

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE MAY 4, 2016

AMENDED IN SENATE APRIL 20, 2016

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1177

Introduced by Senator Galgiani

February 18, 2016

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 law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California within the ~~department~~. *Department of Consumer Affairs*. 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, substance abuse, as specified. If the board establishes a program, the bill would require the board to contract for the program's administration with a private 3rd-party independent administering entity meeting certain requirements. The bill would require program participants to enter into an individual agreement 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 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 of, and
5 appropriate interventions to support a physician and surgeon in
6 his or her rehabilitation from, substance abuse to ensure that the
7 physician and surgeon remains able to practice medicine in a
8 manner that will not endanger the public health and safety and that
9 will maintain the integrity of the medical profession. The program,
10 if established, shall aid a physician and surgeon with substance
11 abuse issues impacting his or her ability to practice medicine.

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

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

16 2340.2. If the board establishes a program, the program shall
17 do all of the following:

18 (a) Provide for the education of all licensed physicians and
19 surgeons with respect to the recognition and prevention of physical,
20 emotional, and psychological problems.

21 (b) Offer assistance to a physician and surgeon in identifying
22 substance abuse problems.

23 (c) Evaluate the extent of substance abuse problems and refer
24 the physician and surgeon to the appropriate treatment by executing
25 a written agreement with a physician and surgeon participant.

26 (d) Provide for the confidential participation by a physician and
27 surgeon with substance abuse issues who does not have a restriction
28 on his or her practice related to those substance abuse issues. If an
29 investigation of a physician and surgeon occurs after the physician
30 and surgeon has enrolled in the program, the board may inquire
31 of the program whether the physician and surgeon is enrolled in
32 the program and the program shall respond accordingly.

33 (e) Comply with the Uniform Standards Regarding
34 Substance-Abusing Healing Arts Licensees as adopted by the
35 Substance Abuse Coordination Committee of the ~~Department of~~
36 ~~Consumer Affairs~~ *department* pursuant to Section 315.

37 2340.4. (a) If the board establishes a program, the board shall
38 contract for the program’s administration with a private third-party
39 independent administering entity pursuant to a request for
40 proposals. The process for procuring the services for the program

1 shall be administered by the board pursuant to Article 4
2 (commencing with Section 10335) of Chapter 2 of Part 2 of
3 Division 2 of the Public Contract Code. However, Section 10425
4 of the Public Contract Code shall not apply to this subdivision.

5 (b) The administering entity shall have expertise and experience
6 in the areas of substance or alcohol abuse in healing arts
7 professionals.

8 (c) The administering entity shall identify and use a statewide
9 treatment resource network that includes treatment and screening
10 programs and support groups and shall establish a process for
11 evaluating the effectiveness of those programs.

12 (d) The administering entity shall provide counseling and
13 support for the physician and surgeon and for the family of any
14 physician and surgeon referred for treatment.

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

18 (f) The administering entity shall have a system for immediately
19 reporting a physician and surgeon, including, but not limited to, a
20 physician and surgeon who withdraws or is terminated from the
21 program, to the board. This system shall ensure absolute
22 confidentiality in the communication to the board. The
23 administering entity shall not provide this information to any other
24 individual or entity unless authorized by the participating physician
25 and surgeon or this article.

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

28 (1) Provide regular communication to the board, including
29 annual reports to the board with program statistics, including, but
30 not limited to, the number of participants currently in the program,
31 the number of participants referred by the board as a condition of
32 probation, the number of participants who have successfully
33 completed their agreement period, and the number of participants
34 terminated from the program. In making reports, the administering
35 entity shall not disclose any personally identifiable information
36 relating to any participant.

37 (2) Submit to periodic audits and inspections of all operations,
38 records, and management related to the program to ensure
39 compliance with the requirements of this article and its
40 implementing rules and regulations. Any audit conducted pursuant

1 to this section shall maintain the confidentiality of all records
2 reviewed and information obtained in the course of conducting
3 the audit and shall not disclose any information identifying a
4 program participant.

5 (h) ~~In the event that~~ If the board determines the administering
6 entity is not in compliance with the requirements of the program
7 or contract entered into with the board, the board may terminate
8 the contract.

9 2340.6. (a) A physician and surgeon shall, as a condition of
10 participation in the program, enter into an individual agreement
11 with the program and agree to pay expenses related to treatment,
12 monitoring, laboratory tests, and other activities specified in the
13 participant's written agreement. The agreement shall include all
14 of the following:

15 (1) A jointly agreed-upon plan and mandatory conditions and
16 procedures to monitor compliance with the program.

17 (2) Compliance with terms and conditions of treatment and
18 monitoring.

19 (3) Criteria for program completion.

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

22 (5) Acknowledgment that withdrawal or termination of a
23 physician and surgeon participant from the program shall be
24 reported to the board.

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

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

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

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

35 (c) Any oral or written information reported to the board shall
36 remain confidential and shall not constitute a waiver of any existing
37 evidentiary ~~privileges under any other provision or rule of law.~~
38 *privileges*. However, confidentiality regarding the physician and
39 surgeon's participation in the program and related records shall

1 not apply if the board has referred a participant as a condition of
2 ~~probation~~. *probation or as otherwise authorized by this article.*

3 (d) Nothing in this section prohibits, requires, or otherwise
4 affects the discovery or admissibility of evidence in an action by
5 the board against a physician and surgeon based on acts or
6 omissions that are *alleged to be* grounds for discipline.

7 (e) Participation in the program shall not be a defense to any
8 disciplinary action that may be taken by the board. This section
9 does not preclude the board from commencing disciplinary action
10 against a physician and surgeon who is terminated unsuccessfully
11 from the program. However, that disciplinary action ~~may~~ *shall* not
12 include as evidence any confidential information unless authorized
13 by this article.

14 2340.8. (a) The Physician and Surgeon Health and Wellness
15 Program Account is hereby established within the Contingent Fund
16 of the Medical Board of California. Any fees collected by the board
17 pursuant to subdivision (b) shall be deposited in the Physician and
18 Surgeon Health and Wellness Program Account and shall be
19 available, upon appropriation by the Legislature, for the support
20 of the program.

21 (b) The board shall adopt regulations to determine the
22 appropriate fee that a physician and surgeon participating in the
23 program shall provide to the board. The fee amount adopted by
24 the board shall be set at a level sufficient to cover all costs for
25 participating in the program, including any administrative costs
26 incurred by the board to administer the program.

27 (c) Subject to appropriation by the Legislature, the board may
28 use moneys from the Contingent Fund of the Medical Board of
29 California to support the initial costs for the board to establish the
30 program under this article, except these moneys shall not be used
31 to cover any costs for individual physician and surgeon
32 participation in the program.