Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Rudy Salas, Chair
SB 1177(Galgiani) – As Amended June 1, 2016

SENATE VOTE: 39-0

SUBJECT: Physician and Surgeon Health and Wellness Program

SUMMARY: Authorizes the Medical Board of California (MBC) to contract with a private third party to allow physicians and surgeons to participate in a Physician Health and Wellness Program (PHWP) to provide treatment for substance abuse disorders.

EXISTING LAW:

1) Establishes the Department of Consumer Affairs (DCA) which oversees boards and bureaus that license and regulate businesses and professions, including but not limited to physicians, nurses, dentists, engineers, architects, contractors, cosmetologists, automotive repair facilities and private postsecondary education institutions. (Business and Professions Code (BPC) § 101)

2) Requires individuals or entities contracting with the DCA or any board within the DCA to provide services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs to retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the DCA for a maximum of three years, as specified. (BPC § 156.1)

3) Requires all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the DCA, or to any board to be kept confidential, and not subject to discovery or subpoena.

4) Establishes the Substance Abuse Coordination Committee (SACC) in the DCA, comprised of executive officers of the DCA's healing arts boards and a designee of the State Department of Health Care Services. (BPC § 315 (a))

5) Requires the SACC 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, whether or not a board chooses to have a formal diversion program. (BPC § 315 (c))

6) Requires a healing arts board, except the Board of Registered Nursing (BRN), to order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. (BPC § 315.2)

7) Permits a healing arts board to adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice due to a major violation or if the licensee has been ordered to undergo a clinical diagnostic evaluation pursuant to uniform and specific standards, as specified, but that this requirement shall not apply to the BRN for purposes of their intervention program. (BPC §§ 315.4 (a) and (d))

8) Prohibits an order to cease practice from being governed by the Administrative Procedures Act (APA), and states that the order shall not constitute a disciplinary action. (BPC §§ 315.4 (b) and (c))

9) Requires the following boards to establish a diversion program for board licensees in order to seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to abuse of dangerous drugs and alcohol, so that licensees may be treated and returned to practice in a manner which will not endanger the public's health and safety. Most boards also specify Legislative intent that a diversion program (or intervention program) is a voluntary alternative approach to traditional disciplinary actions:

   a) The Dental Board of California for dentists and dental hygienists. (BPC §§ 1695-1699; 1966-1966.6)

   b) The Osteopathic Medical Board of California for osteopathic physicians and surgeons. (BPC §§ 2360-2370)

   c) The Physical Therapy Board of California for physical therapists. (BPC §§ 2662-2669)

   d) The Board of Registered Nursing for registered nurses. (BPC §§ 2770-2770.14)

   e) The Physician Assistant Board for physician assistants. (BPC §§ 3534- 3534.10)

   f) The Board of Pharmacy to operate a recovery program for pharmacists or intern pharmacists. (BPC §§ 4360-4373)

   g) The Veterinary Medical Board for veterinarians and registered veterinary technicians. (BPC §§ 4860-4873)

10) Establishes the Attorney Diversion and Assistance Act within the State Bar of California to address the substance abuse and mental health problems of attorneys who voluntarily participate in the program. (BPC §§ 6230-6238)

11) Provides for the professional review of specified healing arts licentiates by a peer review body, as defined, including a medical or professional staff of any licensed health care facility or clinic, health care service plan, specified health professional societies, or a committee organized by any entity that functions as a body to review the quality of professional care provided by specified health care practitioners. (BPC § 805)

12) Requires a report to be filed by a peer review body to an agency having regulatory jurisdiction over healing arts licentiates if a licentiate's application for staff privileges is denied or rejected, has had his or her membership, staff privileges, or employment terminated or revoked for medical disciplinary reasons; or if restrictions are imposed, or voluntarily accepted, on staff privileges, membership or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason. (BPC § 805)

13) Requires a peer review body to file a report with the relevant agency within 15 days after a peer review body makes a final decision or recommendation regarding the disciplinary action to be taken against a licentiate if it is determined, based on the investigation of the licentiate, that the licentiate was involved in the use of, or prescribing for or administering to himself or

herself, any controlled substance; or the use of any dangerous drug or alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licentiate, any other person, or to the public, or to the extent that such use impairs the ability of the licentiate to practice safely. (BPC § 805.01)

14) Provides for the licensure and regulation of physicians and surgeons by the MBC pursuant to the Medical Practice Act (Act). (BPC § 2000 *et. seq*.)

15) Requires MBC to investigate complaints from the public, other licensees, health care facilities, or from others as specified. Requires MBC to investigate the circumstances underlying a report received pursuant to BPC § 805 or § 805.01 above within 30 days to determine if an interim suspension order or temporary restraining order should be issued. (BPC § 2220)

16) Requires MBC to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Requires cases involving drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient to be handled as a high priority. (BPC §2220.05)

17) Provides MBC with the authority to issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited the applicant to limited practice under a supervised, structured environment, continuing medical or psychiatric treatment, ongoing participation in a specified rehabilitation program, or abstention from the use of alcohol or drugs. (BPC §2221)

18) Provides that the MBC shall take action against a physician who is charged with unprofessional conduct, as specified. (BPC § 2234)

19) Provides that a violation of any federal or state statute or regulation regulating dangerous drugs or controlled substances constitutes unprofessional conduct. (BPC § 2238)

20) Provides that the use of, or self-prescribing or self-administering, of any controlled substance or dangerous drugs or alcoholic beverages in such a manner as to be dangerous or injurious to the licensee or any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely, or more than one misdemeanor or any felony involving the use, consumption or self-administration of any of these substances, constitutes unprofessional conduct. (BPC § 2239)

THIS BILL:

1) Permits the MBC to establish a PHWP for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse to ensure that the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession.

2) Defines “program” as the PHWP.

3) Requires the PHWP to:

a) Provide for the education of all licensed physicians and surgeons with respect to the recognition and prevention of physical, emotional, and psychological problems;

b) Offer assistance to a physician and surgeon in identifying substance abuse problems;

c) Evaluate the extent of substance abuse problems and refer the physician and surgeon to the appropriate treatment by executing a written agreement with a physician and surgeon participant;

d) Provide for the confidential participation by a physician and surgeon with substance abuse issues who does not have a restriction on his or her practice related to those substance abuse issues; and,

e) Comply with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the SACC of the DCA.

4) Specifies that if the MBC establishes a PHWP, the MBC shall contract for the program's administration with a private third-party independent administering entity pursuant to a request for proposals.

5) Requires that the administering entity to:

a) Have expertise and experience in the areas of substance or alcohol abuse in healing arts professionals;

b) Identify and use a statewide treatment resource network that includes treatment and screening programs and support groups and shall establish a process for evaluating the effectiveness of such programs;

c) Provide counseling and support for the physician and surgeon and for the family of any physician and surgeon referred for treatment;

d) Make their services available to all licensed California physicians and surgeons, including those who self-refer to the PHWP; and,

e) Have a system for immediately reporting a physician and surgeon who withdraws or is terminated from the PHWP to the MBC. This system shall ensure absolute confidentiality in the communication to the MBC. The administering entity shall not provide this information to any other individual or entity unless authorized by the participating physician and surgeon.

6) Additionally requires the administering entity to do the following:

a) Provide regular communication to the MBC, including annual reports to the MBC with PHWP statistics, including, but not limited to, the number of participants currently in the PHWP, the number of participants referred by the MBC as a condition of probation, the number of participants who have successfully completed their agreement period, and the number of participants terminated from the PHWP. In making reports, the administering entity shall not disclose any personally identifiable information relating to any participant.

b) Submit to periodic audits and inspections of all operations, records, and management related to the PHWP to ensure compliance with the requirements of this article and its implementing rules and regulations. Specifies that any audit conducted pursuant to 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 identifying a PHWP participant.

c) Allow the MBC to terminate the contract in the event that the MBC determines the administering entity is not in compliance with the requirements of the PHWP or contract entered into with the MBC.

7) Indicates that a physician and surgeon shall, as a condition of participation in the PHWP, enter into an individual agreement with the PHWP and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement. The agreement shall include all of the following:

a) A jointly agreed upon plan and mandatory conditions and procedures to monitor compliance with the PHWP;

b) Compliance with terms and conditions of treatment and monitoring;

c) Criteria for PHWP completion;

d) Criteria for termination of a physician and surgeon participant from the PHWP;

e) Acknowledgment that withdrawal or termination of a physician and surgeon participant from the PHWP shall be reported to the MBC; and,

f) Acknowledgment that expenses related to treatment, monitoring, laboratory tests, and other activities specified by the PHWP shall be paid by the physician and surgeon participant.

8) Specifies that any agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the MBC and shall not be disclosed to the MBC if both of the following apply:

a) The physician and surgeon did not enroll in the PHWP as a condition of probation or as a result of an action by the MBC; and,

b) The physician and surgeon is in compliance with the conditions and procedures in the agreement.

9) States that any oral or written information reported to the MBC shall remain confidential and does not constitute a waiver of any existing evidentiary privileges under any other provision or rule of law. However, confidentiality regarding the physician and surgeon's participation in the PHWP and related records do not apply if the MBC has referred a participant as a condition of probation.

10) Specifies that nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the MBC against a physician and surgeon based on acts or omissions within the course and scope of his or her practice.

11) Indicates that any information received, developed, or maintained regarding a physician and surgeon in the PHWP is not to be used for any other purposes.

12) States that participation in the PHWP is not a defense to any disciplinary action that may be taken by the MBC. This section does not preclude the MBC from commencing disciplinary action against a physician and surgeon who is terminated unsuccessfully from the PHWP. However, that disciplinary action may not include as evidence any confidential information unless authorized by this section.

13) Establishes the Physician and Surgeon Health and Wellness Program Account within the Contingent Fund of the MBC.

14) Specifies that any fees collected by the MBC, as specified, must be deposited in the Physician and Surgeon Health and Wellness Program Account and shall be available, upon appropriation by the Legislature, for the support of the program.

15) States that the MBC shall adopt regulations to determine the appropriate fee that a physician and surgeon participating in the PHWP is required to provide to the MBC. The fee amount adopted by the MBC must be set at a level sufficient to cover all costs for participating in the PHWP including any administrative costs incurred by the board to administer the PHWP.

16) Permits the MBC, subject to appropriation by the Legislature, to use moneys from the Contingent Fund of the MBC to support the initial costs for the MBC to establish the PHWP under this article, except these moneys is not to be used to cover any costs for individual physician and surgeon participation in the PHWP.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the California Medical Association. According to the author, "As in other states, [this bill] will establish a much-needed statewide Physician Health and Wellness Program in California, which is essential for increasing patient safety through early identification of physicians with substance abuse disorders. It will ensure resources are available to increase awareness, coordination, and monitoring of treatment for physicians, and will ensure the [MBC] can take decisive action to protect patients."

Background. *Substance Misuse, Abuse, and Addiction among Health Care Licensees*. The distinctions between misuse, abuse, and addiction are important. Substance misuse is defined as inappropriate use of any substance, such as alcohol, a street drug, or misuse of a prescription or over the counter drug. Substance abuse has been described as unreasonable ingestion of a mind-altering substance that causes harm or injury to the health care professional. Addiction is a compulsive or chronic need for, or an active addiction to, alcohol or drugs. Healthcare professionals are at particular risk for substance misuse, abuse, and addiction; however, limited data is available on the rates of incidence because abusing or addicted health care professionals rarely report abuse or addiction for fear of disciplinary action against their license to practice. It is also difficult to gather accurate statistics because employers often fail to recognize the signs and symptoms of these disorders. Available literature estimates that between 10 to 15 percent of health care professionals are afflicted with alcohol or drug addiction.

Health care professionals are at particular risk for alcohol/drug misuse, abuse, or addiction for many reasons. Drugs are one of the primary tools used by health care professionals to treat and help their patients. They prescribe, administer, and dispense medications every day. In addition, their exposure and accessibility to mind-altering medications, pharmacological knowledge of the drugs that fosters a false sense of control, and a tendency to self-treat or self-medicate are contributing factors. (Nebraska Department of Health and Human Services, *Alcohol and Drug Abuse and Addiction: A Healthcare Professional's Guide, 2011*).

In a study conducted by Cicala (2003), 8 to 12 percent of physicians were estimated to be at risk of developing a substance use problem. Specifically, emergency medicine and anesthesiology tend to be the highest-risk specialties for substance use problems among physicians. Similarly, Trinkoff and Storr (1998) conducted an investigation where substance use was studied among nurses. Thirty-two percent of 4,438 respondents indicated some substance abuse. Emergency room nurses were 3.5 times as likely to abuse substances as general practice or pediatric nurses. Oncology or administrative nurses were twice as likely to binge-drink. Psychiatric nurses were 2.5 times as likely as general practice nurses to smoke.

Diversion and Physician Health Programs. Diversion programs are established by enforcement entities to allow professional licensees the opportunity to address their substance misuse, abuse or addiction, in lieu of automatic discipline. Physician health programs (PHPs) offer the same services to enrollees as diversion programs, but not all PHPs provide the ability for certain enrollees to "divert" automatic discipline from enforcement entities by instead enrolling, participating, and completing treatment. In 1974, the American Medical Association and the Federation of State Medical Boards advised state medical boards on the importance of developing PHPs. By 1980, almost all states had authorized or implemented PHPs. To date, PHPs operate in 47 states and the District of Columbia.

Several studies have reported recovery rates between 70 to 90 percent for physicians with substance use problems monitored by PHPs (DuPont, R.L. et al., 2009; McLellan, A.T., 2008). Other studies cite abstinence rates of almost 90 percent five years after physicians completed PHPs (Institute for Behavior and Health, *Creating a New Standard for Addiction Treatment Outcomes*, 2014).

Diversion Programs in California. Across the state, there are multiple programs including seven programs housed within the DCA and one program, the Lawyer Assistance Program, operated by the State Bar of California.

The BPC requires seven different boards to establish diversion programs which will allow the boards to identify and rehabilitate licensees whose competency may be impaired due to substance misuse, abuse, or addiction. The programs are intended to provide treatment to licenses so that they can return to practice in a manner that will not endanger the public's health and safety. Most of these boards specify in their practice acts that participation in the diversion programs is a voluntary alternative approach to traditional disciplinary actions. The following boards are authorized to administer a diversion program via statute:

1) The Dental Board of California

2) The Osteopathic Medical Board of California

3) The Physical Therapy Board of California

4) The Board of Registered Nursing

5) The Physician Assistant Board

6) The Board of Pharmacy

7) The Veterinary Medical Board

The MBC's Diversion Program. The MBC previously operated a diversion program from 1980 until 2008. The program re-routed physicians with substance use problems out of the enforcement program and into a monitoring program intended to assist them in their recovery. Participants were required to adhere to an agreement for a five-year monitoring program, including random bodily fluids testing, mandatory group meeting attendance, worksite monitoring, and often substance abuse treatment and/or psychotherapy. Those who complied with these terms and maintained sobriety for three years were discharged from the program without facing disciplinary action. Those who violated the agreement were referred to the enforcement program for discipline. Many of the physicians in the program retained full and unrestricted medical licenses during their participation in the diversion program and their participation was confidential.

Audit of the MBC's Diversion Program. The MBC's diversion program was audited five times with its first audit commencing in 2003 as a result of a legislatively mandated enforcement monitor who was placed at the MBC to monitor its oversight of the diversion program (SB 1950 (Figueroa), Chapter 1085, Statues of 2002). The fifth audit was completed in 2007 by the Bureau of State Audits.

In a report of the first audit, it was recommended that MBC consider contracting the program out to another entity due to the MBC's problems with administering the program. All subsequent audits resulted in reports that highlighted the MBC's difficulty with establishing and maintaining sufficient quality controls in administering the program, and pointed out problems including insufficient staff, inadequate monitoring and reporting mechanisms, and deficient guidance. The MBC did not make all of the recommended changes from the various audits. The program was discontinued July 1, 2008.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards). Senate Bill 1441 (Ridley-Thomas), Chapter 548, Statutes of 2008, created the SACC). The SACC was required to formulate uniform and specific standards in specified areas that each healing arts board should use when dealing with licensees with substance use problems, regardless if the board decided to have a formal program. The standards were finalized in April of 2011. Since then, there have been three separate legal opinions that concluded that the use of the Uniform Standards by the DCA's healing arts boards is mandatory. The standards outline how the boards should address the following:

1) Clinical and diagnostic evaluation of the licensee;

2) Temporary removal of the licensee from practice;

3) Communication with licensee's employer about licensee status and condition;

4) Testing and frequency of testing while participating in a diversion program or while on probation;

5) Group meeting attendance and qualifications for facilitators;

6) Determining what type of treatment is necessary;

7) Worksite monitoring;

8) Procedures to be followed if a licensee tests positive for a banned substance;

9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance;

10) Consequences for major violations and minor violations of the standards and requirements;

11) Return to practice on a full-time basis;

12) Reinstatement of a health practitioner's license;

13) Use and reliance on a private-sector vendor that provides diversion services;

14) The extent to which participation in a diversion program shall be kept confidential;

15) Audits of a private-sector vendor's performance and adherence to the uniform standards and requirements; and

16) Measurable criteria and standards to determine how effective diversion programs are in protecting patients and in assisting licensees in recovering from substance abuse in the long term.

The MBC stated at its October 29, 2015 board meeting that any PHWP operated by the MBC should comply with the Uniform Standards. It further stated in its letter of support that it interprets the PHWP described in this measure as being compliant with the Uniform Standards.

Prior Related Legislation. AB 2346 (Gonzalez) of 2014, would have authorized MBC to contract with a third party to establish a voluntary Physician Health Program. (NOTE: *The bill was held under submission in the Assembly Committee on Appropriations.*)

SB 1483 (Steinberg) of 2012, would have created the Physician Health, Awareness, and Monitoring Quality Act (PHAMQ Act) and established a Physician Health Program for physicians, medical students, and medical residents seeking treatment for alcohol or substance abuse, a mental disorder, or other health conditions. Created a Physician Health, Awareness, and Monitoring Quality Oversight Committee within the DCA and vested it with the duties and responsibilities for the program, including entering into contracts. (NOTE: *This bill was placed on inactive file on the Assembly Floor*.)

SB 1172 (Negrete McLeod) Chapter 517, Statutes of 2010, required healing arts boards to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program.

AB 526 (Fuentes) of 2009, would have established a voluntary Physician Health Program within the State and Consumer Services Agency to assist physicians and surgeons with alcohol or substance abuse. (NOTE: *The bill was held under submission in the Senate Committee on Appropriations.*)

AB 214 (Fuentes) of 2008, would have established a voluntary Physician Health Program within the Department of Public Health to assist physicians and surgeons with alcohol or substance abuse. (NOTE: *The measure was vetoed by Governor Schwarzenegger who stated in his veto message, "separating the operation of such programs from the [MBC] is inappropriate. Ideally, diversion programs would always lead to success, but the reality is that not everyone succeeds in recovery. It is critical that the licensing agency be directly involved in monitoring participation in diversion programs to protect patients and enable timely enforcement actions."*)

SB 1441 (Ridley-Thomas) Chapter 548, Statutes of 2008, established the SACC within the DCA to develop uniform standards and controls for programs dealing with licensees with substance abuse problems.

AB 2443 (Nakanishi) of 2008, would have required the MBC to establish a program to promote the well-being of physicians and surgeons. (NOTE: *The measure was vetoed by Governor Schwarzenegger who stated in his veto message, "This bill, while well-intentioned, detracts from the mission and purpose of the MBC. The [MBC] should be focused on successfully implementing its current licensure, regulatory and enforcement activities before attempting to offer new programs outside its highest priority – protecting the health and safety of consumers."*)

SB 761 (Ridley-Thomas) of 2007, would have extended the sunset date of the PDP to July 1, 2010. (NOTE: *This bill was held under submission in the Assembly Committee on Appropriations.*)

SB 231 (Figueroa) Chapter 674, Statutes of 2005, established a January 1, 2009, sunset date for the physician diversion program.

ARGUMENTS IN SUPPORT:

The California Medical Association, sponsors of this measure, write, "Currently, California physicians and surgeons are the only licensed medical professionals without a wellness and treatment program aimed at providing support and rehabilitation for substance abuse disorders. In fact, California is just one of a few states nationwide that does not provide a pathway for physicians and surgeons to address substance abuse and mental health problems. Because there is no program in California, many who suffer from these conditions often do not know where to turn for help. A statewide system will increase awareness and coordination of reliable treatment options."

The California Chapter of the American College of Emergency Physicians writes in support, "Studies show that burnout is common among physicians, and even more so among emergency physicians, with rates as high as 60%... It's not at all surprising that burnout, left unchecked, can

lead to serious consequences, such as substance abuse and even suicide. That's why it's crucial to provide support for those suffering from its effects."

The California Academy of Family Physicians writes in their letter of support, "…the MBC operated a Diversion Program for physicians and surgeons…[that] allowed for participation in the program in lieu of discipline. The program proposed under [this bill] would not be a diversion program; participation would not preclude the MBC from taking disciplinary actions deemed necessary, thereby strengthening consumer protections."

The California Health Advocates also supports the measure and writes, "California's Physicians and Surgeons face a myriad of work related stresses and it is important that we do more to protect their well-being because they keep the rest of us healthy. [This bill] will authorize the [MBC] to establish a Physician and surgeon Health and Wellness Program for the early identification and appropriate interventions to support a physician and surgeon in his or her rehabilitation from substance abuse, physical or mental illness and burnout. The creation of this type of wellness program is long overdue."

The California Hospital Association writes, "CHA feels this bill would achieve legislation that is supportive of early intervention, offers flexible treatment options and achieves the goals of retaining valuable members of the medical community while protecting the public."

The California Society of Addiction Medicine supports the measure and writes, "As physicians, CSAM understand the importance of protecting patients. No other progression swears an oath of allegiance to their clients' wellbeing quite like the Hippocratic Oath. To protect our patients we must find the most effective way to safeguard them from healthcare professionals who abuse alcohol and other drugs."

The Drug Policy Alliance writes, "California is one of only a handful of states with no such program in place. We support creating this kind of program because national scientific evidence proves that the public is safer when doctors who need help with physical and mental health conditions can access that help and be monitored by such a program."

The Medical Board of California supports the measure and writes, "This bill would require the PHWP to comply with the Uniform Standards and would require any physician participant who terminates or withdraws from the PHWP to be reported to the Board. These are both very important elements for consumer protection."

The Union of American Physicians and Dentists writes, "There is a tragic irony in California being one of the only states in America to not provide their professional healthcare providers with a holistic support and rehabilitation program for substance abuse, stress, and other health issues. It is imperative California work to provide our physicians and surgeons with the same type of robust assistance and care we provide to other professional classes."

The Western Occupational and Environmental Medical Association writes in support, "Similar programs exist in most other states, and in California, physicians are the only medical professionals without access to a program that provides support and rehabilitation for substance abuse, stress, or other issues. The Physician Health Program would fill that void."

ARGUMENTS IN OPPOSITION:

The Center for Public Interest Law opposes the measure and writes, "At a minimum,…it is critical that the bill be amended to ensure patients are adequately protected…CPIL recommends the following amendments:

1) The bill should be amended to require MBC to appoint a standing committee of [MBC] members to meet quarterly, in public to review data provided by the administering entity, and any audits performed with respect to eh program as required by Uniform Standard #15. The committee should be comprised of three public members and two licensee members of the [MBC], evaluate the programs' compliance with the Uniform Standards, and report its finding to the [MBC].

2) The bill should impose a sunset date on the program two years after it is implemented so that the Legislature may evaluate the program and ensure MBC is maintaining its public protection mandate.

3) Section 2340.4(h) should be amended to clarify that the [MBC] may terminate the contract with the administering entity if it determines the administering entity is not in compliance with the Uniform Standards, the requirements of the program, or any contract entered into with the [MBC]."

The Consumer Attorneys of California writes in opposition, "Our organization appreciates that the CMA and other physician groups acknowledge that drug and alcohol dependency among physicians is a serious matter that deserves attention by the Legislature. Unfortunately, [this bill] falls short of the steps needed to ensure that this dangerous problem is addressed in a way that provides accountability, correction and, above all else, assurance that patients are protected from negligent treatment by doctors under the influence."

The Consumers Union writes in opposition to the measure, "We are concerned that this bill would allow physicians accused of substance abuse to be diverted into a confidential substance abuse program and that information will be kept secret from their patients. As soon as a physician is required to enter a substance abuse-related program, that information should be publicly reported on eh MBC website. Further, substance abusing physicians who have been referred by the MBC into treatment should be required to disclose that to their patients. Additionally, whether or not substance abuse is involved, all physicians should be subject, at minimum, to the same MBC public reporting requirements, i.e. the involvement of substance abuse should never be a cause to allow secrecy or reduce public reporting requirements, such as information about actions taken by the board on doctors' online profiles."

AMENDMENTS:

1) In order to ensure that physicians who enroll in the PHWP do not avoid enforcement action from the MBC for substance abuse related offenses, the bill should be amended to allow for confidentiality of self-referrals to be breached if an investigation of a substance abuse offense occurs after enrollment in the program as follows:

   2340.2 (d) Provide for the confidential participation by a physician and surgeon with substance abuse issues who do not have a restriction on his or her practice related to those substance abuse issues. *If an investigation of a physician occurs after the physician has enrolled in the program, the board may inquire of the program if the physician is enrolled in the program.*

2) In order to ensure that the provisions of this bill allow the administering entity the ability to report the physician's name to the MBC for additional offenses outlined in the Uniform Standards, the bill should be amended as follows:

   2340.4 (f) The administering entity shall have a system for immediately reporting ~~a~~ *to the board* ~~a~~ physician and surgeon*s* *including but not limited to those* who withdraw~~s~~ or *are* ~~is~~ terminated from the program. ~~to the board.~~

3) To address the conflict in language listed in subdivision (d) and (e), the bill should be amended as follows:

   2340.6 (d) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the board against a physician and surgeon based on acts or omissions within the course and scope of his or her practice.

   2340.6 (e) ~~Any information received, developed, or maintained regarding a physician and surgeon in the program shall not be used for any other purposes.~~

REGISTERED SUPPORT:

California Medical Association (sponsor)
California American College of Emergency Physicians
California Academy of Family Physicians
California Health Advocates
California Hospital Association
California Society of Addiction Medicine
Drug Policy Alliance
Medical Board of California
Union of American Physicians and Dentists
Western Occupational and Environmental Medical Association

REGISTERED OPPOSITION:

Center for Public Interest Law
Consumer Attorneys of California
Consumers Union
1 individual

Analysis Prepared by: Le Ondra Clark Harvey, Ph.D. / B. & P. / (916) 319-3301