

AMENDED IN ASSEMBLY APRIL 27, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 791

Introduced by Assembly Members Thomson and Migden

February 24, 1999

An act to amend Section 2089 of the Business and Professions Code, to amend Sections 104145, 104181, and 104510 of, and to add Section 1254.7 to, the Health and Safety Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 791, as amended, Thomson. Healing arts: pain management.

Existing law regulates the practice of medicine, as specified.

~~This bill would declare the intent of the Legislature to provide for the improvement of pain management for terminally ill and dying patients, and sets forth curriculum requirements for all applicants for a physician's and surgeon's license.~~

This bill would add pain management and end-of-life care to the curriculum requirements for physicians and surgeons.

Existing law establishes a breast cancer research program, a cancer research program, and a medical research program regarding the prevention, causes, and treatment of tobacco-related diseases. Existing law defines "breast cancer research," "cancer research," and "tobacco-related disease research" for purposes of these programs.

This bill would include pain management within each of these definitions.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Services. Under existing law, violation of these provisions is a misdemeanor.

This bill would require every health facility licensed pursuant to these provisions, as a condition of licensure, to include pain as an item to be assessed at the same time as vital signs are taken. By changing the definition of a crime, this bill would impose a state-mandated local program.

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: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

~~1 SECTION 1. It is the intent of the Legislature to
2 provide for the improvement of pain management for
3 terminally ill and dying patients.~~

4 SECTION 1. Section 2089 of the Business and
5 Professions Code is amended to read:

6 2089. (a) Each applicant for a physician's and
7 surgeon's certificate shall show by official transcript or
8 other official evidence satisfactory to the Division of
9 Licensing that he or she has successfully completed a
10 medical curriculum extending over a period of at least
11 four academic years, or 32 months of actual instruction,
12 in a medical school or schools located in the United States
13 or Canada approved by the division, or in a medical school
14 or schools located outside the United States or Canada
15 which otherwise meets the requirements of this section.
16 The total number of hours of all courses shall consist of a
17 minimum of 4,000 hours. At least 80 percent of actual
18 attendance shall be required. If an applicant has



1 matriculated in more than one medical school, the
2 applicant must have matriculated in the medical school
3 awarding the degree of doctor of medicine or its
4 equivalent for at least the last full academic year of
5 medical education received prior to the granting of the
6 degree.

7 (b) The curriculum for all applicants shall provide for
8 adequate instruction in the following subjects:

9 Alcoholism and other chemical substance dependency,
10 detection and treatment.

11 Anatomy, including embryology, histology, and
12 neuroanatomy.

13 Anesthesia.

14 Biochemistry.

15 Child abuse detection and treatment.

16 Dermatology.

17 Geriatric medicine.

18 Human sexuality.

19 Medicine, including pediatrics.

20 Neurology.

21 Obstetrics and gynecology.

22 Ophthalmology.

23 Otolaryngology.

24 *Pain management and end-of-life care.*

25 Pathology, bacteriology, and immunology.

26 Pharmacology.

27 Physical medicine.

28 Physiology.

29 Preventive medicine, including nutrition.

30 Psychiatry.

31 Radiology, including radiation safety.

32 Spousal or partner abuse detection and treatment.

33 Surgery, including orthopedic surgery.

34 Therapeutics.

35 Tropical medicine.

36 Urology.

37 *SEC. 2. Section 1254.7 is added to the Health and*
38 *Safety Code, to read:*



1 1254.7. (a) *It is the intent of the Legislature that pain*
2 *be assessed and treated promptly, effectively, and for as*
3 *long as pain persists.*

4 (b) *Every health facility licensed pursuant to this*
5 *chapter shall, as a condition of licensure, include pain as*
6 *an item to be assessed at the same time as vital signs are*
7 *taken.*

8 SEC. 3. *Section 104145 of the Health and Safety Code*
9 *is amended to read:*

10 104145. (a) The Legislature hereby requests the
11 University of California to establish and administer the
12 Breast Cancer Research Program, which is created by this
13 act, as a comprehensive grant and contract program to
14 support research efforts into the cause, cure, treatment,
15 earlier detection, and prevention of breast cancer. It is
16 the intent of the Legislature that this program
17 incorporate the principles and organizational elements
18 specified in this act, including, but not limited to, a
19 research program office with a director and other
20 necessary staff, a Breast Cancer Research Council, and
21 research review panels.

22 (b) For the purposes of this section:

23 (1) “Breast cancer research” includes, but is not
24 limited to, research in the fields of biomedical science and
25 engineering, *pain management for persons suffering*
26 *from breast cancer*, the social, economic and behavioral
27 sciences, epidemiology, technology development and
28 translation, and public health.

29 (2) “Council” means the Breast Cancer Research
30 Council.

31 (3) “Grantee” means any qualifying public, private, or
32 nonprofit agency or individual, including, but not limited
33 to, colleges, universities, hospitals, laboratories, research
34 institutions, local health departments, voluntary health
35 agencies, health maintenance organizations,
36 corporations, students, fellows, entrepreneurs, and
37 individuals conducting research in California.

38 (4) “Program” means the Breast Cancer Research
39 Program.

40 (5) “University” means the University of California.



1 (c) It is the intent of the Legislature that this program
2 be administered pursuant to the following principles:

3 (1) The university shall work in close collaboration
4 with the council and seek the consent of the council
5 before taking an action different from the action
6 recommended by the council.

7 (2) The council shall develop the strategic objectives
8 and priorities of the program, actively participate in the
9 overall management of the program, and make final
10 recommendations on which research grants should be
11 funded based on the research priorities established for
12 the program and the technical merits of the proposals as
13 determined by peer review panels.

14 (3) The program shall fund innovative and creative
15 research, with a special emphasis on research that
16 complements, rather than duplicates, the research
17 funded by the federal government and other entities.

18 (4) The university and the council shall work in close
19 collaboration with the Breast Cancer Early Detection
20 Program.

21 (5) All research funds shall be awarded on the basis of
22 the research priorities established for the program and
23 the scientific merit of the proposed research, as
24 determined by an open, competitive peer review process
25 that ensures objectivity, consistency, and high quality. All
26 investigators, regardless of affiliation, shall have equal
27 access and opportunity to compete for program funds.

28 (6) The peer review process for the selection of
29 research grants awarded under this program shall be
30 generally modeled on that used by the National Institutes
31 of Health in its grantmaking process.

32 (7) An awardee shall be awarded grants for the full
33 cost, both direct and indirect, of conducting the
34 sponsored research consistent with those federal
35 guidelines governing all federal research grants and
36 contracts. All intellectual property assets developed
37 under this program shall be treated in accordance with
38 state and federal law.

39 (8) In establishing its research priorities, the council
40 shall consider a broad range of cross-disciplinary breast



1 cancer research, as defined in paragraph (1) of
2 subdivision (b), including, but not limited to, research
3 into the cause, cure, and prevention of breast cancer;
4 translational and technological research, including
5 research regarding the development and translation of
6 technologies of earlier detection; research regarding the
7 cultural, economic, and legal barriers to accessing the
8 health care system for early detection and treatment of
9 breast cancer; and research examining the link between
10 breast cancer and environmental factors, including both
11 natural and industrial chemicals, estrogen imitators, and
12 electromagnetic fields.

13 (d) It is the intent of the Legislature that the
14 university, as lead agency, do all of the following:

15 (1) Establish the Breast Cancer Research Council in
16 accordance with the following:

17 (A) The council shall consist of at least 13 and no more
18 than 15 members representing a range of expertise and
19 experience, appointed by the President of the University
20 of California. Individuals and organizations may submit
21 nominations to the council, and the University of
22 California shall solicit nominations from relevant
23 organizations and individuals. The council shall be
24 comprised of the following members:

25 (i) Four members from breast cancer survivor and
26 breast cancer-related advocacy groups, including, but not
27 limited to, the California Breast Cancer Organizations
28 (CABCO).

29 (ii) Four members drawn from the ranks of scientists
30 or clinicians, including one from an independent
31 research university in California. The scientists shall have
32 expertise covering the various fields of scientific
33 endeavor, including, but not limited to, the fields of
34 biomedical research and engineering, social, economic,
35 and behavioral research, epidemiology, and public
36 health.

37 (iii) Two members from nonprofit health
38 organizations with a commitment to breast cancer
39 research and control.



1 (iv) One member who is a practicing breast cancer
2 medical specialist.

3 (v) Two members from private industry with a
4 commitment to breast cancer research and control,
5 including, but not limited to, entrepreneurs, or persons
6 from the science or high technology industry or persons
7 from the health care sector.

8 (vi) One ex officio, nonvoting member from the
9 Breast Cancer Early Detection Program.

10 (B) If the president appoints more than 13 members,
11 it is the intent of the Legislature that the proportional
12 representation remain substantially the same as set forth
13 in subparagraph (A).

14 (C) Members shall serve without compensation, but
15 may receive reimbursement for travel and other
16 necessary expenses actually incurred in the performance
17 of their official duties. Any member of the Breast Cancer
18 Research Council shall be ineligible to apply for or
19 receive funding for breast cancer research from the
20 Breast Cancer Research Program during his or her term
21 of service on the council, and for one cycle immediately
22 following his or her term of service on the council, if the
23 council member helped plan that subsequent cycle.

24 (D) Membership shall be staggered in such a way as to
25 maintain a full council while ensuring a reasonable
26 degree of continuity of expertise and consistency of
27 direction.

28 (2) Provide overall coordination of the program.

29 (3) Provide staff assistance to the program and
30 council.

31 (4) Develop administrative procedures relative to the
32 solicitation, review, and awarding of grants to ensure an
33 impartial, high quality peer review system.

34 (5) Recruit and supervise research review panels. The
35 membership of these panels shall vary depending on the
36 subject matter of the proposals and the review
37 requirements, and shall draw on the most qualified
38 individuals. The work of the review panels shall be
39 administered pursuant to policies and procedures
40 established for the implementation of the program. In



1 order to avoid conflicts of interest and to ensure access to
2 qualified reviewers, the university may utilize reviewers
3 not only from California but also from outside the state.
4 When serving on review panels, institutions,
5 corporations, or individuals who have submitted grant
6 applications for funding by this program shall be
7 governed by conflict-of-interest provisions consistent
8 with the National Institutes of Health Manual (Chapter
9 4510 (item h)), and any applicable conflict-of-interest
10 provisions in state law.

11 (6) Provide for periodic program evaluation to ensure
12 that research funded is consistent with program goals.

13 (7) Maintain a system of financial reporting and
14 accountability.

15 (8) Provide for the systematic dissemination of
16 research results to the public and the health care
17 community, and provide for a mechanism to disseminate
18 the most current research findings in the areas of cause,
19 treatment, cure, earlier detection, and prevention of
20 breast cancer, in order that these findings may be applied
21 to the planning, implementation, and evaluation of the
22 breast cancer-related programs of the State Department
23 of Health Services, including the Breast Cancer Early
24 Detection Program authorized by this act.

25 (9) Develop policies and procedures to facilitate the
26 translation of research results into commercial, alternate
27 technological, and other applications wherever
28 appropriate and consistent with state and federal law.

29 (10) Transmit annually on or before each December
30 31, a report to the Legislature on grants made, grants in
31 progress, program accomplishments, and future program
32 directions. Each report shall include, but not be limited
33 to, the following information:

34 (A) The number and dollar amounts of research
35 grants, including the amount allocated to indirect costs.

36 (B) The subject of research grants.

37 (C) The relationship between federal and state
38 funding for breast cancer research.

39 (D) The relationship between each project and the
40 overall strategy of the research program.



1 (E) A summary of research findings including
2 discussion of promising new areas.

3 (F) The institutions and campuses receiving grant
4 awards.

5 In addition, the first annual report shall include an
6 evaluation and recommendations concerning the
7 desirability and feasibility of requiring for-profit grantees
8 to compensate the state in the event that a grant results
9 in the development of a profit-making product. This
10 evaluation shall include, but not be limited to, the costs
11 and benefits of requiring a for-profit grantee to repay the
12 grant, to provide the product at cost to Medi-Cal and
13 other state programs serving low-income breast cancer
14 patients, and to pay the state a percentage of the royalties
15 derived from the product.

16 (e) It is the intent of the Legislature that no more than
17 5 percent of the allocation to the university be used for
18 the purposes of administration of this program.

19 (f) It is the intent of the Legislature that the
20 responsibilities of the council shall include, but not be
21 limited to, the following:

22 (1) Development and review of the strategic
23 objectives and research priorities of the program.

24 (2) Delineation of resource allocation across the
25 various priorities established for the program.

26 (3) Participation in periodic program and financial
27 review, including the report transmitted pursuant to
28 paragraph (10) of subdivision (d).

29 (4) Development and review of guidelines to ensure
30 fairness, neutrality, and adherence to the principles of
31 merit and quality in the conduct of the program.

32 (5) Development of appropriate linkages to
33 nonacademic entities, including, but not limited to,
34 voluntary organizations, health care delivery systems,
35 industry, government agencies, research entrepreneurs,
36 and public officials.

37 (6) Development and review of criteria and standards
38 for granting awards.

39 (7) Oversight and review of the request for
40 applications (RFA).



1 (8) Review of research review panel reports and
2 recommendations for grant awards.

3 (9) Making of final recommendations on which grants
4 are to be awarded.

5 (10) Development and review of oversight
6 mechanisms for the dissemination of research results.

7 (11) Development and review of policies and liaison
8 programs to facilitate the translation of research results
9 into commercial, alternate technological, or other
10 applications wherever appropriate.

11 (12) Establishment of its own internal rules of
12 operation.

13 (13) Participation in the identification and
14 recruitment of breast cancer advocates and survivors,
15 clinicians, scientists, and persons from the science, high
16 technology, or health care sector with relevant expertise
17 for possible participation in a peer review panel. The
18 council may propose to assign a member of the council to
19 sit as a nonvoting member of the peer review panels.

20 (g) (1) The State Auditor shall conduct an audit of the
21 Breast Cancer Research Program 1996–97 fiscal year
22 grant award process. Prior to conducting the audit, the
23 State Auditor shall review laws, rules, and regulations
24 relevant to the Breast Cancer Research Program. The
25 audit by the State Auditor shall make the following
26 determinations:

27 (A) Whether the Breast Cancer Research Program has
28 adequate controls to ensure that the program is
29 administered in a manner designed to minimize any
30 potential conflicts that may arise from the university's
31 dual role as program administrator and grant recipient.

32 (B) Whether the Breast Cancer Research Program has
33 adequate controls to safeguard the program's funds and
34 assets, and whether those controls are operating as
35 intended.

36 (2) The State Auditor shall conduct its audit and report
37 its findings to the Legislature on or before January 1, 1998.

38 (3) The program shall retain documents received and
39 prepared in connection with grant applications or awards
40 until the State Auditor has completed its audit. The



1 university, the State Auditor, and their respective
2 employees shall maintain these documents in a manner
3 that will protect these documents from public disclosure.

4 (4) Nothing in this subdivision shall be construed to
5 prevent the university from making publicly available,
6 after awards for a cycle of funding have been publicly
7 announced, those applicants receiving funding for that
8 cycle from the Breast Cancer Research Program, the
9 names and affiliations of the peer reviewers of each study
10 section, an abstract of grant awards, the amount of
11 funding received from the program, and any other
12 information the university released in prior grant award
13 cycles.

14 (5) The actual and reasonable costs incurred by the
15 audit shall be paid by the State Auditor.

16 *SEC. 4. Section 104181 of the Health and Safety Code*
17 *is amended to read:*

18 104181. (a) The moneys in the Cancer Research
19 Fund, established pursuant to Section 104180, shall be
20 expended for the purpose of cancer research.

21 (b) The State Department of Health Services shall
22 establish and administer the Cancer Research Program
23 created by this article in a manner that will ensure the
24 participation of both private sector and public research
25 organizations. The State Department of Health Services
26 may contract with nonprofit organizations, foundations,
27 or public entities to administer the Cancer Research
28 Program created by this article. A nonprofit organization
29 shall be established under Section 501(c)(3) of the
30 Internal Revenue Code for the purpose of conducting
31 public health research. A nonprofit organization,
32 foundation, or public entity shall have prior experience
33 administering research programs offering
34 comprehensive grant and contract opportunities for
35 research concerning public health and disease-related
36 projects, with substantial participation by private entities
37 and public research organizations. In addition, a
38 nonprofit organization, foundation, or public entity shall
39 have experience in seeking, combining, and maximizing
40 private funding to supplement public funding of projects.



1 It is the intent of the Legislature that this program
2 incorporate the principles and organizational elements
3 set forth in this article, including, but not limited to, a
4 research program office with a director and other
5 essential staff, a cancer research council, and a research
6 peer review panel.

7 (c) For the purposes of this article, all of the following
8 shall apply:

9 (1) “Cancer research” is research with respect to the
10 cause and prevention, cure, diagnosis, and treatment of
11 cancer, including, but not limited to, intramural and
12 extramural research in the fields of biomedical science
13 and engineering, economics, epidemiology, diet and
14 lifestyle, *pain management for persons suffering from*
15 *cancer*, public health, and technology development and
16 translation, with emphasis on noninvasive treatments.

17 (2) “Department” means the State Department of
18 Health Services.

19 (3) “Grantee” means any qualifying public, private, or
20 nonprofit agency or individual, including, but not limited
21 to, colleges, universities, hospitals, laboratories, research
22 institutions, local health departments, voluntary health
23 agencies, cancer registries, health maintenance
24 organizations, publicly traded or private corporations,
25 students, fellows, entrepreneurs, and individuals
26 conducting research in this state. A grantee may also be
27 a corporation that is headquartered in California and that
28 will conduct a substantial majority of the grant’s research
29 in this state.

30 (4) “Indirect costs” includes use allowance for
31 research facilities, heating, lighting, library services,
32 health and safety services, project administration, and
33 building maintenance, as defined by federal cost
34 accounting guidelines for federally sponsored research.

35 (5) “Program” means the Cancer Research Program.

36 (6) “Council” means the Cancer Research Council
37 established pursuant to Section 104182.

38 *SEC. 5. Section 104510 of the Health and Safety Code*
39 *is amended to read:*

40 104510. For the purposes of this article:



1 (a) “Grantee” means any qualifying public, private, or
2 nonprofit agency or individual including, but not limited
3 to, colleges, universities, hospitals, laboratories, research
4 institutions, local health departments, voluntary health
5 agencies, health maintenance organizations, and
6 individuals conducting research in California.

7 (b) “Indirect costs” includes such items as use
8 allowance for research facilities, heating, lighting, library
9 services, health and safety services, project
10 administration, and building maintenance, as defined by
11 federal cost accounting guidelines for federally sponsored
12 research.

13 (c) “Tobacco-related disease” includes, but is not
14 limited to, the following:

15 (1) Coronary heart disease.

16 (2) Cerebrovascular disease.

17 (3) Cancer, including cancers of the lung, larynx,
18 esophagus, bladder, pancreas, and mouth. It is the intent
19 of the Legislature that the university further research the
20 epidemiological link between smoking and breast cancer

21 (4) Chronic obstructive lung disease, including
22 emphysema, chronic bronchitis, asthma, and related lung
23 disorders.

24 (5) Other conditions or diseases that smoking or
25 tobacco use has been established to be a risk factor for
26 excess disability and illness.

27 (d) “Tobacco-related disease research” includes, but is
28 not limited to, research in the fields of biomedical science,
29 *pain management for persons suffering from*
30 *tobacco-related diseases*, the social and behavioral
31 sciences, public policy, epidemiology, and public health.

32 (e) “Public policy research” means research that
33 investigates and evaluates various programs and
34 strategies used by governmental, private, and nonprofit
35 organizations to control tobacco use.

36 (f) “University” means the University of California.

37 *SEC. 6. No reimbursement is required by this act*
38 *pursuant to Section 6 of Article XIII B of the California*
39 *Constitution because the only costs that may be incurred*
40 *by a local agency or school district will be incurred*



1 *because this act creates a new crime or infraction,*
2 *eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section*
4 *17556 of the Government Code, or changes the definition*
5 *of a crime within the meaning of Section 6 of Article*
6 *XIII B of the California Constitution.*

