

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 670

Introduced by Senator Steinberg

February 22, 2013

An act to amend Sections 2225 and 2234 of, and to add Section 2221.5 to, the Business and Professions Code, and to amend Section 11529 of the Government Code, relating to ~~administrative adjudication~~ healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Steinberg. ~~Medical Quality Hearing Panel: limitation on licensee authority: controlled substances: Physicians and surgeons: drug prescribing privileges: investigation.~~

(1) Existing law authorizes investigators and representatives of the Medical Board of California, among others, to inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, and to inspect documents relevant to those investigations, including the inspection and copying of any document relevant to an investigation where patient consent is given.

Existing law requires specified persons, including the administrator of a peer review body, to file a report with the board within 15 days after the effective date of any specified action taken against a licensee for a medical disciplinary cause or reason. Existing law also requires a coroner to make a report to the board, among other specified entities, when he or she receives information that indicates that a death may be the result of a physician and surgeon's, podiatrist's, or physician assistant's gross negligence or incompetence.

This bill would authorize the board, if it receives a report pursuant to either of the provisions described above that involves the death of a patient from a prescription drug overdose, to inspect and copy the medical records of the deceased patient without the consent of the patient's next of kin or a court order in order to determine the extent to which the death was the result of a prescriber's inappropriate conduct.

(2) Existing law requires the board to take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct is defined for this purpose to include, among other things, the repeated failure by a licensee who is the subject of a board investigation, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the licensee and the board.

This bill would revise that definition of unprofessional conduct to include the failure by a licensee who is the subject of a board investigation, in the absence of good cause, to attend and participate in an interview scheduled within 30 days of notification from the board.

(3) Existing law, the Administrative Procedure Act, authorizes the administrative law judge of the Medical Quality Hearing Panel to issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other licensee restrictions.

This bill would further authorize the administrative law judge to issue an interim order limiting the authority to prescribe, furnish, administer, or dispense controlled substances. The bill would also ~~declare the intent of the Legislature to enact legislation that would significantly reduce the time in which a disciplinary proceeding against a physician is adjudicated, if the proceeding involves a patient who has died as a result of the overprescribing of controlled substances~~ require the board, notwithstanding the authority of an administrative law judge to issue an interim order, to impose limitations on the authority of a physician and surgeon to prescribe, furnish, administer, or dispense controlled substances during a pending investigation if there is a reasonable suspicion that the physician and surgeon has engaged in overprescribing drugs or other behavior related to his or her drug prescribing privileges that has resulted in the death of a patient.

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. It is the intent of the Legislature to enact legislation~~
2 ~~that would significantly reduce the time in which a disciplinary~~
3 ~~proceeding against a physician is adjudicated, if the proceeding~~
4 ~~involves a patient who has died as a result of the overprescribing~~
5 ~~of controlled substances.~~

6 *SECTION 1. Section 2221.5 is added to the Business and*
7 *Professions Code, to read:*

8 *2221.5. Notwithstanding Section 11529 of the Government*
9 *Code, the board shall impose limitations on the authority of a*
10 *physician and surgeon to prescribe, furnish, administer, or*
11 *dispense controlled substances during a pending investigation if*
12 *there is a reasonable suspicion that the physician and surgeon has*
13 *engaged in either of the following:*

14 *(a) Overprescribing drugs.*

15 *(b) Other behavior related to his or her drug prescribing*
16 *privileges that has resulted in the death of a patient.*

17 *SEC. 2. Section 2225 of the Business and Professions Code is*
18 *amended to read:*

19 *2225. (a) Notwithstanding Section 2263 and any other*
20 ~~*provision of law making a communication between a physician*~~
21 ~~*and surgeon or a doctor of podiatric medicine and his or her*~~
22 ~~*patients a privileged communication, those provisions shall not*~~
23 ~~*apply to investigations or proceedings conducted under this chapter.*~~
24 ~~*Members of the board, the Senior Assistant Attorney General of*~~
25 ~~*the Health Quality Enforcement Section, members of the California*~~
26 ~~*Board of Podiatric Medicine, and deputies, employees, agents, and*~~
27 ~~*representatives of the board or the California Board of Podiatric*~~
28 ~~*Medicine and the Senior Assistant Attorney General of the Health*~~
29 ~~*Quality Enforcement Section shall keep in confidence during the*~~
30 ~~*course of investigations, the names of any patients whose records*~~
31 ~~*are reviewed and*~~ *may shall* ~~*not disclose or reveal those names,*~~
32 ~~*except as is necessary during the course of an investigation, unless*~~
33 ~~*and until proceedings are instituted. The authority of the board or*~~
34 ~~*the California Board of Podiatric Medicine and the Health Quality*~~
35 ~~*Enforcement Section to examine records of patients in the office*~~
36 ~~*of a physician and surgeon or a doctor of podiatric medicine is*~~
37 ~~*limited to records of patients who have complained to the board*~~
38 ~~*or the California Board of Podiatric Medicine about that licensee.*~~

39 ~~*(b) Notwithstanding any other provision of law, the Attorney*~~
40 ~~*General and his or her investigative agents, and investigators and*~~

1 representatives of the board or the California Board of Podiatric
2 Medicine, may inquire into any alleged violation of the Medical
3 Practice Act or any other federal or state law, regulation, or rule
4 relevant to the practice of medicine or podiatric medicine,
5 whichever is applicable, and may inspect documents relevant to
6 those investigations in accordance with the following procedures:

7 (1) Any document relevant to an investigation may be inspected,
8 and copies may be obtained, where patient consent is given.

9 (2) Any document relevant to the business operations of a
10 licensee, and not involving medical records attributable to
11 identifiable patients, may be inspected and copied ~~where~~ *if* relevant
12 to an investigation of a licensee.

13 *(c) Notwithstanding subdivision (b) or any other law, if the*
14 *board receives a report pursuant to Section 802.5 or 805 that*
15 *involves the death of a patient from a prescription drug overdose,*
16 *the board may inspect and copy the medical records of the*
17 *deceased patient without the consent of the patient's next of kin*
18 *or a court order in order to determine the extent to which the death*
19 *was the result of a prescriber's inappropriate conduct.*

20 ~~(e)~~

21 *(d) In all cases—where in which* documents are inspected or
22 copies of those documents are received, their acquisition or review
23 shall be arranged so as not to unnecessarily disrupt the medical
24 and business operations of the licensee or of the facility where the
25 records are kept or used.

26 ~~(d) Where~~

27 *(e) If* documents are lawfully requested from licensees in
28 accordance with this section by the Attorney General or his or her
29 agents or deputies, or investigators of the board or the California
30 Board of Podiatric Medicine, ~~they~~ *the documents* shall be provided
31 within 15 business days of receipt of the request, unless the licensee
32 is unable to provide the documents within this time period for good
33 cause, including, but not limited to, physical inability to access
34 the records in the time allowed due to illness or travel. Failure to
35 produce requested documents or copies thereof, after being
36 informed of the required deadline, shall constitute unprofessional
37 conduct. The board may use its authority to cite and fine a
38 physician and surgeon for any violation of this section. This remedy
39 is in addition to any other authority of the board to sanction a
40 licensee for a delay in producing requested records.

1 (e)

2 (f) Searches conducted of the office or medical facility of any
3 licensee shall not interfere with the recordkeeping format or
4 preservation needs of any licensee necessary for the lawful care
5 of patients.

6 *SEC. 3. Section 2234 of the Business and Professions Code is*
7 *amended to read:*

8 2234. The board shall take action against any licensee who is
9 charged with unprofessional conduct. In addition to other
10 provisions of this article, unprofessional conduct includes, but is
11 not limited to, the following:

12 (a) Violating or attempting to violate, directly or indirectly,
13 assisting in or abetting the violation of, or conspiring to violate
14 any provision of this chapter.

15 (b) Gross negligence.

16 (c) Repeated negligent acts. To be repeated, there must be two
17 or more negligent acts or omissions. An initial negligent act or
18 omission followed by a separate and distinct departure from the
19 applicable standard of care shall constitute repeated negligent acts.

20 (1) An initial negligent diagnosis followed by an act or omission
21 medically appropriate for that negligent diagnosis of the patient
22 shall constitute a single negligent act.

23 (2) When the standard of care requires a change in the diagnosis,
24 act, or omission that constitutes the negligent act described in
25 paragraph (1), including, but not limited to, a reevaluation of the
26 diagnosis or a change in treatment, and the licensee's conduct
27 departs from the applicable standard of care, each departure
28 constitutes a separate and distinct breach of the standard of care.

29 (d) Incompetence.

30 (e) The commission of any act involving dishonesty or
31 corruption ~~which~~ *that* is substantially related to the qualifications,
32 functions, or duties of a physician and surgeon.

33 (f) Any action or conduct ~~which~~ *that* would have warranted the
34 denial of a certificate.

35 (g) The practice of medicine from this state into another state
36 or country without meeting the legal requirements of that state or
37 country for the practice of medicine. Section 2314 shall not apply
38 to this subdivision. This subdivision shall become operative upon
39 the implementation of the proposed registration program described
40 in Section 2052.5.

1 (h) The ~~repeated~~ failure by a certificate holder, in the absence
2 of good cause, to attend and participate in an interview scheduled
3 ~~by the mutual agreement of the certificate holder and~~ *within 30*
4 *days of notification from* the board. This subdivision shall only
5 apply to a certificate holder who is the subject of an investigation
6 by the board.

7 ~~SEC. 2.~~

8 *SEC. 4.* Section 11529 of the Government Code is amended
9 to read:

10 11529. (a) The administrative law judge of the Medical Quality
11 Hearing Panel established pursuant to Section 11371 may issue
12 an interim order suspending a license, imposing drug testing,
13 continuing education, supervision of procedures, limitations on
14 the authority to prescribe, furnish, administer, or dispense
15 controlled substances, or other license restrictions. Interim orders
16 may be issued only if the affidavits in support of the petition show
17 that the licensee has engaged in, or is about to engage in, acts or
18 omissions constituting a violation of the Medical Practice Act or
19 the appropriate practice act governing each allied health profession,
20 or is unable to practice safely due to a mental or physical condition,
21 and that permitting the licensee to continue to engage in the
22 profession for which the license was issued will endanger the
23 public health, safety, or welfare.

24 (b) All orders authorized by this section shall be issued only
25 after a hearing conducted pursuant to subdivision (d), unless it
26 appears from the facts shown by affidavit that serious injury would
27 result to the public before the matter can be heard on notice. Except
28 as provided in subdivision (c), the licensee shall receive at least
29 15 days' prior notice of the hearing, which notice shall include
30 affidavits and all other information in support of the order.

31 (c) If an interim order is issued without notice, the administrative
32 law judge who issued the order without notice shall cause the
33 licensee to be notified of the order, including affidavits and all
34 other information in support of the order by a 24-hour delivery
35 service. That notice shall also include the date of the hearing on
36 the order, which shall be conducted in accordance with the
37 requirement of subdivision (d), not later than 20 days from the
38 date of issuance. The order shall be dissolved unless the
39 requirements of subdivision (a) are satisfied.

1 (d) For the purposes of the hearing conducted pursuant to this
2 section, the licentiate shall, at a minimum, have the following
3 rights:

4 (1) To be represented by counsel.

5 (2) To have a record made of the proceedings, copies of which
6 may be obtained by the licentiate upon payment of any reasonable
7 charges associated with the record.

8 (3) To present written evidence in the form of relevant
9 declarations, affidavits, and documents.

10 The discretion of the administrative law judge to permit
11 testimony at the hearing conducted pursuant to this section shall
12 be identical to the discretion of a superior court judge to permit
13 testimony at a hearing conducted pursuant to Section 527 of the
14 Code of Civil Procedure.

15 (4) To present oral argument.

16 (e) Consistent with the burden and standards of proof applicable
17 to a preliminary injunction entered under Section 527 of the Code
18 of Civil Procedure, the administrative law judge shall grant the
19 interim order—~~where~~ *if*, in the exercise of discretion, the
20 administrative law judge concludes that:

21 (1) There is a reasonable probability that the petitioner will
22 prevail in the underlying action.

23 (2) The likelihood of injury to the public in not issuing the order
24 outweighs the likelihood of injury to the licensee in issuing the
25 order.

26 (f) In all cases—~~where~~ *in which* an interim order is issued, and
27 an accusation is not filed and served pursuant to Sections 11503
28 and 11505 within 15 days of the date—~~in~~ *on* which the parties to
29 the hearing on the interim order have submitted the matter, the
30 order shall be dissolved.

31 Upon service of the accusation the licensee shall have, in addition
32 to the rights granted by this section, all of the rights and privileges
33 available as specified in this chapter. If the licensee requests a
34 hearing on the accusation, the board shall provide the licensee with
35 a hearing within 30 days of the request, unless the licensee
36 stipulates to a later hearing, and a decision within 15 days of the
37 date the decision is received from the administrative law judge, or
38 the board shall nullify the interim order previously issued, unless
39 good cause can be shown by the Division of Medical Quality for
40 a delay.

1 (g) ~~Where~~*If* an interim order is issued, a written decision shall
2 be prepared within 15 days of the hearing, by the administrative
3 law judge, including findings of fact and a conclusion articulating
4 the connection between the evidence produced at the hearing and
5 the decision reached.

6 (h) Notwithstanding the fact that interim orders issued pursuant
7 to this section are not issued after a hearing as otherwise required
8 by this chapter, interim orders so issued shall be subject to judicial
9 review pursuant to Section 1094.5 of the Code of Civil Procedure.
10 The relief ~~which~~ *that* may be ordered shall be limited to a stay of
11 the interim order. Interim orders issued pursuant to this section
12 are final interim orders and, if not dissolved pursuant to subdivision
13 (c) or (f), may only be challenged administratively at the hearing
14 on the accusation.

15 (i) The interim order provided for by this section shall be:

16 (1) In addition to, and not a limitation on, the authority to seek
17 injunctive relief provided for in the Business and Professions Code.

18 (2) A limitation on the emergency decision procedure provided
19 in Article 13 (commencing with Section 11460.10) of Chapter 4.5.