MIEC

MIEC New Law Alert

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New Law Alert – California

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New Law Alert
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All laws are effective January 1, 2016, unless otherwise specified.

Vaccinations: Personal Belief Exemptions Curtailed

SB 277 (Pan)
Amends Health & Safety Code §§120325, 120335, 120370, 120375; adds §120338; repeals §120365

Prior law required that children be fully immunized against various diseases prior to being admitted to schools, child care centers, nursery schools, or development centers unless an exemption for medical reasons or *due to personal beliefs* had been submitted to the governing authority. The new law eliminates the personal beliefs exemption, except under the following circumstances:

- Pupils in a home-based private school and students enrolled in an independent study program and who do not receive class-room-based instruction.
- Pupils who, prior to January 1, 2016, have a letter or affidavit on file at a public or private elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating personal beliefs opposed to immunization shall be allowed enrollment within the state until the pupil enrolls in the next grade span (e.g., birth to preschool; kindergarten and grades one to six; grades seven to twelve).

Except as under the circumstances described above, on and after July 1, 2016, no child will be unconditionally admitted to school for the first time or advanced to the seventh grade without immunizations pursuant to Health & Safety Code §120335.

Medical Exemptions: If the parent or guardian files with the governing authority a written

statement by a licensed physician to the effect that the physical or medical condition of the child is such that immunization is not considered safe, and the statement indicates the specific nature and probable duration of the medical condition, or other circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt from the immunization requirement. Physicians should be prepared to answer parent questions about what constitutes a valid, medical basis for exemptions from the immunization requirements, and to remind parents that their objection to immunizations as a matter of principle or personal belief will not be a sufficient basis for the required physician statement. Some examples of medical exemptions can be found on the CDC web page for contraindications for childhood vaccinations: http://www.cdc.gov/vaccines/recs/vac-admin/contraindications-vacc.htm

The California Department of Public Health has provided the following **Q&A** on Medical Exemptions:

Q*: What's required for a medical exemption to a required immunization?*

A*: A parent or guardian must submit a written statement from a licensed physician (M.D. or D.O.) which states:*

- *That the physical condition or medical circumstances of the child are such that the required immunization(s) is not indicated.*
- *Which vaccines are being exempted.*
- *Whether the medical exemption is permanent or temporary.*
- *The expiration date, if the exemption is temporary.*

Q*: May other practitioners besides licensed physicians (M.D.s and D.O.s) provide a medical exemption to a required immunization?*

A*: No.*

Q*: Is there a standardized form for medical exemptions?*

A*: No, but the physician statement must include the elements described above.*

Q*: Are licensed physicians required to assist in requests for medical exemptions by preparing a written statement at a parent's request?*

A*: No. A licensed physician may provide a medical exemption, but is not required to do so. Parents or guardians seeking medical exemptions should check with physicians in advance to clarify their policies on medical exemptions.*

The California Department of Public Health has a helpful website, http://www.shotsforschool.org/ that can answer your and your patient's questions about the most recent student immunization requirements including FAQs for providers and for parents in English and Spanish.

Physician Aid-in-Dying (End of Life Option Act)

ABX2 15 (Eggman)
Adds Health & Safety Code §§443, et seq. (Part 1.85, Division 1)

The End of Life Option Act authorizes an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to request a drug prescription for the purpose of ending his or her life.

Participation for both patients and physicians is voluntary. Physicians may refuse to comply with a patient's request for assistance with end of life medications without fear of reprisal in the way of sanctions, censure or liability. Importantly, the bill provides immunity from civil, criminal, administrative, employment, or contractual liability or professional disciplinary action to physicians who comply with the act in good faith. Immunity

from civil or criminal liability is provided by Health & Safety Code §443.14. Under this section, physicians who, in good faith, comply with the requirements of the Act by either agreeing or refusing to assist a patient under the terms of the Act, are protected from liability.

Patients must meet certain qualifications under the Act. One qualification is that the patient must have the mental capacity to make medical decisions. In other words, in the opinion of the patient's attending physician, consulting physician, psychiatrist, or psychologist, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its significant benefits, risk, and alternatives, and the ability to make and communicate an informed decision to health care providers.

Specified elements of informed consent include:

- The individual's medical diagnosis and prognosis;
- The potential risks associated with taking the drug to be prescribed;
- The probable result of taking the drug to be prescribed;
- The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to ingest it;
- The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

The law specifies requirements for counseling patients regarding the aid-in-dying drugs, documentation and reporting to the California Department of Public Health.

For more information about this important new legislation, please see the Winter 2016 issue of the *Medical Board of California Newsletter*: http://www.mbc.ca.gov/Publications/Newsletters/newsletter_2016_01.pdf and the *California Medical Association Legislative Wrap-Up*: http://www.cmanet.org/files/assets/news/2015/10/legislative-wrap-up-2015-long-final.pdf

Provider Directories

SB 137 (Hernandez)
Adds Health & Safety Code §1357.27 and Insurance Code §10133.15; repeals Health & Safety Code §1367.26)
Effective July 1, 2016

Health care service plans or health insurers must update provider directories with information about contracting providers, including those who are accepting new patients. Directories must be updated weekly and available on carrier websites without requiring searchers to create or access an account or commit to signing up for the plan. Plans must be reviewed and updated at least annually to accurately reflect current providers and products offered. Provider directories will be required to include whether the provider or staff speaks any non-English language and if there is access for persons with disabilities. In addition, the law requires a health care service plan or insurer to reimburse an enrollee or insured for any amount beyond what the enrollee or insured would have paid for in-network services, if the enrollee or insured reasonably relied on the provider directory. The new law authorizes a delay in payment to a provider who does not respond to the plan's or insurer's requests to verify the provider's information. The Department of Managed Health Care and the Department of Insurance will develop uniform provider directory standards.

Ambulatory Surgery Centers

SB 396 (Hill)
Amends Business & Professions Code §805.5; Government Code §12529.7; and, Health & Safety Code §§1248.15 and 1248.35

The primary features of this law are that it:

- Authorizes accrediting agencies to conduct unannounced inspections subsequent to the initial inspection for accreditation of ambulatory surgery centers; after the initial inspection, the accreditation agency shall notify the outpatient setting that the inspection will occur within 60-days. Inspections are required to be conducted no less than once every three years by the accreditation agency and as often as the Medical Board determines is necessary to ensure the quality of care provided;
- Requires that each licensee who performs procedures in an outpatient setting be peer reviewed at least every two years by licensees who are qualified by education and experience to perform the same or similar procedures performed by the licensee. (Findings of peer review are to be reported to the governing body to determine if the licensee continues to be professionally qualified to perform the privileges granted); and,
- Requires any outpatient or ambulatory surgical center that is certified to participate in the federal Medicare Program to request from the health care provider's licensing board a peer review report ("805 report") to determine whether the provider has had any disciplinary action taken against his or her license or had privileges restricted in any way.

For more information, please visit the California Ambulatory Surgery Association (CASA) website at: http://www.casurgery.org/aws/CASA/pt/sd/news_article/115827/_PARENT/layout_details/false.

CASA has also published a letter from the Medical Board of California outlining the new requirements: http://www.casurgery.org/aws/CASA/asset_manager/get_file/116781?ver=186

Midwife Assistants

SB 408 (Morrell)
Adds Business & Professions Code §2516

This new law creates a set of guidelines and certification for midwife assistants similar to the laws that govern medical assistants. The certified midwife assistant will perform "technical supportive services" and additional procedures authorized by a licensed midwife. "Technical supportive services" include the ability to:

- Administer medications orally, sublingually, topically, vaginally or rectally by providing a single dose to a patient for immediate self-administration and to administer oxygen;
- Assist in performing neonatal resuscitation, assist in auscultation of fetal heat tones when a licensed midwife is engaged in a concurrent activity that precludes the licensed midwife from doing so;
- Collect by non-invasive techniques and preserve specimens for testing, including but not limited to, urine;
- Assist patients to and from a patient examination room, bed, or bathroom;
- Assist patients in activities of daily living;
- Provide patient information and instructions, as authorized by a licensed midwife;
- Collect and record patient data, including height, weight, temperature, pulse, respiration rate, blood pressure, and basic information about the presenting and previous conditions;
- Perform simple laboratory and screening tests customarily performed in a medical or midwife office;
- Administer medication by intradermal, subcutaneous, or intramuscular injections;
- Perform skin tests; and,

- Provide/perform additional technical support services upon the specific authorization of a licensed midwife.

Additional information can be found at the California Association of Midwives (CAM) website: http://www.californiamidwives.org/resources/Documents/Medi-CalandMidwiferyAssistantImplementationWebinarCAM.pdf

CURES registration deadline extended

AB 679 (Travis, Allen)
Amends Health & Safety Code §§11165.1

All individuals practicing in California who possess both a state regulatory board license authorized to prescribe, dispense, furnish or order controlled substances and a Drug Enforcement Administration Controlled Substance Registration Certificate (DEA Certificate) now have until July 1, 2016, to register to use CURES; this is a six-month extension from previous law established in 2013.

Involuntary Commitment

AB 1194 (Eggman)
Amends Welfare & Institutions Code §5150

Senate Bill AB1194 amends the criteria to be considered when determining whether to place a patient on an involuntary hold pursuant to this code section. A physician or other person authorized to evaluate and issue an involuntary hold may no longer only consider the risk of imminent harm, but must also consider the patient's history as set out in Section 5150.5. Section 5150.5 provides that "information about the historical course of the person's mental disorder" includes evidence presented by a family member, or anyone who has provided or is providing mental health or related support services to the person under consideration for the hold, or anyone designated by the person under consideration.

Medical Marijuana

SB 643 (McGuire)
Amends Business & Professions Code §§144, 2220.05, 2241.5, 2242.1; adds §§19302.1, 19319, 19320, 19322, 19323, 19324, 19325, 2525, et seq. (Article 2525, Chapter 5, Division 2), 19331 et seq. (Article 6, Chapter 3.5, Division 8), 19335 et seq. (Article 7.5, Chapter 3.5, Division 8),19337 et seq. (Article 8, Chapter 3.5, Division 8), and 19348 et seq. (Article 11, Chapter 3.5, Division 8)

Senate Bill 643 amends multiple sections of the Business & Professions Code and adds additional provisions that govern a number of issues pertaining to the use, prescribing and dispensing of medical marijuana. Physicians who recommend patients for medical cannabis should be aware of several important changes to the law:

- The Medical Board of California has been tasked with prioritizing investigation of physicians who excessively recommend cannabis for medical use and/or repeatedly fail to perform a prior good-faith examination and/or fail to adequately document their care of patients to whom medical cannabis is prescribed. The new law states that "repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation," will be of great concern to the Medical Board and will be prioritized for investigation.
- If a physician or his or her immediate family has a financial interest in a state-licensed marijuana business, the physician may not recommend medical cannabis to a patient and then accept, solicit, or offer

any form of remuneration from that business. Failure to comply with this law will result in a misdemeanor.

- No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances (including medical cannabis) as long as they comply with the new laws. However, a physician may be vulnerable to disciplinary action on their license for unprofessional conduct if he or she does not perform an "appropriate prior examination" and establish and document "the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis."

An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

To review SB 643 in its entirety as amended and enacted, please go to https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160SB643.

We thank Renee A. Richards, Of Counsel with Hassard Bonnington LLP, San Francisco, California, for her review of this edition of New Law Alert.

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