
THIRD READING

Bill No: AB 1954
Author: Quirk (D)
Amended: 5/19/22 in Assembly
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 13-0, 6/13/22
AYES: Roth, Melendez, Bates, Becker, Dodd, Eggman, Hurtado, Jones, Leyva,
Min, Newman, Ochoa Bogh, Pan
NO VOTE RECORDED: Archuleta

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 76-0, 5/25/22 - See last page for vote

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

SOURCE: California NORML

DIGEST: This bill 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.

ANALYSIS:

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) 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)
- 6) 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)
- 7) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) 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.*)

- 8) 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)
- 9) 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)
- 10) 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))
- 11) 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.*)
- 12) 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.

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 Cannabis 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.” 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. 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. 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.

Comments

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”.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 6/28/22)

California NORML (source)

Americans for Safe Access

California Cannabis Industry Association

Origins Council

The Parent Company

OPPOSITION: (Verified 6/28/22)

None received

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

ASSEMBLY FLOOR: 76-0, 5/25/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, O'Donnell

Prepared by: Sarah Mason / B., P. & E.D. /
6/28/22 14:28:15

**** END ****