

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 357
AUTHOR: Portantino
BILL DATE: April 27, 2023, Amended
SUBJECT: Vehicles: Physician and Surgeon Reporting
SPONSOR: Epilepsy Foundation Los Angeles

DESCRIPTION OF CURRENT LEGISLATION

Permits, instead of requiring (under current law), a physician to report to the Department of Motor Vehicles (DMV) certain information about a patient they have diagnosed with a condition that could affect their safe operation of a motor vehicle.

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.

BACKGROUND

[Health and Safety Code section 103900](#) requires physicians and surgeons 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 constitute 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Yet here in California, an outdated state law from 1957 discriminates against drivers with epilepsy and other conditions by requiring physicians to automatically report these drivers to the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 requirement upon 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 physical or mental disability, disease, or disorder that could affect the safe operation of 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 not mandatory) for physicians to report to the DMV related to the conditions described above. Expanding the authority and removing the mandate is intended to cover other conditions that may interfere with the safe operation of a vehicle but provides the physician discretion on whether to share such information. This is intended to foster a spirit of transparency between the patient and physicians – a worthy goal.

The provisions of the bill contain a sunset date and would revert to a mandatory reporting requirement related to patients with lapses of consciousness on January 1, 2029.

Staff Concerns with Safe Harbor Provisions

The bill includes sweeping language that provides 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 making or not making a report to the DMV about their patient.

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 Board Position

The chief aim of the bill is laudable and will hopefully lead to greater transparency between the patient and their physician, thereby aiding the treatment of various serious conditions.

Unfortunately, the safe harbor provisions may prevent the Board from acting against a licensee who acts in an unprofessional manner in conjunction with these reports to the DMV.

Accordingly, staff recommend that the Board adopt a Support, if Amended position to seek inclusion of the following language in Vehicle Code section 13030 (as proposed to be added):

(e) (1) 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.

(2) Notwithstanding paragraph (1), the Medical Board of California may take disciplinary action against a licensee under the following circumstances:

(A) Any act involving dishonesty or corruption related to making or not making a report authorized pursuant to this section.

(B) Any act described in subdivisions (b), (c), or (d) of Business and Professions Code section 2234 related to a patient diagnosis described in subdivision (a) of this section.

The language in (e)(2)(A) will ensure the Board can act in the situations described. The language in (e)(2)(B) helps to clarify the Board's authority to take an action against a physician who acts in a negligent or incompetent manner related to the underlying diagnosis associated with these reports to the DMV.

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.

POSITION: Staff Recommendation: Support, if Amended.

ATTACHMENT: [SB 527, Portantino - Vehicles: Physician and Surgeon Reporting.](#)
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