

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 439

Introduced by Senators Steinberg and Leno

February 21, 2013

An act to amend ~~Section~~ *Sections 2220.05, 2242, and 2264 of the Business and Professions Code, and to amend Section 11362.765 of the Health and Safety Code, relating to medical marijuana.*

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as amended, Steinberg. Medical marijuana.

The Medical Practice Act provides for the regulation and licensing of physicians and surgeons by the Medical Board of California. Existing law requires the board to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously, and identifies the types of cases that are to be given priority, including cases of repeated acts of excessively prescribing, furnishing, or administering controlled substances without a good faith prior examination of the patient and medical reason therefor. Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without an appropriate prior examination and medical indication. Existing law also makes it unprofessional conduct to employ, aid, or abet an unlicensed person in the practice of medicine. Existing law generally makes any person who violates these provisions guilty of a misdemeanor.

This bill would specify that repeated acts of excessively recommending marijuana to a patient for medical purposes constitutes the type of case that the board should prioritize. This bill would add that recommending marijuana to a patient for medical purposes without an appropriate prior examination and medical indication constitutes unprofessional conduct. This bill would also specify that employing, aiding, or abetting, an unlicensed person to engage in the practice of medicine with a cannabis clinic or dispensary to provide recommendations for medical marijuana constitutes unprofessional conduct. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

Existing law, the Compassionate Use Act of 1996, provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.

Existing law also makes it a crime to possess for sale, plant, cultivate, harvest, dry process, transport, import into this state, sell, furnish, administer, or give away, to offer to transport, import into this state, sell, furnish, administer, or give away, or to attempt to import into this state or transport, any marijuana. Existing law makes it a felony or misdemeanor to open or maintain any place for the purpose of unlawfully selling, giving away, or using, or to knowingly rent, lease, or make available for use a building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution. Existing law further provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered.

Existing law requires the Attorney General to develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996, and the Attorney General has published guidelines regarding collectives and cooperatives organized and operated to cultivate and distribute marijuana for medical purposes.

This bill would exempt from the criminal acts and abatement of nuisance provisions described above collectives, and cooperatives, as

defined. The bill would also exempt those entities and persons from criminal prosecution or punishment solely on the basis of the fact that they receive compensation for actual expenses incurred in carrying out activities that are in compliance with those guidelines.

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2220.05 of the Business and Professions
2 Code is amended to read:

3 2220.05. (a) In order to ensure that its resources are maximized
4 for the protection of the public, the Medical Board of California
5 shall prioritize its investigative and prosecutorial resources to
6 ensure that physicians and surgeons representing the greatest threat
7 of harm are identified and disciplined expeditiously. Cases
8 involving any of the following allegations shall be handled on a
9 priority basis, as follows, with the highest priority being given to
10 cases in the first paragraph:

11 (1) Gross negligence, incompetence, or repeated negligent acts
12 that involve death or serious bodily injury to one or more patients,
13 such that the physician and surgeon represents a danger to the
14 public.

15 (2) Drug or alcohol abuse by a physician and surgeon involving
16 death or serious bodily injury to a patient.

17 (3) Repeated acts of clearly excessive prescribing, furnishing,
18 or administering of controlled substances, or repeated acts of
19 prescribing, dispensing, ~~or~~ furnishing of controlled ~~substances~~
20 substances, or recommending marijuana to a patient for medical
21 purposes without a good faith prior examination of the patient and
22 medical reason therefor. However, in no event shall a physician
23 and surgeon prescribing, furnishing, or administering controlled
24 substances for intractable pain consistent with lawful prescribing,
25 including, but not limited to, Sections 725, 2241.5, and 2241.6 of

1 this code and Sections 11159.2 and 124961 of the Health and
2 Safety Code, be prosecuted for excessive prescribing and prompt
3 review of the applicability of these provisions shall be made in
4 any complaint that may implicate these provisions.

5 (4) Sexual misconduct with one or more patients during a course
6 of treatment or an examination.

7 (5) Practicing medicine while under the influence of drugs or
8 alcohol.

9 (b) The board may by regulation prioritize cases involving an
10 allegation of conduct that is not described in subdivision (a). Those
11 cases prioritized by regulation shall not be assigned a priority equal
12 to or higher than the priorities established in subdivision (a).

13 (c) The Medical Board of California shall indicate in its annual
14 report mandated by Section 2312 the number of temporary
15 restraining orders, interim suspension orders, and disciplinary
16 actions that are taken in each priority category specified in
17 subdivisions (a) and (b).

18 *SEC. 2. Section 2242 of the Business and Professions Code is*
19 *amended to read:*

20 2242. (a) Prescribing, dispensing, or furnishing dangerous
21 drugs as defined in Section ~~4022~~ 4022, and recommending
22 marijuana to a patient for medical purposes without an appropriate
23 prior physical examination and a medical indication, constitutes
24 unprofessional conduct.

25 (b) No licensee shall be found to have committed unprofessional
26 conduct within the meaning of this section if, at the time the drugs
27 were prescribed, dispensed, or furnished, any of the following
28 applies:

29 (1) The licensee was a designated physician and surgeon or
30 podiatrist serving in the absence of the patient's physician and
31 surgeon or podiatrist, as the case may be, and if the drugs were
32 prescribed, dispensed, or furnished only as necessary to maintain
33 the patient until the return of his or her practitioner, but in any case
34 no longer than 72 hours.

35 (2) The licensee transmitted the order for the drugs to a
36 registered nurse or to a licensed vocational nurse in an inpatient
37 facility, and if both of the following conditions exist:

38 (A) The practitioner had consulted with the registered nurse or
39 licensed vocational nurse who had reviewed the patient's records.

1 (B) The practitioner was designated as the practitioner to serve
2 in the absence of the patient’s physician and surgeon or podiatrist,
3 as the case may be.

4 (3) The licensee was a designated practitioner serving in the
5 absence of the patient’s physician and surgeon or podiatrist, as the
6 case may be, and was in possession of or had utilized the patient’s
7 records and ordered the renewal of a medically indicated
8 prescription for an amount not exceeding the original prescription
9 in strength or amount or for more than one refill.

10 (4) The licensee was acting in accordance with Section 120582
11 of the Health and Safety Code.

12 *SEC. 3. Section 2264 of the Business and Professions Code is*
13 *amended to read:*

14 2264. The employing, directly or indirectly, the aiding, or the
15 abetting of any unlicensed person or any suspended, revoked, or
16 unlicensed practitioner to engage in the practice of ~~medicine~~
17 *medicine, including, but not limited to, engaging in the practice*
18 *of providing recommendations for medical marijuana at a cannabis*
19 *clinic or dispensary, or any other mode of treating the sick or*
20 *afflicted which requires a license to practice constitutes*
21 *unprofessional conduct.*

22 ~~SECTION 4.~~

23 *SEC. 4. Section 11362.765 of the Health and Safety Code is*
24 *amended to read:*

25 11362.765. (a) Subject to the requirements of this article, the
26 individuals specified in subdivision (b) shall not be subject, on
27 that sole basis, to criminal liability under Section 11357, 11358,
28 11359, 11360, 11366, or 11366.5, or liability as a nuisance under
29 Section 11570. However, nothing in this section shall authorize
30 the individual to smoke or otherwise consume marijuana unless
31 otherwise authorized by this article, nor shall anything in this
32 section authorize any individual or group to cultivate or distribute
33 marijuana for profit.

34 (b) Subdivision (a) shall apply to all of the following:

35 (1) A qualified patient or a person with an identification card
36 who transports or processes marijuana for his or her own personal
37 medical use.

38 (2) A designated primary caregiver who transports, processes,
39 administers, delivers, or gives away marijuana for medical
40 purposes, in amounts not exceeding those established in subdivision

1 (a) of Section 11362.77, only to the qualified patient of the primary
2 caregiver, or to the person with an identification card who has
3 designated the individual as a primary caregiver.

4 (3) Any individual who provides assistance to a qualified patient
5 or a person with an identification card, or his or her designated
6 primary caregiver, in administering medical marijuana to the
7 qualified patient or person or acquiring the skills necessary to
8 cultivate or administer marijuana for medical purposes to the
9 qualified patient or person.

10 (4) Collectives and cooperatives.

11 (c) Collectives and cooperatives that receive compensation for
12 actual expenses incurred in carrying out activities that are in
13 compliance with the guidelines referenced in subdivision (e),
14 including reasonable compensation incurred for services provided
15 to the members or the organization, shall not be subject to
16 prosecution or punishment under Section 11359 or 11360 solely
17 on the basis of the fact that those entities or persons receive
18 compensation as described in this subdivision.

19 (d) A primary caregiver who receives compensation for actual
20 expenses, including reasonable compensation incurred for services
21 provided to an eligible qualified patient or person with an
22 identification card to enable that person to use marijuana under
23 this article, or for payment for out-of-pocket expenses incurred in
24 providing those services, or both, shall not, on the sole basis of
25 that fact, be subject to prosecution or punishment under Section
26 11359 or 11360.

27 (e) For purposes of this section, both of the following apply:

28 (1) “Collectives and cooperatives” means a collective or
29 cooperative that operates within the terms of the Compassionate
30 Use Act of 1996 (Section 11362.5) and this article and that is
31 organized and operated in compliance with paragraphs A and B
32 of Section IV of the Guidelines for the Security and Non-Diversion
33 of Marijuana Grown for Medical Use, issued by the Attorney
34 General in August 2008, pursuant to Section 11362.81. For
35 purposes of this section, “collectives and cooperatives” includes
36 the officers, members, and employees of the collectives and
37 cooperatives.

38 (2) A collective may be organized as any statutory business
39 entity permitted under California law.

1 (f) Consistent with Section 11362.83, this section shall not
2 prevent a local government from adopting or enforcing local
3 ordinances that regulate the location, operation, or establishment
4 of a medical marijuana collective or cooperative.

5 *SEC. 5. No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution because*
7 *the only costs that may be incurred by a local agency or school*
8 *district will be incurred because this act creates a new crime or*
9 *infraction, eliminates a crime or infraction, or changes the penalty*
10 *for a crime or infraction, within the meaning of Section 17556 of*
11 *the Government Code, or changes the definition of a crime within*
12 *the meaning of Section 6 of Article XIII B of the California*
13 *Constitution.*