



Assemblymember Susan Bonilla  
Chair, Business, Professions & Consumer Protection Committee  
State Capitol  
Sacramento, CA 94249-0014

Assemblymember Lorena Gonzalez  
State Capitol  
Sacramento, CA 94249-0080

Monday, April 28, 2014

**Re: AB 2346 – Doctor Substance Abuse – OPPOSE UNLESS AMENDED**

Dear Assemblymembers Bonilla and Gonzalez:

We are grateful that the California Medical Association, which has introduced this bill in violation of all the typical rules of legislative process, is now acknowledging the crisis that exists when physicians abuse drugs and alcohol. Recent comments by the leaders of the Medical Association and their representatives suggested otherwise.

For example, a representative of the physicians' lobby, Benjamin Fenton, said on Southern California Public Radio on March 28, 2014 that "[t]he idea that there needs to be testing of physicians is just ridiculous...Doctors need to be held in some level of esteem, they do such significant training, they play such an important role in our society, and the idea that we want to subject all doctors to drug testing just because this gentleman can point to one or two cases where something may have happened I think is really unfortunate. I think there has to be a sense that these doctors are sacrificing their lives."

In fact, patients are the ones sacrificing their lives when physicians abuse drugs and alcohol.

The same indifference to the problem was expressed by the California Society of Anesthesiologists. On November 13, 2013, anesthesiologist Jeffrey Poage, M.D. declared in an article on the home page of the California Society of Anesthesiologists web site: "Is physician impairment really a problem? Doesn't matter."

The fact that the physicians' lobby is now acknowledging physician impairment as a problem is significant, though no doubt spurred by the filing of 840,000 signatures for a patient safety ballot measure that addresses the problem head on through mandatory drug testing of physicians and greater legal accountability for their victims. Unfortunately, AB 2346 needs to be amended in significant ways or the legislation will threaten the public's interest.

California has a serious physician substance abuse problem. The California Medical Board estimates that 18% of doctors will have a substance abuse problem at some point during their careers, and 1-2% are abusing drugs or alcohol at any given point in time. Thousands of

Californians are placed in harm's way every time one of those drug or alcohol-addicted doctors goes to work.

Yet, according to a review of records Consumer Watchdog obtained from the Medical Board through the Public Records Act, since 2003 the Medical Board disciplined just 149 doctors for substance abuse, 27 for using drugs or alcohol at work and 104 for DUIs. Attached to this letter is a list of those physicians disciplined for drug or alcohol abuse in San Diego. However, if up to 2,000 doctors are abusing drugs or alcohol at any given time, the vast majority of them are successfully escaping detection and consequences.

An investigative report in USA Today this month contained first-hand testimony from a doctor who carried on a prescription drug addiction at work and was never caught. Dr. Stephen Lloyd said that he "worked impaired every day; looking back, it scares me to death, what I could have done. I thought I was doing a pretty good job keeping it hidden. There were signs, behavioral changes. I canceled appointments, my paperwork was behind, I started dressing poorly, doing (hospital) rounds at odd hours. But no one ever reported me."

The article also documented once again that previous attempts at confidentially treating substance-abusing physicians in California in lieu of disciplinary action created a revolving door for drunk and high physicians and did not catch most doctors with a problem. The scandalous history of the so-called "diversion" program – where doctors who should have been disciplined were quietly "treated" – shows that when there is no accountability and discipline there are high rates of recidivism and the public is seriously threatened.

The California Highway Patrol (CHP), 60 Minutes, the Center for Public Interest Law, and five separate state audits found that the diversion program let substance-abusing doctors off the hook for failing to comply with rehabilitation terms and failed to monitor substance abusers. Seven years ago, the California Medical Board shut down this failed confidential rehab program run by the same interests backing AB 2346 today. That program prioritized keeping a doctor's addiction secret over the safety of his patients. This failed road is not one that Californians should again walk down, particularly as substance abusing physicians have the ability to prescribe their own drugs to feed their own addiction – a privilege other professions do not enjoy.

Nothing in this bill prevents the same Medical Association interests that turned the diversion program into a country club for substance abusing doctors from running the program presented in AB 2346. Moreover, AB 2346 needs to be amended to exclude "diversion" as an option in lieu of the disciplinary system, as the state bar program does.

In Fresno, a doctor accused of having an alcohol problem and a pattern of leaving surgeries early left in the middle of open-heart surgery, allegedly to go out to lunch. The patient, 72-year-old grandfather Silvino Perez, was left in a permanent vegetative state. Cristobal Arteaga found out about the cause of his stepfather's condition only after a state report documented the "leaving early" incident and a hospital whistleblower alerted him to it. Cristobal noted recently that he was drug tested at work but the doctor that disabled his father is not despite reports from medical staff about this alcohol abuse.

Patient safety demands the public be informed of physician addiction problems. Yet the second sentence of AB 2346 would ensure just the opposite: “Confidentiality pursuant to this article shall be absolute...”

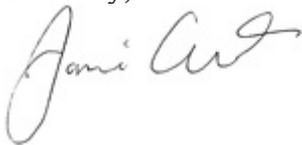
For this reason alone, Consumer Watchdog would urge the committee to oppose AB 2346. Unfortunately, it’s not the only reason.

The bill does nothing to identify problem doctors before their substance abuse places patients at risk. Doctors should meet more stringent safety standards than most professions, not less. Yet the number one tool for detecting substance abuse in other jobs where safety matters – random drug and alcohol testing – is not contained in this legislation. If random drug testing is the right thing to do for the nation’s pilots, bus drivers, train engineers, and even athletes, surely it’s the right thing to do for doctors who hold our lives in their hands.

AB 2346 does not remove doctors from practice when they enroll in rehab, or take away the prescribing ability of a doctor caught abusing prescription drugs. The bill does not require the Medical Board be notified of physicians entering the program, and contains no consequences for a physician who fails rehab – no matter how often or even if patients are harmed. Drug abuse by a doctor should follow a “one strike and you’re out” policy. As soon as a drug-abusing doctor is identified, public safety demands that their prescription-writing privileges be revoked. If a participating doctor fails the program, or completes it but is subsequently discovered to still be abusing drugs, the Medical Board should be required to immediately hold a hearing to revoke the doctor’s license. We should have no tolerance for addicted doctors who repeatedly place their patients in harm’s way.

AB 2346 would bless the same backwards structure of doctors protecting doctors and ensure physician drug and alcohol abuse remains secret and unpunished. Patients would end up worse off than they are now. For these reasons, Consumer Watchdog opposes AB 2346 unless amended. We look forward to working with you on an effective doctor treatment program, but only one that doesn’t keep the public in the dark about drunk and drugged doctors or allow them to escape accountability.

Sincerely,



Jamie Court



Carmen Balber

cc: Members of the Assembly Business, Professions and Consumer Protection Committee

## **San Diego Doctors Disciplined by the Medical Board for Drug-Related Violations**

Dr. Jayson Patrick Bell – self-prescribing Ambien and Provigil

Dr. Babak Abedi – convicted of DUI after striking another vehicle while under Xanax, admitted to abusing prescription medication like Adderall and Ambien

Dr. Scott David Greer – self-administered drugs, convicted of three separate DUIs, assaulted a patient with a hatchet

Dr. Erin Muntean David – self-prescribing, drug problem interfering with work, recommended to take medical leave of absence, violated terms of re-entry to work by obtaining more prescription drugs

Dr. Jerry Neil Rand – self-prescribing; violation of drug laws; gross negligence in prescribing drugs, resulting in deaths of patients

Dr. Manoj V. Motwani – convicted of DUI after racing over 100 mph under the influence and colliding with another driver, who sustained neck injuries; convicted of drug violations; malpractice during eye surgeries

Dr. Murthy Sathyanaraya Dasari – convicted of DUI, BAC of 0.25 percent

Dr. Mark Akira Okada – self-use of prescription drugs, including purchases of at least 10,000 dosage units of hydrocodone and 20,000 dosage units of diazepam in one year; unprofessional conduct

Dr. David Peter Kapelanski – alcoholism and drug dependence; once found bloody and naked in a stairwell, BAC of 0.355 percent; said in an interview with the Medical Board that there is nothing wrong with drinking alcohol while on pain medication

Dr. Gerald Eugene Lake – DUI convictions

Dr. Nicholas Joseph Jerrard – failed a drug test when applying to the Oregon Board of Medical Examiners, admitted to using methamphetamines for over three years

Dr. Johannes Reinhard Sack – violation of drug laws, misrepresentation of self to other doctors to obtain prescriptions from them, failure to complete diversion program

Dr. Derek Emerson – convicted of DUI, then violated probation

Dr. M. Tarek Kady – self-prescribing, prescribed to undercover officers without first conducting a good-faith examination, medical fraud