MIEC

MIEC New Law Alert

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New laws affecting California clinicians

INSIDE

New Law Alert
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The California Legislature enacted a number of new laws affecting physicians, allied health practitioners, and patients, including: confidentiality breach notification requirements; minor consent for mental health services; peer review reporting requirements; clarification of PA scope of practice; violations of practice probation or diversion; CT scan radiation dose recording and adverse event reporting; health care practitioner education and training disclosure; foreign medical license applicants; peer review protections for psychotherapy services and MFTs; disclosure of confidential medical information; drug overdose treatment; child abuse reporting; and HIV test reporting and disclosure. All laws are currently in effect unless otherwise specified.

Patient confidentiality: reporting requirements updated

(Health & Safety Code §§1280.15, 130251, 130316, and 130317)

Under existing law, clinics, health facilities, home health agencies and hospices licensed and regulated by the Department of Public Health are required to report instances of breaches of patient confidentiality to the Department of Public Health and to the affected patient within 5 business days of detection of a breach. The Department may assess a penalty of $100 for each day that a breach is not reported. The new law specifies that notification of breaches must be documented. For enforcement purposes, in the absence of documentation of notification, it will be presumed that notification of the breach did not occur.

Existing law provides an exception to the 5 day notification requirement if a law enforcement agency or official provides a written or oral statement that reporting would impede the law enforcement agency's activities that relate to disclosure of the medical information. The new law applies this exception specifically to law enforcement "investigations" rather than "activities."

Minor consent for mental health services

(Health & Safety Code §124260; Welfare & Institutions Code §14029.8)

Existing law authorizes a minor who is 12 years of age or older to consent to mental health treatment or counseling on an outpatient basis or to residential shelter services, if specified conditions are met. The new law instead provides that a minor who is 12 years of age or older may consent to outpatient mental health services, if, in the opinion of the professional person, the minor is mature enough to participate intelligently in treatment or counseling services.

The law expands the definition of a "professional person" to include a licensed clinical social worker and a Board Certified or Board eligible psychiatrist.

The treatment or counseling shall include involvement of the minor's parent or guardian, unless the professional determines after consulting with the minor that the involvement would be inappropriate. The professional person shall state in the client's record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the parent or guardian.

This law does not authorize a minor to receive convulsive therapy or psychosurgery or psychotropic drugs without the consent of the parent or guardian.

Physician peer review, reporting requirements
(Business & Professions Code §§800, 803.1, 805, 805.1, 805.5, 2027 and 2220)

Several changes have been made to the statutes governing peer review reporting requirements, including patient protections such as disclosure of enforcement actions against *former* licensees and early reporting for sexual misconduct, improper prescribing, and other specified acts. The new law also provides protections for physicians who have been the victims of peer review conducted in bad faith.

Early reporting required for specified acts

Under existing law, specified persons are required to file an 805 report with a licensing board within 15 days after a specified "action is taken" against a licensee. In addition to any other 805 report required by law, the new law requires a report be filed with the relevant agency within 15 days after a peer review body "makes a final decision or recommendation" regarding disciplinary action. The decision or recommendation is following a formal investigation by the peer review body, regardless of whether a hearing is held.

Specified acts requiring early reporting:

1) Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury.
2) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any drugs or alcoholic beverages to the extent or in such a manner as to be dangerous or injurious to the licentiate, or to any other person or to the public, or to the extent that such use impairs the ability of the licentiate to practice safely.
3) Repeated acts of clearly excessive prescribing of controlled substances, or repeated acts of prescribing controlled substances without good faith effort prior to the examination of the patient and medical reason therefore.
4) Sexual misconduct.

The licentiate must be notified of the proposed action, including a notice advising the licentiate of the right to submit additional explanatory or exculpatory statements electronically or otherwise.

The relevant agency (licensing board) is entitled to inspect and copy the following documents in the record of any formal investigation required to be reported pursuant to the acts listed above:

- Any statement of charges
- Any document, medical chart, or exhibit
- Any opinions, findings, or conclusions
- Any copy of certified medical records, as permitted by other applicable law

The report and information reported shall be kept confidential and not subject to discovery, but the information may be reviewed and may be disclosed in any subsequent disciplinary hearing.

Peer review conducted in bad faith

If a court finds, in a final judgment, that a peer review resulting in an 805 report was conducted in bad faith, and the licensee subject of the report notifies the Board:

- The MBC shall include that finding in the central file.
- The MBC, OMBC, and the California Board of Podiatric Medicine are prohibited from disclosing to an inquiring member of the public or to specified health care entities any summaries of hospital disciplinary actions related to the peer review conducted in bad faith.
- The MBC must remove from its web site any information concerning a hospital disciplinary action if a court finds that peer review resulting in a hospital disciplinary action was conducted in bad faith.

Disclosure to the public

In addition to disclosing information about current licensees, the MBC, OMBC, and the California Board of Podiatric Medicine must now disclose information regarding enforcement actions taken against a *former* licensee to an inquiring member of the public.

The MBC must provide a link on its web site to any additional explanatory or exculpatory evidence submitted electronically by the licentiate.

The MBC must post on the Internet a factsheet that explains and provides information on the reporting requirements under Section 805.

Definition of peer review

The new law defines peer review as a process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, in order to do either or both of the following:

- Determine whether the licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services and, if so, to determine the parameters of that practice;
- Assess and improve the quality of care rendered in a health care facility, clinic or other setting providing medical services; or
- Any other activities of a peer review body as specified.

Physician Assistant scope of practice clarification
(Business & Professions Code §§3501, 3502.2 and 3502.3; Education Code §§44336, 49406, 49423, 49455, 87408, 87408.5, 87408.6 and 49458; and Public Utilities Code §2881)

The California Academy of Physician Assistants (CAPA) states that the new law clarifies various inconsistencies and omissions in existing law by allowing PAs to order durable medical equipment, certify disability for the purposes of unemployment insurance eligibility, approve, sign, modify or add to a treatment plan for home health or personal care services, and conduct specified physical examinations and sign corresponding certificates or forms. All of these functions must be performed under physician supervision and are consistent with existing PA scope of practice.

In addition to any other practices that meet the general criteria for inclusion in a delegation of services agreement, the new law specifies that a delegation of services agreement may authorize a physician assistant to:

- Order durable medical equipment.
- Approve, sign, modify or add to a plan of treatment or plan of care (after consultation with the supervising physician) for individuals receiving home health services or personal care services.

In addition, PAs may:

1) Certify that an applicant for a teacher certification or renewal of certification is free from any contagious or communicable disease or other disabling disease or defect.
2) Conduct medical examintions and certify that an individual that is initially employed by a school district in a certificated or classified position is free from tuberculosis.
3) Conduct medical examination and certify that an applicant for an academic posi-

tion at a community college district is free from any communicable disease, including tuberculosis.

4) Order medications for any pupil to take during the regular school day, as specified, and provide written statements to the school district detailing information about the medication.
5) Perform a physical examination of a student participating in an interscholastic athletic program, as specified.
6) Certify the need for an individual who has been diagnosed by a licensed physician as being deaf or hearing impaired to participate in a program implemented by the Public Utilities Commission (PUC) to provide telecommunications devices for deaf or hearing impaired.
7) Certify the results of a determination of a child's vision to be presented by a parent to the school district for waiving a required vision assessment of school-aged children.

Violations of probation or diversion
(Business & Professions Code §§156.1, 315.2 and 315.4)

This law requires a healing arts board (with the exception of the Board of Registered Nursing) to order a licensee to cease practice if the licensee tests positive for any prohibited substances under the terms of the licensee's probation or diversion program. A cease practice order does not constitute disciplinary action.

CT scan radiation dose recording and event reporting
(Health & Safety Code §§115111, 115112, and 115113)

Commencing July 1, 2012, this law requires hospitals and clinics that use CT for human use to record, if the CT systems are capable, the dose of radiation on every CT study produced during the administration of a CT exam. A person that uses a CT system shall record the dose of radiation on every CT study produced. The facility conducting the study shall electronically send each CT study and protocol page that lists the technical factors and dose of radiation to the electronic picture archiving and communications system. The dose must be verified annually by a medical physicist to ensure the displayed doses are within 20 percent of the true measured dose, unless the facility is accredited. The radiology report of a CT study shall include the dose of radiation by either recording the dose within the patient's radiology report or attaching the protocol page that includes the dose of radiation to the radiology report (these requirements are limited to CT systems capable of calculating and displaying the dose). Commencing July 1, 2013, facilities that furnish CT services must be accredited by an organization approved by CMS, MBC, or CDPH.

Health care practitioner education and training disclosure
(Business & Professions Code §680.5)

Existing law requires a health care practitioner to disclose, while working, his or her name and practitioner's license status on a name tag in at least 18-point type or to prominently display his or her license in his or her office. This new law requires each of those health care practitioners to disclose the type of license and the highest level of academic degree he or she holds either in a prominent display in his or her office, or in writing, and given to a patient on his or her initial office visit.

Practitioners certified in a medical specialty are also now required to disclose the name of the certifying board or association in either manner listed above and on the practitioner's website. If information is provided in writing, it must be in at least 24-point type.

Specified health care practitioners, including persons working in certain licensed laboratories and health care facilities, are exempt from these requirements.

Foreign medical license applicants
(Business & Professions Code, numerous sections)

The Medical Practice Act requires medical license applicants who have received instruction outside the US or Canada to provide evidence of completion of at least one year of specified postgraduate training. The new law increases this to at least two years of that postgraduate training.

In addition, existing law requires an applicant for a physician's and surgeon's certificate to obtain a passing score on the written examination designated by the board and makes passing scores on a written examination valid for 10 years for purposes of qualification for a license. Existing law authorizes the board to extend this period of validity for good cause or for time spent in a postgraduate training program. The new law applies this 10-year period of validity to passing scores obtained on each step of the United States Medical Licensing Examination and would also authorize the board to extend that period for an applicant who is a physician and surgeon in another state or a Canadian province and who is currently and actively practicing medicine in that state or province.

Peer review protections extended to psychotherapy services and marriage and family therapists
(Civil Code §43.7)

Existing law provides that there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, specified health related professional societies and members of peer review committees. The new law applies these provisions to committees providing peer review of psychotherapy services and marriage and family therapists.

Disclosure of confidential medical information
(Civil Code §§56.10 and 56.104)

The Confidentiality of Medical Information Act prohibits a health care provider from disclosing medical information without first obtaining patient authorization, except as specified. The new law authorizes providers to disclose information relevant to the incident of child abuse or neglect, or to the incident of elder or dependent adult abuse, that may be given to an investigator from an agency investigating the case, including the investigation report and other pertinent materials that may be given to the licensing agency.

Existing law prohibits providers of health care from releasing information that specifically relates to participation in outpatient treatment with a psychotherapist, unless the requestor of the information submits a specified written request for the information to the patient and the provider. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient or that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

The new law also excepts from these provisions disclosures that are specifically authorized by law, including, but not limited to disclosures made to the FDA of adverse events related to drug products or medical devices or disclosures that authorize a health care provider to disclose information relevant to the incident of child abuse or neglect, or elder or dependent adult abuse, in the report that may be given to an investigator from an agency investigating the case or by a mandated reporter, as provided.

Drug overdose treatment: liability
(Civil Code §1714.22)

This law applies only to the following counties: Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco, and Santa Cruz.

A person who is not otherwise licensed to administer an opioid antagonist may administer an opioid antagonist in an emergency without fee if the person has received the specified training and believes in good faith that the other person is experiencing a drug overdose. The person shall not, as a result of his or her acts or omissions, be liable for any violation of any professional licensing statute, or subject to any criminal prosecution arising from or related to the unauthorized practice of medicine or the possession of an opioid antagonist.

"Opioid overdose prevention and treatment training program" or "program" means any program operated by a local health jurisdiction or that is registered by a local health jurisdiction to train individuals to prevent, recognize, and respond to an opiate overdose, and that provides, at a minimum, training in all of the following:

- The causes of an opiate overdose.
- Mouth to mouth resuscitation.
- How to contact appropriate emergency medical services.
- How to administer an opioid antagonist.

Child abuse reporting: emotional damage
(Penal Code §11167)

Existing law requires reports made by mandated reporters of suspected child abuse or neglect to include specified information. The new law provides, in addition, that information relevant to a report made relating to a child suffering serious emotional damage may be given to the investigator or licensing agency. Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency or investigator of the agency

Child abuse reporting: "reasonable suspicion"
(Penal Code §11166)

Existing law identifies persons as mandated reporters who must submit a report to law enforcement whenever in their professional capacity they have knowledge of or observe a child who is known or reasonably suspected to have been the victim of child abuse or neglect. Existing law defines the term "reasonable suspicion" for the purposes of these reporting provisions. The new law provides that "reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect.

HIV test reporting and disclosure
(Health & Safety Code §§120130, 121022, and 121025)

Existing law requires providers to report certain communicable diseases to the local health officer. Within one year after the establishment of a state electronic laboratory reporting system, reports generated by a lab must be submitted electronically in a manner specified by the Department of Public Health.

Under the new law, reports of HIV infections are no longer exempted from this electronic reporting. The new law states: "Health care providers and local health officers shall submit cases of HIV infection…by courier service, United States Postal Service express mail or registered mail, other traceable mail, person-to-person transfer, facsimile, or electronically by a secure and confidential electronic reporting system established by the department."

Existing law prohibits the disclosure of public health records relating to HIV and AIDS, except for public health purposes, or pursuant to a written authorization.

Existing law requires a disclosure of these records or information to include only the information necessary for the purpose of the disclosure, and to be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization.

The new law expands information disclosure provisions applicable to the information contained in public health records relating to HIV and AIDS, including when the person is coinfected with HIV/AIDS, tuberculosis, and an STD, as specified. The following disclosures shall be authorized for the purpose of enhancing completeness of HIV/AIDS, tuberculosis, and sexually transmitted disease coinfection reporting to the federal Centers for Disease Control and Prevention (CDC):

- The local public health agency HIV surveillance staff may further disclose the information to the health care provider who provides HIV care to the HIV-positive person who is subject of the record for the purpose of assisting in compliance with subdivision (a) of Section 121022, which reads: "To ensure knowledge of current trends in the HIV epidemic and to ensure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases

of HIV infection to the local health officer using patient names. Local health officers shall report unduplicated HIV cases by name to the department."

- Local public health agency tuberculosis control staff may further disclose the information to state public health agency tuberculosis control staff, who may further disclose the information, without disclosing patient identifying information, to the CDC, to the extent the information is requested by the CDC for purposes of the investigation, control, or surveillance of HIV and tuberculosis coinfections.

The following disclosures shall be authorized for the purpose of facilitating appropriate HIVAIDS medical care and treatment:

- State public health agency HIV surveillance staff, AIDS Drug Assistance Program staff, and care services staff may further disclose the information to local public health agency staff, who may further disclose the information to the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV care, for the purpose of proactively offering and coordinating care and treatment services to him or her.
- For the purposes of facilitating appropriate medical care and treatment of persons coinfected with HIV, tuberculosis, and syphilis, gonorrhea, or chlamydia, local public health agency sexually transmitted disease control staff may further disclose the information to the state or local public health agency sexually transmitted disease control and tuberculosis control staff, the HIV positive person who is the subject of the record, or the health care provider who provides his or her HIV, tuberculosis, and sexually transmitted disease care.

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