SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No:	AB 1954	**Hearing Date:**	June 13, 2022
Author:	Quirk		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	Sarah Mason		

Subject: Physicians and surgeons: treatment and medication of patients using cannabis

SUMMARY: Prohibits a physician and surgeon from automatically denying 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, a determination that the qualified patient's use of medical cannabis is "medically significant" to the treatment or medication.

Existing law:

1) Establishes the Medical Practice Act, which provides for the licensing and regulation of physicians and surgeons by the Medical Board of California (MBC). (Business and Professions Code (BPC) § 2000 *et seq*.)

2) Prohibits any person other than a physician, dentist, podiatrist, veterinarian, naturopathic doctor (according to certain supervision and protocol requirements), pharmacist (according to certain authorization and according to certain policies and procedures), certified nurse midwife (if furnished or ordered incidentally to the provision of family planning services, routine health care or perinatal care, or care rendered consistent with their practice), nurse practitioner (if it is consistent with their educational preparation or for which clinical competency has been established and maintained); a pharmacist or registered nurse or physician assistant acting within the scope of an experimental health workforce project authorized by the Office of Statewide Health Planning and Development (Health and Safety Code (HSC) §§ 128125 *et seq*.); an optometrist licensed under the Optometry Practice Act, or an out-of-state prescriber acting in an emergency situation from writing or issuing a prescription for a controlled substance. (HSC § 11150)

3) Establishes schedules of drugs, from I – V, under the Uniform Controlled Substances Act, in descending order of the potential for abuse. (HSC §§ 11053 *et seq*)

4) Specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. States that a violation shall result in imprisonment for up to one year or a fine of up to $20,000, or both. (HSC § 11153)

5) Requires that existing trainings for certain health care professionals related to pain management include addiction risks associated with Schedule II drugs.

6) 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. (HSC § 11362.5)

7) Enacts various provisions of law by statute to further regulate the Compassionate Use Act, including establishing a voluntary means of getting a medical marijuana identification card, and defining terms such as "attending physician," "primary caregiver," and "qualified patient" for purposes of the CUA. (HSC §11362.7)

8) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and cannabis products, and adult-use cannabis and cannabis products for adults 21 years of age and over. (BPC §26000 *et seq*.)

9) 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)

10) 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)

11) 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))

12) Establishes the "Ryan's Law" which requires a health care facility to permit a terminally ill patient, defined as a prognosis of one year or less to live, to use medical cannabis within the health care facility. (HSC § 1649 *et seq*)

13) 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) Prohibits a physician and surgeon from automatically denying treatment or medication to a qualified patient based solely on a positive drug screen for 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, a determination that the qualified

patient's use of medical cannabis is "medically significant" to the treatment or medication.

2) Defines "medically significant" as the physician and surgeon made a clinical determination that treatment is contraindicated or likely to cause an adverse reaction or physical or mental harm if administered or used in conjunction with THC; that treatment is expected to be ineffective based on clinical characteristics and patient history; that treatment, used in conjunction with THC, is not appropriate for the qualified patient because it could worsen a comorbid condition or decrease capacity to perform daily activities or pose a barrier to adherence to a plan of care or drug regimen.

3) Clarifies that the use of medical cannabis recommended by a licensed physician and surgeon does not constitute the use of an illicit substance in the evaluation.

4) Prohibits a physician and surgeon from being punished or denied any right or privilege for having administered treatment or medication to a qualified patient according to the requirements of this bill and consistent with the standard of care.

FISCAL EFFECT: This bill is keyed fiscal by Legislative Counsel. According to the Assembly Committee on Appropriations, the bill will result in Minor and absorbable costs to MBC and the Osteopathic Medical Board.

COMMENTS:

1. **Purpose.** CaNORML is the Sponsor of this bill. According to the Author, "An online survey by CaNORML of nearly 600 patients found that 18.5% of respondents have been denied prescription medications due to their use of cannabis. [Centers for Disease Control] guidelines on the prescription of opioid treatments for pain management specify that "clinicians should not dismiss patients from care based on a urine drug test result because this could […] have adverse consequences for patient safety."

   The Author states that "Chronic pain and high-impact chronic pain that limits life and work activities (collectively, chronic pain) are among the most common reasons adults seek medical care and are associated with decreased quality of life, opioid dependence, and poor mental health. In 2019, chronic pain affected 27.8% of women and 25.3% of men in the United States. Opioid treatments are frequently prescribed for the treatment of moderate-to-severe pain. In recent years, the acceptance and use of prescription opioids for the treatment of chronic pain has increased dramatically, despite serious known risks and a lack of evidence for their long-term effectiveness. As many as 25% of patients who receive long-term opioid therapy in a primary care setting struggle with opioid addiction – a public health emergency that has reached epidemic proportions….In their 2017 report *The Health Effects of Cannabis and Cannabinoids*, the National Academy of Sciences concluded that there is substantial evidence that cannabis is an effective treatment for chronic pain in adults. In 2020, over 1.9 million Californians, or approximately 4.8% of the state's population, were medicinal cannabis patients and almost 17% of Californians consumed cannabis recreationally . Importantly, preliminary studies suggest that use of medicinal cannabis in chronic pain patients is associated with a

reduction in opioid treatment dose and/or overall use and an improved quality of life. However, chronic pain patients in many instances cannot fully rely on cannabis for pain management, necessitating either full reliance on opioids or a combinatorial treatment approach."

2. **Background.**

History of Medicinal Cannabis. California was the first state in the nation to allow for the medical use of marijuana with the passage of Proposition 215 in 1996 (Compassionate Use Act of 1996). Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes. Since then, according to the National Conference of State Legislatures, 37 more states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands have enacted similar laws.

In 2003, the Legislature authorized the formation of medical marijuana cooperatives—nonprofit organizations that cultivate and distribute marijuana for medical uses to their members through dispensaries.

In 2015, the Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA). For the first time, MCRSA established a comprehensive, statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis.

Shortly following the passage of MCRSA in November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" (Proposition 64), which legalized adult-use cannabis. Less than a year later in June 2017, the California State Legislature passed a budget trailer bill, SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), that integrated MCRSA with Prop 64 to create MAUCRSA, the current regulatory structure for both medicinal and adult-use cannabis. Beginning in 2018, Proposition 64 permitted adults 21 years of age or older to legally grow, possess, and use cannabis for nonmedical purposes, with certain restrictions.

Medicinal Use Benefits. Following enactment of Proposition 215, the Institute of Medicine issued a report in 1999 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 2017, the National Academies of Science, Engineering, and Medicine released a comprehensive report dedicated to the current understanding of the demonstrated health effects of cannabis and cannabinoids, including cannabidiol (CBD) and the psychoactive molecule, THC. 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.

The report found conclusive evidence of modest therapeutic efficacy for cannabis, cannabis-based products, or synthetic cannabinoids for three conditions: cancer patients experiencing chemotherapy-induced nausea and vomiting, chronic pain, and multiple sclerosis-related spasticity. Although there is only conclusive evidence for these three conditions, California's Compassionate Use Act of 1996 established the right for patients to obtain and use cannabis when prescribed for "cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which [cannabis] may provide relief."

Medicinal versus Adult-Use Cannabis. Currently, doctors write their patient or client a "recommendation" for cannabis. After a doctor provides a "recommendation", the county health department approves (or denies) it with an application fee, and then a medical identification card (ID) is given. With this ID, a person can buy cannabis in a retail store, but benefit from a reduced taxes. Medicinal Cannabis is fully exempt from state and local sales taxes if purchased for medical use with a valid state medical ID card. Some cities and counties also levy lower excise tax rates on purchases.

Guidelines for Prescribing Controlled Substances and Cannabis. For certain types of medication, and certain types of medication prescribed to certain types of patients, guidelines on appropriate and safe prescribing practices can serve as a helpful tool for providers, patients and regulatory boards alike.

In 1994, MBC unanimously adopted a policy statement entitled "Prescribing Controlled Substances for Pain." Stemming from studies and discussions about controlled substances, this policy statement was designed to provide guidance to improve prescriber standards for pain management, while simultaneously undermining opportunities for drug diversion and abuse. The guidelines outlined appropriate steps related to a patient's examination, treatment plan, informed consent, periodic review, consultation, records, and compliance with controlled substances laws. Subsequent to MBC's 1994 action, legislation that took effect in 2002 (AB 487, Aroner, Chapter 518, Statutes of 2001) created a task force to revisit the 1994 guidelines to develop standards assuring competent review in cases concerning the under-treatment and under-medication of a patient's pain and also required CE courses for physicians in the subjects of pain management and the treatment of terminally ill and dying patients. The passage of AB 2198 in 2006 (Houston, Chapter 350, Statutes of 2006) updated California law governing the use of drugs to treat pain by clarifying that health care professionals with a medical basis, including the treatment of pain, for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances, may do so without being subject to disciplinary action or prosecution.

MBC currently encourages all licensees to consult the policy statement and *Guidelines for Prescribing Controlled Substances for Pain* which were updated in 2014 based on input from a MBC Prescribing Task Force that held multiple meetings to identify best practices. According to the MBC website, "The board strongly urges physicians and surgeons to view effective pain management as a high priority in all patients, including children, the elderly, and patients who are terminally ill. Pain should be assessed and treated promptly, effectively and for as long as pain persists. The medical management of pain should be based on up-to-

date knowledge about pain, pain assessment and pain treatment. Pain treatment may involve the use of several medications and non-pharmacological treatment modalities, often in combination. For some types of pain, the use of medications is emphasized and should be pursued vigorously; for other types, the use of medications is better de-emphasized in favor of other therapeutic modalities. Physicians and surgeons should have sufficient knowledge or utilize consultations to make such judgments for their patients. Medications, in particular opioid analgesics, are considered the cornerstone of treatment for pain associated with trauma, surgery, medical procedures, or cancer." MBC intends for the guidelines to educate physicians on effective pain management in California by avoiding under treatment, overtreatment, or other inappropriate treatment of a patient's pain. Reduction of prescription overdose deaths is also an objective of the updated guidelines.

In 2015, the Osteopathic Medical Board of California, which licenses and oversees osteopathic physicians and surgeons, adopted the 2014 MBC guidelines.

In 2017, MBC adopted *Guidelines for the Recommendation of Cannabis for Medical Purposes*. Guidelines revisions were adopted in 2018. MBC states that "The Medical Board of California (Board) developed these guidelines since cannabis is a permissible treatment modality in California under qualifying circumstances. The Board wants to assure physicians who choose to recommend cannabis for medical purposes to their patients, as part of their regular practice of medicine, that they will not be subject to investigation or disciplinary action by the Board if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending cannabis for medical purposes will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards. These guidelines are not intended to mandate the standard of care. The Board recognizes that deviations from these guidelines may occur and may be appropriate depending upon the unique needs of individual patients. Medicine is practiced one patient at a time and each patient has individual needs and vulnerabilities. Physicians should document their rationale for each recommendation decision."

OMBC adopted *Guidelines for the Recommendation of Cannabis for Medical Purposes* in 2021 which are very similar to MBC's, and include a similar statement as noted above.

3. **Arguments in Support.** Supporters state that despite substantial evidence of the effectiveness of using medicinal cannabis to treat chronic pain, many health plans, health systems, and hospitals still 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. Many physicians also lack clarity as to whether they can 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. Supporters believe that California needs end discrimination against seniors, veterans, and other seriously ill Californians who require prescription drugs and choose to use cannabis with a doctor's recommendation

4. **Policy Consideration: Should this measure be limited to physicians and surgeons?** Californians interact with a multitude of health care professionals, including licensed health care providers other than physicians and surgeons who also provide primary care services and may recommend treatment or medication to patients who utilize cannabis. If the goal is to ensure that patients receive the quality care and treatment they deserve and are not prevented from doing so based on cannabis use, it is unclear why only one named health care licensee would be prohibited from "automatically denying treatment or medication to a qualified patient". *The Author may wish to consider expanding the provisions of the measure to include the many other health care practitioners who also treat and prescribe medication to Californians.*

SUPPORT AND OPPOSITION:

Support:

California NORML (Sponsor)
Americans for Safe Access
California Cannabis Industry Association
Origins Council
The Parent Company

Opposition:

None received

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