



April 5, 2016

Senator Jerry Hill, Chair  
Senate Business, Professions & Economic Development Committee  
State Capitol  
Room 2053  
Sacramento, CA 95814

Re. SB 1177 (Galgiani) – Physician substance abuse – OPPOSE

Dear Senator Hill,

Consumer Watchdog must oppose SB 1177 (Galgiani), which would create a program that would allow physicians to hide substance abuse problems from their patients and the Medical Board.

Physician substance abuse is an endemic, but too-often hidden problem. The Medical Board has estimated substance abuse afflicts 15 to 18 percent of doctors during their lifetime and 1 to 2 percent at any given time. National reports suggest that physicians abuse alcohol at the same frequency as the general population, and are more likely to abuse prescription drugs. By whatever measure, Californians are placed in harm's way every time a drug or alcohol-addicted doctor goes to work.

For example, a Sonora family doctor arrested last July for overprescribing controlled substances finally surrendered her license in January, four years after her dangerous behavior was first reported to the Medical Board. The Medical Board accusation notes that she "appeared to be always under the influence while practicing...would slur her words, would drool, and her eyes would roll back during conversations." Several of her patients were arrested for selling the narcotics she prescribed, she left signed prescription pads for her staff to fill out for patients, and undercover investigators observed that she was always "high." She was administered an in-office drug test that came back positive for six drugs, including Fentanyl and Oxycodone. Multiple patients were harmed by her drug use and resultant negligent care.

Usually, these doctors are never caught. Of the approximately 110,000 physicians in California, 1,100 – 2,200 are likely to be abusing substances at any given time. Yet the Medical Board's 2014-2015 annual report notes just 47 disciplinary actions taken against physicians for self-abuse of drugs or alcohol, including 26 physicians given probation but allowed to continue practicing. Over a 10-year period the Medical Board disciplined just 149 doctors for substance abuse, 27 for using drugs or alcohol at work and 104 for DUIs.

SB 1177 would do nothing to identify substance abuse by physicians more quickly, through proactive intervention like random drug testing of physicians, and would do nothing to ensure they do not remain a danger to patient safety while Medical Board investigations drag on. Instead, SB 1177 creates a program that mirrors many of the failures of the “diversion” program that prioritized keeping a doctor’s addiction secret and was shut down by the California Medical Board in 2008.

The now-shuttered diversion program allowed physicians to choose confidential enrollment in the program in lieu of disciplinary action when a physician was caught. The program created a revolving door for drunk and high physicians who went in and out of treatment, avoiding discipline while their patients were unaware of their ongoing problem.

The California Highway Patrol, 60 Minutes, the Center for Public Interest Law, and five separate state audits found that the diversion program failed to monitor substance abusers and let substance-abusing doctors off the hook for failing to comply with rehabilitation terms. Once doctors “graduated” the program, follow-up to ensure doctors’ continued sobriety was haphazard at best. When follow-up drug testing was required it was seldom truly random, allowing addicts to game the system. The program was understaffed and underfunded, and enrolled only a fraction of the doctors estimated to have an addiction problem at any given time.

This failed road is not one that California should walk down again. However nothing in SB 1177 would prevent the same Medical Association interests that turned the diversion program into a country club for substance abusing doctors from running a new program in much the same way.

Patient safety demands the public and the Medical Board be informed of physician addiction problems. Yet SB 1177 would ensure just the opposite: “...all program records and documents and records and documents of participation of a physician and surgeon in the program shall be confidential... .”

It also prohibits any “confidential information,” including records of a physician’s failure to successfully complete a substance abuse program, from being used as evidence in a disciplinary action.

In this way, SB 1177 could give doctors a way to prevent regulators from obtaining evidence of their ongoing substance abuse by entering the program specifically in order to hide under its cone of silence. While the bill does not *prohibit* the Medical Board from pursuing disciplinary action against a physician with substance abuse issues, this confidentiality will throw serious roadblocks before the Board if and when it seeks to act.

Any physician substance abuse program should ensure that physicians cannot use the program to escape disciplinary action or to keep their substance abuse history secret from the Board or their patients.

SB 1177 has myriad other problems that place patient safety at risk. The bill does not remove doctors from practice when they enroll in rehab, or take away the prescribing ability of a doctor caught abusing prescription drugs. The bill does not require the Medical Board be notified of physicians entering the program, and contains no consequences for a physician who fails the program (except notification to the Medical Board if the Board referred them) – no matter how often they fail or even if patients are harmed. The bill does not require doctors to surrender their license if they repeatedly fail treatment for addiction. And the bill fails to require compliance with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees that are mandated by statute for all health care providers but have seen resistance from the physician community.

Instead, SB 1177 would bless the same backwards tradition of doctors protecting doctors that was abolished as a failure in 2008 and ensure physician drug and alcohol abuse remains secret and uncorrected.

For these reasons, Consumer Watchdog must oppose SB 1177. We would be happy to work with you on an effective doctor drug and alcohol treatment program, but only one that does not keep the Medical Board and the public in the dark about drunk and drugged doctors or allow those physicians to choose a murky “treatment” program to escape accountability.

Sincerely,

A handwritten signature in cursive script, reading "Carmen Balber", with a long horizontal flourish extending to the right.

Carmen Balber  
Executive Director