Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1954 (Quirk) – As Introduced February 10, 2022

SUBJECT: Physicians and surgeons: treatment and medication of patients using cannabis.

SUMMARY: Prohibits a physician and surgeon from denying treatment or medication to a qualified patient using medicinal cannabis, as specified.

EXISTING LAW:

1) Regulates the practice of medicine by physicians and surgeons under the Medical Practice Act and establishes the Medical Board of California (MBC) to administer and enforce the act. (Business and Professions Code (BPC) §§ 2000-2529.6)

2) Authorizes a physician to recommend cannabis for medical purposes under the Compassionate Use Act of 1996, which protects patients and their primary caregivers from criminal prosecution or sanction for obtaining and using marijuana for medical purposes upon the recommendation of a physician. (Health and Safety Code (HSC) § 11362.5)

3) Outlines various requirements related to recommending medical cannabis, including making it unprofessional conduct to recommend medical cannabis without an appropriate prior examination. (BPC §§ 2525-2529.6)

4) Requires the MBC to consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis. (BPC § 2525.1)

5) Defines "qualified patient" as a person who is qualified for protection under the Compassionate Use Act of 1996 to use and cultivate cannabis for medical purposes. (HSC §§ 11362.5(d); 11362.7(f))

6) Prohibits a hospital, physician and surgeon, procurement organization, or person from denying a potential recipient of an anatomical gift based solely upon the potential recipient's status as a qualified patient, or based solely upon a positive test for the use of medical cannabis by the potential recipient, except to the extent that the qualified patient's use of medical cannabis has been found by a physician and surgeon, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift. (HSC § 7151.36(a))

THIS BILL:

1) Defines "qualified patient" as having the same meaning as defined under the HSC provisions relating to the Compassionate Use Act of 1996.

2) Prohibits a physician and surgeon from denying treatment or medication to a qualified patient based solely on a positive drug screen for tetrahydrocannabinol (THC) or report of medical cannabis use, except to the extent that the qualified patient's use of medical cannabis has

been found by a physician and surgeon, following a case-by-case evaluation of the patient, to be medically significant to the treatment or medication.

3) Specifies that the use of medical cannabis that has been recommended by a licensed physician and surgeon does not constitute the use of an illicit substance in the evaluation performed under this bill.

4) Specifies that no physician and surgeon may be punished, or denied any right or privilege, for having administered treatment or medication to a qualified patient within the requirements of this bill.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by The *California Chapter of the National Organization for the Reform of Marijuana Laws (California NORML)*. According to the author, "Recent research is increasingly highlighting the medical utility of cannabis, especially in the treatment of chronic pain. Medicinal cannabis is being used by almost 2 million Californians and has the potential to significantly improve patient quality of life. However, patients who use medicinal cannabis may be denied healthcare services solely based on a positive THC test. Doctors, too, are unclear about their liability prescribing treatments such as opioids to medicinal cannabis users. [This bill] specifies that physicians cannot deny treatment or medication to a qualified patient based solely on a positive drug screen for THC, except when medically indicated. It further clarifies that medicinal cannabis use does not constitute the use of an illicit substance for the purpose of treatment evaluation. The bill also shields physicians from liability and repercussions for treating or prescribing medication to qualified patients."

Background. Under California law, the use and cultivation of medicinal cannabis has been legal since 1996, and the cultivation and non-medical use of cannabis has been legal since 2016. While physician recommendations are no longer necessary to consume cannabis in California, many patients still obtain these recommendations and obtain additional state law protections, including those relating to organ donations and the ability of the terminally ill to consume cannabis in certain health facilities. To qualify, a physician must determine that the person's health would benefit from its use in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief.

Medicinal Cannabis. Medicinal cannabis refers to the use of cannabis and cannabis products for health care purposes. Also known as "marijuana" or "marihuana," cannabis is the general term for processed cannabis plants. Cannabis plants are processed in many ways, providing for a variety of inhalable, ingestible, and other mediums. Cannabis plants contain more than 100 cannabinoids, but two are of particular interest for medical purposes: tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the primary psychoactive substance leading to an altered mental state (high). CBD is also psychoactive but does not tend to alter a person's mental state.

In 1999, after medicinal cannabis was legalized in California, the Institute of Medicine of the National Academies of Sciences, Engineering, and Medicine issued a report stating that scientific data indicate the "potential therapeutic value of cannabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting, and appetite stimulation." The report went on to state that

the psychological effects of cannabinoids, such as anxiety reduction, sedation, and euphoria can influence their potential therapeutic value.

In January 2017, the National Academies of Sciences, Engineering, and Medicine published *The Health Effects of Cannabis and Cannabinoids*, a review of the scientific research on cannabis published since 1999, considering more than 10,000 scientific abstracts to reach nearly 100 conclusions. This review found evidence to support that patients who were treated with cannabis or cannabinoids were more likely to experience significant reductions in pain symptoms. It also found benefits for multiple sclerosis-related muscle spasms, and preventing and treating chemotherapy-induced nausea and vomiting. Along with certain benefits, the review of the science suggested cannabis is likely to increase the risk of developing schizophrenia and other psychoses, and that with greater frequency of cannabis use, there is an increased likelihood of developing riskier cannabis use.

Legal Status of Cannabis. According to the National Conference of State Legislatures, 33 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have authorized some form of cannabis use, California being the first with the passage of the Compassionate Use Act (Proposition 215) in 1996. Still, at the federal level cannabis is classified as a Schedule I substance under the Uniform Controlled Substances Act. Schedule I substances are considered to have no accepted medical use and a high potential for dependency, which makes the distribution of cannabis a federal offense.

In October 2009, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute cannabis for medical purposes per state law. In August 2013, the U.S. Department of Justice provided an update to its cannabis enforcement policy after Colorado and Washington voted to legalize the non-medical use of cannabis. This memo, known as the "Cole Memorandum," stated that while cannabis remains illegal federally, the Department of Justice expects states like Colorado and Washington to create "strong, state-based enforcement efforts…and will defer the right to challenge their legalization laws at this time."

However, in January 2018, then U.S. Attorney General Sessions issued a "Marijuana Enforcement Memorandum" that rescinded the Cole Memorandum, and permitted federal prosecutors to decide how to prioritize enforcement of federal marijuana laws, weighing "all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community." While the Biden Administration has yet to issue a follow-up memo, Congress has passed a law, known as the Rohrabacher-Farr amendment, that prohibits the U.S. Department of Justice from spending funds to interfere with the implementation of state medical cannabis laws.

Further discussions are also occurring at the federal level. On March 24, 2022, the U.S. Senate passed the "Cannabidiol and Marihuana Research Expansion Act" which would take several steps toward gathering data on the safety and medical efficacy of cannabis and cannabidiol, opening the door to federally-sanctioned medical research. It would also specify that it is not a violation of the federal Controlled Substances Act for a State-licensed physician to discuss the known potential harms and benefits of specified types of cannabis as a treatment with (1) the patient or guardian of the patient if the patient is an adult or (2) the guardian of a patient if the patient is a child.

Current Related Legislation. SB 988 (Hueso), which is pending in the Senate, would repeal the requirement that health facilities comply with drug and medication requirements applicable to Schedule II, III, and IV drugs, and be subject to enforcement actions by the California Department of Public Health when permitting patient use of medicinal cannabis.

Prior Related Legislation. SB 311 (Hueso), Chapter 384, Statutes of 2021, requires specified health care facilities to allow terminally ill patients to use medical cannabis within the facility, subject to certain restrictions.

AB 258 (Levine), Chapter 51, Statutes of 2015, prohibits the denial of a potential organ donor recipient based on the recipient's status as a qualified patient or based solely upon a positive test for the use of medical cannabis unless the use is found by the patient's physician and surgeon, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift.

ARGUMENTS IN SUPPORT:

California NORML (sponsor) writes in support:

> California NORML has heard innumerable complaints from chronic pain patients who say that physicians or clinics have denied them treatment with prescription opioids or other medications for no other reason than using or testing positive for medical marijuana…. However, chronic pain patients in many instances cannot fully rely on cannabis for pain management, necessitating some reliance on opioids or other prescription drugs.
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> In California, many health plans, health systems, and hospitals require patients to sign agreements not to use illicit or controlled substances for the duration of their prescribed opioid treatment and agree to drug testing…. An online survey by [California NORML] of nearly 600 patients found that 18.5% of respondents have been denied prescription medications due to their use of cannabis. Existing law does not specify whether healthcare providers who prescribe opioids may refuse to do so exclusively on the grounds of a positive test for [THC] or its metabolites. In its 2016 guidelines for prescribing opiates for chronic pain, the Centers for Disease Control recommended that patients not be dismissed from care based on a urine test for THC because this could have adverse consequences for patient safety. We have heard of cases where patients have resorted to street drugs after being denied opioid prescriptions.
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> Many physicians are wrongly under the impression that they cannot prescribe opioid medications to patients who test positive for cannabis, resulting in hundreds of chronic pain patients who are unfairly denied access to quality-of-life or life-saving medications.

ARGUMENTS IN OPPOSITION:

The *California Medical Association (CMA)* writes in opposition, "This legislation in its current form prohibits a physician from denying treatment to a patient solely based on a positive drug test for [THC]. This limits a physician's ability to make medical decisions; this type of restriction on physicians could lead to negative patient health outcomes and burdensome liability risk.

Cannabis is still federally prohibited and there has been few studies conducted or published on how THC interacts with other medications. Additionally, this bill is overly broad, particularity the term 'medically significant' not being clearly defined. CMA believes that this bill is premature, strips physicians of critical medical decision making and puts physicians at risk of being non-compliant with Federal law."

IMPLEMENTATION ISSUES:

Health System, Plan, and Facility Policies. This bill would require a physician and surgeon to provide treatment or medication to a qualified patient using medicinal cannabis if there is no determination that the qualified patient's use of medicinal cannabis would be medically significant to the treatment or medication. However, the sponsor also reports that there are health systems, health plans, and health facilities that may be establishing policies that prohibit physicians and surgeons from providing certain medications and treatments, such as opioids, to cannabis users who also suffer from chronic pain.

This bill would require a physician and surgeon operating under a blanket policy established by a health system or other relevant entity to violate that policy if the physician does not find a medically significant interaction with the treatment or medication. While the bill specifies that the physician and surgeon may not be denied any right or privilege or otherwise punished for doing so, it is unclear what the effect practical effect of this requirement would be, or what effects it may have on the entity imposing the policy.

If this bill passes this Committee, the author and sponsor may wish to work with the Assembly and Senate Committees on Health and relevant stakeholders to ensure this bill would not create unintended conflicts and whether there is a more direct route to addressing the issue of blanket policies established by health systems.

AMENDMENTS:

Definition of Medical Significance. While "medical significance" is used on other areas of law, it is not currently defined. To provide additional direction to physicians and surgeons and make clarifying changes, the bill should be amended as follows:

1) On page 2 of the bill, lines 3-9:

> (a) A physician and surgeon shall not *automatically* deny treatment or medication to a qualified patient based solely on a positive drug screen for tetrahydrocannabinol (THC) or report of medical cannabis use, *without first completing a case-by-case evaluation of the patient that includes, but is not limited to,* ~~except to the extent~~ *a determination* that the qualified patient's use of medical cannabis ~~has been found by a physician and surgeon, following a case-by-case evaluation of the patient, to be~~ *is* medically significant to the treatment or medication.

2) On page 2, lines 16-18:

(d) For purposes of this section, *the following terms have the following meanings:* ~~"qualified~~

(1) "Medically significant" means that a physician and surgeon has made a clinical determination that may include, but is not limited to, any of the following:

(A) The treatment or medication is contraindicated or is likely, or expected, to cause an adverse reaction or physical or mental harm to the qualified patient if administered or used in conjunction with THC or medical cannabis, based on the known clinical characteristics of the patient and the known characteristics and history of the patient's treatment or medication regimen.

(B) The treatment or medication is expected to be ineffective based on the known clinical characteristics of the qualified patient and the known characteristics and history of the patient's treatment or medication regimen.

(C) The treatment or medication, when administered or used in conjunction with THC or medical cannabis, is not clinically appropriate for the qualified patient because the treatment or medication is expected to do any of the following, as determined by a physician and surgeon:

(i) Worsen a comorbid condition.

(ii) Decrease the capacity to maintain a reasonable functional ability in performing daily activities.

(iii) Pose a significant barrier to adherence to, or compliance with, the qualified patient's drug regimen or plan of care.

(D) Any other clinically or medically relevant determination.

(2) "Qualified patient" has the same meaning as defined in Section 11362.7 of the Health and Safety Code.

REGISTERED SUPPORT:

California NORML
Americans for Safe Access
California Cannabis Industry Association
Origins Council
129 Individuals

REGISTERED OPPOSITION:

California Medical Association

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