

Assembly Bill No. 3265

CHAPTER 149

An act to amend Sections 2365 and 2369 of the Business and Professions Code, relating to medicine.

[Approved by Governor July 11, 1996. Filed with
Secretary of State July 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3265, Gallegos. Osteopathic physicians and surgeons: diversion program.

Existing law authorizes the Osteopathic Medical Board of California to establish diversion evaluation committees to evaluate licensees who request participation in a diversion treatment program for drug or alcohol abuse, and requires the board to establish criteria for the acceptance, denial, or termination of participants in the diversion program.

This bill would add provisions regarding the methods by which a person may participate in the diversion program, and would provide, among other things, that neither acceptance nor participation in the diversion program precludes the board from investigating or disciplining a participant for unprofessional conduct.

Existing law provides for the confidentiality of all board and committee records of proceedings regarding treatment of a participant in the diversion program except in the case of a criminal proceeding.

This bill would also provide an exception to the requirement of confidentiality of the records if a participant withdraws or is terminated from the diversion program at a time when the diversion evaluation committee determines that he or she presents a threat to the public health and safety, and the bill would require each participant to sign an agreement of understanding regarding this exception.

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

SECTION 1. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239 of the Business and Professions Code, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed, before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated



from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 2. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After a committee, in its discretion, has determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

