

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 505 (Caballero) – As Amended March 27, 2017

SUBJECT: Physicians and surgeons: probation.

SUMMARY: Prohibits the Medical Board of California (MBC) from entering into a stipulated settlement for a disciplinary action with a physician if the underlying accusations of the complaint allege a felony conviction resulting in harm to patient safety; drug or alcohol abuse directly resulting in harm to patient safety; or, sexual acts or sexual exploitation.

EXISTING LAW:

- 1) Provides for the licensure and regulation of physicians and surgeons by MBC pursuant to the Medical Practice Act (Act). (BPC § 2000 *et. seq.*)
- 2) Requires the MBC to disclose on the Internet specified information in its possession, custody, or control regarding licensed physicians and surgeons, including: any felony convictions reported to the MBC after January 3, 1991; or, any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed. (BPC § 2027)
- 3) Requires MBC to investigate complaints from the public, other licensees, health care facilities or from others as specified. (BPC § 2220)
- 4) 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. (BPC § 2220.05)
- 5) Sets forth what the MBC may do in disciplining a physician (e.g., revoke or suspend a license, place a physician on probation, etc); further states that a licensee can "Have any other action taken in relation to discipline as part of an order as the board or administrative law judge may deem proper." (BPC § 2227)
- 6) Requires the automatic suspension of a physician and surgeon's certificate during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Requires the MBC, immediately upon receipt of the certified copy of the record of conviction, to determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. Requires the MBC to notify the physician and surgeon of the license suspension and of his or her right to elect to have the issue of penalty heard, as provided. (BPC § 2236.1)

THIS BILL:

- 1) Specifies that the MBC may not enter into any stipulation for disciplinary action, if the stipulation places a licensee on probation, and the operative accusation includes any of the following:
 - a) Felony conviction involving harm to patient safety or health;
 - b) Drug or alcohol abuse directly resulting in harm to patient safety or health; or,
 - c) Sexual act or sexual exploitation.

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, “AB 505 prohibits the Medical Board from entering into a stipulated settlement with a physician accused of certain enumerated violations unless there is a finding of fact by an administrative law judge after a full investigation by the board. These accusations include 1) felony convictions resulting in direct patient harm; 2) alcohol or drug abuse resulting in direct patient harm and 3) Sexual acts or sexual exploitation. This bill would effectively prohibit probation from being offered as a means to settle the enumerated accusations unless an investigation has been completed and reviewed by a judge.”

Background. *MBC Enforcement Data.* According to information obtained from the MBC, in fiscal year 2015-2016, the Enforcement Program received 8,679 complaints against physicians and surgeons and unlicensed individuals alleged to be practicing medicine without a license. This was an increase of 412 complaints from the prior fiscal year. Since fiscal year 2012-2013, the MBC has seen a significant increase in complaints received. These complaints include allegations including excessive prescribing, gross negligence/incompetence, licensee self-abuse of drugs or alcohol, convictions of a crime and general unprofessional conduct.

Stipulated Settlements. According to information obtained from the Department of Consumer Affairs (DCA), stipulations are legal documents that typically contain admissions by the licensee to one or more violations of law and set forth a proposal for appropriate discipline. Appropriate discipline is based on the MBC’s disciplinary guidelines which outline both minimum and maximum penalties for every violation of the Medical Practice Act.

Discipline comes in many forms and, depending on the admission(s) of misconduct, may include probation with terms and conditions, suspension, surrender of license, or even revocation. Minor violations are settled less stringently by way of reprimands, educational coursework or conferences, or perhaps an oral examination. Stipulations are negotiated between the licensee or his/her attorney and the MBC’s legal representative from the Office of the Attorney General. Once a stipulation is agreed upon and signed by the licensee and the MBC’s legal representative, the document is voted upon by the MBC. The MBC votes to either adopt the stipulation, reject it, or offer a counterproposal. If the licensee does not agree with the counterproposal, s/he has the right to request a formal hearing before an Administrative Law Judge.

Licenses who choose stipulated agreements over formal hearings waive their rights to further due process procedures and appeals and are legally bound by the terms of the penalty order, but in so doing, save time and money and often end up with the same penalty order that would result after a full administrative hearing. This bill would prohibit the option to enter into a stipulated settlement if the stipulation places a licensee on probation if the accusation includes felony conviction resulting in harm to patient safety; drug or alcohol abuse directly resulting in harm to patient safety; or, sexual acts or sexual exploitation.

ARGUMENTS IN SUPPORT:

The **California Medical Association** (sponsor) writes in support, “CMA believe AB 505 enhances the integrity of the profession by ensuring that serious allegations are fully investigated by an administrative law judge and probation can be offered only after a finding of fact. When serious allegations are leveled, it is important that they be treated in a manner that ensures public trust in the disciplinary process while maintain due process for physicians at the same time.”

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Medical Association (sponsor)

REGISTERED OPPOSITION:

None on file.

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