

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE MAY 24, 2013

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 healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Steinberg. 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, in any ~~ease~~ *investigation* that involves the death of a patient, to inspect and copy the medical records of the deceased patient without the ~~consent of the patient's next of kin~~ *authorization of the beneficiary or personal representative of the deceased patient* or a court order ~~in order to determine solely to determine~~ the extent to which the death was the result of the physician and surgeon's violation of the Medical Practice Act, *if the board provides a written request to the physician and surgeon that includes a declaration that the board has been unsuccessful in locating or contacting the deceased patient's beneficiary or personal representative after reasonable efforts.*

(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 *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 within 30 days of notification from~~ *by* 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 ~~require~~ *authorize* 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~~ *the board has* probable cause to believe that the physician and surgeon has prescribed, furnished, administered, or dispensed controlled substances in violation of the Medical Practice Act *and the failure of the board to impose those limitations will endanger the public health, safety, or welfare.*

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 2221.5 is added to the Business and
2 Professions Code, to read:

3 2221.5. (a) (1) Notwithstanding Section 11529 of the
4 Government Code, the board ~~shall~~ *may* impose limitations on the
5 authority of a physician and surgeon to prescribe, furnish,
6 administer, or dispense controlled substances during a pending
7 investigation if ~~there is~~ *both of the following apply:*

8 (A) *The board has probable cause to believe that the physician*
9 *and surgeon has prescribed, furnished, administered, or dispensed*
10 *controlled substances in violation of the Medical Practice Act.*

11 (B) *The failure of the board to impose limitations on the*
12 *authority of that physician and surgeon to prescribe, furnish,*
13 *administer, or dispense controlled substances will endanger the*
14 *public health, safety, or welfare.*

15 (2) *The board shall provide written notice of the limitations to*
16 *the affected physician and surgeon by personal service at least*
17 *five business days prior to the effective date of any limitations*
18 *imposed pursuant to this subdivision.*

19 (b) *In all cases in which the board, pursuant to this section, has*
20 *imposed any limitations on the authority of a physician and surgeon*
21 *to prescribe, furnish, administer, or dispense controlled substances,*
22 *and a petition for an interim suspension order is not filed and*
23 *served against the physician and surgeon pursuant to Section*
24 *11529 of the Government Code within 30 business days of the date*
25 *on which the board imposed the limitations, the imposed limitations*
26 *shall be dissolved.*

27 (c) *The board may adopt regulations or policies and procedures*
28 *to carry out the provisions of this section.*

29 SEC. 2. Section 2225 of the Business and Professions Code is
30 amended to read:

31 2225. (a) Notwithstanding Section 2263 and any other law
32 making a communication between a physician and surgeon or a
33 doctor of podiatric medicine and his or her patients a privileged
34 communication, those provisions shall not apply to investigations
35 or proceedings conducted under this chapter. Members of the
36 board, the Senior Assistant Attorney General of the Health Quality
37 Enforcement Section, members of the California Board of Podiatric
38 Medicine, and deputies, employees, agents, and representatives of

1 the board or the California Board of Podiatric Medicine and the
2 Senior Assistant Attorney General of the Health Quality
3 Enforcement Section shall keep in confidence during the course
4 of investigations, the names of any patients whose records are
5 reviewed and shall not disclose or reveal those names, except as
6 is necessary during the course of an investigation, unless and until
7 proceedings are instituted. The authority of the board or the
8 California Board of Podiatric Medicine and the Health Quality
9 Enforcement Section to examine records of patients in the office
10 of a physician and surgeon or a doctor of podiatric medicine is
11 limited to records of patients who have complained to the board
12 or the California Board of Podiatric Medicine about that licensee.

13 (b) Notwithstanding any other law, the Attorney General and
14 his or her investigative agents, and investigators and representatives
15 of the board or the California Board of Podiatric Medicine, may
16 inquire into any alleged violation of the Medical Practice Act or
17 any other federal or state law, regulation, or rule relevant to the
18 practice of medicine or podiatric medicine, whichever is applicable,
19 and may inspect documents relevant to those investigations in
20 accordance with the following procedures:

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

23 (2) Any document relevant to the business operations of a
24 licensee, and not involving medical records attributable to
25 identifiable patients, may be inspected and copied if relevant to
26 an investigation of a licensee.

27 (c) (1) Notwithstanding subdivision (b) or any other law, in
28 any ~~ease~~ *investigation* that involves the death of a ~~patient,~~ *patient,*
29 the board may inspect and copy the medical records of the deceased
30 patient without the ~~consent of the patient's next of kin~~ *authorization*
31 *of the beneficiary or personal representative of the deceased*
32 *patient or a court order in order to determine solely for the purpose*
33 *of determining the extent to which the death was the result of the*
34 *physician and surgeon's conduct in violation of the Medical*
35 *Practice Act, if the board provides a written request to the*
36 *physician and surgeon that includes a declaration that the board*
37 *has been unsuccessful in locating or contacting the deceased*
38 *patient's beneficiary or personal representative after reasonable*
39 *efforts. Nothing in this subdivision shall be construed to allow the*
40 *board to inspect and copy the medical records of a deceased*

1 *patient without a court order when the beneficiary or personal*
2 *representative of the deceased patient has been located and*
3 *contacted but has refused to consent to the board inspecting and*
4 *copying the medical records of the deceased patient.*

5 (2) The Legislature finds and declares that the authority created
6 in the board pursuant to this section, and a physician and surgeon's
7 compliance with this section, are consistent with the public interest
8 and benefit activities of the federal Health Insurance Portability
9 and Accountability Act (HIPAA).

10 (d) In all cases in which documents are inspected or copies of
11 those documents are received, their acquisition or review shall be
12 arranged so as not to unnecessarily disrupt the medical and business
13 operations of the licensee or of the facility where the records are
14 kept or used.

15 (e) If documents are lawfully requested from licensees in
16 accordance with this section by the Attorney General or his or her
17 agents or deputies, or investigators of the board or the California
18 Board of Podiatric Medicine, the documents shall be provided
19 within 15 business days of receipt of the request, unless the licensee
20 is unable to provide the documents within this time period for good
21 cause, including, but not limited to, physical inability to access
22 the records in the time allowed due to illness or travel. Failure to
23 produce requested documents or copies thereof, after being
24 informed of the required deadline, shall constitute unprofessional
25 conduct. The board may use its authority to cite and fine a
26 physician and surgeon for any violation of this section. This remedy
27 is in addition to any other authority of the board to sanction a
28 licensee for a delay in producing requested records.

29 (f) Searches conducted of the office or medical facility of any
30 licensee shall not interfere with the recordkeeping format or
31 preservation needs of any licensee necessary for the lawful care
32 of patients.

33 SEC. 3. Section 2234 of the Business and Professions Code is
34 amended to read:

35 2234. The board shall take action against any licensee who is
36 charged with unprofessional conduct. In addition to other
37 provisions of this article, unprofessional conduct includes, but is
38 not limited to, the following:

1 (a) Violating or attempting to violate, directly or indirectly,
2 assisting in or abetting the violation of, or conspiring to violate
3 any provision of this chapter.

4 (b) Gross negligence.

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

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

12 (2) When the standard of care requires a change in the diagnosis,
13 act, or omission that constitutes the negligent act described in
14 paragraph (1), including, but not limited to, a reevaluation of the
15 diagnosis or a change in treatment, and the licensee's conduct
16 departs from the applicable standard of care, each departure
17 constitutes a separate and distinct breach of the standard of care.

18 (d) Incompetence.

19 (e) The commission of any act involving dishonesty or
20 corruption that is substantially related to the qualifications,
21 functions, or duties of a physician and surgeon.

22 (f) Any action or conduct that would have warranted the denial
23 of a certificate.

24 (g) The practice of medicine from this state into another state
25 or country without meeting the legal requirements of that state or
26 country for the practice of medicine. Section 2314 shall not apply
27 to this subdivision. This subdivision shall become operative upon
28 the implementation of the proposed registration program described
29 in Section 2052.5.

30 (h) The *repeated* failure by a certificate holder, in the absence
31 of good cause, to attend and participate in an interview ~~scheduled~~
32 ~~within 30 days of notification from~~ *by* the board. This subdivision
33 shall only apply to a certificate holder who is the subject of an
34 investigation by the board.

35 SEC. 4. Section 11529 of the Government Code is amended
36 to read:

37 11529. (a) The administrative law judge of the Medical Quality
38 Hearing Panel established pursuant to Section 11371 may issue
39 an interim order suspending a license, imposing drug testing,
40 continuing education, supervision of procedures, limitations on

1 the authority to prescribe, furnish, administer, or dispense
2 controlled substances, or other license restrictions. Interim orders
3 may be issued only if the affidavits in support of the petition show
4 that the licensee has engaged in, or is about to engage in, acts or
5 omissions constituting a violation of the Medical Practice Act or
6 the appropriate practice act governing each allied health profession,
7 or is unable to practice safely due to a mental or physical condition,
8 and that permitting the licensee to continue to engage in the
9 profession for which the license was issued will endanger the
10 public health, safety, or welfare.

11 (b) All orders authorized by this section shall be issued only
12 after a hearing conducted pursuant to subdivision (d), unless it
13 appears from the facts shown by affidavit that serious injury would
14 result to the public before the matter can be heard on notice. Except
15 as provided in subdivision (c), the licensee shall receive at least
16 15 days' prior notice of the hearing, which notice shall include
17 affidavits and all other information in support of the order.

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

27 (d) For the purposes of the hearing conducted pursuant to this
28 section, the licentiate shall, at a minimum, have the following
29 rights:

- 30 (1) To be represented by counsel.
- 31 (2) To have a record made of the proceedings, copies of which
32 may be obtained by the licentiate upon payment of any reasonable
33 charges associated with the record.
- 34 (3) To present written evidence in the form of relevant
35 declarations, affidavits, and documents.

36 The discretion of the administrative law judge to permit
37 testimony at the hearing conducted pursuant to this section shall
38 be identical to the discretion of a superior court judge to permit
39 testimony at a hearing conducted pursuant to Section 527 of the
40 Code of Civil Procedure.

1 (4) To present oral argument.

2 (e) Consistent with the burden and standards of proof applicable
3 to a preliminary injunction entered under Section 527 of the Code
4 of Civil Procedure, the administrative law judge shall grant the
5 interim order if, in the exercise of discretion, the administrative
6 law judge concludes that:

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

9 (2) The likelihood of injury to the public in not issuing the order
10 outweighs the likelihood of injury to the licensee in issuing the
11 order.

12 (f) In all cases in which an interim order is issued, and an
13 accusation is not filed and served pursuant to Sections 11503 and
14 11505 within 15 days of the date on which the parties to the hearing
15 on the interim order have submitted the matter, the order shall be
16 dissolved.

17 Upon service of the accusation the licensee shall have, in addition
18 to the rights granted by this section, all of the rights and privileges
19 available as specified in this chapter. If the licensee requests a
20 hearing on the accusation, the board shall provide the licensee with
21 a hearing within 30 days of the request, unless the licensee
22 stipulates to a later hearing, and a decision within 15 days of the
23 date the decision is received from the administrative law judge, or
24 the board shall nullify the interim order previously issued, unless
25 good cause can be shown by the Division of Medical Quality for
26 a delay.

27 (g) If an interim order is issued, a written decision shall be
28 prepared within 15 days of the hearing, by the administrative law
29 judge, including findings of fact and a conclusion articulating the
30 connection between the evidence produced at the hearing and the
31 decision reached.

32 (h) Notwithstanding the fact that interim orders issued pursuant
33 to this section are not issued after a hearing as otherwise required
34 by this chapter, interim orders so issued shall be subject to judicial
35 review pursuant to Section 1094.5 of the Code of Civil Procedure.
36 The relief that may be ordered shall be limited to a stay of the
37 interim order. Interim orders issued pursuant to this section are
38 final interim orders and, if not dissolved pursuant to subdivision
39 (c) or (f), may only be challenged administratively at the hearing
40 on the accusation.

- 1 (i) The interim order provided for by this section shall be:
- 2 (1) In addition to, and not a limitation on, the authority to seek
- 3 injunctive relief provided for in the Business and Professions Code.
- 4 (2) A limitation on the emergency decision procedure provided
- 5 in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

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