

## Senate Bill No. 1456

### CHAPTER 848

An act to add Section 2282.5 to the Business and Professions Code, relating to medicine.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1456, Kuehl. Hospitals: physicians and surgeons: self-governance.

(1) The Medical Practice Act provides for licensing and regulation of physicians and surgeons by the Medical Board of California. Existing law provides that the practice of medicine in a licensed general or specialized hospital having 5 or more physicians and surgeons on the medical staff without provision for organization and self-governance of the medical staff under certain rules constitutes unprofessional conduct subject to discipline by the board. A violation of specified provisions of the Medical Practice Act is a crime.

This bill would specify certain rights that would be included in hospital medical staff self-governance provisions. The bill would require the medical staff and the hospital governing board to meet and confer to resolve disputes related to these provisions, and would authorize court relief in certain circumstances. The bill would make findings and declarations of the Legislature in this regard.

(2) Because the bill would change the definition of a crime, it 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.

(3) This bill would become operative only if SB 1325 is enacted and becomes effective on or before January 1, 2005.

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

SECTION 1. (a) The Legislature finds and declares that providing quality medical care in hospitals depends on the mutual accountability, interdependence, and responsibility of the medical staff and the hospital



governing board for the proper performance of their respective obligations.

(b) The Legislature further finds and declares that the governing board of a hospital must act to protect the quality of medical care provided and the competency of its medical staff, and to ensure the responsible governance of the hospital in the event that the medical staff fails in any of its substantive duties or responsibilities. Nothing in this act shall be construed to undermine this authority. The final authority of the hospital governing board may be exercised for the responsible governance of the hospital or for the conduct of the business affairs of the hospital; however, that final authority may only be exercised with a reasonable and good faith belief that the medical staff has failed to fulfill a substantive duty or responsibility in matters pertaining to the quality of patient care. It would be a violation of the medical staff's self-governance and independent rights for the hospital governing board to assume a duty or responsibility of the medical staff precipitously, unreasonably, or in bad faith.

(c) Finally, the Legislature finds and declares that the specific actions that would constitute bad faith or unreasonable action on the part of either the medical staff or hospital governing board will always be fact-specific and cannot be precisely described in statute. The provisions set forth in this act do nothing more than provide for the basic independent rights and responsibilities of a self-governing medical staff. Ultimately, a successful relationship between a hospital's medical staff and governing board depends on the mutual respect of each for the rights and responsibilities of the other.

SEC. 2. Section 2282.5 is added to the Business and Professions Code, to read:

2282.5. (a) The medical staff's right of self-governance shall include, but not be limited to, all of the following:

(1) Establishing, in medical staff bylaws, rules, or regulations, criteria and standards, consistent with Article 11 (commencing with Section 800) of Chapter 1 of Division 2, for medical staff membership and privileges, and enforcing those criteria and standards.

(2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records.

(3) Selecting and removing medical staff officers.

(4) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.



(5) The ability to retain and be represented by independent legal counsel at the expense of the medical staff, provided that medical staff at the University of California have the right to retain and be represented by independent legal counsel at the expense of the medical staff upon approval by the Regents of the University of California or their designee in accordance with the bylaws of the Regents, which approval shall not be unreasonably denied.

(6) Initiating, developing, and adopting medical staff bylaws, rules, and regulations, and amendments thereto, subject to the approval of the hospital governing board, which approval shall not be unreasonably withheld.

(b) The medical staff bylaws shall not interfere with the independent rights of the medical staff to do any of the following, but shall set forth the procedures for:

(1) Selecting and removing medical staff officers.

(2) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(3) The ability to retain and be represented by independent legal counsel at the expense of the medical staff.

(c) With respect to any dispute arising under this section, the medical staff and the hospital governing board shall meet and confer in good faith to resolve the dispute. Whenever any person or entity has engaged in or is about to engage in any acts or practices that hinder, restrict, or otherwise obstruct the ability of the medical staff to exercise its rights, obligations, or responsibilities under this section, the superior court of any county, on application of the medical staff, and after determining that reasonable efforts, including reasonable administrative remedies provided in the medical staff bylaws, rules, or regulations, have failed to resolve the dispute, may issue an injunction, writ of mandate, or other appropriate order. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

SEC. 3. 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.



SEC. 4. This act shall become operative only if SB 1325 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2005.

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