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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2305

Introduced by Assembly Member Runner
(~~Coauthor: Assembly Member Migden~~)
(Coauthors: Assembly Members Alquist, Bordonaro, Kuehl,
and Migden)

February 19, 1998

An act to amend Sections 725, 1680, and 2024 of the Business and Professions Code, to add Section 1367.22 to, and to add and repeal Chapter 6 (commencing with Section 11759.20) ~~to~~ of Part 1 of Division 10.5 of, the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2305, as amended, Runner. Health care.

(1) Existing law provides that repeated acts of clearly excessive prescribing or administering of drugs or treatment is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist. Existing law prescribes certain criminal sanctions for any person who engages in repeated acts of clearly excessive prescribing of drugs or treatment. Existing

law provides that it is inappropriate conduct and a crime for a dentist to engage in clearly excessive prescribing or administering of drugs or treatment.

This bill would revise these provisions to make them applicable to repeated acts of inappropriate prescribing or administering of drugs or treatment. By changing the definition of existing crimes, this bill would impose a state-mandated local program.

(2) The Medical Practice Act establishes the Medical Board of California to, among other things, review, through its Division of Medical Quality, the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board. It also authorizes the board to select and contract with necessary medical consultants who are licensed physicians and surgeons to assist the board in its programs.

This bill would, in addition, require that every consultant retained by the board under that provision for a given investigation of a licensee be a specialist, ~~and be actively engaged in treating patients in the same area of medicine as that of the licensee under investigation as defined.~~

(3) Existing law prohibits a health care service plan contract that covers prescription drug benefits from being issued, amended, delivered, or renewed if the plan limits or excludes coverage for a drug on the basis that the drug is prescribed for a use that is different from the use for which the drug has been approved for marketing by the federal Food and Drug Administration if the drug meets certain conditions. Willful violation of the law regulating health care service plans is a crime.

This bill would require an enrollee of a health care service plan who has been determined to be terminally ill to have access to pain management medications deemed appropriate and lawfully prescribed without prior authorization or retrospective denial of coverage. By changing the definition of a crime, the bill would impose a state-mandated local program.

(4) ~~Under existing law, the State Department of Alcohol and Drug Programs is responsible for directing and coordinating the state's efforts to prevent or minimize the~~



~~effect of alcohol misuse, narcotic addiction, and drug abuse~~
Existing law requires the Office of Statewide Health Planning and Development to provide for the planning, development, and financing of health facilities and to ascertain the health care provider availability in the state.

This bill would establish in the ~~department—office~~, until January 1, 2002, a fellowship program to provide fellowships to practicing physicians to study the treatment of severe, chronic, or intractable pain, contingent on funding being made available by the Budget Act of 1998.

(5) 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: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 725 of the Business and
2 Professions Code is amended to read:
3 725. Repeated acts of clearly inappropriate
4 prescribing or administering of drugs or treatment,
5 repeated acts of clearly excessive use of diagnostic
6 procedures, or repeated acts of clearly excessive use of
7 diagnostic or treatment facilities as determined by the
8 standard of the community of licensees is unprofessional
9 conduct for a physician and surgeon, dentist, podiatrist,
10 psychologist, physical therapist, chiropractor, or
11 optometrist.
12 Any person who engages in repeated acts of clearly
13 inappropriate prescribing or administering of drugs or
14 treatment is guilty of a misdemeanor and shall be
15 punished by a fine of not less than one hundred dollars
16 (\$100) nor more than six hundred dollars (\$600), or by
17 imprisonment for a term of not less than 60 days nor more
18 than 180 days, or by both the fine and imprisonment.



1 SEC. 2. Section 1680 of the Business and Professions
2 Code is amended to read:

3 1680. Unprofessional conduct by a person licensed
4 under this chapter is defined as, but is not limited to, the
5 violation of any one of the following:

6 (a) The obtaining of any fee by fraud or
7 misrepresentation.

8 (b) The employment directly or indirectly of any
9 student or suspended or unlicensed dentist to practice
10 dentistry as defined in this chapter.

11 (c) The aiding or abetting of any unlicensed person to
12 practice dentistry.

13 (d) The aiding or abetting of a licensed person to
14 practice dentistry unlawfully.

15 (e) The committing of any act or acts of gross
16 immorality substantially related to the practice of
17 dentistry.

18 (f) The use of any false, assumed, or fictitious name,
19 either as an individual, firm, corporation, or otherwise, or
20 any name other than the name under which he or she is
21 licensed to practice, in advertising or in any other manner
22 indicating that he or she is practicing or will practice
23 dentistry, except that name as is specified in a valid
24 permit issued pursuant to Section 1701.5.

25 (g) The practice of accepting or receiving any
26 commission or the rebating in any form or manner of fees
27 for professional services, radiograms, prescriptions, or
28 other services or articles supplied to patients.

29 (h) The making use by the licentiate or any agent of
30 the licentiate of any advertising statements of a character
31 tending to deceive or mislead the public.

32 (i) The advertising of either professional superiority or
33 the advertising of performance of professional services in
34 a superior manner. This subdivision shall not prohibit
35 advertising permitted by subdivision (h) of Section 651.

36 (j) The employing or the making use of solicitors.

37 (k) The advertising in violation of Section 651.

38 (l) The advertising to guarantee any dental service, or
39 to perform any dental operation painlessly. This



1 subdivision shall not prohibit advertising permitted by
2 Section 651.

3 (m) The violation of any of the provisions of law
4 regulating the procurement, dispensing, or
5 administration of dangerous drugs, as defined in Article
6 7 (commencing with Section 4211) of Chapter 9, or
7 controlled substances, as defined in Division 10
8 (commencing with Section 11000) of the Health and
9 Safety Code.

10 (n) The violation of any of the provisions of this
11 division.

12 (o) The permitting of any person to operate dental
13 radiographic equipment who has not met the
14 requirements of Section 1656.

15 (p) The clearly inappropriate prescribing or
16 administering of drugs or treatment, or the clearly
17 excessive use of diagnostic procedures, or the clearly
18 excessive use of diagnostic or treatment facilities, as
19 determined by the customary practice and standards of
20 the dental profession.

21 Any person who violates this subdivision is guilty of a
22 misdemeanor and shall be punished by a fine of not less
23 than one hundred dollars (\$100) or more than six
24 hundred dollars (\$600), or by imprisonment for a term of
25 not less than 60 days or more than 180 days, or by both a
26 fine and imprisonment.

27 (q) The use of threats or harassment against any
28 patient or licentiate for providing evidence in any
29 possible or actual disciplinary action, or other legal action;
30 or the discharge of an employee primarily based on the
31 employee's attempt to comply with the provisions of this
32 chapter or to aid in the compliance.

33 (r) Suspension or revocation of a license issued, or
34 discipline imposed, by another state or territory on
35 grounds which would be the basis of discipline in this
36 state.

37 (s) The alteration of a patient's record with intent to
38 deceive.



1 (t) Unsanitary or unsafe office conditions, as
2 determined by the customary practice and standards of
3 the dental profession.

4 (u) The abandonment of the patient by the licentiate,
5 without written notice to the patient that treatment is to
6 be discontinued and before the patient has ample
7 opportunity to secure the services of another dentist and
8 provided the health of the patient is not jeopardized.

9 (v) The willful misrepresentation of facts relating to a
10 disciplinary action to the patients of a disciplined
11 licentiate.

12 (w) Use of fraud in the procurement of any license
13 issued pursuant to this chapter.

14 (x) Any action or conduct that would have warranted
15 the denial of the license.

16 (y) The aiding or abetting of a licensed dentist or
17 dental auxiliary to practice dentistry in a negligent or
18 incompetent manner.

19 (z) The failure to report to the board in writing within
20 seven days either: (1) the death of his or her patient
21 during the performance of any dental procedure; or, (2)
22 the discovery of the death of a patient whose death is
23 causally related to a dental procedure performed by him
24 or her.

25 (aa) Participating in or operating any group
26 advertising and referral services that is in violation of
27 Section 650.2.

28 (bb) The failure to use a fail-safe machine with an
29 appropriate exhaust system in the administration of
30 nitrous oxide. The board shall, by regulation, define what
31 constitutes a fail-safe machine.

32 (cc) Engaging in the practice of dentistry with an
33 expired license.

34 (dd) Except for good cause, the knowing failure to
35 protect patients by failing to follow infection control
36 guidelines of the board, thereby risking transmission of
37 blood-borne infectious diseases from dentist or dental
38 auxiliary to patient, from patient to patient, and from
39 patient to dentist or dental auxiliary. In administering this
40 subdivision, the board shall consider referencing the



1 standards, regulations, and guidelines of the State
2 Department of Health Services developed pursuant to
3 Section 1250.11 of the Health and Safety Code and the
4 standards, guidelines, and regulations pursuant to the
5 California Occupational Safety and Health Act of 1973
6 (Part 1 (commencing with Section 6300), Division 5,
7 Labor Code) for preventing the transmission of HIV,
8 hepatitis B, and other blood-borne pathogens in health
9 care settings. As necessary, the board shall consult with
10 the California Medical Board, the Board of Podiatric
11 Medicine, the Board of Registered Nursing, and the
12 Board of Vocational Nursing and Psychiatric Technicians,
13 to encourage appropriate consistency in the
14 implementation of this subdivision.

15 The board shall seek to ensure that licentiates and
16 others regulated by the board are informed of the
17 responsibility of licentiates and others to follow infection
18 control guidelines, and of the most recent scientifically
19 recognized safeguards for minimizing the risk of
20 transmission of blood-borne infectious diseases.

21 (ee) The utilization by a licensed dentist of any person
22 to perform the functions of a registered dental assistant,
23 registered dental assistant in extended functions,
24 registered dental hygienist, or registered dental hygienist
25 in extended functions who, at the time of initial
26 employment, does not possess a current, valid license to
27 perform those functions.

28 SEC. 3. Section 2024 of the Business and Professions
29 Code is amended to read:

30 2024. (a) The board may select and contract with
31 necessary medical consultants who are licensed
32 physicians and surgeons to assist it in its programs. Subject
33 to Section 19130 of the Government Code, the board may
34 contract with these consultants on a sole source basis.

35 (b) Every consultant retained under this section for a
36 given investigation of a licensee shall be a specialist, ~~and~~
37 ~~shall be actively engaged in the treatment of patients in~~
38 ~~the same area of medicine as that of the licensee under~~
39 ~~investigation.~~ *as defined in subparagraph (B) of*
40 *paragraph (5) of subdivision (h) of Section 651.*

1 SEC. 4. Section 1367.22 is added to the Health and
2 Safety Code, immediately following Section 1367.21, to
3 read:

4 1367.22. Notwithstanding any other provision of law,
5 an enrollee of a health care service plan who has been
6 determined to be terminally ill shall have access to pain
7 management medications deemed appropriate and
8 lawfully prescribed by the treating physician of the
9 enrollee without prior authorization or retrospective
10 denial of coverage.

11 SEC. 5. Chapter 6 (commencing with Section
12 11759.20) is added to Part 1 of Division 10.5 of the Health
13 and Safety Code, to read:

14

15 CHAPTER 6. FELLOWSHIP PROGRAM

16

17 11759.20. A fellowship program is hereby established
18 in the ~~department~~ office to provide fellowships to
19 physicians to study the treatment of severe, chronic, or
20 intractable pain. The program shall be funded from funds
21 made available from the 1998 Budget Act.

22 11759.21. As used in this chapter:

23 (a) "Physician" means a practicing physician and
24 surgeon.

25 ~~(b) "Department" means the State Department of~~
26 ~~Alcohol and Drug Programs.~~

27 (b) "Office" means the Office of Statewide Health
28 Planning and Development.

29 (c) "Program" means the fellowship program
30 established by Section 11759.20.

31 11759.22. Each fellowship shall provide twenty
32 thousand dollars (\$20,000). The fellowship shall be used
33 for a stipend, and living and travel expenses for a period
34 of 60 days.

35 11759.23. The fellowship shall be awarded to a
36 physician for full-time placement with a physician who
37 actively treats patients suffering from severe, chronic, or
38 intractable pain. ~~The Medical Board of California shall~~
39 ~~approve placement sites.~~



1 11759.24. The program shall fund 25 physician
2 fellowships over a three-year period, contingent on
3 funding being made available pursuant to Section
4 11759.20. The ~~department~~ *office* shall award 10 of those
5 fellowships to physicians who practice in counties with
6 populations of less than one million persons.

7 11759.25. This chapter shall remain in effect only until
8 January 1, 2002, and as of that date is repealed, unless a
9 later enacted statute, that is enacted before January 1,
10 2002, deletes or extends that date.

11 SEC. 6. No reimbursement is required by this act
12 pursuant to Section 6 of Article XIII B of the California
13 Constitution because the only costs that may be incurred
14 by a local agency or school district will be incurred
15 because this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition
19 of a crime within the meaning of Section 6 of Article
20 XIII B of the California Constitution.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

