

AMENDED IN SENATE JULY 8, 2025
AMENDED IN ASSEMBLY APRIL 21, 2025
AMENDED IN ASSEMBLY MARCH 24, 2025
CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL

No. 408

Introduced by Assembly Member Berman

February 4, 2025

An act to repeal and add Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

AB 408, as amended, Berman. Physician Health and Wellness Program.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons and licensed midwives by the Medical Board of California. A violation of the act is a crime. Existing law authorizes the board to establish a Physician and Surgeon Health and Wellness Program to support a physician and surgeon in their rehabilitation from substance abuse to ensure the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession. Existing law requires the board to contract with a third party for the program’s administration in accordance with specified provisions of the Public Contract Code. Existing law provides that participation in the program shall not be a defense to any disciplinary action that may be taken by the board. Existing law requires the program to comply with the Uniform Standards Regarding Substance-Abusing

Healing Arts Licensees adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs. Existing law establishes the Physician and Surgeon Health and Wellness Program Account in the Contingent Fund of the Medical Board of California for the support of the program.

This bill would revise and recast those provisions and would instead authorize the board to establish a Physician Health and Wellness Program to support, treat, monitor, and rehabilitate physicians and surgeons and other professionals licensed by the board with impairing physical and mental health conditions that may impact their ability to practice their profession in a reasonably safe, competent, and professional manner. The bill would require the administering entity to be a nonprofit entity and would require the contract with the administering entity to include procedures on specified topics. The bill would exempt the program from the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees. The bill would exempt program records relating to *current or former* program participants from disclosure under the California Public Records Act, except as specified. The bill would authorize the board to establish advisory committees to assist in carrying out the duties of the administering entity, and would establish duties and responsibilities authorized to be performed by a committee. The bill would rename the Physician and Surgeon Health and Wellness Program Account as the Physician Health and Wellness Program Account, and would authorize the board to seek and use grant funds and gifts from public or private sources to pay any cost associated with the program. The bill would require the board to annually report to the Legislature and make available to the public the amount and source of funds. The bill would require a licensee to report a license to the administering entity or the board if they believe the licensee is impaired. By expanding the scope of a crime under the Medical Practice Act, the bill would impose a state-mandated local program. The bill would make a person who reports information or takes action in connection with the bill's provisions immune from civil liability for reporting information or taking the action, except as specified. The bill would make the program inapplicable to the Osteopathic Medical Board of California.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the

interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 14 (commencing with Section 2340) of
2 Chapter 5 of Division 2 of the Business and Professions Code is
3 repealed.

4 SEC. 2. Article 14 (commencing with Section 2340) is added
5 to Chapter 5 of Division 2 of the Business and Professions Code,
6 to read:

7
8 Article 14. Physician Health and Wellness Program
9

10 2340. (a) The board may establish a Physician Health and
11 Wellness Program for the early identification of, and appropriate
12 interventions to support, treat, monitor, and rehabilitate physicians
13 and surgeons and allied health care professionals licensed by the
14 board, as well as applicants, prospective applicants, trainees, and
15 students with impairing or potentially impairing physical or mental
16 health conditions, including substance use disorders, that may
17 impact their ability to practice their profession in a reasonably
18 safe, competent, and professional manner.

19 (b) For purposes of this article, the following definitions apply:

20 (1) "Administering entity" means a nonprofit, third-party
21 independent administering entity qualified under Section 501(c)(3)
22 of the Internal Revenue Code of 1986 that has expertise in mental
23 health disorders, including substance use disorders and other
24 potentially impairing health conditions, that has been designated
25 pursuant to a request for proposal to perform any of the activities
26 set forth in this article and any applicable regulations pursuant to
27 a contract with the board.

(2) “Applicant” means an individual who has applied for licensure with the board.

(3) “Board” means the Medical Board of California or its designee. If the board establishes one or more committees pursuant to this article, “board” may also refer to a board committee to the extent duties have been delegated to the committee, or to its designee.

~~(4) “Disruptive behavior” means aberrant behavior exhibited through personal interaction with others, including, but not limited to, health care professionals, facility staff, or patients, clients, or their family members, which interferes with patient or client care or could reasonably be expected to interfere with the process of delivering health care in a reasonably safe, competent, and professional manner.~~

~~(5)~~

(4) “Impaired,” “impairing,” or “impairment” means the inability to practice medicine or other health care profession regulated by the board in a reasonably safe, competent, and professional manner due to mental illness, physical illness, ~~disruptive behavior~~, or substance use disorder.

~~(6)~~

(5) “Licensee” means an individual licensed by the board.

~~(7)~~

(6) “Mental illness” means an illness or condition characterized by a clinically significant disturbance in an individual’s cognition, emotion regulation, or behavior, ~~including disruptive behavior~~, that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning.

~~(8)~~

(7) “Participant” means a licensee, applicant, prospective applicant, trainee, or student who was or is enrolled in the program for evaluation, treatment, or monitoring pursuant to an agreement between that person and the program, including voluntary participants and those referred by the board pursuant to an order of probation.

~~(9)~~

(8) “Physical illness” means an illness or condition that would adversely affect cognitive, motor, or perceptive skills, including, but not limited to, deterioration through the aging process.

~~(10)~~

1 (9) “Physician Health and Wellness Program” or “program”
2 means the confidential resource operated by the administering
3 entity for licensees, applicants, prospective applicants, trainees,
4 and students suffering from impairing or potentially impairing
5 health conditions.

6 ~~(11)~~

7 (10) “Prospective applicant” means an individual who has
8 graduated from a school approved by the board and is
9 contemplating applying for licensure with the board.

10 ~~(12)~~

11 (11) “Student” means an individual enrolled in a school *in this*
12 *state* approved by the board studying to enter a profession regulated
13 by the board. For an individual participating in the program, the
14 program shall make any required reports pursuant to this article
15 to the individual’s oversight entity, such as the individual’s school,
16 program, or supervisor as specified in the individual’s participation
17 agreement, instead of to the board, unless otherwise specified in
18 this article.

19 ~~(13)~~

20 (12) “Substance use disorder” means a disease in which the
21 essential feature is a cluster of cognitive, behavioral, and
22 physiological symptoms indicating that the individual continues
23 using the substance despite significant substance-related problems.

24 ~~(14)~~

25 (13) “Trainee” means an individual who has graduated from a
26 school approved by the board who is in training to enter a
27 profession regulated by the board, and who is currently unlicensed
28 to practice in California, including, but not limited to, those who
29 are practicing during the exemption period under Section 2064.5
30 or 2065. For an individual participating in the program, the program
31 shall make any required reports pursuant to this article to the
32 individual’s oversight entity, such as the individual’s training
33 program or supervisor, as specified in the individual’s participation
34 agreement, instead of to the board, unless otherwise specified in
35 this article.

36 ~~(15)~~

37 (14) “Treatment” means a course of inpatient or outpatient care
38 or rehabilitation services provided pursuant to recommendations
39 by the administering entity or its designee authorized to make those
40 recommendations.

1 ~~(16)~~

2 (15) “Voluntary participant” means a participant who voluntarily
3 enrolled in the program for evaluation, monitoring, or treatment
4 services, including an individual referred by the board in lieu of
5 the board pursuing disciplinary ~~action~~, *action under the conditions*
6 *provided in subdivisions (a) and (b) of Section 2344*, and is not
7 required by the board to participate in the program pursuant to an
8 order of probation.

9 2341. (a) A program established pursuant to this article shall
10 do all of the following:

11 (1) Educate the public, licensees, applicants, prospective
12 applicants, trainees, students, health facilities, medical groups,
13 health care service plans, health insurers, and other relevant
14 organizations on the following topics:

15 (A) Early identification and prevention of threats to patient
16 safety due to health care providers who may be impaired.

17 (B) How to refer eligible individuals to the program, including
18 relevant ethical and legal obligations to refer impaired individuals
19 to the program or board.

20 (C) Other information that furthers the purposes of the program.

21 (2) Enter into relationships supportive of the program with
22 professionals experienced in working with health care providers
23 to provide education, evaluation, monitoring, or treatment services.

24 (3) Receive and assess reports of suspected impairment from
25 any source.

26 (4) Intervene in cases of verified impairment or suspected
27 impairment, as well as in cases where the individual has a condition
28 that could lead to impairment if left untreated.

29 (5) Upon reasonable cause, refer participants for evaluation,
30 treatment, monitoring, or other appropriate services.

31 (6) Provide consistent and regular monitoring, care management
32 support, or other appropriate services for program participants.

33 (7) Advocate on behalf of participants, with their consent, to
34 the board to allow them to participate in the program as an
35 alternative to disciplinary action, when appropriate.

36 (8) Offer guidance on participants’ fitness for duty with current
37 or potential workplaces, when appropriate.

38 (9) Perform other services as agreed between the program and
39 the board.

(b) Notwithstanding any other law, the board and program shall be exempt from being mandated to impose or follow the requirements of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315 (Uniform Standards), for those who are voluntary participants.

(c) A participant who is subject to a board order of probation, including, but not limited to, an order imposing the Uniform Standards, shall comply with the terms of their probation, and the program shall provide the required evaluations, treatment, monitoring, and reports to the board consistent with the participant's order of probation. A participant who commits a violation of their order of probation shall be subject to the consequences required by the order.

2342. (a) If the board chooses to establish a program, the board shall contract for the program's administration with a third-party independent administering entity that is a nonprofit entity that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986, pursuant to a request for proposals. The process for procuring the services for the program shall be administered by the board pursuant to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. However, Section 10425 of the Public Contract Code shall not apply to this subdivision. The board may enter into a multiyear contract with the administering entity without having to obtain the approval of the Department of General Services, the Office of Legal Services, or any other state entity to justify a multiyear term.

(b) The administering entity shall have expertise and experience in the areas of impairment and rehabilitation in health care providers. The leadership of the administering entity shall have at least one medical director, who is specially trained or board certified in addiction medicine or addiction psychiatry and has expertise in health programs for health care providers.

(c) The administering entity shall identify and ~~use a national~~ *establish agreements with treatment resource network that includes resources, including in-person and telehealth evaluations, treatment programs, and support groups and shall establish a process for evaluating the effectiveness of those resources and programs.*

1 (d) The administering entity shall identify other individuals
2 affiliated with the participant who would benefit from counseling
3 and may refer them to services appropriate for the circumstances.

4 (e) The administering entity shall make the program services
5 available to all board licensees, applicants, prospective applicants,
6 ~~trainees, and students.~~ *and trainees. If the administering entity and*
7 *the board determine that sufficient resources are available, the*
8 *administering entity shall make the program available to students.*

9 (f) The administering entity shall make prompt and diligent
10 efforts to contact and conduct an appropriate assessment and
11 referral for an independent evaluation, when indicated, with each
12 licensee, applicant, prospective applicant, ~~trainee, and student~~ *and*
13 *trainee* who has been referred to the program. The administering
14 entity shall attempt to enroll the referred individual if, in the good
15 faith judgment of the administering entity, the individual has a
16 condition that impairs or may impair their ability to practice their
17 profession in a reasonably safe, competent, and professional
18 manner. *If the administering entity and the board determine that*
19 *sufficient resources are available, the administering entity shall*
20 *provide the services described in this subdivision to students.*

21 (g) The administering entity shall have a board-approved system
22 for immediately reporting a participant to the board when required
23 by this article, including, but not limited to, a participant who
24 withdraws or is terminated from the program prior to completion.
25 This system shall ensure absolute confidentiality in the
26 communication to the board. The administering entity shall not
27 provide this information to any other individual or entity unless
28 authorized by the participant or this article.

29 (h) The administering entity shall provide regular
30 communication to the board, including, but not limited to, the
31 following:

32 (1) Participate at board meetings, which may include presenting
33 at meetings or providing reports, as requested by the board, on
34 matters relevant to the program and participants.

35 (2) Provide annual reports to the board with program statistics
36 requested by the board.

37 (3) Provide reports regarding participants and other individuals
38 as required by this article.

39 (4) Reports provided during an open meeting or published in
40 open meeting materials, including to provide program statistics,

1 shall not disclose any personally identifiable information relating
2 to any participant without the express written consent of the
3 participant.

4 (i) Upon request of the board, the administering entity shall
5 submit to periodic quality and compliance evaluations of all or
6 select operations, fund conditions, records, and management related
7 to the program to ensure compliance with the requirements of this
8 article, applicable regulations, and the contract with the board. The
9 evaluation shall be conducted by an independent third party
10 approved by the board. Any report on the evaluation conducted
11 pursuant to this section shall maintain the confidentiality of all
12 records reviewed and information obtained in the course of
13 conducting the evaluation and shall not disclose any information
14 identifying a program participant.

15 2343. A contract entered into pursuant to this article with the
16 administering entity shall include procedures on all of the following
17 topics:

18 (a) Regular participation at board meetings, which may include
19 presenting at meetings or providing reports, as requested by the
20 board.

21 (b) Regular reporting of statistical information related to the
22 program and participants, including for the board's annual report.

23 (c) Periodic disclosure and joint review of information the board
24 may deem appropriate regarding referrals, including the contacts,
25 evaluations, and investigations made, and the disposition of each
26 referral. However, with respect to nonboard referrals, the
27 administering entity shall not disclose any personally identifiable
28 information to the board except as provided in subdivision (d) or
29 (e), or when required by the board following consideration of
30 information provided under subdivision (f).

31 (d) Immediate reporting to the board the name, last known
32 contact information, and a factual summary of events and findings
33 regarding any suspected or verified impaired licensee, applicant,
34 or trainee practicing during the exemption period under Section
35 2064.5 or 2065, who, in the opinion of the administering entity,
36 is probably an imminent danger to the public. Other program
37 records pertaining to the participant shall be confidential and not
38 accessible to the board, unless the individual is participating in the
39 program pursuant to an order of probation.

(e) Timely reporting to the board the name, last known contact information, and a factual summary of events and findings regarding any suspected or verified impaired licensee, applicant, or trainee practicing during the exemption period under Section 2064.5 or 2065, who fails to cooperate with the program, fails to submit to an evaluation, treatment, or monitoring, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the administering entity, is probably unable to practice their profession in a reasonably safe, competent, and professional manner. Other program records pertaining to the participant shall be confidential and not accessible to the board, unless the individual is participating in the program pursuant to an order of probation.

(f) Timely reporting to the board, when required under the criteria established pursuant to subdivision (e) of Section 2345, for the board's evaluation and direction, deidentified voluntary participants who commit a program violation. After consulting with the administering entity, if the board requests that the individual be identified, the administering entity shall provide to the board the name, last known contact information, and a factual summary of events and findings relating to the individual's participation in the program. Other program records pertaining to the participant shall be confidential and not accessible to the board.

(g) Informing each participant of the program procedures, the responsibilities of participants, and the possible consequences of noncompliance with the program.

(h) Qualifications and requirements for individuals and entities providing services to participants, including, but not limited to, treatment facilities, evaluators, testing locations, laboratories, treatment providers, support group facilitators, and monitors.

(i) Prevention of personal, financial, business, or professional conflicts of interests that may compromise the program's responsibilities, including, but not limited to, conflicts that may unduly influence decisions regarding the selection of treatment options, evaluators, testing locations, laboratories, treatment providers, support group facilitators, or monitors.

(j) Quality assurance and quality improvement principles.

(k) Confidentiality and maintenance of program records.

(l) Identification of the full names and qualifications of program staff who are available to certify records regarding individuals

1 participating pursuant to an order of probation and be the person
2 most knowledgeable to explain the program's records, if needed.

3 (m) Standardized data collection to allow for data analysis and
4 research.

5 (n) Research processes and methodologies.

6 (o) Education and outreach to stakeholders.

7 (p) Interstate monitoring to support communication and
8 accountability of program participants across jurisdictions.

9 (q) Notification of program evaluations required pursuant to
10 subdivision (i) of Section 2342, compliance with those evaluations,
11 and opportunities to cure deficiencies identified in those
12 evaluations.

13 (r) Any other topic pertinent to the program as determined by
14 the board.

15 2344. (a) In lieu of disciplinary action, if the board determines
16 that the unprofessional conduct may be the result of an impairing
17 or potentially impairing condition, the board may refer the licensee
18 to the program. If the unprofessional conduct involves allegations
19 of patient or client harm or sexual misconduct with a patient, client,
20 or any other person, referral to the program shall not be an option
21 for avoiding disciplinary action.

22 (b) Referral of the licensee to the program in lieu of disciplinary
23 action shall be done only with the consent of the licensee. If the
24 licensee does not consent to be referred to the program, or does
25 not successfully complete the program, the board may take
26 appropriate disciplinary action.

27 (c) The cost of evaluation and treatment shall be the sole
28 responsibility of the participant, and this responsibility does not
29 preclude payment by an employer, insurer, or other sources.

30 (d) Evaluation, monitoring, and treatment shall be conducted
31 by providers with expertise in working with health care
32 professionals with impairing or potentially impairing conditions
33 approved by the administering entity or the board.

34 (e) Upon receiving a report from the program that is required
35 under the criteria established pursuant to subdivision (e) of Section
36 2345 that a deidentified voluntary participant committed a program
37 violation, the board may do any of the following:

38 (1) Encourage continued program participation with additional
39 conditions, in lieu of disciplinary action, when the board determines

1 that the licensee is able to continue to practice in a reasonably safe,
2 competent, and professional manner.

3 (2) Request the participant's identity, last known contact
4 information, and a factual summary of events and findings relating
5 to the individual's participation in the program so that the board
6 may investigate and pursue disciplinary action, as warranted.

7 (3) Take other action consistent with the agreed-upon
8 procedures.

9 (f) A participant shall sign a waiver allowing the program to
10 release information to the board as required by this article or their
11 program agreement, including, but not limited to, if the participant
12 does not comply with their program agreement, or, in the opinion
13 of the administering entity, is unable to practice in a reasonably
14 safe, competent, and professional manner. The program shall report
15 to the board a participant who fails to comply with their program
16 agreement when required under the criteria established pursuant
17 to subdivision (e) of Section 2345, or who, in the opinion of the
18 administering entity, is unable to practice their profession in a
19 reasonably safe, competent, and professional manner.

20 (g) The administering entity shall report to the board a licensee,
21 applicant, or trainee practicing during the exemption period under
22 Section 2064.5 or 2065, who fails to enter into a program
23 agreement, and who, in the opinion of the administering entity, is
24 unable to practice their profession in a reasonably safe, competent,
25 and professional manner.

26 (h) A licensee, applicant, or trainee practicing during the
27 exemption period under Section 2064.5 or 2065 shall notify the
28 board in writing on a form approved by the board within three
29 calendar days from the date they withdraw or are terminated from
30 the program without completing the program's requirements.

31 (i) A licensee, applicant, or trainee practicing during the
32 exemption period under Section 2064.5 or 2065 who previously
33 withdrew or was terminated from the program without completing
34 the program's requirements may, upon the agreement of the
35 administering entity and the board, reenter the program.

36 (j) This section does not restrict the authority of the board to
37 take disciplinary action against a licensee or to deny a license to
38 an individual who withdraws or is terminated from the program
39 without completing the program's requirements or for any other

1 unprofessional conduct, including, but not limited to, its authority
2 under Section 820.

3 2345. A participant shall, as a condition of participation in the
4 program, enter into an individual agreement with the program.
5 The agreement shall include, but not be limited to, all of the
6 following, to the extent they are applicable to the services to be
7 provided by the program to the individual participant:

8 (a) A jointly agreed-upon plan and mandatory conditions and
9 procedures for monitoring of compliance with the program. For
10 individuals who are referred to the program pursuant to an order
11 of probation, the program's written agreement shall require
12 compliance with the terms of their order of probation, in addition
13 to any other program requirements.

14 (b) Criteria for compliance with terms and conditions of
15 evaluation, treatment, or monitoring.

16 (c) Criteria for program completion.

17 (d) Criteria for termination from the program.

18 (e) Criteria for when the administering entity will report a
19 participant to the board for noncompliance with the program
20 requirements.

21 (f) Agreement to maintain an active release authorizing
22 communication between the program and the board, and other
23 entities and individuals as required by the program.

24 (g) Acknowledgment that the administering entity is required
25 to report to the board, pursuant to subdivision (e) of Section 2343,
26 the participant's withdrawal or termination before completion of
27 program requirements or if the administering entity determines
28 that the participant is unable to practice their profession in a
29 reasonably safe, competent, and professional manner.

30 (h) Acknowledgment that the report described in subdivision
31 (g) is required to include the participant's name, last known contact
32 information, and a factual summary of events and findings relating
33 to the individual's participation in the program.

34 (i) Acknowledgment that participation in the program shall not
35 be a defense to any disciplinary or licensing action that may be
36 taken by the board.

37 (j) Acknowledgment that expenses related to evaluation,
38 treatment, monitoring, laboratory tests, and other activities
39 specified by the program shall be paid by the participant or other
40 sources available to the participant.

2346. (a) Program records, including, but not limited to, case notes, progress notes, laboratory reports, evaluation and treatment records, electronic and written correspondence within the program, and between the program and ~~the~~ *a current or former* participant, board, or other involved entities, including, but not limited to, employers, credentialing bodies, referents, or other collateral sources, relating to participants are investigatory or security files compiled for licensing purposes, as described in Section 7923.600 of the Government Code, that are exempt from disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government ~~Code~~) ~~and Code~~. *Such records also are* not subject to discovery by subpoena or admissible as evidence except:

(1) To defend *the program or* a program professional in any civil or administrative action involving a *current or former* participant regarding the restriction or revocation of that participant's clinical or staff privileges, or termination of the participant from employment, a school, or training program. In such an action, the program shall, upon subpoena issued by any party to the action and upon the requesting party seeking a protective order for the requested disclosure, provide to the parties to the action written disclosure that includes all of the following information:

(A) Verification of the individual's participation in the program as it relates to aspects of program involvement at issue in the action.

(B) The dates of participation.

(C) Whether the program identified an impairing or potentially impairing health condition.

(D) Whether the individual was compliant with their program agreement.

(E) Whether the individual successfully completed the program.

(2) ~~Records~~ *In a licensing or enforcement action by the board, the board may introduce the records the program provided to the board as required by this article.*

(b) All other records held by the board under this ~~section~~ *article* are also investigatory or security files compiled for licensing purposes, as described in Section 7923.600 of the Government Code, that are exempt from disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section

7920.000) of Title 1 of the Government Code) and are not subject to discovery by subpoena. These records are available to the individual only pursuant to Section 11507.6 of the Government Code, and the board may use those records as evidence in a licensing or ~~disciplinary~~ *enforcement* action against the individual.

2347. (a) Except as provided in subdivision (b), a person who reports information or takes action in connection with this article is immune from civil liability for reporting information or taking the action as authorized by this article.

(1) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section. The persons and entities entitled to immunity shall include all of the following:

(A) The administering entity, board, and committees.

(B) Members, employees, and agents of the administering entity, board, and committees.

(C) Persons reporting a licensee, trainee, applicant, or prospective applicant for licensure as being possibly impaired or providing information about the subject's impairment to the board or administering entity.

(D) Professionals supervising or monitoring the course of the program participant's treatment or rehabilitation, including when they report progress or noncompliance to the board as warranted.

(2) The courts are strongly encouraged to impose sanctions on program participants and their attorneys whose ~~allegations~~ *allegations, in a legal action against a person or entity described in paragraph (1)*, regarding violations of this article are not made in good faith and are without either reasonable objective or substantive grounds, or both.

(3) The immunity provided in this section is in addition to any other immunity provided by law.

(b) Subdivision (a) does not apply in a case where it can be proven that a person made a false report and either knew that the report was false, or made the report with reckless disregard of the truth or falsity of the report. In such a case, the person who makes the report is liable for any damages caused to the subject of the report.

(c) This section does not require the board to defend or indemnify a person in an action described in subdivision (a), unless

1 the person who makes the report is an employee of the board and
2 their report is not described in subdivision (b).

3 2348. (a) If the board establishes a program pursuant to this
4 article, the board may establish one or more advisory committees
5 to assist it in carrying out its duties under this article. A committee
6 created under this article shall operate under the direction of the
7 board's executive director or their designee.

8 (b) Appointments to a committee shall be by the affirmative
9 vote of a majority of members appointed to the board. Each
10 appointment shall be at the pleasure of the board for a term not to
11 exceed four years. The board may stagger the terms of the initial
12 committee members appointed, and may remove a committee
13 member for any reason.

14 (c) Any committee established by the board shall have at least
15 three members, who are unaffiliated with the program or any
16 contractors thereof, ~~including at thereof~~. *A majority of those*
17 *appointed shall be physicians who have expertise in the evaluation,*
18 *diagnosis, treatment, or management of health care professionals*
19 *who are impaired due to substance use disorders, mental illness,*
20 *or physical illness. All physician members appointed shall have a*
21 *current and active license from California.*

22 (1) *The committee members shall also meet the following*
23 *criteria:*

24 (A) ~~At least one member who is not licensed by the board and~~
25 ~~who is knowledgeable board. All members not licensed by the~~
26 ~~board shall have expertise in a board-recognized field relating to~~
27 ~~substance use disorders, mental illness, or physical illness. Each~~
28 ~~licensee appointed shall have experience in the evaluation or~~
29 ~~management of health care professionals who are impaired due to~~
30 ~~substance use disorders, mental illness, or physical illness. At~~

31 (B) ~~At least one licensee appointed~~ *physician member* shall
32 specialize in the diagnosis and treatment of substance use disorders
33 in health care professionals.

34 (d) A majority of the members of a committee shall constitute
35 a quorum for the transaction of business. Any action requires an
36 affirmative vote of a majority of those members present at a
37 meeting constituting at least a quorum, or a majority of the
38 members on the committee if a decision is made through electronic
39 voting. Each committee shall elect from its membership a
40 chairperson and a vice chairperson.

1 (e) Notwithstanding the Bagley-Keene Open Meeting Act
2 (Article 9 (commencing with Section 11120) of Chapter 1 of Part
3 1 of Division 3 of Title 2 of the Government Code), a committee
4 may convene in closed session, in person or remotely, to review
5 information relating to any participant, any licensee being
6 considered for enrollment in the program in lieu of board
7 disciplinary action, or any individual the program is required to
8 report to the board pursuant to this article. A meeting that will be
9 convened entirely in closed session pursuant to this subdivision is
10 exempt from Section 11125 of the Government Code. A committee
11 shall only convene in closed session pursuant to this subdivision
12 to the extent that it is necessary to protect the privacy of individuals
13 being reviewed.

14 (f) Each member of a committee shall receive a per diem and
15 shall be reimbursed for expenses as provided in Section 103.

16 2349. (a) A committee established pursuant to Section 2348
17 may have the following duties and responsibilities as determined
18 by the board or its designee:

19 (1) To evaluate licensees for possible referral to the program in
20 lieu of board discipline and to make recommendations to the
21 executive director or their designee. In making recommendations,
22 a committee shall consider any recommendations from professional
23 consultants on the admission of licensees to the program.

24 (2) To review information concerning individuals participating
25 in the program, and any individual the administering entity is
26 required to report to the board pursuant to this article, and to make
27 recommendations to the executive director or their designee.

28 (3) To consider information provided by the administering entity
29 and make recommendations to the executive director or their
30 designee as to whether the administering entity should report the
31 participant to the board for noncompliance or continue to evaluate,
32 treat, or monitor the participant and under what conditions.

33 (4) To call meetings as necessary to consider the requests of
34 licensees to participate in the program, to consider reports regarding
35 participants in the program or regarding any individual the
36 administering entity is required to report to the board pursuant to
37 this article, and to consider any other matters referred to it by the
38 board.

39 (5) To periodically hold open public meetings to evaluate the
40 program's progress, to prepare reports to be submitted to the board,

1 to consider proposals for changes in the program, and to consider
2 other matters as requested by the board.

3 (b) For the purposes of the Government Claims Act (Division
4 3.6 (commencing with Section 810) of Title 1 of the Government
5 Code), any member of a committee shall be considered a public
6 employee. No board or committee member, contractor, or agent
7 thereof, shall be liable for any civil damage because of acts or
8 omissions that may occur while acting in good faith pursuant to
9 this article.

10 2350. (a) The Physician Health and Wellness Program Account
11 is hereby continued in existence within the Contingent Fund of
12 the Medical Board of California. Any funds collected or allocated
13 by the board pursuant to this article or the article repealed by the
14 act adding this article shall be deposited into the Physician Health
15 and Wellness Program Account and shall be available, upon
16 appropriation by the Legislature, for the support of the program.

17 (b) The board may seek and use grant funds and gifts of financial
18 support from public or private sources to pay any cost associated
19 with the program. The board shall annually report to the Legislature
20 and make available to the public the amount and source of funds
21 it receives for support of the program. The report shall be submitted
22 in compliance with Section 9795 of the Government Code.

23 (c) Any reference in law or regulation to the Physician and
24 Surgeon Health and Wellness Program Account shall be deemed
25 to refer to the Physician Health and Wellness Program Account.

26 2351. (a) If the board establishes the program, a licensee shall
27 report to the administering entity or the board, the name and current
28 contact information of another licensee if they, in their good faith
29 judgment, believe that the other licensee may be impaired.

30 (b) Program staff and agents are exempt from this reporting
31 mandate when the licensee is compliant with program requirements
32 and does not pose a risk to patient safety.

33 (c) The administering entity or board shall not disclose the name
34 of the referring individual to the referred licensee under any
35 circumstances, except with the express written permission of the
36 referring individual, or if otherwise required by law.

37 2352. This article does not apply to the Osteopathic Medical
38 Board of California or its licensees, applicants, prospective
39 applicants, students, or trainees.

1 SEC. 3. The Legislature finds and declares that Section 2 of
2 this act, which adds Sections 2342, 2346, and 2348 to the Business
3 and Professions Code, imposes a limitation on the public's right
4 of access to the meetings of public bodies or the writings of public
5 officials and agencies within the meaning of Section 3 of Article
6 I of the California Constitution. Pursuant to that constitutional
7 provision, the Legislature makes the following findings to
8 demonstrate the interest protected by this limitation and the need
9 for protecting that interest:

10 It is in the public interest to limit the disclosure of information
11 relating to program participants to encourage individuals in need
12 to participate in the program and ensure the safe practice of
13 medicine.

14 SEC. 4. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.