

August 1, 2012

The Honorable Felipe Fuentes, Chair
Assembly Appropriations Committee
State Capitol
Sacramento, California 95814

Re: Opposition to SB 1483 (Steinberg)

Dear Assembly Member Fuentes:

Consumers Union's Safe Patient Project¹ opposes SB 1483 (Steinberg), which would establish a costly and unnecessary government entity to serve as a substance abuse and mental health treatment referral service for physicians, who are well-equipped to find their own therapy services, while leaving patients uninformed and unprotected.

SB 1483 would raise approximately \$2.5 million a year through a new \$40 biannual fee on every physician's license to fund education and referral opportunities for substance-abusing physicians. Our concerns about this bill include the following issues:

- The bill fails to protect patients from physicians whose practice of medicine may be compromised due to substance abuse. The new "government" program created by SB 1483(Steinberg) will be state sanctioned but is neither transparent nor publicly accountable. It would allow substance-abusing physicians to be diverted from the attention of the Medical Board of California (MBC).
- This bill is redundant. A law is already on the books. SB 1441 (Ridley-Thomas) led to the establishment of mandatory uniform standards by the Department of Consumer Affairs that each healing arts board is required to use in dealing with substance-abusing licensees whether a board has a diversion program or not. SB 1483(Steinberg) references those standards but places them at arm's length from the MBC, whose mission is to ensure that physician care does not put patients at risk of harm.
- This bill is impractical. It is unlikely any physicians would ever voluntarily enroll in this program, which promises to report them to the MBC if they fail to complete treatment.

¹ The Safe Patient Project is a nationwide campaign of Consumers Union, the advocacy arm of Consumer Reports, that has been working in California since 2003 to engage consumers in promoting laws and policies that enhance patient safety including work with local advocates on issues relating to the regulation of physicians in California.

Therefore, this program would be dependent on referrals from organizations like hospitals, clinic and medical societies. If a physician's substance abuse problem has risen to the level of being recognizable to these entities, then that doctor is surely putting patients in danger – this should be reported to the MBC, not referred to a secret program that will keep unsuspecting patients in the dark about the physician's problems. This proposed program would even keep a physician's substance abuse problem secret from the MBC unless the physician fails the program.

Substance abusing physicians pose significant risks to patients, who typically are unaware of the problem. When these issues come before the MBC, they should be addressed through rigorous, conscientious and publicly transparent action by the MBC. When the MBC, hospital peer review committees or others require or create conditions that place pressure on physicians to enter substance-abuse programs, patients need to be informed in the following ways:

- Physicians who are in these programs should be suspended from the practice of medicine for as long as it takes them to successfully complete a treatment program.
- The MBC website should fully disclose that the physician's license is suspended.
- Whether a physician has successfully completed a program or has failed to complete the program, the full record of the actions by the MBC should be included in the documentation of that physician's license history, posted on the MBC website.

SB 1483 (Steinberg) fails to protect patients and Consumers Union urges you to vote “no” on the bill.

Attached are statements from Tina Minasian and Michele Monserratt-Ramos, Consumers Union Safe Patient Project activists who have personal stories of harm suffered at the hands of substance-abusing physicians and who urge you to oppose SB 1483 (Steinberg).

Please contact Consumers Union consultant on Medical Board-related issues, Maryann O'Sullivan (maryannosullivan1@gmail.com) 415 457 1417, or me (lmcgiffert@consumer.org) if you have any questions.

Sincerely,



Lisa McGiffert
Manager, Safe Patient Project
lmcgiffert@consumer.org

Statement of
Michele Monserratt-Ramos
August 1, 2012

Regarding: SB 1483 (Steinberg) and experiences with the former Diversion Program run by the Medical Board of California

My name is Michele Monserratt-Ramos and I am from Los Angeles, California. I have been following the Diversion Program and all legislation linked to this program since 2007, and have been monitoring the Medical Board and physician accountability issues since 2005. I have followed this issue through all versions of legislation to bring back the Diversion Program in some format through AB 214 (Fuentes), AB 526 (Fuentes), through the Senate Business and Professions hearing, and now SB 1483 (Steinberg). I testified at the Senate Business and Professions Committee Review of Physicians and Health Practitioners Substance Abuse Programs in 2008 where my testimony describing Lloyd Monserratt's death made a significant difference in the introduction of SB 1441(Ridley-Thomas). SB 1441(Ridley-Thomas) created uniform and specific standards that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

My reason for devoting my time and advocacy to these issues is due to the greatest tragedy of my life – the day that my husband-to-be Lloyd Monserratt died in a Los Angeles hospital. Lloyd died three days following elective surgery with no reason given for his death. I hired a pathologist and brought in the coroner to consult. The pathologists determined that Lloyd's death was caused by surgical errors, and infection untreated which led to severe sepsis. Lloyd's physician lied to me and to Lloyd when asked of his true condition. It did not make sense that this physician could abandon him hours before Lloyd died telling me that Lloyd could speak so he thought he was okay and left the hospital. What occurred in that hospital was so alarming that I felt that I had to be missing something. There had to be some other factor that could contribute to the complete lack of care. In time, I discovered that Lloyd's physician had an arrest record. His arrest record spanned a ten-year period including felony possession of crack cocaine amongst other crimes. The fact that the State of California allowed this doctor to practice with no reference to his criminal past and drug abuse led me to this path of advocacy. You see, Lloyd was not your average patient. He knew how to advocate for himself. He was the Vote Director for the Democratic Congressional Campaign Committee (DCCC), He was the Director of Constituency Services for the National Association of Latino Elected and Appointed Officials (NALEO), he was a Chief of Staff for the City of Los Angeles, and was a well regarded political leader throughout California and some areas of the Southwest. Early in his career he even organized nurses for SEIU. He contributed so much to empowering Californians. Yet, the State of California failed Lloyd.

The co-sponsors of this legislation have emphasized that this program needs to be recreated in some format in order to provide resources for physicians before patients are harmed but I am here to tell you that people have died. Lloyd Monserratt is gone at 36 years old.

There are many other examples of California doctors on the edge and their patients have no way to know that their doctor has impairment issues and a criminal past. If physicians choose a life of drug abuse and crime then we should have the right to know this before we put our beloved family members in their care.

I urge your “no” vote on SB 1483 (Steinberg), a bill that would only make this situation worse.

Statement of
Tina Minasian
August 1, 2012

Regarding: SB 1483 (Steinberg) and experiences with the former Diversion Program run by the Medical Board of California

My name is Tina Minasian, I was a victim of a doctor who participated in the former Diversion Program run by the Medical Board of California.

I wasn't his only victim. There are countless others that suffered and have passed away.

In 2002, he performed a surgery on me that I was not a candidate for. After the surgery he cut me back open. I got infected but he closed his practice down and abandoned me. He left me infected with bleeding gaping holes. I was crippled by this and couldn't drive for nearly nine months. Ten years later, I still suffer from the lingering effects of this surgery with excruciating pain and spitting sutures. I just pulled another suture out from my back last week.

What I didn't know about my doctor has forever changed my life and the lives of others. In 2002 when he operated on me, he was at his all-time high with his alcohol and drug problem and the Medical Board was trying to revoke his license. And I didn't know any of this. He was in a secret program called Diversion. The issue was he failed Diversion twice but they allowed him to continue to practice medicine.

Diversion was a monitoring program. When the Medical Board became aware of a substance abuse problem in a physician they diverted the physician into a program as opposed to taking away his license. The idea being, get them into recovery, rehab and put them back in practice when they are safe to practice.

And during that time period, they were supposed to monitor them: do random drug testing; attend group meetings; they would have work site monitors when permitted to return back to practice. They used a lot of monitoring mechanisms in the program in an attempt to monitor the physician's behavior.

The problem was that none of those monitoring mechanisms were effective at all. They were inadequate. The random drug testing was not random at all. It was done many times on the days the physician could anticipate or manipulate.

In my case, my doctor was allowed to have his own office manager, an employee of his, a person he can hire and fire, to be his work site monitor. She lied for him on his AA records stating he attended the meetings, when in fact he never went. And they tried to dilute his urine when he was being drug tested.

The Medical Board of California's Diversion Program was a failed program – it was audited five times and they failed all five audits. The problem I have is that SB 1483 sets up the steps to create another diversion program except this one not only keeps doctor's substance abuse problems secret from patients, it also keeps them secret from the Medical Board of California.

I urge you to oppose this bill. It does not protect patients and patient safety is at risk.