

AMENDED IN SENATE APRIL 20, 2016

AMENDED IN SENATE APRIL 4, 2016

**SENATE BILL**

**No. 1177**

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**Introduced by Senator Galgiani**

February 18, 2016

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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 1177, as amended, Galgiani. Physician and Surgeon Health and Wellness Program.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards and a designee of the State Department of Health Care Services. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board is required to use in dealing with substance-abusing licensees, whether or not a healing arts board has a formal diversion program. ~~Existing~~

*Existing* law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California within the department. *Existing law requires all moneys paid to and received by the Medical Board of California to be paid into the state treasury and credited to the Contingent Fund of the Medical Board of California, which, except for fine and penalty money, is a continuously appropriated fund.*

This bill would authorize the board to establish a Physician and Surgeon Health and Wellness Program for the early identification of,

and appropriate interventions to support a physician and surgeon in his or her rehabilitation ~~from~~ *from*, substance abuse, ~~physical or mental health, burnout, or other similar conditions~~, as specified. If the board establishes a program, the bill would require the board to contract for the program's administration with ~~an~~ *a private third-party* independent administering entity meeting certain requirements. The bill would require program participants to enter into ~~a contractual~~ *an individual* agreement ~~agreeing to cooperate with all elements of the program designed for the individual participant for successful completion of any treatment or monitoring recommendations~~; *with the program that includes, among other things, a requirement to pay expenses related to treatment, monitoring, and laboratory tests, as provided.*

~~This bill would declare the intent of the Legislature to enact legislation that would authorize an administrative fee to be established by the board to be charged to the individual licensee for participation in the program and require all costs of treatment to be paid by the participant.~~

*This bill would create the Physician and Surgeon Health and Wellness Program Account within the Contingent Fund of the Medical Board of California. The bill would require the board to adopt regulations to determine the appropriate fee for a physician and surgeon to participate in the program, as specified. The bill would require these fees to be deposited in the Physician and Surgeon Health and Wellness Program Account and to be available, upon appropriation by the Legislature, for the support of the program. Subject to appropriation by the Legislature, the bill would authorize the board to use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program, except the bill would prohibit these moneys from being used to cover any costs for individual physician and surgeon participation in the program.*

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

1 Article 14. Physician and Surgeon Health and Wellness Program

2  
3 ~~2340. (a) The board may establish a Physician and Surgeon~~  
4 ~~Health and Wellness Program for the early identification and~~  
5 ~~appropriate interventions to support a physician and surgeon in~~  
6 ~~his or her rehabilitation from substance abuse, physical or mental~~  
7 ~~health, burnout, or other similar conditions to ensure that the~~  
8 ~~physician and surgeon remains able to practice medicine in a~~  
9 ~~manner that will not endanger the public health and safety and will~~  
10 ~~maintain the integrity of the medical profession. The program, if~~  
11 ~~established, shall aid a physician and surgeon with those health~~  
12 ~~issues impacting his or her ability to practice medicine.~~

13 ~~(b) For the purposes of this article, “program” shall mean the~~  
14 ~~Physician and Surgeon Health and Wellness Program.~~

15 ~~(c) If the board establishes a program, the program shall meet~~  
16 ~~the requirements of this article.~~

17 ~~2340.2. (a) If the board establishes a program, the board shall~~  
18 ~~contract for the program’s administration with an independent~~  
19 ~~administering entity that shall do all of the following:~~

20 ~~(1) Provide for the education of physicians and surgeons with~~  
21 ~~respect to the recognition and prevention of physical, emotional,~~  
22 ~~and psychological problems and provide for intervention when~~  
23 ~~necessary or under circumstances that may be established through~~  
24 ~~regulations adopted by the board.~~

25 ~~(2) Offer assistance to a physician and surgeon in identifying~~  
26 ~~physical, emotional, or psychological problems.~~

27 ~~(3) Evaluate the extent of physical, emotional, or psychological~~  
28 ~~problems and refer the physician and surgeon to the appropriate~~  
29 ~~treatment.~~

30 ~~(4) Pursuant to regulations adopted by the board addressing~~  
31 ~~protocols to report compliance back to the referring entity described~~  
32 ~~in paragraph (6), monitor the compliance of a physician and~~  
33 ~~surgeon who has been referred for treatment.~~

34 ~~(5) Provide counseling and support for the physician and surgeon~~  
35 ~~and for the family of any physician and surgeon referred for~~  
36 ~~treatment.~~

37 ~~(6) Agree to receive referrals from the board and other health~~  
38 ~~care entities, including, but not limited to, hospital medical staffs,~~  
39 ~~well-being committees, and medical corporations.~~

1 ~~(7) Agree to make their services available to all licensed~~  
2 ~~California physicians and surgeons.~~

3 ~~(b) For the purposes of the program, an administering entity~~  
4 ~~shall mean a private entity contracted to perform the duties~~  
5 ~~described in, and meet the requirements of, this article. A request~~  
6 ~~for proposals shall be solicited by the board in the selection of the~~  
7 ~~administering entity.~~

8 ~~2340.4. The administering entity of the program shall:~~

9 ~~(a) Have expertise and experience in the areas of substance or~~  
10 ~~alcohol abuse, and mental disorders in healing arts professionals.~~

11 ~~(b) Evaluate the program's progress, prepare reports and provide~~  
12 ~~an annual accounting to the board on noneconfidential, statistical~~  
13 ~~information as determined by the board.~~

14 ~~(c) Identify and use a statewide treatment resource network,~~  
15 ~~which includes treatment and screening programs and support~~  
16 ~~groups.~~

17 ~~(d) Demonstrate a process for evaluating the effectiveness of~~  
18 ~~such programs.~~

19 ~~(e) Be subject to an independent audit.~~

20 ~~2340.6. (a) All participants of the program shall enter into a~~  
21 ~~contractual agreement agreeing to cooperate with all elements of~~  
22 ~~the program designed for the individual participant for successful~~  
23 ~~completion of any treatment or monitoring recommendations as~~  
24 ~~determined by the administering entity.~~

25 ~~(b) If a participant referred to the program is terminated from~~  
26 ~~the program for any reason other than the successful completion~~  
27 ~~of the program, the administering entity shall inform the referring~~  
28 ~~entity of the participant's termination. If the program determines~~  
29 ~~that the continued practice of medicine by that individual creates~~  
30 ~~too great a risk to public health, safety, and welfare, that fact shall~~  
31 ~~be reported to the referring entity and all documents and~~  
32 ~~information pertaining to and supporting that conclusion shall be~~  
33 ~~provided to the referring entity.~~

34 ~~(c) Unless required under subdivision (b), all program records~~  
35 ~~and documents and records and documents of participation of a~~  
36 ~~physician and surgeon in the program shall be confidential and are~~  
37 ~~not subject to discovery or subpoena.~~

38 ~~(d) Participation in the program shall not be a defense to any~~  
39 ~~disciplinary action that may be taken by the board. This section~~  
40 ~~does not preclude the board from commencing disciplinary action~~

1 against a physician and surgeon who is terminated unsuccessfully  
2 from the program. However, that disciplinary action may not  
3 include as evidence any confidential information, including  
4 documents and records described in subdivision (c).

5 2340.8. No program employee, contractor, or agent thereof,  
6 shall be liable for any civil or criminal damages because of acts  
7 or omissions that may occur while acting in good faith in a program  
8 established pursuant to this article.

9 2340.10. (a) It is the intent of the Legislature to enact  
10 legislation that would authorize an administrative fee to be  
11 established by the board to be charged to the individual licensee  
12 for participation in the program and to require all costs of treatment  
13 to be paid by the participant.

14 (b) It is the intent of the Legislature to enact legislation that  
15 would provide that nothing in this section shall be construed to  
16 prohibit additional funding from private contributions from being  
17 used to support the operations of the program.

18 2340.12. The Administrative Procedure Act (Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code) shall apply to regulations adopted  
21 pursuant to this article.

22 2340. (a) *The board may establish a Physician and Surgeon*  
23 *Health and Wellness Program for the early identification of, and*  
24 *appropriate interventions to support a physician and surgeon in*  
25 *his or her rehabilitation from, substance abuse to ensure that the*  
26 *physician and surgeon remains able to practice medicine in a*  
27 *manner that will not endanger the public health and safety and*  
28 *that will maintain the integrity of the medical profession. The*  
29 *program, if established, shall aid a physician and surgeon with*  
30 *substance abuse issues impacting his or her ability to practice*  
31 *medicine.*

32 (b) *For the purposes of this article, “program” shall mean the*  
33 *Physician and Surgeon Health and Wellness Program.*

34 (c) *If the board establishes a program, the program shall meet*  
35 *the requirements of this article.*

36 2340.2. (a) *If the board establishes a program, the program*  
37 *shall do all of the following:*

38 (1) *Provide for the education of all licensed physicians and*  
39 *surgeons with respect to the recognition and prevention of physical,*  
40 *emotional, and psychological problems.*

1 (2) Offer assistance to a physician and surgeon in identifying  
2 substance abuse problems.

3 (3) Evaluate the extent of substance abuse problems and refer  
4 the physician and surgeon to the appropriate treatment by  
5 executing a written agreement with a physician and surgeon  
6 participant.

7 (4) Provide for the confidential participation by a physician  
8 and surgeon with substance abuse issues who is not the subject of  
9 a current investigation.

10 (5) Comply with the Uniform Standards Regarding  
11 Substance-Abusing Healing Arts Licensees as adopted by the  
12 Substance Abuse Coordination Committee of the Department of  
13 Consumer Affairs pursuant to Section 315.

14 2340.4. (a) If the board establishes a program, the board shall  
15 contract for the program's administration with a private third-party  
16 independent administering entity pursuant to a request for  
17 proposals. The process for procuring the services for the program  
18 shall be administered by the board pursuant to Article 4  
19 (commencing with Section 10335) of Chapter 2 of Part 2 of  
20 Division 2 of the Public Contract Code. However, Section 10425  
21 of the Public Contract Code shall not apply to this subdivision.

22 (b) The administering entity shall have expertise and experience  
23 in the areas of substance or alcohol abuse in healing arts  
24 professionals.

25 (c) The administering entity shall identify and use a statewide  
26 treatment resource network that includes treatment and screening  
27 programs and support groups and shall establish a process for  
28 evaluating the effectiveness of such programs.

29 (d) The administering entity shall provide counseling and  
30 support for the physician and surgeon and for the family of any  
31 physician and surgeon referred for treatment.

32 (e) The administering entity shall make their services available  
33 to all licensed California physicians and surgeons, including those  
34 who self-refer to the program.

35 (f) The administering entity shall have a system for immediately  
36 reporting a physician and surgeon who is terminated from the  
37 program to the board. This system shall ensure absolute  
38 confidentiality in the communication to the board. The  
39 administering entity shall not provide this information to any other

1 individual or entity unless authorized by the participating physician  
2 and surgeon.

3 (g) The contract entered into pursuant to this section shall also  
4 require the administering entity to do the following:

5 (1) Provide regular communication to the board, including  
6 annual reports to the board with program statistics, including, but  
7 not limited to, the number of participants currently in the program,  
8 the number of participants referred by the board as a condition  
9 of probation, the number of participants who have successfully  
10 completed their agreement period, and the number of participants  
11 terminated from the program. In making reports, the administering  
12 entity shall not disclose any personally identifiable information  
13 relating to any participant.

14 (2) Submit to periodic audits and inspections of all operations,  
15 records, and management related to the program to ensure  
16 compliance with the requirements of this article and its  
17 implementing rules and regulations. Any audit conducted pursuant  
18 to this section shall maintain the confidentiality of all records  
19 reviewed and information obtained in the course of conducting  
20 the audit and shall not disclose any information identifying a  
21 program participant.

22 (h) In the event that the board determines the administering  
23 entity is not in compliance with the requirements of the program  
24 or contract entered into with the board, the board may terminate  
25 the contract.

26 2340.6. (a) A physician and surgeon shall, as a condition of  
27 participation in the program, enter into an individual agreement  
28 with the program and agree to pay expenses related to treatment,  
29 monitoring, laboratory tests, and other activities specified in the  
30 participant's written agreement. The agreement shall include all  
31 of the following:

32 (1) A jointly agreed upon plan and mandatory conditions and  
33 procedures to monitor compliance with the program.

34 (2) Compliance with terms and conditions of treatment and  
35 monitoring.

36 (3) Criteria for program completion.

37 (4) Criteria for termination of a physician and surgeon  
38 participant from the program.

1 (5) Acknowledgment that withdrawal or termination of a  
2 physician and surgeon participant from the program shall be  
3 reported to the board.

4 (6) Acknowledgment that expenses related to treatment,  
5 monitoring, laboratory tests, and other activities specified by the  
6 program shall be paid by the physician and surgeon participant.

7 (b) Any agreement entered into pursuant to this section shall  
8 not be considered a disciplinary action or order by the board and  
9 shall not be disclosed if both of the following apply:

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

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

14 (c) Any oral or written information reported to the board shall  
15 remain confidential and shall not constitute a waiver of any existing  
16 evidentiary privileges under any other provision or rule of law.  
17 However, confidentiality regarding the physician and surgeon's  
18 participation in the program and related records shall not apply  
19 if the board has referred a participant as a condition of probation.

20 (d) Nothing in this section prohibits, requires, or otherwise  
21 affects the discovery or admissibility of evidence in an action by  
22 the board against a physician and surgeon based on acts or  
23 omissions within the course and scope of his or her practice.

24 (e) Any information received, developed, or maintained  
25 regarding a physician and surgeon in the program shall not be  
26 used for any other purposes.

27 (f) Participation in the program shall not be a defense to any  
28 disciplinary action that may be taken by the board. This section  
29 does not preclude the board from commencing disciplinary action  
30 against a physician and surgeon who is terminated unsuccessfully  
31 from the program. However, that disciplinary action may not  
32 include as evidence any confidential information unless authorized  
33 by this section.

34 2340.8. (a) The Physician and Surgeon Health and Wellness  
35 Program Account is hereby established within the Contingent Fund  
36 of the Medical Board of California. Any fees collected by the board  
37 pursuant to subdivision (b) shall be deposited in the Physician and  
38 Surgeon Health and Wellness Program Account and shall be  
39 available, upon appropriation by the Legislature, for the support  
40 of the program.

1     ***(b) The board shall adopt regulations to determine the***  
2     ***appropriate fee that a physician and surgeon participating in the***  
3     ***program shall provide to the board. The fee amount adopted by***  
4     ***the board shall be set at a level sufficient to cover all costs for***  
5     ***participating in the program.***

6     ***(c) Subject to appropriation by the Legislature, the board may***  
7     ***use moneys from the Contingent Fund of the Medical Board of***  
8     ***California to support the initial costs for the board to establish***  
9     ***the program under this article, except these moneys shall not be***  
10    ***used to cover any costs for individual physician and surgeon***  
11    ***participation in the program.***

12    ***2340.10. The Administrative Procedure Act (Chapter 3.5***  
13    ***(commencing with Section 11340) of Part 1 of Division 3 of Title***  
14    ***2 of the Government Code) shall apply to regulations adopted***  
15    ***pursuant to this article.***