AMENDED IN SENATE JULY 15, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 526

Introduced by Assembly Member Fuentes

February 25, 2009

An act to add and repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as amended, Fuentes. Public Protection and Physician Health Program Act of 2009.

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, as specified, and a designee of the State Department of Alcohol and Drug Programs. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees. The Medical Practice Act establishes in the Department of Consumer Affairs the Medical Board of California, which provides for the licensure and regulation of physicians and surgeons.

This bill would enact the Public Protection and Physician Health Program Act of 2009, which would, until January 1, 2021, establish

within the State and Consumer Services Agency the Public Protection and Physician Health Committee, consisting of 14 members appointed by specified entities, would require the committee to be appointed and to hold its first meeting by March 1, 2010, and would require agency adoption of related rules and regulations by June 30, 2010. The bill would require the committee to recommend to the agency one or more physician health programs, and would authorize the agency to contract, including on an interim basis, as specified, with any qualified physician health program for purposes of care and rehabilitation of physicians and surgeons with alcohol or drug abuse or dependency problems or mental disorders as specified. The bill would impose requirements on the physician health program relating to, among other things, monitoring the status and compliance of physicians and surgeons who enter treatment for a qualifying illness, as defined, pursuant to written, voluntary agreements, and would require the agency and committee to monitor compliance with these requirements. The bill would provide that a voluntary agreement to receive treatment would not be subject to public disclosure or disclosure to the Medical Board of California, except as specified. The bill would require the board to increase physician and surgeon licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. The Legislature hereby finds and declares that:

(a) California has long valued high quality medical care for its citizens and, through its regulatory and enforcement system, protects health care consumers through the proper licensing and regulation of physicians and surgeons to promote access to quality medical care. The protection of the public from harm by physicians and surgeons who may be impaired by alcohol or substance abuse or dependence or by a mental disorder is paramount.

(b) Nevertheless, physicians and surgeons experience health-related problems at the same frequency as the general population, and many competent physicians and surgeons with

illnesses may or may not immediately experience impairment in their ability to serve the public. It has been estimated that at least 10 percent of the population struggles with alcohol or substance abuse or dependence during their lifetime, which may, at some point, impact approximately 12,500 of the state's 125,000 licensed physicians and surgeons.

(c) It is in the best interests of the public and the medical profession to provide a pathway to recovery for any licensed physician and surgeon that is currently suffering from alcohol or substance abuse or dependence or a mental disorder. The American Medical Association has recognized that it is an expression of the highest meaning of professionalism for organized medicine to take an active role in helping physicians and surgeons to lead healthy lives in order to help their patients, and therefore, it is appropriate for physicians and surgeons to assist in funding such a program.

(d) While nearly every other state has a physician health program, since 2007 California has been without any state program that monitors physicians and surgeons who have independently obtained, or should be encouraged to obtain, treatment for alcohol or substance abuse or dependence or for a mental disorder, so that they do not treat patients while impaired.

(e) It is essential for the public interest and the public health, safety, and welfare to focus on early intervention, assessment, referral to treatment, and monitoring of physicians and surgeons with significant health impairments that may impact their ability to practice safely. Such a program need not, and should not necessarily, divert physicians and surgeons from the disciplinary system, but instead focus on providing assistance before any harm to a patient has occurred.

(f) Therefore, it is necessary to create a program in California that will permit physicians and surgeons to obtain referral to treatment and monitoring of alcohol or substance abuse or dependence or a mental disorder, so that they do not treat patients while impaired.

SEC. 2. Article 14 (commencing with Section 2340) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 14. Public Protection and Physician Health Program

2340. This article shall be known and may be cited as the Public Protection and Physician Health Program Act of 2009.

2341. For purposes of this article, the following terms have the following meanings:

(a) "Agency" means the State and Consumer Services Agency.

(b) "Board" means the Medical Board of California.

(c) "Committee" means the Public Protection and Physician Health Committee established pursuant to Section 2342.

(d) "Impaired" or "impairment" means the inability to practice medicine with reasonable skill and safety to patients by reason of alcohol abuse, substance abuse, alcohol dependency, any other substance dependency, or a mental disorder.

(e) "Participant" means a physician and surgeon enrolled in the program pursuant to an agreement entered into as provided in Section 2345.

(f) "Physician health program" or "program" means the program for the prevention, detection, intervention, monitoring, and referral to treatment of impaired physicians and surgeons, and includes vendors, providers, or entities contracted with by the agency pursuant to this article.

(g) "Physician and surgeon" means a holder of a physician's and surgeon's certificate.

(h) "Qualifying illness" means "alcohol or substance abuse," "alcohol or chemical dependency," or a "mental disorder" as those terms are used in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) or subsequent editions.

(i) "Secretary" means the Secretary of State and Consumer Services.

(j) "Treatment program" or "treatment" means the delivery of care and rehabilitation services provided by an organization or persons authorized by law to provide those services.

2342. (a) (1) There is hereby established within the State and Consumer Services Agency the Public Protection and Physician Health Committee. The committee shall be appointed and hold its first meeting no later than March 1, 2010. The committee shall be comprised of 14 members who shall be appointed as follows:

(A) Eight members appointed by the secretary, including the following:

(i) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental disorders.

(ii) Six members who are physicians and surgeons with knowledge and expertise in the identification and treatment of alcohol dependence and substance abuse. One member shall be a designated representative from a panel recommended by a nonprofit professional association representing physicians and surgeons licensed in this state with at least 25,000 members in all modes of practice and specialties. The secretary shall fill one each of the remaining appointments from among those individuals as may be recommended by the California Society of Addiction Medicine, the California ~~Psychiatrist~~ *Psychiatric* Association, and the California Hospital Association.

(B) Four members of the public appointed by the Governor, at least one of whom shall have experience in advocating on behalf of consumers of medical care in this state.

(C) One member of the public appointed by the Speaker of the Assembly.

(D) One member of the public appointed by the Senate Committee on Rules.

(2) (A) For the purpose of this subdivision, a public member may not be any of the following:

(i) A current or former physician and surgeon or an immediate family member of a physician and surgeon.

(ii) Currently or formerly employed by a physician and surgeon or business providing or arranging for physician and surgeon services, or have any financial interest in the business of a licensee.

(iii) An employee or agent or representative of any organization representing physicians and surgeons.

(B) Each public member shall meet all of the requirements for public membership on the board as set forth in Chapter 6 (commencing with Section 450) of Division 1.

(b) Members of the committee shall serve without compensation, but shall be reimbursed for any travel expenses necessary to conduct committee business.

(c) Committee members shall serve terms of four years, and ~~may be reappointed. By lot, the committee shall stagger the terms of the initial members appointed.~~ *may be reappointed. With respect to the initial appointees, the Governor shall appoint two members*

for a two-year term, one member for a three-year term, and one member for a four-year term. The Senate Committee on Rules and the Speaker of the Assembly shall each initially appoint one member for a three-year term. The secretary shall initially appoint four members for a two-year term, two members for a three-year term, and two members for a four-year term.

(d) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), and shall prepare any additional recommended rules and regulations necessary or advisable for the purpose of implementing this article, subject to the Administrative ~~Procedures~~ *Procedure* Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The rules and regulations shall include appropriate minimum standards and requirements for referral to treatment, and monitoring of participants in the physician health program, and shall be written in a manner that provides clear guidance and measurable outcomes to ensure patient safety and the health and wellness of physicians and surgeons. The agency shall adopt regulations for the implementation of this article, taking into consideration the regulations recommended by the committee.

(e) The rules and regulations required by this section shall be adopted not later than June 30, 2010, and shall, at a minimum, be consistent with the uniform standards adopted pursuant to Section 315, and shall include all of the following:

(1) Minimum standards, criteria, and guidelines for the acceptance, denial, referral to treatment, and monitoring of physicians and surgeons in the physician health program.

(2) Standards for requiring that a physician and surgeon agree to cease practice to obtain appropriate treatment services.

(3) Criteria that must be met prior to a physician and surgeon returning to practice.

(4) Standards, requirements, and procedures for random testing for the use of banned substances and protocols to follow if that use has occurred.

(5) Worksite monitoring requirements and standards.

(6) The manner, protocols, and timeliness of reports required to be made pursuant to Section 2345.

(7) Appropriate requirements for clinical diagnostic evaluations of program participants.

(8) Requirements for a physician and surgeon's termination from, and reinstatement to, the program.

(9) Requirements that govern the ability of the program to communicate with a participant's employer or organized medical staff about the participant's status and condition.

(10) Group meeting and other self-help requirements, standards, protocols, and qualifications.

(11) Minimum standards and qualifications of any vendor, monitor, provider, or entity contracted with by the agency pursuant to Section 2343.

(12) A requirement that all physician health program services shall be available to all licensed physicians and surgeons with a qualifying illness.

(13) A requirement that any physician health program shall do all of the following:

(A) Promote, facilitate, or provide information that can be used for the education of physicians and surgeons with respect to the recognition and treatment of alcohol dependency, chemical dependency, or mental disorders, and the availability of the physician health program for qualifying illnesses.

(B) Offer assistance to any person in referring a physician and surgeon for purposes of assessment or treatment, or both, for a qualifying illness.

(C) Monitor the status during treatment of a physician and surgeon who enters treatment for a qualifying illness pursuant to a written, voluntary agreement.

(D) Monitor the compliance of a physician and surgeon who enters into a written, voluntary agreement for a qualifying illness with the physician health program setting forth a course of recovery.

(E) Agree to accept referrals from the board to provide monitoring services pursuant to a board order.

(F) Provide a clinical diagnostic evaluation of physicians and surgeons entering the program.

(14) Rules and procedures to comply with auditing requirements pursuant to Section 2348.

(15) A definition of the standard of "reasonably likely to be detrimental to patient safety or the delivery of patient care," relying,

to the extent practicable, on standards used by hospitals, medical groups, and other employers of physicians and surgeons.

(16) Any other provision necessary for the implementation of this article.

2343. (a) On and after July 1, 2010, upon adoption of the rules and regulations required by Section 2342, the committee shall recommend one or more physician health programs to the agency, and the agency may contract with any qualified physician health program. The physician health program shall be a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the United States Code. The chief executive officer shall have expertise in the areas of alcohol abuse, substance abuse, alcohol dependency, other chemical dependencies, and mental disorders. In order to expedite the delivery of physician health program services established by this article, the agency may contract with an entity meeting the minimum standards and requirements set forth in subdivision (e) of Section 2342 on an interim basis prior to the adoption of any additional rules and regulations required to be adopted pursuant to subdivision (d) of Section 2342. The agency may extend the contract when the rules and regulations are adopted, provided that the physician health program meets the requirements in those rules and regulations.

(b) Any contract entered into pursuant to this article shall comply with all rules and regulations required to be adopted pursuant to this article. No entity shall be eligible to provide the services of the physician health program that does not meet the minimum standards, criteria, and guidelines contained in those rules and regulations.

(c) The contract entered into pursuant to this article shall also require the contracting entity to do both of the following:

(1) Report annually to the committee statistics, including the number of participants served, the number of compliant participants, the number of participants who have successfully completed their agreement period, and the number of participants reported to the board for suspected noncompliance; provided, however, that in making that report, the physician health program shall not disclose any personally identifiable information relating to any physician and surgeon participating in a voluntary agreement as provided in this article.

(2) Agree to submit to periodic audits and inspections of all operations, records, and management related to the physician health program to ensure compliance with the requirements of this article and its implementing rules and regulations.

(d) In addition to the requirements of Section 2348, the agency, in conjunction with the committee, shall monitor compliance of the physician health program with the requirements of this article and its implementing regulations, including making periodic inspections and onsite visits with any entity contracted to provide physician health program services.

2344. The agency has the sole discretion to contract with a physician health program for licensees of the board and no provision of this article may be construed to entitle any physician and surgeon to the creation or designation of a physician health program for any individual qualifying illness or group of qualifying illnesses.

2345. (a) In order to encourage voluntary participation in monitored alcohol or chemical dependency or mental disorder treatment programs, and in recognition of the fact that mental disorders, alcohol dependency, and chemical dependency are illnesses, a physician and surgeon, certified or otherwise lawfully practicing in this state, may enter into a voluntary agreement with a physician health program. The agreement between the physician and surgeon and the physician health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the treatment program, including, but not limited to, an agreement to cease practice, as defined by the rules and regulations adopted pursuant to Section 2342. Except as provided in subdivisions (b), (c), (d), and (e), a physician and surgeon's participation in the physician health program pursuant to a voluntary agreement shall be confidential unless waived by the physician and surgeon.

(b) (1) Any voluntary agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board, and shall not be public information if all of the following are true:

(A) The voluntary agreement is the result of the physician and surgeon self-enrolling or voluntarily participating in the physician health program.

(B) The board has not referred a complaint against the physician and surgeon to a district office of the board for investigation for conduct involving or alleging an impairment adversely affecting the care and treatment of patients.

(C) The physician and surgeon is in compliance with the treatment program and the conditions and procedures to monitor compliance.

(2) (A) Each participant, prior to entering into the voluntary agreement described in paragraph (1), shall disclose to the committee whether he or she is under investigation by the board. If a participant fails to disclose such an investigation, upon enrollment or at any time while a participant, the participant shall be terminated from the program. For those purposes, the committee shall regularly monitor recent accusations filed against physicians and surgeons and shall compare the names of physicians and surgeons subject to accusation with the names of program participants.

(B) Notwithstanding subparagraph (A), a participant who is under investigation by the board and who makes the disclosure required in subparagraph (A) may participate in, and enter into a voluntary agreement with, the physician health program.

(c) (1) If a physician and surgeon enters into a voluntary agreement with the physician health program pursuant to this article, the physician health program shall do both of the following:

(A) In addition to complying with any other duty imposed by law, report to the committee the name of and results of any contact or information received regarding a physician and surgeon who is suspected of being, or is, impaired and, as a result, whose competence or professional conduct is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(B) Report to the committee if the physician and surgeon fails to cooperate with any of the requirements of the physician health program, fails to cease practice when required, fails to submit to evaluation, treatment, or biological fluid testing when required, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the physician health program, is unable to practice medicine with reasonable skill and safety, or who withdraws or is terminated from the physician health program prior to completion.

(2) Within 48 hours of receiving a report pursuant to paragraph (1), the committee shall make a determination as to whether the competence or professional conduct of the physician and surgeon is reasonably likely to be detrimental to patient safety or to the delivery of patient care, and, if so, refer the matter to the board consistent with rules and regulations adopted by the agency. Upon receiving a referral pursuant to this paragraph, the board shall take immediate action and may initiate proceedings to seek a temporary restraining order or interim suspension order as provided in this division.

(d) Except as provided in subdivisions (b), (c), and (e), and this subdivision, any oral or written information reported to the board pursuant to this section, including, but not limited to, any physician and surgeon's participation in the physician health program and any voluntary agreement entered into pursuant to this article, shall remain confidential as provided in subdivision (c) of Section 800, and shall not constitute a waiver of any existing evidentiary privileges under any other provision or rule of law. However, this subdivision shall not apply if the board has referred a complaint against the physician and surgeon to a district office of the board for investigation for conduct involving or alleging an impairment adversely affecting the care and treatment of patients.

(e) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action against a physician and surgeon based on acts or omissions within the course and scope of his or her practice.

(f) Any information received, developed, or maintained by the agency regarding a physician and surgeon in the program shall not be used for any other purpose.

2346. The committee shall report to the agency statistics received from the physician health program pursuant to Section 2343, and the agency shall, thereafter, report to the Legislature the number of individuals served, the number of compliant individuals, the number of individuals who have successfully completed their agreement period, and the number of individuals reported to the board for suspected noncompliance; provided, however, that in making that report the agency shall not disclose any personally identifiable information relating to any physician and surgeon participating in a voluntary agreement as provided herein.

2347. (a) A physician and surgeon participating in a voluntary agreement shall be responsible for all expenses relating to chemical or biological fluid testing, treatment, and recovery as provided in the written agreement between the physician and surgeon and the physician health program.

(b) In addition to the fees charged for the initial issuance or biennial renewal of a physician and surgeon's certificate pursuant to Section 2435, and at the time those fees are charged, the board shall include a surcharge of not less than twenty-two dollars ($22), or an amount equal to 2.5 percent of the fee set pursuant to Section 2435, whichever is greater, and which shall be expended solely for the purposes of this article. The board shall collect this surcharge and cause it to be transferred monthly to the trust fund established pursuant to subdivision (c). This amount may be separately identified on the fee statement provided to physicians and surgeons as being imposed pursuant to this article. The board may include a conspicuous statement indicating that the Public Protection and Physician Health Program is not a program of the board and the collection of this fee does not, nor shall it be construed to, constitute the board's endorsement of, support for, control of, or affiliation with, the program.

(c) There is hereby established in the State Treasury the Public Protection and Physician Health Program Trust Fund into which all funds collected pursuant to this section shall be deposited. These funds shall be used, upon appropriation in the annual Budget Act, only for the purposes of this article.

(d) Nothing in this section is intended to limit the amount of funding that may be provided for the purposes of this article. In addition to funds appropriated in the annual Budget Act, additional funding from private or other sources may be used to ensure that no person is denied access to the services established by this program due to a lack of available funding.

(e) All costs of the committee and program established pursuant to this article shall be paid out of the funds collected pursuant to this section.

2348. (a) The agency shall biennially contract to perform a thorough audit of the effectiveness, efficiency, and overall performance of the program and its vendors. The agency may contract with a third party to conduct the performance audit, except the third party may not be a person or entity that regularly testifies

before the board. This section is not intended to reduce the number of audits the agency or board may otherwise conduct.

(b) The audit shall make recommendations regarding the continuation of this program and this article and shall suggest any changes or reforms required to ensure that individuals participating in the program are appropriately monitored and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or dependency or mental disorder. Any person conducting the audit required by this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the audit and shall not disclose any information that is identifiable to any program participant.

(c) If, during the course of an audit, the auditor discovers that a participant has harmed a patient, or a patient has died while being treated by a participant, the auditor shall include that information in his or her audit, and shall investigate and report on how that participant was dealt with by the program.

(d) A copy of the audit shall be made available to the public by posting a link to the audit on the agency's Internet Web site homepage no less than 10 business days after publication of the audit. Copies of the audit shall also be provided to the Assembly and Senate Committees on Business and Professions and the Assembly and Senate Committees on Health within 10 business days of its publication.

2349. This article shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

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