

**Assembly Bill No. 2305**

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Passed the Assembly August 31, 1998

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*Chief Clerk of the Assembly*

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Passed the Senate August 28, 1998

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1998, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Sections 725, 1367.215 and 2024 of the Business and Professions Code, and to add Section 1367.215 to, the Health and Safety Code, relating to health care.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2305, 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.

This bill would revise these provisions to make them applicable to repeated acts of excessive prescribing or administering of drugs or treatment. The bill would provide that no physician and surgeon in compliance with the California Intractable Pain Treatment Act shall be subject to disciplinary action for engaging in specified lawful conduct. 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, which reviews, 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, 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 every health care service plan contract that covers prescription drug benefits to provide coverage for appropriately prescribed pain management medications for terminally ill patients when medically necessary. The bill would also provide that coverage for different-use drugs shall be subject to a specified provision of existing law. By changing the definition of a crime, the bill would impose a state-mandated local program.

(4) 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.

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

SECTION 1. Section 725 of the Business and Professions Code is amended to read:

725. Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist. However, pursuant to Section 2241.5, no physician and surgeon in compliance with the California Intractable Pain Treatment Act shall be subject to disciplinary action



for lawfully prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both the fine and imprisonment.

SEC. 2. Section 2024 of the Business and Professions Code is amended to read:

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

(b) Every consultant retained under this section for a given investigation of a licensee shall be a specialist, as defined in subparagraph (B) of paragraph (5) of subdivision (h) of Section 651.

SEC. 3. Section 1367.215 is added to the Health and Safety Code, immediately following Section 1367.21, to read:

1367.215. (a) Every health care service plan contract that covers prescription drug benefits shall provide coverage for appropriately prescribed pain management medications for terminally ill patients when medically necessary. The plan shall approve or deny the request by the provider for authorization of coverage for an enrollee who has been determined to be terminally ill in a timely fashion, appropriate for the nature of the enrollee's condition, not to exceed 72 hours of the plan's receipt of the information requested by the plan to make the decision. If the request is denied or if additional information is required, the plan shall contact the provider within one working day of the determination, with an explanation of the reason for the denial or the need for additional information. The requested treatment shall be deemed authorized as of the expiration



of the applicable timeframe. The provider shall contact the plan within one business day of proceeding with the deemed authorized treatment, to do all of the following:

- (1) Confirm that the timeframe has expired.
- (2) Provide enrollee identification.
- (3) Notify the plan of the provider or providers performing the treatment.
- (4) Notify the plan of the facility or location where the treatment was rendered.

(b) This section does not apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug Administration. Coverage for different-use drugs is subject to Section 1367.21.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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



Approved \_\_\_\_\_, 1998

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*Governor*

