

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 357
 AUTHOR: Portantino
 BILL DATE: May 6, 2024, Amended
 SUBJECT: Vehicles: Physician and Surgeon Reporting
 SPONSOR: Epilepsy Foundation Los Angeles
 POSITION: Oppose

DESCRIPTION OF CURRENT LEGISLATION

For a seven-year period, starting January 1, 2030, physicians would be permitted, instead of required per current law, to report to the Department of Motor Vehicles (DMV) certain information about a patient they have diagnosed with a condition severe enough to be likely to impair their ability to operate a motor vehicle. Maintains a mandatory reporting requirement for physicians to report to the DMV if their patient is of driving age and has been diagnosed with a case of Alzheimer's disease or a related disorder.

Provides physicians immunity from any civil, criminal, employment, or licensing/disciplinary action against them related to making or not making a report authorized by this bill.

RECENT AMENDMENTS

On May 6, 2024, SB 357 was amended, as follows:

- Delays the effective date of this bill to January 1, 2030.
- Clarifies the guidance to physicians when considering reporting a patient to the DMV as "having any condition severe enough to be likely to impair their ability to operate a motor vehicle if the physician and surgeon reasonably believes that reporting the patient will serve the public interest."
- Notwithstanding the permissive reporting requirement described in the prior bullet, a physician would be required to report immediately in writing to the DMV the name, date of birth, and address of every patient of driving age whom the physician has diagnosed as having a case of Alzheimer's disease or a related disorder.
- Sunsets this law and reverts to a mandatory reporting requirement related to patients with lapses of consciousness on January 1, 2037.

BACKGROUND

[Health and Safety Code section 103900](#) requires physicians to report immediately to the local health officer, who will then report to the DMV, the name, date of birth, and address of any patient at least 14 years or older diagnosed with a disorder

characterized by lapses of consciousness. These reports shall be kept confidential and used solely by the DMV for determining eligibility for operating motor vehicles.

[Business and Professions Code section 2234](#) states that repeated negligent acts, gross negligence, incompetence, and acts of dishonesty and corruption related to the practice of medicine constitutes unprofessional conduct.

ANALYSIS

According to the author's fact sheet:

“Epilepsy is the fourth-most common neurological disorder, affecting more than 3.4 million Americans and more than 425,000 Californians.

Yet here in California, an outdated state law from 1957 discriminates against drivers with epilepsy and other conditions by requiring physicians to automatically report these drivers to the Department of Motor Vehicles. This adversely affects the patient-physician relationship.

When a person with epilepsy withholds such critical information from their doctor, they jeopardize their access to appropriate care, risking an increase of seizure activity or even a loss of seizure control. Increased seizure activity can lead to injury and death.

Despite evidence that drivers with epilepsy do not have meaningfully higher accident rates than the broader population, drivers with epilepsy and other conditions covered by the current law—including diabetes—who have their licenses unfairly suspended or revoked often must go through an expensive and often humiliating process to have their licenses restored.”

This analysis focuses on the aspects related to the consumer protection mission of the Medical Board of California (Board).

Overview of SB 357

This bill replaces a mandatory reporting requirement with a permissive reporting authorization for physicians with a patient at least 15 years of age or older, or 14 years of age if the patient has a junior permit, whom they have diagnosed as having any condition severe enough to likely impair their ability to operate a motor vehicle, provided the physician reasonably and in good faith believes that reporting the patient will serve the public interest. Current law focuses on conditions characterized by lapses of consciousness, which proponents argue discriminates against individuals with certain conditions, like epilepsy.

This bill creates a more expansive authorization (which is largely permissive) for physicians to report to the DMV related to the conditions described above. Expanding the authority and loosening the mandate is intended to cover other conditions that may

interfere with the safe operation of a vehicle while providing the physician with increased discretion on whether to share such information. This is intended to foster a spirit of transparency between the patient and their physician – a worthy goal.

The bill contains a sunset date and would revert to a mandatory reporting requirement related to patients with lapses of consciousness on January 1, 2037. That mandatory reporting requirement defines “disorder characterized by lapses of consciousness” as one that involves all the following:

- A loss of consciousness or a marked reduction of alertness or responsiveness to external stimuli.
- The inability to perform one or more activities of daily living.
- The impairment of the sensory motor functions used to operate a motor vehicle.

In this section, the bill provides examples of medical conditions that may progress to the level of functional severity to be a “disorder characterized by lapses of consciousness” to include Alzheimer’s disease and related disorders, seizure disorders, brain tumors, narcolepsy, sleep apnea, and abnormal metabolic states, including hypo- and hyperglycemia associated with diabetes.

Staff Concerns with Safe Harbor Provisions

The bill includes language that provides certain immunity to a health care provider or entity, which reads as follows:

(e) A health care provider or health care entity is not subject to civil, criminal, administrative, licensing, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for making or not making, or in relation to or arising from making or not making, a report authorized pursuant to this section.

The analysis of the Senate Judiciary Committee provides, in relevant part, helpful commentary about liability immunity, generally:

“Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty. Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities.

When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow

a victim to be made whole, but to encourage appropriate compliance with legal requirements.”

Regarding the Board’s mission of consumer protection, the safe harbor language in the bill would prevent the Board from taking any action against a physician licensee who acted in an unprofessional manner related to a nonmandatory report to the DMV.

In addition, a respondent’s attorney may argue that the language prevents the Board from taking disciplinary action against their client based upon the underlying diagnosis that led to filing a report about their patient to the DMV.

Similar language was contained in [SB 57 \(Wiener\) of 2021](#) to shield a physician against disciplinary action related to their work in a controlled substances overdose prevention program. The author of SB 57, however, agreed to place language into their bill that allowed the Board to pursue disciplinary action against a physician for their acts or omissions in those programs in violation of the Medical Practice Act.

Consideration of a Possible Updated Board Position

The Board adopted an Oppose position in 2023, as the Board members believed that the current law was sufficient to promote patient and public safety. The Board members expressed concern that the bill would lead to fewer reports to the DMV, therefore eroding patient and public safety.

The recent amendments described above may mitigate the Board’s concerns, as physicians would be required to report their patients who have a [dementia-related](#) disorder.

FISCAL: None identified.

SUPPORT: American Academy of Neurology
 American Epilepsy Society
 California Academy of Family Physicians
 California Medical Association
 California Neurology Society
 California Teamsters Public Affairs Council
 Epilepsy Foundation of America
 Health Officers Association of California

OPPOSITION: None identified.

ATTACHMENT: [SB 357, Portantino - Vehicles: Physician and Surgeon Reporting.](#)
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