the public by
38 posting a link on the committee’s Internet Web site homepage no
39 more than 10 business days after publication.

1 2346. (a) A physician and surgeon shall, as a condition of
2 participation in the Physician Health Program, enter into an
3 individual agreement with the program.

4 (b) The agreement between the physician and surgeon and the
5 program *shall be consistent with the standards adopted by the*
6 *committee pursuant to subdivision (e) of Section 2343, and shall*
7 include all of the following:

8 (1) A jointly agreed-upon plan and mandatory conditions and
9 procedures to monitor compliance with the program, including,
10 but not limited to, an agreement to cease practice.

11 (2) Compliance with terms and conditions of treatment and
12 monitoring.

13 (3) Limitations on practice.

14 (4) Conditions and terms for return to practice.

15 (5) Criteria for program completion.

16 (6) Criteria for termination of the participant from the program.

17 (c) In addition, if the physician and surgeon retains the services
18 of a private monitoring entity, he or she shall agree to authorize
19 the program vendor to receive reports from the private monitoring
20 entity and to request information from the private monitoring entity
21 regarding his or her treatment status. Except as provided in
22 subdivisions (b), (c), (d), and (e), and subdivision (f) of Section
23 2344, a physician and surgeon's participation in the program
24 pursuant to an agreement shall be confidential unless waived by
25 the physician and surgeon.

26 (d) Any agreement entered into pursuant to this section shall
27 not be considered a disciplinary action or order by the board, and
28 shall not be disclosed to the committee or the board if both of the
29 following apply:

30 (1) The physician and surgeon did not enroll in the program as
31 a condition of probation or as a result of an action of the board.

32 (2) The physician and surgeon is in compliance with the
33 conditions and procedures in the agreement.

34 (e) (1) The program shall immediately report the name of a
35 participant to the *board and the committee* when it learns of the
36 participant's failure to meet the requirements of the program,
37 including failure to cease practice when required~~or~~, failure to
38 submit to evaluation, treatment, or biological testing when required,
39 *or a violation of the rules adopted by the committee pursuant to*
40 *subdivision (e) of Section 2343.* The program shall also

1 immediately report the name of a participant to the committee
2 when it learns that the participant’s impairment is not substantially
3 alleviated through treatment, or if the participant withdraws or is
4 terminated from the program prior to completion, or if, in the
5 opinion of the program after a risk assessment is conducted, the
6 participant is unable to practice medicine with reasonable skill and
7 safety.

8 ~~(2) Within two business days of receiving a report pursuant to~~
9 ~~paragraph (1), the committee shall refer the matter to the board.~~
10 *Notwithstanding subdivision (f) of Section 2344, the report shall*
11 *provide sufficient information to permit the board to assess whether*
12 *discipline or other action is required to protect the public.*

13 (f) Except as *otherwise* provided in subdivisions (b), (c), ~~and~~
14 (e), and ~~subdivision~~ (f) of Section 2344, *subdivision (e) of this*
15 *section*, and this subdivision, any oral or written information
16 reported to the board pursuant to this section, including, but not
17 limited to, any physician and surgeon’s participation in the program
18 and any agreement entered into pursuant to this article, shall remain
19 confidential as provided in subdivision (c) of Section 800, and
20 shall not constitute a waiver of any existing evidentiary privileges
21 under any other provision or rule of law. However, confidentiality
22 regarding the physician and surgeon’s participation in the program
23 and of all information and records created by the program related
24 to that participation shall not apply if the board has referred a
25 participant as a condition of probation.

26 (g) Nothing in this section prohibits, requires, or otherwise
27 affects the discovery or admissibility of evidence in an action by
28 the board against a physician and surgeon based on acts or
29 omissions within the course and scope of his or her practice.

30 (h) Any information received, developed, or maintained by the
31 committee regarding a physician and surgeon in the program shall
32 not be used for any other purposes.

33 2347. The committee shall report to the department statistics
34 received from the program pursuant to Section 2344, and the
35 department shall, thereafter, report to the appropriate policy
36 committees of the Legislature on or before _____, and annually
37 thereafter, the outcomes of the program, including, but not limited
38 to, the number of individuals served, the number of participants
39 currently in the program, the number of participants referred by
40 the board as a condition of probation, the number of individuals

1 who have successfully completed their agreement period, the
2 number of participants terminated from the program, and the
3 number of individuals reported to the board for noncompliance
4 pursuant to subdivision-(e) (e) of Section 2346. However, in
5 making those reports, the committee and the department shall not
6 disclose any personally identifiable information relating to any
7 physician and surgeon participating in the program pursuant to an
8 agreement entered into pursuant to Section 2346.

9 2349. (a) The committee shall biennially contract to perform
10 an audit of the Physician Health Program and its vendors. This
11 section is not intended to reduce the number of audits the
12 committee may otherwise conduct. The initial audit shall
13 commence two years after the award of an initial five-year contract.
14 Under no circumstances shall General Fund revenue be used for
15 this purpose.

16 (b) Any person or entity conducting the audit required by this
17 section shall maintain the confidentiality of all records reviewed
18 and information obtained in the course of conducting the audit and
19 shall not disclose any information identifying any program
20 participant.

21 (c) The biennial audit shall be done by ____ and shall ascertain
22 if the program is operating in conformance with the rules and
23 regulations established by the committee.