

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2198**

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**Introduced by Assembly Member Houston**

February 22, 2006

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An act to amend Sections 725, 2241, ~~and 2242~~ 2242, and 2242.1 of, and to repeal and add Section 2241.5 of, the Business and Professions Code, and to amend Section 11156 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2198, as amended, Houston. Health care: controlled substances and dangerous drugs.

Existing law makes it unprofessional conduct for specified health care providers to engage in repeated acts of clearly excessive prescribing or administering of drugs or treatment, unless the health care provider is a physician and surgeon in compliance with the California Intractable Pain Treatment Act.

This bill would delete the provision prohibiting disciplinary action against a physician and surgeon who is in compliance with the California Intractable Pain Treatment Act. The bill would define "clearly excessive" to mean an amount or extent that is without substantial medical basis and is substantially greater than the usual amount of prescribing, administering, or use of the therapeutic modalities.

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. The California Intractable Pain Treatment Act, in the Medical

Practice Act, authorizes a physician and surgeon to prescribe or administer controlled substances to a person in the course of treatment for a diagnosed condition causing intractable pain, except in certain circumstances, and prohibits disciplinary action against a physician and surgeon for such action.

This bill would define addict for purposes of these provisions. The bill would delete these provisions and would instead authorize a physician and surgeon to prescribe for, or dispense or administer to, a person for a medical condition drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including intractable pain. The bill would require the physician and surgeon to exercise reasonable care in determining whether a particular patient or condition, or complexity of the patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. A violation of this requirement would be a crime.

Existing law, except as specified, prohibits a person from prescribing or administering or dispensing a controlled substance to an addict or habitual user. Existing law generally makes it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so, but contains certain exceptions from this provision.

This bill would delete the provision making it unprofessional conduct for a physician and surgeon to prescribe, sell, furnish, give away, or administer certain drugs to an addict or habitué, or to offer to do so, ~~and would instead prohibit a physician and surgeon from prescribing, dispensing, or administering prescription drugs or controlled substances to an addict, except for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances or in specified other instances.~~ *The bill would authorize a physician and surgeon to prescribe, dispense, or administer prescription drugs, including prescription controlled substances, (1) to an addict under his or her treatment for a condition other than maintenance on, or detoxification from, prescription drugs or controlled substances and (2) under specified conditions to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances. The bill would also authorize prescription drugs or controlled substances to be administered or applied by a physician and surgeon, or by a registered nurse acting under his or*

her instruction and supervision, in certain circumstances. A violation of this requirement would be a crime.

Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without a good faith prior examination and medical indication. *Existing law also, with specified exceptions, prohibits a person or entity from prescribing, dispensing, or furnishing, or causing to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices on the Internet for delivery to a person in California without a good faith prior examination and medical indication.*

This bill would, *for purposes of these provisions*, require an appropriate prior examination instead of a good faith prior examination. The bill would make related legislative findings.

Because this bill would create new crimes, 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.

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. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) The investigation and prosecution of pain management
- 4 cases in California have evolved over the past 15 years.
- 5 (b) The Pain Patient’s Bill of Rights and the Intractable Pain
- 6 Treatment Act were created to ensure patients received adequate
- 7 pain medication and to protect a physician and surgeon from
- 8 being disciplined solely because of the amounts of controlled
- 9 substances he or she prescribed or administered.
- 10 (c) California recognizes that prescription medication,
- 11 including controlled substances, can play a critical role in the
- 12 treatment of pain, and, in and of itself, is an insufficient basis to
- 13 determine if a physician and surgeon has violated the standard of
- 14 care in his or her treatment of pain management patients.

1 (d) California also recognizes that the Intractable Pain  
2 Treatment Act may be an impediment to easily accessible pain  
3 treatment which can be confusing to both licensees and  
4 regulating entities. It can also provide a false sense of security to  
5 licensees who may erroneously believe it immunizes them from  
6 any actions against their license.

7 (e) In recognition of the Medical Board of California’s  
8 consumer protection mandates, and in an attempt to provide  
9 better treatment of pain patients, as well as protect the public  
10 through the appropriate investigation and prosecution of those  
11 who violate the standard of care when treating pain patients, the  
12 Legislature recognizes that it is time to reflect upon the current  
13 state of pain management to aid both those who treat pain  
14 patients, as well as those who investigate and prosecute  
15 physicians and surgeons.

16 SEC. 2. Section 725 of the Business and Professions Code is  
17 amended to read:

18 725. (a) Repeated acts of clearly excessive prescribing,  
19 furnishing, dispensing, or administering of drugs or treatment,  
20 repeated acts of clearly excessive use of diagnostic procedures,  
21 or repeated acts of clearly excessive use of diagnostic or  
22 treatment facilities as determined by the standard of the  
23 community of licensees is unprofessional conduct for a physician  
24 and surgeon, dentist, podiatrist, psychologist, physical therapist,  
25 chiropractor, or optometrist.

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

33 (c) For purposes of this section, “clearly excessive” shall mean  
34 an amount or extent that is both (1) without substantial medical  
35 basis and (2) substantially greater than the usual amount of  
36 prescribing, administration, or use of therapeutic modalities.

37 SEC. 3. Section 2241 of the Business and Professions Code is  
38 amended to read:

39 2241. (a) A physician and surgeon may ~~not~~ prescribe,  
40 dispense, or administer prescription drugs, including prescription

1 controlled substances, to an addict under his or her treatment;  
2 ~~except as follows: for a condition other than maintenance on, or~~  
3 ~~detoxification from, prescription drugs or controlled substances.~~

4 ~~(1)~~

5 (b) A physician and surgeon may *only* prescribe, dispense, or  
6 administer prescription drugs or prescription controlled  
7 substances to an addict for purposes of maintenance on or  
8 detoxification from prescription drugs or controlled substances as  
9 set forth in ~~Section 11217 subdivision (c) or in Sections 11215,~~  
10 ~~11217, 11217.5, 11218, 11219, and 11220~~ of the Health and  
11 Safety Code. Nothing in this ~~paragraph~~ *subdivision* shall  
12 authorize a physician and surgeon to prescribe, dispense, or  
13 administer dangerous drugs or controlled substances to a person  
14 he or she knows or reasonably believes is using or will use the  
15 drugs or substances for a nonmedical purpose.

16 ~~(2) Drugs or controlled substances may be administered or~~  
17 ~~applied to an addict~~

18 (c) *Notwithstanding subdivision (a), prescription drugs or*  
19 *controlled substances may also be administered or applied* by a  
20 physician and surgeon, or by a registered nurse acting under his  
21 or her instruction and supervision, under the following  
22 circumstances:

23 ~~(A)~~

24 (1) Emergency treatment of a patient whose addiction is  
25 complicated by the presence of incurable disease, acute accident,  
26 illness, or injury, or the infirmities attendant upon age.

27 ~~(B)~~

28 (2) Treatment of addicts in state licensed institutions where the  
29 patient is kept under restraint and control, or in city or county  
30 jails or state prisons.

31 ~~(C)~~

32 (3) Treatment of addicts as provided for by Section 11217.5 of  
33 the Health and Safety Code.

34 ~~(b)~~

35 (d) For purposes of this section and Section 2241.5, “addict”  
36 means a person whose actions are characterized by one or more  
37 of the following:

38 (1) Impaired control over drug use.

39 (2) Compulsive use.

40 (3) Continued use despite harm and craving.

1 SEC. 4. Section 2241.5 of the Business and Professions Code  
2 is repealed.

3 SEC. 5. Section 2241.5 is added to the Business and  
4 Professions Code, to read:

5 2241.5. (a) A physician and surgeon may prescribe for, or  
6 dispense or administer to, a person under his or her treatment for  
7 a medical condition dangerous drugs or prescription controlled  
8 substances for the treatment of pain or a condition causing pain,  
9 including, but not limited to, intractable pain.

10 (b) A physician and surgeon’s authority under this section  
11 shall be subject to the provisions of Sections 725, 2234, 2241,  
12 2242, and 2242.1, and Sections 11152, 11153, and 11154 of the  
13 Health and Safety Code. Nothing in this section shall authorize a  
14 physician and surgeon to prescribe, administer or dispense  
15 dangerous drugs or controlled substances to a person he or she  
16 knows or reasonably believes is using or will use the drugs or  
17 substances for a non-medical purpose.

18 (c) Any physician and surgeon has the legal authority to treat a  
19 patient for pain using dangerous drugs or prescription controlled  
20 substances but the prescribing, administering, or dispensing  
21 physician and surgeon shall exercise reasonable care in  
22 determining whether a particular patient or condition, or  
23 complexity of the patient’s treatment, including, but not limited  
24 to, a current or recent pattern of drug abuse, requires consultation  
25 with or referral to a more qualified specialist.

26 SEC. 6. Section 2242 of the Business and Professions Code is  
27 amended to read:

28 2242. (a) Prescribing, dispensing, or furnishing dangerous  
29 drugs as defined in Section 4022 without an appropriate prior  
30 examination and a medical indication, constitutes unprofessional  
31 conduct.

32 (b) No licensee shall be found to have committed  
33 unprofessional conduct within the meaning of this section if, at  
34 the time the drugs were prescribed, dispensed, or furnished, any  
35 of the following applies:

36 (1) The licensee was a designated physician and surgeon or  
37 podiatrist serving in the absence of the patient’s physician and  
38 surgeon or podiatrist, as the case may be, and if the drugs were  
39 prescribed, dispensed, or furnished only as necessary to maintain

1 the patient until the return of his or her practitioner, but in any  
2 case no longer than 72 hours.

3 (2) The licensee transmitted the order for the drugs to a  
4 registered nurse or to a licensed vocational nurse in an inpatient  
5 facility, and if both of the following conditions exist:

6 (A) The practitioner had consulted with the registered nurse or  
7 licensed vocational nurse who had reviewed the patient's records.

8 (B) The practitioner was designated as the practitioner to serve  
9 in the absence of the patient's physician and surgeon or  
10 podiatrist, as the case may be.

11 (3) The licensee was a designated practitioner serving in the  
12 absence of the patient's physician and surgeon or podiatrist, as  
13 the case may be, and was in possession of or had utilized the  
14 patient's records and ordered the renewal of a medically  
15 indicated prescription for an amount not exceeding the original  
16 prescription in strength or amount or for more than one refilling.

17 (4) The licensee was acting in accordance with Section  
18 120582 of the Health and Safety Code.

19 *SEC. 7. Section 2242.1 of the Business and Professions Code*  
20 *is amended to read:*

21 2242.1. (a) No person or entity may prescribe, dispense, or  
22 furnish, or cause to be prescribed, dispensed, or furnished,  
23 dangerous drugs or dangerous devices, as defined in Section  
24 4022, on the Internet for delivery to any person in this state,  
25 without ~~a good faith~~ *an appropriate* prior examination and  
26 medical indication ~~therefor~~, except as authorized by Section  
27 2242.

28 (b) Notwithstanding any other provision of law, a violation of  
29 this section may subject the person or entity that has committed  
30 the violation to either a fine of up to twenty-five thousand dollars  
31 (\$25,000) per occurrence pursuant to a citation issued by the  
32 board or a civil penalty of twenty-five thousand dollars (\$25,000)  
33 per occurrence.

34 (c) The Attorney General may bring an action to enforce this  
35 section and to collect the fines or civil penalties authorized by  
36 subdivision (b).

37 (d) For notifications made on and after January 1, 2002, the  
38 Franchise Tax Board, upon notification by the Attorney General  
39 or the board of a final judgment in an action brought under this  
40 section, shall subtract the amount of the fine or awarded civil

1 penalties from any tax refunds or lottery winnings due to the  
2 person who is a defendant in the action using the offset authority  
3 under Section 12419.5 of the Government Code, as delegated by  
4 the Controller, and the processes as established by the Franchise  
5 Tax Board for this purpose. That amount shall be forwarded to  
6 the board for deposit in the Contingent Fund of the Medical  
7 Board of California.

8 (e) If the person or entity that is the subject of an action  
9 brought pursuant to this section is not a resident of this state, a  
10 violation of this section shall, if applicable, be reported to the  
11 person’s or entity’s appropriate professional licensing authority.

12 (f) Nothing in this section shall prohibit the board from  
13 commencing a disciplinary action against a physician and  
14 surgeon pursuant to Section 2242.

15 ~~SEC. 7.~~

16 *SEC. 8.* Section 11156 of the Health and Safety Code is  
17 amended to read:

18 11156. (a) No person shall prescribe for or administer, or  
19 dispense a controlled substance to an addict ~~or habitual user~~, or  
20 to any person representing himself or herself as such, except as  
21 permitted by this division.

22 (b) For purposes of this section, “addict” means a person  
23 whose actions are characterized by one or more of the following:

- 24 (1) Impaired control over drug use.
- 25 (2) Compulsive use.
- 26 (3) Continued use despite harm and craving.

27 ~~SEC. 8.~~

28 *SEC. 9.* No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the  
33 penalty for a crime or infraction, within the meaning of Section  
34 17556 of the Government Code, or changes the definition of a  
35 crime within the meaning of Section 6 of Article XIII B of the  
36 California Constitution.