Date of Hearing: June 24, 2008

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Mike Eng, Chair
SB 1441 (Ridley-Thomas) – As Amended: June 16, 2008

SENATE VOTE: 33-2

SUBJECT: Healing arts practitioners: alcohol and drug abuse.

SUMMARY: Establishes a Substance Abuse Coordination Committee (SACC) in the Department of Consumer Affairs (DCA) tasked with developing uniform standards and controls for programs dealing with substance-abusing healing arts licensees, and makes changes to the existing diversion program structure, as specified. Specifically, this bill:

1) Establishes the SACC within DCA to establish uniform standards for healing arts boards in dealing with substance-abusing licensees.

2) Specifies that SACC shall be chaired by the DCA director and comprised of the executive officer of each of the following boards:

   a) Chiropractic Board;

   b) Dental Board of California (DBC);

   c) Medical Board of California (MBC);

   d) Physical Therapy Board (PTB);

   e) Board of Optometry;

   f) Osteopathic Medical Board of California (OMBC);

   g) Veterinary Medical Board (VMB);

   h) Board of Behavioral Sciences;

   i) Acupuncture Board;

   j) Board of Podiatric Medicine;

   k) Board of Psychology;

   l) Respiratory Care Board;

   m) Board of Pharmacy;

   n) Board of Registered Nursing (BRN); and,

   o) Physician Assistant Committee (PAC).

3) Requires the committee to develop uniform standards for healing arts boards, whether or not they use a formal diversion program, in the following areas by January 1, 2010:

   a) Clinical diagnostic evaluation;

   b) Temporary license removal;

   c) Communication between the licensee and the licensee's employer;

   d) Required testing;

   e) Group meeting attendance;

   f) Treatment;

   g) Worksite monitoring;

   h) Positive tests;

   i) Ingestion of banned substances;

   j) Consequences for major and minor violations;

   k) Returning to practice; and,

   l) License reinstatement.

4) Requires SACC to establish standards for healing arts boards using a private-sector vendor for diversion services, as specified, including the extent to which licensee participation shall be kept confidential to the public, and a schedule for external independent audits of the vendor's performance.

5) Requires SACC to develop measurable criteria and standards to determine whether each healing arts board's methods of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

6) Transfers responsibilities of the diversion evaluation committees (DECs) to the program manager of the following healing arts boards, and recasts DECs' duties as advisors to the program manager, as specified:

   a) DBC;

   b) OMBC;

   c) PTB;

   d) BRN; and,

e) PAC.

7) Makes legislative findings and declarations regarding substance abuse and diversion programs.

8) Declares legislative intent that DCA conduct a thorough audit of the performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees and make recommendations, as specified.

9) Defines "program manager" as the staff manager of the diversion program, as designated by the executive officer of each respective board.

EXISTING LAW:

1) Establishes DCA which oversees boards and bureaus which license and regulate businesses and professions, including doctors, nurses, dentists, engineers, architects, contractors, cosmetologists and automotive repair facilities.

2) Requires the following healing arts boards to establish criteria for the acceptance, denial or termination of licentiates in a diversion program:

a) MBC;

b) OMBC;

c) BRN;

d) DBC;

e) The Board of Pharmacy;

f) PTB;

g) VMB; and,

h) PAC.

3) Allows a board of a healing arts licensee to deny, suspend, or revoke a license for specified acts.

4) Creates the Health Quality Enforcement Section (HQES) within the Department of Justice (DOJ) with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the MBC and various other healing arts boards.

5) Requires that DOJ's attorneys' staff and the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing, and simultaneously assign a complaint received by the MBC to an investigator and a deputy attorney general in the HQES. Makes these provisions inoperative on July 1, 2008.

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of this bill. According to the author's office, "The intent of this bill is to protect the public by ensuring that, at a minimum, a set of best practices or standards are adopted by health care related boards to deal with practitioners with alcohol or drug problems.

"SB 1441 is not attempting to dictate to [the health-related boards under DCA] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards' diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the MBC's diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees."

Background. This bill stems from a series of highly publicized news articles and hearings on the MBC's now-defunct diversion program. This program, established in 1980, was designed to rehabilitate doctors with mental illness and substance abuse problems without endangering public health and safety. The diversion program was audited four times between 1982 and 2007 by the Bureau of State Audits and once in 2005 by a legislatively created enforcement monitor; all reports concluded that the program needed substantial improvements.

While the program reported that upward of 74% of participants successfully completed the program, external audits found problems with the program's core mission: monitoring. According to the state auditor and a legislatively created enforcement monitor, drug tests were not performed as scheduled, the program lacked cohesive, enforceable standards for many aspects of operations, and the MBC itself failed to exert effective oversight.

Further, the controls in place to monitor physicians on the job were not adequately designed. The enforcement monitor's report found that though hospital and worksite monitors were designed to be the eyes and ears of the program, ensuring that participants act appropriately and perform their duties substance-free, the "Diversion Program Manual" contained no requirements that the monitors be on-site with the participants at the same time, or even meet with and talk with the physicians. The state auditor also reported that the program did not always require a physician to immediately stop practicing following a positive drug test.

Meanwhile, press reports of several high-profile cases highlighted the potential threat to public safety. For example, Dr. Brian West, a plastic surgeon, had a history of alcohol problems dating back to 1987. He was arrested in 2000 on his second drunken driving offense, just weeks before performing surgery on a woman that resulted in dead stomach tissue and exposed intestines. The woman required subsequent corrective surgeries and treatment by an infectious disease doctor. According to press reports, she eventually settled a lawsuit related to Dr. West's care for $250,000 (the maximum allowable for malpractice suits in California) in 2002. However, Dr. West admitted no fault and his attorney stated that he had no information that Dr. West ever treated patients while under the influence. Dr. West also entered, and failed, MBC's diversion program.

While MBC housed its diversion program within the board itself, other boards outsource these functions. DCA currently manages a master contract with a publicly traded corporation for six boards' and one committee's diversion programs: BRN, DBC, the Board of Pharmacy, PTB,

VMB, OMBC, and PAC. The individual boards oversee the programs, but services are provided by a contractor.

These boards' diversion programs follow the same general principles of MBC's diversion program. Health practitioners with mental illnesses or substance abuse issues may be referred in lieu of discipline or self-refer into the programs and receive help with rehabilitation. After an initial evaluation, individuals accept a participation agreement and are regularly monitored in various ways, including random drug testing, to ensure compliance. DCA's current private contractor, Maximus, provides the services that MBC kept in-house: medical advisors, compliance monitors, case managers, a urine testing system, reporting, and record maintenance.

The DCA master contract standardizes certain tasks, such as designing and implementing a case management system, maintaining a 24-hour access line, and providing initial intake and in-person assessments, but the planning and execution of the programs are tailored to each board according to their needs and mandates. Each board currently specifies its own policies and procedures.

This bill addresses many of the concerns the enforcement monitor had with MBC's program, and these recommendations are now extended across all healing arts boards. Although many of the other healing arts boards currently express satisfaction with their contractor's current performance of their individual diversion programs, the MBC is the only healing arts board to have had a formal audit. This bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels.

Support: The Center for Public Interest Law writes in support, "Substance-abusing licensees of health care boards should be treated consistently and uniformly regardless of which board licenses them. Substance-abusing dentists should not be treated differently from substance-abusing pharmacists. As the bill states, the impairment of a health care practitioner for even a moment can mean irreparable harm to patients — and any program that purports to monitor impaired practitioners must be demonstrably effective."

Related legislation: AB 2443 (Nakanishi) of 2008, requires MBC to develop a program to address and promote physician and surgeon well-being.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Public Interest Law

Opposition

None on file.

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