



POLICY & ACTION FROM CONSUMER REPORTS

September 12, 2016

The Honorable Edmund G. Brown Jr.
Governor of California
State Capitol
Sacramento, CA 95814

Regarding: Opposition to SB 1177 (Galgiani)

Dear Governor Brown:

Consumers Union's Safe Patient Project (CU SPP) is a nationwide campaign that works intensively with patients and policymakers in California and organizes patient safety advocates on issues relating to hospital safety (hospital-acquired infections and medical errors) and physician safety (Medical Board). We write to urge you to veto Senate Bill 1177 (Galgiani).

Senate Bill 1177, sponsored by the California Medical Association (CMA), creates a state-sanctioned treatment program for substance abusing physicians. While treatment for impaired physicians is important, there is nothing that now prevents doctors from seeking treatment with complete confidentiality. There is no need to create a special program that may interfere with the oversight responsibilities of the Medical Board of CA (MBC). It took the MBC years to fully comply with the law establishing uniform standards for substance abusing health professionals (created by SB1441 in 2008); and the agency's regulations only became effective in 2015. This new bill contradicts these uniform standards and would interfere with keeping patients informed and safe. This is yet another attempt by CMA to reinstate a flawed treatment program abolished by the MBC in 2008.

Specifically, we are concerned that SB 1177 would allow MBC to refer physicians brought to the attention of the Medical Board by complaints relating to substance abuse to a confidential treatment program – thus diverting them from MBC disciplinary action. This would keep patients in the dark about their doctors' problems even where those problems are known to MBC, jeopardizing their safety. Instead, any physician who has a significant enough problem to be referred by the MBC to this program should be monitored by the MBC. Today, when the MBC requires a physician to enter treatment as a consequence of complaints brought to the agency, that is done through an order and the information is publicly reported on the agency's website. SB 1177 would allow such notice to the public to be diverted.

SB 1177 also fails to prohibit the use of a "diversion program" associated with the California Medical Association (or with any nonprofit associated with the CMA or with an entity associated with past administrators). This "fox guarding the chicken house" approach led to the failed model that the MBC used in the past and should not be repeated.

The bill is vague or confusing regarding: 1) when the MBC can begin investigating a physician who is terminated or withdraws from the program [2340.2(d)]; 2) when the Board is notified about violations of probation, such as a dirty drug test [Sec. 2340.4(f)]; and 3) whether every California doctor can be charged a fee for supporting the program [2340.8]. Even more of a problem is confusion around compliance with the Uniform Standards. SB 1177 clearly states that compliance with the Uniform Standards should continue [2340.2(e)], but then specifies the situations that trigger notification to the Board regarding a physician's non-compliance with treatment [Sec. 2340.4(f)] that contradicts the Uniform Standards. Uniform Standard #9 specifically defines a failed drug test as a major violation and Uniform Standard #10 outlines specific consequences for a failed drug test, including ceasing practice.

This legislation specifies that the treatment program will notify the MBC when a physician withdraws or is terminated from the program but does not address notice when the doctor fails a drug test.

We strongly urge you to veto this damaging legislation and to continue the protection that patients in California currently have with full disclosure of Medical Board actions relating to substance abusing physicians.

Please feel free to contact me at the address below, or to contact Betsy Imholz (bimholz@consumer.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Lisa McGiffert". The signature is written in a cursive, flowing style.

Lisa McGiffert
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CC:

Graciela Castillo-Krings, Deputy Legislative Secretary, Office of Gov Edmund G. Brown Jr.
Betsy Imholz, Director of Special Projects, Consumers Union