

AMENDED IN SENATE APRIL 7, 2008

SENATE BILL

No. 1441

Introduced by Senator Ridley-Thomas

February 21, 2008

~~An act to amend Section 2307 of the Business and Professions Code, relating to medicine.~~ *An act to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of the Business and Professions Code, relating to health care.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. ~~Physicians and surgeons: disciplinary procedures.~~ *Healing arts practitioners: alcohol and drug abuse.*

Existing law requires various healing arts licensing boards to establish and administer diversion programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol.

This bill would establish in the Department of Consumer Affairs the Diversion Coordination Committee, which would be comprised of the executive officers of those healing arts boards, as specified, that establish and maintain a diversion program or diversion evaluation committee, and would establish in the department the Licensee Drug and Alcohol Addiction Coordination Committee, which would be comprised of the executive officers of all other healing arts boards. The bill would require these committees to meet periodically at the discretion of the department and to each issue, by an unspecified date, a set of best practices and recommendations, as specified.

~~Existing law, the Medical Practice Act, creates the Medical Board of California and makes it responsible for disciplining a physician and~~

surgeon for acts of unprofessional conduct. Under the act, a physician and surgeon whose certificate is revoked, suspended, or placed on probation for unprofessional conduct may petition for reinstatement or modification after a specified time period. Existing law requires that petition to be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

This bill would also allow those recommendations to be made by physicians and surgeons licensed in other states. The bill would also make other technical, nonsubstantive changes to obsolete references.

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

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

1 SECTION 1. *It is the intent of the Legislature that the Bureau*
2 *of State Audits conduct a thorough performance audit of the*
3 *diversion programs created pursuant to this act in order to evaluate*
4 *the effectiveness and efficiency of the programs and the providers*
5 *chosen by the Department of Consumer Affairs to manage the*
6 *programs, and to make recommendations regarding the*
7 *continuation of the programs and any changes or reforms required*
8 *to ensure that individuals participating in the programs are*
9 *appropriately monitored, and the public is protected from health*
10 *practitioners who are impaired due to alcohol or drug abuse or*
11 *mental or physical illness. The department and its staff shall*
12 *cooperate with the audit, and shall provide data, information, and*
13 *case files as requested by the auditor to perform all of his or her*
14 *duties. The provision of confidential data, information, and case*
15 *files from health care-related boards to the auditor shall not*
16 *constitute a waiver of any exemption from disclosure or discovery*
17 *or of any confidentiality protection or privilege otherwise provided*
18 *by law that is applicable to the data, information, or case files.*

19 SEC. 2. *Article 3.6 (commencing with Section 315) is added*
20 *to Chapter 4 of Division 1 of the Business and Professions Code,*
21 *to read:*

1 Article 3.6 *Healing Arts Licensee Addiction and Diversion*

2
3 315. (a) *There is established in the Department of Consumer*
4 *Affairs the Diversion Coordination Committee. The committee*
5 *shall be comprised of the executive officers of those healing arts*
6 *licensing boards within the department that establish and maintain*
7 *diversion programs or diversion evaluation committees. The*
8 *Director of Consumer Affairs shall act as the chair of the*
9 *committee.*

10 (b) *The committee shall meet periodically at the discretion of*
11 *the director and shall, no later than _____, issue a set of best*
12 *practices and recommendations to govern those healing arts*
13 *licensing boards' diversion programs or diversion evaluation*
14 *committees. These recommendations shall propose best practices,*
15 *regulations, or changes in law, as are necessary, and shall include,*
16 *but shall not be limited to, recommendations addressing all of the*
17 *following issues:*

18 (1) *When a licensee is to be irrevocably terminated from the*
19 *diversion program and referred for disciplinary action.*

20 (2) *Periodic audits of the program.*

21 (3) *Whether a licensee enrolled in the program who may pose*
22 *a risk to patients may continue to practice while in the program*
23 *without the knowledge or consent of patients.*

24 (4) *How best to ensure that drug tests are random, accurate,*
25 *and reliable, and that results for those tests are obtained quickly.*

26 (5) *Whether there should be criteria for entry into the program,*
27 *such as criteria that differentiate between licensees who the board*
28 *has reason to believe pose a risk to patients and those where the*
29 *risk is speculative.*

30 316. (a) *There is established in the Department of Consumer*
31 *Affairs the Licensee Drug and Alcohol Addiction Coordination*
32 *Committee. The committee shall be comprised of the executive*
33 *officers of the healing arts licensing boards within the department*
34 *that do not establish and maintain diversion programs or diversion*
35 *evaluation committees. The Director of Consumer Affairs shall*
36 *act as the chair of the committee.*

37 (b) *The committee shall meet periodically at the discretion of*
38 *the department and shall, no later than _____, issue a set of best*
39 *practices and recommendations to govern those healing arts*
40 *licensing boards' disciplinary programs as they relate to*

1 *disciplinary matters relating to drug or alcohol addiction. These*
2 *recommendations shall propose best practices, regulations, or*
3 *changes in law, as are necessary, and shall include, but shall not*
4 *be limited to, recommendations addressing all of the following*
5 *issues, related to drug or alcohol abuse:*

6 (1) *Criteria for placing a licensee on probation and related*
7 *criteria for reporting and monitoring the probation.*

8 (2) *Criteria for refusing a request for probation.*

9 (3) *Criteria for imposition of discipline and the level of*
10 *discipline.*

11 (4) *Criteria for restoration of a license.*

12 317. *For purposes of this article, “healing arts licensing*
13 *board” means any board established pursuant to Division 2*
14 *(commencing with Section 500), the State Board of Chiropractic*
15 *Examiners, or the Osteopathic Medical Board of California.*

16 SECTION 1. ~~Section 2307 of the Business and Professions~~
17 ~~Code is amended to read:~~

18 2307. ~~(a) A person whose certificate has been surrendered~~
19 ~~while under investigation or while charges are pending or whose~~
20 ~~certificate has been revoked or suspended or placed on probation;~~
21 ~~may petition the board for reinstatement or modification of penalty;~~
22 ~~including modification or termination of probation.~~

23 ~~(b) The person may file the petition after a period of not less~~
24 ~~than the following minimum periods have elapsed from the~~
25 ~~effective date of the surrender of the certificate or the decision~~
26 ~~ordering that disciplinary action:~~

27 ~~(1) At least three years for reinstatement of a license surrendered~~
28 ~~or revoked for unprofessional conduct, except that the board may,~~
29 ~~for good cause shown, specify in a revocation order that a petition~~
30 ~~for reinstatement may be filed after two years.~~

31 ~~(2) At least two years for early termination of probation of three~~
32 ~~years or more.~~

33 ~~(3) At least one year for modification of a condition, or~~
34 ~~reinstatement of a license surrendered or revoked for mental or~~
35 ~~physical illness, or termination of probation of less than three years.~~

36 ~~(e) The petition shall state any facts as may be required by the~~
37 ~~board. The petition shall be accompanied by at least two verified~~
38 ~~recommendations from physicians and surgeons licensed in any~~
39 ~~state who have personal knowledge of the activities of the petitioner~~
40 ~~since the disciplinary penalty was imposed.~~

1 ~~(d) The petition may be heard by a panel of the board. The board~~
2 ~~may assign the petition to an administrative law judge designated~~
3 ~~in Section 11371 of the Government Code. After a hearing on the~~
4 ~~petition, the administrative law judge shall provide a proposed~~
5 ~~decision to the board or the California Board of Podiatric Medicine,~~
6 ~~as applicable, which shall be acted upon in accordance with Section~~
7 ~~2335.~~

8 ~~(e) The panel of the board or the administrative law judge~~
9 ~~hearing the petition may consider all activities of the petitioner~~
10 ~~since the disciplinary action was taken, the offense for which the~~
11 ~~petitioner was disciplined, the petitioner's activities during the~~
12 ~~time the certificate was in good standing, and the petitioner's~~
13 ~~rehabilitative efforts, general reputation for truth, and professional~~
14 ~~ability. The hearing may be continued from time to time as the~~
15 ~~administrative law judge designated in Section 11371 of the~~
16 ~~Government Code finds necessary.~~

17 ~~(f) The administrative law judge designated in Section 11371~~
18 ~~of the Government Code reinstating a certificate or modifying a~~
19 ~~penalty may recommend the imposition of any terms and conditions~~
20 ~~deemed necessary.~~

21 ~~(g) No petition shall be considered while the petitioner is under~~
22 ~~sentence for any criminal offense, including any period during~~
23 ~~which the petitioner is on court-imposed probation or parole. No~~
24 ~~petition shall be considered while there is an accusation or petition~~
25 ~~to revoke probation pending against the person. The board may~~
26 ~~deny without a hearing or argument any petition filed pursuant to~~
27 ~~this section within a period of two years from the effective date~~
28 ~~of the prior decision following a hearing under this section.~~

29 ~~(h) This section is applicable to and may be carried out with~~
30 ~~regard to licensees of the California Board of Podiatric Medicine.~~
31 ~~In lieu of two verified recommendations from physicians and~~
32 ~~surgeons, the petition shall be accompanied by at least two verified~~
33 ~~recommendations from podiatrists licensed by the board who have~~
34 ~~personal knowledge of the activities of the petitioner since the date~~
35 ~~the disciplinary penalty was imposed.~~

36 ~~(i) Nothing in this section shall be deemed to alter Sections 822~~
37 ~~and 823.~~

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