

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: AB 1369
AUTHOR: Bauer-Kahan
BILL DATE: March 23, 2023, Amended
SUBJECT: Out-of-State Physicians and Surgeons: Telehealth:
License Exemption
SPONSOR: ALS Foundation

DESCRIPTION OF CURRENT LEGISLATION

Exempts from licensure requirements certain out-of-state physicians, authorizing them to practice medicine in California via telehealth with a patient who has a disease or condition that is immediately life-threatening.

BACKGROUND

[Business and Professions Code \(BPC\) section 2051](#) authorizes the holder of a physician's and surgeon's (P&S) license to treat patients in this state.

[BPC section 2052](#) states that it is a crime to treat the sick or afflicted in this state without a license from the Medical Board of California (Board) or other appropriate state entity.

[BPC section 2060](#) authorizes an out-of-state physician to consult with a Board-licensed physician provided they do not have ultimate authority over the care or primary diagnosis of a patient located in California.

BPC sections [2135](#) and [2135.5](#) provide two pathways for out-of-state physicians to obtain a license to treat patients in this state.

[Health and Safety Code sections 111548-111548.5](#) authorize a California-licensed physician to treat an eligible patient with an investigational drug, biological product, or device, as specified.

ANALYSIS

According to the author's fact sheet:

“When an individual is terminally ill, they must be able to utilize every possible option for healthcare that is available. Especially when it comes to being admitted to important clinical trials, an in-state option is often unavailable. California's licensure restrictions are necessary protections for health and wellness for the population at large but fail to protect the small segment of patients who cannot travel but could stand to benefit significantly from participation in out-of-state care.”

The fact sheet continues:

“California has already established a “right to try” medication law for terminally ill people. This allows traditional restrictions on pharmaceuticals to be lifted in order for terminally ill patients to participate in clinical trials and experimental treatments. In the age of telehealth, the “right to try” for terminally ill patients must extend beyond medications and also include the ability to obtain needed treatment through a medical professional via the telehealth method. With such an exemption in place, terminally ill people will have expanded options to much needed health care and the ability to participate in clinical trials across the country, which increases their hopes of recovery.”

AB 1369 would add a section to the Medical Practice Act that would authorize a person licensed as a P&S “in another state that uses criteria substantially similar to the criteria used by the [Board]” to treat a patient in California who has a disease or condition that is “immediately life-threatening.” To be eligible, that patient must also have not been accepted into a clinical trial, as specified, or, per the determination of two physicians, it is unreasonable for the patient to participate in the trial due to their condition and stage of disease.

Existing Options for Out-of-State Physicians to Treat Californians

Any eligible physician may obtain a license by the Board and be authorized to treat patients in this state. Licensure is a vital form of consumer protection and ensures that physicians practicing in California have met the relevant statutory requirements to treat patients in this state.

Without the requirement for licensure, the Board would be unaware of those who are treating patients in this state and would be unable to take disciplinary action against a physician who fails to treat their patients within the standard of care. Under the language of the bill, it is also unclear whether the home state of the physician in question would have authority to discipline that physician when treating Californians.

In addition, the definition of an eligible physician is vague. It appears that the physician in question would be the one to determine for themselves if they are qualified. Further, the bill does not disqualify physicians with a history of disciplinary action against them.

Consideration of a Board Position

For the reasons stated above, establishing an exemption for licensure to treat patients with a life-threatening disease or condition is not necessary. Eliminating the normative requirement for licensure reduces the certainty that a fragile patient population will receive treatment consistent with the standard of care and may even subject this patient population to costly, fraudulent “cures” with no oversight by any licensing board.

Accordingly, Board staff recommend an Oppose position.

FISCAL: None identified.

SUPPORT: ATA Action

OPPOSITION: None identified.

POSITION: Recommendation: Oppose.

ATTACHMENT: [AB 1369, Bauer-Kahan – Out-of-State Physicians and Surgeons: Telehealth: License Exemption](#)
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