

Proposition **46** Drug and Alcohol Testing of Doctors. Medical Negligence Lawsuits. Initiative Statute.

Official Title and Summary

Prepared by the Attorney General

Drug and Alcohol Testing of Doctors. Medical Negligence Lawsuits. Initiative Statute.

- Requires drug and alcohol testing of doctors and reporting of positive test to the California Medical Board.
- Requires Board to suspend doctor pending investigation of positive test and take disciplinary action if doctor was impaired while on duty.
- Requires doctors to report any other doctor suspected of drug or alcohol impairment or medical negligence.
- Requires health care practitioners to consult state prescription drug history database before prescribing certain controlled substances.
- Increases \$250,000 cap on pain and suffering damages in medical negligence lawsuits to account for inflation.

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Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Increased state and local government health care costs from raising the cap on medical malpractice damages, likely ranging from the tens of millions of dollars to several hundred million dollars annually.
- Uncertain, but potentially significant, state and local government savings from new requirements on health care providers, such as provisions related to prescription drug monitoring and alcohol and drug testing of physicians. These savings would offset to some extent the health care costs noted above.

Analysis by the Legislative Analyst

Background

This measure has several provisions that relate to health care provider conduct and patient safety. Specifically, the measure’s primary provisions relate to medical malpractice, prescription drug monitoring, and alcohol and drug testing for physicians. Below, we provide background information on some of these topics and describe the major role state and local governments have in paying for health care services in California.

State and Local Governments Pay for a Substantial Amount of Health Care

The state and local governments in California spend tens of billions of dollars annually on health care services. These costs include purchasing services directly from health care providers (such as physicians and pharmacies), operating health care facilities (such as hospitals and clinics), and

paying premiums to health insurance companies. The major types of public health care spending are:

- **Health Coverage for Government Employees and Retirees.** The state, public universities, cities, counties, school districts, and other local governments in California pay for a significant portion of health costs for their employees and their families and for some retirees. Together, state and local governments pay about \$20 billion annually for employee and retiree health benefits.
- **Medi-Cal.** In California, the federal-state Medicaid program is known as Medi-Cal. Medi-Cal pays about \$17 billion annually from the state General Fund to provide health care to over 10 million low-income persons.

- **State-Operated Mental Hospitals and Prisons.** The state operates facilities, such as mental hospitals and prisons, that provide direct health care services.
- **Local Government Health Programs.** Local governments—primarily counties—pay for many health care services, mainly for low-income individuals. Some counties operate hospitals and clinics that provide health care services.

Medical Malpractice

Persons Injured While Receiving Health Care May Sue for Medical Malpractice. Persons injured while receiving health care may sue health care providers—typically physicians—for medical malpractice. In a medical malpractice case, the person suing must prove that he or she was injured as a result of the health care provider’s negligence—a failure to follow an appropriate standard of care. The person must also prove some harm resulted from the provider’s negligence. Damages awarded in medical malpractice cases include:

- **Economic Damages**—payments to a person for the financial costs of an injury, such as medical bills or loss of income.
- **Noneconomic Damages**—payments to a person for items other than financial losses, such as pain and suffering.

Attorneys working malpractice cases are typically paid a fee that is based on the damages received by the injured person—also known as a contingency fee. Most medical malpractice claims—as with lawsuits in general—are settled outside of court.

How Health Care Providers Cover Malpractice Costs. Health care providers usually pay the costs of medical malpractice claims—including damages and legal costs—in one of two ways:

- **Purchasing Medical Malpractice Insurance.** The provider pays a monthly premium to an insurance company and, in

turn, the company pays the costs of malpractice claims.

- **Self-Insurance.** Sometimes the organization a provider works for or with—such as a hospital or physician group—directly pays the costs of malpractice claims. This is often referred to as self-insurance.

These malpractice costs are roughly 2 percent of total annual health care spending in California.

Medical Injury Compensation Reform Act (MICRA). In 1975, the Legislature enacted MICRA in response to a concern that high medical malpractice costs would limit the number of doctors practicing medicine in California. The act made several changes intended to limit malpractice liability, including limiting the size of medical malpractice claims. For example, it established a \$250,000 cap on noneconomic damages that may be awarded to an injured person. (There is no cap on economic damages.)

The act also established a cap on fees going to attorneys representing injured persons in malpractice cases. The percentage that can go to these attorneys depends on the amount of damages awarded, with the percentage declining as the amount of the award grows. For example, attorneys cannot receive more than 40 percent of the first \$50,000 recovered or more than 15 percent of the amount recovered greater than \$600,000.

Prescription Drug Abuse and Monitoring

Prescription Drug Monitoring Programs. Use of prescription drugs for nonmedical purposes (such as for recreational use) is often referred to as prescription drug abuse. Largely in response to a growing concern about prescription drug abuse, almost all states—including California—have a prescription drug monitoring program. Such a program typically involves an electronic database that gathers information about the prescribing and dispensing of certain drugs. This information is used to reduce prescription drug abuse, among

other things. For example, it is used to identify potential “doctor shoppers”—persons obtaining prescriptions from many different physicians over a short period of time with the intent to abuse or resell the drugs for profit.

California’s Prescription Drug Monitoring Program. The state Department of Justice (DOJ) administers California’s prescription drug monitoring program, which is known as the Controlled Substance Utilization Review and Evaluation System (CURES). For certain types of prescription drugs, a pharmacy is required to provide specified information to DOJ on the patient—including name, address, and date of birth. The types of prescription drugs that are subject to reporting are generally those that have potential for abuse.

Health Care Providers Required to Register for, but Not Check, CURES Beginning in 2016. Certain health care providers—such as physicians and pharmacists—are allowed to review a patient’s prescription drug history in CURES. (Some other persons—such as certain law enforcement officials—also have access to CURES.) In some cases, checking the system prior to prescribing or dispensing drugs can prevent prescription drug abuse or improve clinical care.

In order to review a patient’s drug history in CURES, a user must first register to use the system. Providers, however, are not currently required to register. (About 12 percent of all eligible providers are now registered.) Beginning January 1, 2016, providers will be required to register. Even then, as currently, providers will not be required to check the database prior to prescribing or dispensing drugs.

CURES Upgrades Scheduled to Be Complete in Summer 2015. Currently, CURES does not have sufficient capacity to handle the higher level of use that is expected to occur when providers are required to register beginning in 2016. The state is currently in the process of upgrading CURES.

These upgrades are scheduled to be complete in the summer of 2015.

The Medical Board of California Regulates Physician Conduct

The Medical Board of California (Board) licenses and regulates physicians, surgeons, and certain other health care professionals. The Board is also responsible for investigating complaints and disciplining physicians and certain other health professionals who violate the laws that apply to the practice of medicine. Such violations include failure to follow an appropriate standard of care, illegally prescribing drugs, and drug abuse.

Proposal

Raises Cap on Noneconomic Damages for Medical Malpractice. Beginning January 1, 2015, this measure adjusts the current \$250,000 cap on noneconomic damages in medical malpractice cases to reflect the increase in inflation since the cap was established—effectively raising the cap to \$1.1 million. The cap on the amount of damages would be adjusted annually thereafter to reflect any increase in inflation.

Requires Health Care Providers to Check CURES. This measure requires health care providers, including physicians and pharmacists, to check CURES prior to prescribing or dispensing certain drugs to a patient for the first time. Providers would be required to check the database for drugs that have a higher potential for abuse, including such drugs as OxyContin, Vicodin, and Adderall. If the check of CURES finds that the patient already has an existing prescription for one of these drugs, the health care provider must determine if there is a legitimate need for another one.

Requires Hospitals to Conduct Alcohol and Drug Testing on Physicians. This measure requires hospitals to conduct testing for drugs and alcohol on physicians who are affiliated with the hospital. There are currently no requirements for

hospitals to test physicians for alcohol and drugs. The measure requires that testing be done randomly and in two specific instances:

- When a physician was responsible for the care and treatment of a patient within 24 hours prior to an adverse event. (Adverse events include such things as mistakes made during surgery, injuries associated with medication errors, or any event that causes the death or serious disability of a patient.)
- When a physician is the subject of a report of possible drug or alcohol use while on duty or failure to follow the appropriate standard of care (discussed below).

The hospital would be required to bill the physician for the cost of the test. The hospital would also be required to report any positive test results, or the willful failure or refusal of a physician to submit to the test, to the Board.

Requires Medical Board to Discipline Physicians Found to Be Impaired. If the Board finds that a physician was impaired by drugs or alcohol while on duty or during an adverse event, or that a physician refused or failed to comply with drug and alcohol testing, the Board must take specified disciplinary action against the physician. This action may include suspension of the physician’s license. The measure requires the Board to assess an annual fee on physicians to pay the costs of administering the measure and taking enforcement actions.

Requires Reporting of Suspected Physician Misconduct to the Medical Board. The measure requires physicians to report to the Board any information known to them that appears to show another physician was impaired by drugs or alcohol while on duty, or that a physician who treated a patient during an adverse event failed to follow the appropriate standard of care. In most cases, individual physicians are not currently required to report this information.

For the full text of Proposition 46, see page 68.

Fiscal Effects

This measure would likely have a wide variety of fiscal effects on state and local governments—many of which are subject to substantial uncertainty. We describe the major potential fiscal effects below.

Effects of Raising Cap on Noneconomic Damages in Medical Malpractice Cases

Raising the cap on noneconomic damages would likely increase overall health care spending in California (both governmental and nongovernmental) by: (1) increasing direct medical malpractice costs and (2) changing the amount and types of health care services provided.

Higher Direct Medical Malpractice Costs.

Raising the cap on noneconomic damages would likely affect direct medical malpractice costs in the following ways:

- **Higher Damages.** A higher cap would increase the amount of damages in many malpractice claims.
- **Change in the Number of Malpractice Claims.** Raising the cap would also change the total number of malpractice claims, although it is unclear whether the total number of claims would increase or decrease. For example, raising the cap would likely encourage health care providers to practice medicine in a way that decreases the number of medical malpractice claims. (We discuss this change in behavior further below.) On the other hand, raising the cap would increase the amount of damages—thereby increasing the amount that could potentially go to an attorney representing an injured party on a contingency-fee basis. This, in turn, makes it more likely that an attorney would be willing to represent an injured party, thereby increasing the number of claims.

On net, these changes would likely result in higher medical malpractice costs, and thus higher total health care spending, in California. Based on studies looking at other states' experience, we estimate that the increase in medical malpractice costs could range from 5 percent to 25 percent. Since medical malpractice costs are currently about 2 percent of total health care spending, raising the cap would likely increase total health care spending by 0.1 percent to 0.5 percent.

Costs Due to Changes in Health Care Services Provided. Raising the cap would also affect the amount and types of health care services provided in California. As discussed earlier, raising the cap on noneconomic damages would likely encourage health care providers to change how they practice medicine in an effort to avoid medical malpractice claims. Such changes in behavior would increase health care costs in some instances and decrease health care costs in other instances. For example, a physician may order a test or procedure for a patient that he or she would not have otherwise ordered. This could affect health care costs in different ways:

- The additional test or procedure could reduce future health care costs by preventing a future illness.
- The additional test or procedure could simply increase the total costs of health care services, with little or no future offsetting savings.

Based on studies looking at other states' experience, we estimate that this would result in a net increase in total health care spending. We estimate this spending would increase by 0.1 percent to 1 percent.

Annual Government Costs Likely Ranging From Tens of Millions to Several Hundred Million Dollars. As noted earlier, state and local governments pay for tens of billions of dollars of health care services annually. Our analysis assumes additional costs for health care providers—such as higher direct medical malpractice costs—are

generally passed along to purchasers of health care services, such as governments. In addition, we assume state and local governments will have net costs associated with changes in the amount and types of health care services.

There would likely be a very small percentage increase in health care costs in the economy overall as a result of raising the cap. However, even a small percentage change in health care costs could have a significant effect on government health care spending. For example, a 0.5 percent increase in state and local government health care costs in California as a result of raising the cap (which is within the range of potential cost increases discussed above) would increase government costs by roughly a couple hundred million dollars annually. Given the range of potential effects on health care spending, we estimate that state and local government health care costs associated with raising the cap would likely range from **the tens of millions of dollars to several hundred million dollars annually**. The state portion of these costs would be less than 0.5 percent of the state's annual General Fund budget.

Effects of Requirement to Check CURES and Physician Alcohol and Drug Testing

The other provisions of the measure that could have significant fiscal effects on state and local governments are: (1) the requirement that certain health care providers check CURES and (2) the requirement that hospitals conduct physician alcohol and drug testing.

Effects of Requirement to Check CURES. Many providers will not be able to check CURES until at least the summer of 2015, when the system upgrades are scheduled to be complete. Once the CURES upgrades are complete, this measure would result in health care providers checking CURES more often because of the measure's requirement that they do so. Checking CURES more often could have many fiscal effects, including:

- **Lower Prescription Drug Costs.** Providers checking CURES would be more likely to identify potential doctor shoppers and, in turn, reduce the number of prescription drugs dispensed. Fewer prescriptions being dispensed would result in lower prescription drug costs.
- **Lower Costs Related to Prescription Drug Abuse.** Fewer prescriptions being dispensed would likely reduce the amount of prescription drug abuse. This, in turn, would result in lower governmental costs associated with prescription drug abuse, such as law enforcement, social services, and other health care costs. These savings could be lessened due to other behavioral changes as a result of the measure. For example, drug abusers may find other ways to obtain prescription drugs.
- **Additional Costs Related to Checking CURES.** Certain health care providers would be required to take additional time to check CURES. As a result, they would have less time for other patient care activities. This could result in additional costs for hospitals or pharmacies needing to hire additional staff to provide care to the same number of patients. Some of these cost increases would eventually be passed on to government purchasers of health care services in the form of higher prices.

Effects of Physician Alcohol and Drug Testing. The requirement to test physicians for alcohol and drugs could have several different fiscal effects, including:

- **Savings From Fewer Medical Errors.** Physician testing would likely prevent some medical errors. For example, alcohol and drug testing would deter some physicians from using alcohol or drugs while on duty and, in turn, result in fewer medical errors. Fewer medical errors would decrease overall health care spending.
- **Costs of Performing Tests.** The measure requires hospitals to bill physicians for the cost of alcohol or drug testing. This would increase costs for providers and some of these costs would be passed along to state and local governments in the form of higher prices for health care services provided by physicians.
- **State Administrative Costs.** The measure's alcohol and drug test requirements would create state administrative costs, including costs for the Board to enforce the measure. These administrative costs would likely be less than a million dollars annually, to be paid for by a fee assessed on physicians.

Uncertain, but Potentially Significant, Net Savings to State and Local Governments. On net, the requirements to check CURES and test physicians for alcohol and drugs would likely result in annual savings to state and local governments. The amount of annual savings is highly uncertain, but potentially significant. These savings would offset to some extent the increased governmental costs from raising the cap on noneconomic damages (discussed above).

Visit <http://cal-access.sos.ca.gov> for details about money contributed in this contest.

★ Argument in Favor of Proposition 46 ★

PROPOSITION 46 WILL SAVE LIVES.

Preventable medical errors kill up to 440,000 people each year, making medical negligence the third leading cause of death in this country behind only heart disease and cancer.

Bob Pack is sponsoring Proposition 46 because a drugged driver killed Bob's children after multiple doctors recklessly prescribed narcotics to her. Bob wants to prevent such a tragedy from happening to other families. Proposition 46 will save lives in three ways:

1. PROPOSITION 46 WILL DETER NEGLIGENCE BY HOLDING DOCTORS ACCOUNTABLE FOR MEDICAL ERRORS.

- It holds doctors accountable when they commit negligence, including while impaired by drugs or alcohol, by adjusting for inflation the current cap of \$250,000 on pain and suffering damages for victims of medical negligence like Troy and Alana Pack.
- The Legislature set the cap in 1975 and has never adjusted it for inflation. While the cost of everything else has increased significantly since then, the value of a life has not increased one penny in 39 years.
- Proposition 46 retains the current limit on attorneys' fees in medical negligence cases.

2. PROPOSITION 46 WILL SAVE LIVES BY CRACKING DOWN ON PRESCRIPTION DRUG ABUSE.

- A recent *LA Times* investigation showed that drugs prescribed by doctors caused or contributed to nearly half of the accidental prescription overdose deaths in four Southern California counties.
- Proposition 46 requires doctors to check the existing statewide database before prescribing addictive painkillers and other narcotics to a first time patient.

3. PROPOSITION 46 WILL SAVE LIVES BY PROTECTING PATIENTS FROM IMPAIRED DOCTORS.

- The California Medical Board reported that experts estimate nearly one in five health professionals suffers from substance abuse during their lifetimes.

- Doctors under the influence of drugs and alcohol cause medical errors, but most substance abuse goes undetected because doctors are not tested.

PROPOSITION 46 REQUIRES:

- Random drug and alcohol testing of doctors using the same proven federal testing program that works with pilots.
- Suspension of a doctor who tests positive and disciplinary action if the doctor was impaired on duty.

THE FACTS:

- Millions of Californians are drug tested at work yet California doesn't require doctors to be tested.
- Drug testing is required for pilots, bus drivers, and other safety workers—but not doctors.
- Drug testing can save lives. That's why random drug testing of doctors is supported by leading medical safety experts, consumer advocates, the Inspector General of the federal agency responsible for overseeing health care, and by doctors who themselves have abused drugs.
- Dr. Stephen Loyd, an internist who practiced medicine while abusing drugs and who is now recovering, said: "I worked impaired every day; looking back, it scares me to death, what I could have done. My patients and my colleagues never knew I was using."

Join Bob Pack, consumer groups, health care professionals and victims of medical negligence in voting YES on Proposition 46 (www.yeson46.org) so we can improve patient safety, hold doctors accountable, and save lives by making sure no one has an intoxicated doctor treating them or a loved one.

Bob Pack, Father of victims of preventable medical error, Troy and Alana Pack

Carmen Balber, Executive Director
Consumer Watchdog

Henry L. "Hank" Lacayo, State President
Congress of California Seniors

★ Rebuttal to Argument in Favor of Proposition 46 ★

Prop. 46 is before you for one reason—to make it easier for trial lawyers to sue doctors and profit from these lawsuits. It's simple. When you increase the cap, you automatically increase trial lawyer profits.

46's sponsors claim this is about drug testing doctors . . . but the lawyers who wrote and funded this measure have NEVER gone to the State Legislature to propose drug testing of doctors.

They have, however, sponsored 3 different proposals to get the State Legislature to raise the cap on lawsuits and make it easier to sue our family doctors. All 3 times the Legislature rejected them. And no less than 10 times, trial lawyers have asked the courts to strike down the cap. Each time, the courts, including the California Supreme Court, found the cap serves its purpose by keeping costs contained, which preserves your access to affordable healthcare.

Lawyers paid to put this on the ballot, making the bold claim it will "save lives." They cite false statistics to defend this political

rhetoric. Much as we wish a ballot initiative could actually save lives, this one will not.

But doctors and nurses DO save lives. They take a solemn oath to care for their patients. They believe 46 would force many California doctors, specialists and healthcare professionals to close their practices. How can that benefit anyone?

Please go to www.NoOn46.com to see why over 500 different community based groups throughout the state, concerned about access to healthcare for everyone, say VOTE NO on 46.

Tricia Hunter, RN, Executive Director
American Nurses Association, California

Tom Scott
California Citizens Against Lawsuit Abuse

Betty Jo Toccoli, President
California Small Business Association

★ Argument Against Proposition 46 ★

California special interests have a history of qualifying ballot propositions that appear to be about one thing but are really about another. Here's another one.

Proposition 46 uses alcohol and drug testing of doctors to disguise the real intent—to increase a limit on the amount of medical malpractice lawsuit awards.

This measure does three things:

- Quadruples the limit on medical malpractice awards in California, which will cost taxpayers hundreds of millions of dollars every year, and cause many doctors and other medical care professionals to quit their practice or move to places with lower medical malpractice insurance premiums.
- Threatens your privacy by requiring a massive expansion of the use of a personal prescription drug database.
- Requires alcohol and drug testing of doctors, which was only added to this initiative to distract from the main purpose.

Vote No on Prop. 46

This measure is not on the ballot because someone thinks we need to drug test doctors. Prop. 46 was written and paid for exclusively by trial lawyers who will profit from its passage. If they get their way, malpractice lawsuits and trial attorney awards will skyrocket. And we will pay the costs.

Raising the Limit on Medical Malpractice Awards

Lawyers want to quadruple the limit of awards that the state allows for medical malpractice lawsuits. Here are the consequences:

- *Increased Health Insurance Costs:* If medical malpractice awards go up, health insurance companies will raise their rates to cover their increased costs. When health care insurance companies raise their rates, we all pay more in health care premiums.
- *Increased Taxes and Fees:* State and county hospitals pay their own medical malpractice insurance premiums. When

health insurance companies raise their rates, state and county governments will have to find a way to cover the new costs. They will either cut services or raise taxes and fees. In fact, the independent Legislative Analyst estimates the increased state and local costs to be “hundreds of millions of dollars . . .” We will pay either way.

- *Access to Health Care Reduced:* If California raises their cap, many doctors and other health care professionals will move to states with lower malpractice insurance rates. Some will give up their practice. This could cause you to lose your doctor. Which is why the California Association of Rural Health Clinics opposes Prop. 46.

Prescription Drug Database

Prop. 46 mandates that doctors consult an online database of Californians’ personal prescription drug history. This database is controlled by the state government in an age when it’s already too easy for government to violate our privacy.

Government websites, including the DMV and the Pentagon, have a history of being hacked. Vote No to prevent reliance on another computer database that no one can assure will be secure.

In Summary

The consequences of Prop. 46 far outweigh any benefits: higher costs of health care, higher taxes, lost access to doctors, loss of privacy, and risking that our personal prescription drug history will be compromised and made available for anyone to see.

Please vote no.

- Donna Emanuele, RN**, President
California Association of Nurse Practitioners
- Ann-Louise Kuhns**, President
California Children’s Hospital Association
- Stuart Cohen, MD**, Chair
American Academy of Pediatrics, California

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★ Rebuttal to Argument Against Proposition 46 ★

As mothers who lost children to medical negligence, we want to prevent our tragedies from happening to others, but insurance companies are spending millions against Proposition 46’s reforms.

Please consider the facts:

Requiring random drug and alcohol testing of doctors will address a serious problem reported by *USA Today*: 103,000 U.S. medical professionals annually abuse illicit drugs.

That’s why Mothers Against Drunk Driving Founder Candace Lightner supports Proposition 46.

The U.S. Health and Human Services Department’s Inspector General has called for testing doctors.

Pilots, hospital workers, and millions of Californians are tested, but California doesn’t require doctors to be tested.

Requiring doctors to check California’s drug database before prescribing new patients narcotics will:

Protect privacy: The existing Department of Justice database is secure. That’s why Consumer Watchdog supports 46.

Save money: The U.S. Health and Human Services Department’s former insurance oversight director estimates it can save California hundreds of millions annually.

Adjusting the \$250,000 cap on compensation for human suffering in medical negligence cases for 39 years of inflation will fairly value lives and hold doctors accountable.

Barbara Boxer, Nancy Pelosi and Erin Brockovich support 46 because the cap disproportionately harms women and children.

Proposition 46 *won’t limit access to health care*: statistics show that people in most states *without* caps have better access to doctors than Californians do.

California’s Insurance Commissioner *holds down doctors’ insurance costs* by regulating rates.

Up to 440,000 people die annually from preventable medical errors. *Help us save lives—VOTE YES.*

- Sarah Hitchcock-Glover, R.N.**, Mother of victim of preventable medical error, Adam Glover
- Alejandra Gonzalez**, Mother of victim of preventable medical error, Mia Chavez
- Jennifer Westhoff**, Mother of victim of preventable medical error, Morgan Westhoff

Proposition 46

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Business and Professions Code, amends and adds sections to the Civil Code, and adds a section to the Health and Safety Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

Troy and Alana Pack Patient Safety Act of 2014

SECTION 1. Title.

This measure shall be known as the Troy and Alana Pack Patient Safety Act of 2014.

SEC. 2. Findings and Declarations.

The people of California find and declare the following:

1. Protecting the safety of patients is of paramount interest to the public.

2. Substance abuse by doctors is a growing problem in California and harms more and more patients every year. Last year, the Medical Board of California reported that it had suspended more physicians than it had the year before and that “[t]his increase correlates to the observed trend in an increased number of physician impairment cases.”

3. Studies find that at least one in ten physicians suffers from drug or alcohol abuse during his or her career. According to an article in the Annals of Internal Medicine, one-third of physicians will, at some time in their careers, experience a condition, including alcohol or drug abuse, that impairs their ability to practice medicine safely. Nonetheless, no mandatory drug and alcohol testing exists for physicians, as it does for pilots, bus drivers, and others in safety-sensitive occupations, and no effective safeguards exist to stop physicians from practicing until a substance abuse problem is addressed.

4. Physicians who are impaired by drugs and alcohol while on the job pose a serious threat to patients and to the public at large. By one estimate cited in the Journal of the American Medical Association, one-third of all hospital admissions experience a medical error – and physician impairment may be a contributor to such patient harm. Doctors who are impaired while on duty may misdiagnose a communicable or life-threatening disease, perform surgery or other procedures in dangerous and unprofessional ways, and prescribe medication in ways that can cause permanent injury or death to their patients.

5. Studies show that a small percentage of doctors, including those who abuse drugs and alcohol, commit the vast majority of malpractice and go undeterred. Yet no law exists to require physicians to report peers they suspect of medical negligence or of practicing under the influence.

6. Patients are also being harmed by doctors who over-prescribe prescription drugs and fail to prevent prescription drug abuse. The Centers for Disease Control and Prevention report that drug overdose is the leading cause of fatal injury, and most of those deaths are caused by prescription drugs, yet too few California physicians check a patient’s prescription history in the state-run electronic database known as CURES before prescribing addictive and potentially harmful narcotics.

7. Patients who are harmed by doctors who are impaired by drugs or alcohol, who over-prescribe addictive narcotics, or who commit other negligent medical acts are entitled to recover compensation for such things as pain, suffering, physical impairment, disfigurement, and decline of quality of life. The surviving family of a person killed

by medical negligence should recover fair and reasonable compensation for the loss of their loved one.

8. In 1975, however, the Legislature set a cap of \$250,000 on compensation for these losses. That severe restriction on patients’ legal rights to hold dangerous doctors accountable was accompanied by a promise that a strong regulatory system would be created to protect patients from harm. Patient safety scandals over the last 38 years, however, have demonstrated that physicians have been unable to police themselves.

9. After 38 years, that \$250,000 cap has never been adjusted for inflation. Despite the rulings of juries, it limits the value of children’s lives, as well as the loss of quality of life for all people injured by medical negligence, to \$250,000, no matter how egregious the malpractice or serious the injury. As a result, negligent doctors are not held accountable and patients’ safety has suffered.

10. Research has found that by providing fair and adequate compensation to patients injured by medical negligence, malpractice litigation prods health care providers to be more open and honest about mistakes and then take corrective action to reduce the chances of repeated errors, thereby limiting the chances of future harm to patients and acting as a deterrent to bad practices.

SEC. 3. Purpose and Intent.

It is the intent of the people of California in enacting this measure to:

1. Protect patients and their families from injury caused by doctors who are impaired by alcohol or drugs by requiring hospitals to conduct random drug and alcohol testing of the doctors who practice there and requiring them to test physicians after an unexpected death or serious injury occurs.

2. Protect patients and their families from injury by requiring doctors to report other physicians who appear to be impaired by drugs or alcohol while on duty or if any physician who was responsible for the care and treatment of a patient during an adverse event failed to follow the appropriate standard of care.

3. Require hospitals to report any verified positive results of drug and alcohol testing to the Medical Board of California.

4. Require that any doctor who tests positive for alcohol or drugs while on duty or who willfully fails or refuses to submit to such testing be temporarily suspended from the practice of medicine pending an investigation.

5. Require the board to take disciplinary action against a doctor if the board finds that the doctor was impaired by drugs or alcohol while on duty or during an adverse event or that the doctor willfully refused to comply with drug and alcohol testing.

6. Require doctors to check the state’s Controlled Substance Utilization Review and Evaluation System (CURES) database prior to writing a prescription for a Schedule II or Schedule III controlled substance for a patient for the first time and, if the patient already has a prescription, determine that the patient has a legitimate need before prescribing the medication, in order to protect patients and others.

7. Adjust the \$250,000 cap on compensation for pain, suffering, physical impairment, disfigurement, decline of quality of life, and death in medical negligence lawsuits set by the Legislature in 1975 to account for inflation and to provide annual adjustments in the future in order to boost health care accountability, act as a deterrent, and ensure that patients, their families, and others who are injured by negligent doctors are entitled to be made whole for their loss.

8. Retain the cap on attorney’s fees in medical negligence cases.

SEC. 4. Article 14 (commencing with Section 2350.10) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 14. Physician and Surgeon Alcohol or Drug Impairment Prevention

2350.10. The Medical Board of California shall administer this article, and shall adopt regulations necessary to implement this article within one year of its effective date. These regulations shall be consistent

with the standards for drug and alcohol testing, including, but not limited to, the collection of specimens, the testing of specimens, the concentration levels of drugs and alcohol, the verification of test results, the retention of specimens and requests for testing of a sample of the specimen by the subject of the test, record keeping, due process, return to duty, and privacy and confidentiality, set forth in Title 49, Part 40, of the Code of Federal Regulations, as of the effective date of this act, to the extent that such standards do not conflict with the terms of this act or the California or United States Constitutions.

2350.15. For the purposes of this article, the following terms have the following meanings:

(a) "Test" or "testing" means examination of a physician for use of drugs or alcohol while on duty that may impair or may have impaired the physician's ability to practice medicine.

(b) "Adverse event" has the same meaning as set forth in Section 1279.1 of the Health and Safety Code.

(c) "Board" means the Medical Board of California.

(d) "Drug" means marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, and phencyclidine (PCP). "Drug" does not include drugs prescribed by a licensed third party for a specific medical condition if the manner in which the physician uses the drug is not known to cause impairment.

(e) "Physician" means a holder of a physician and surgeon's certificate under this chapter.

(f) "Hospital" means a general acute care hospital as defined in Section 1250 of the Health and Safety Code or any successor statute and an "outpatient setting" as defined in paragraph (1) of subdivision (b) of Section 1248 of the Health and Safety Code or any successor statute.

(g) "Verified positive test result" means a positive test result that has been verified through a process established by the board that includes a confirming test, an opportunity for the physician to offer an explanation, and review and determination by a medical review officer, and that satisfies the concentration levels for impairment specified by the board.

2350.20. Every physician shall, and any other person may, report to the board any information known to him or her which appears to show that any physician may be or has been impaired by drugs or alcohol while on duty, or that any physician who was responsible for the care and treatment of a patient during an adverse event failed to follow the appropriate standard of care. Notwithstanding any other provision of law, any physician or other person who in good faith makes such a report to the board shall not be liable under any law of this state for any statement or opinion made in such report.

2350.25. (a) Upon the effective date of the regulations adopted by the board to implement this article, hospitals shall conduct testing for drugs and alcohol on physicians as follows:

(1) On a random basis on physicians who are employees or contractors or who have the privilege to admit patients.

(2) Immediately upon the occurrence of an adverse event on physicians who were responsible for the care and treatment of the patient during the event or who treated the patient or prescribed medication for the patient within 24 hours prior to the event. Testing shall be the responsibility of the physician, who shall make himself or herself available for testing at the hospital as soon as possible, and failure to submit to testing at the hospital within 12 hours after the physician learns of the adverse event may be cause for suspension of the physician's license.

(3) At the direction of the board following a referral pursuant to Section 2350.20 on a physician who is the subject of a referral.

(b) The hospital shall bill the physician for the cost of his or her test and shall not pass on any of the costs of the test to patients or their insurers.

2350.30. Hospitals shall report any verified positive test results, or the willful failure or refusal of a physician to submit to a test, to the board, which shall do all of the following:

(a) Refer the matter to the Attorney General's Health Quality Enforcement Section for investigation and enforcement pursuant to Article 12 (commencing with Section 2220).

(b) Temporarily suspend the physician's license pending the board's investigation and hearing on the matter pursuant to Article 12 (commencing with Section 2220).

(c) Notify the physician and each of the health facilities at which the physician practices that the physician's license has been temporarily suspended pending the board's investigation and hearing on the matter.

2350.35. (a) If, after investigation and hearing, the board finds that a physician was impaired by drugs or alcohol while on duty or during an adverse event or that a physician has willfully refused or failed to comply with drug and alcohol testing, the board shall take disciplinary action against the physician, which may include treatment for addiction as a condition of licensure, additional drug and alcohol testing during a period of probation, and suspension of the physician's license until such time as the physician demonstrates to the board's satisfaction that he or she is fit to return to duty.

(b) If the board finds that a physician was impaired by drugs or alcohol during an adverse event, the board shall inform the patient or, in the case of the patient's death, the patient's family, of its determination.

2350.40. The board shall assess an annual fee on physicians sufficient to pay the reasonable costs of administering this article by the board and the Attorney General. Every physician shall pay the fee as a condition of licensure or license renewal. The board shall reimburse the Attorney General's office for its costs in conducting investigations and enforcement actions under this article.

SEC. 5. Section 3333.2 of the Civil Code is amended to read:

3333.2. (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.

(b) In no action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars (\$250,000), as adjusted pursuant to subdivision (c).

(c) On January 1, 2015, the cap on the amount of damages specified in subdivision (b) shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics since the cap was established. Annually thereafter, the cap on the amount of damages specified in this subdivision shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics. The Department of Finance shall calculate and publish on its Internet Web site the adjustments required by this subdivision.

(d) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

(e) The adjusted cap provided for in subdivision (c) shall apply to an award of noneconomic damages in any action which has not been resolved by way of a final settlement, judgment, or arbitration award as of January 1, 2015.

(f) The limitation on attorney's fees set forth in Section 6146 of the Business and Professions Code shall apply to an action for injury or damage against a health care provider based upon such person's alleged professional negligence, as defined in this section.

SEC. 6. Section 1714.85 is added to the Civil Code, to read:
 1714.85. *There shall be a presumption of professional negligence in any action against a health care provider arising from an act or omission by a physician and surgeon who tested positive for drugs or alcohol or who refused or failed to comply with the testing requirements of Article 14 (commencing with Section 2350.10) of Chapter 5 of Division 2 of the Business and Professions Code following the act or omission and in any action arising from the failure of a licensed health care practitioner to comply with Section 11165.4 of the Health and Safety Code.*

SEC. 7. Section 11165.4 is added to the Health and Safety Code, to read:

11165.4. (a) *Licensed health care practitioners and pharmacists shall access and consult the electronic history maintained pursuant to this code of controlled substances dispensed to a patient under his or her care prior to prescribing or dispensing a Schedule II or Schedule III controlled substance for the first time to that patient. If the patient has an existing prescription for a Schedule II or Schedule III controlled substance, the health care practitioner shall not prescribe any additional controlled substances until the health care practitioner determines there is a legitimate need.*

46 (b) *Failure to consult a patient's electronic history as required in subdivision (a) shall be cause for disciplinary action by the health care practitioner's licensing board. The licensing boards of all health care practitioners authorized to write or issue prescriptions for controlled substances shall notify all authorized practitioners subject to the board's jurisdiction of the requirements of this section.*

47 SEC. 8. Amendment.
 This act may be amended only to further its purpose of improving patient safety, including ensuring that patients, their families, and others who are injured by negligent doctors are made whole for their loss, by a statute approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 9. Conflicting Initiatives.

In the event that this measure and another initiative measure or measures that involve patient safety, including the fees charged by attorneys in medical negligence cases, shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

SEC. 10. Severability.

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

Proposition 47

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Government Code, amends and adds sections to the Penal Code, and amends sections of the Health and Safety Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

Proposed Law

THE SAFE NEIGHBORHOODS AND SCHOOLS ACT

SECTION 1. Title.

This act shall be known as "the Safe Neighborhoods and Schools Act."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare as follows:

The people enact the Safe Neighborhoods and Schools Act to ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.

SEC. 3. Purpose and Intent.

In enacting this act, it is the purpose and intent of the people of the State of California to:

(1) Ensure that people convicted of murder, rape, and child molestation will not benefit from this act.

(2) Create the Safe Neighborhoods and Schools Fund, with 25 percent of the funds to be provided to the State Department of Education for crime prevention and support programs in K–12 schools, 10 percent of the funds for trauma recovery services for crime victims, and 65 percent of the funds for mental health and substance abuse treatment programs to reduce recidivism of people in the justice system.

(3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.

(4) Authorize consideration of resentencing for anyone who is currently serving a sentence for any of the offenses listed herein that are now misdemeanors.

(5) Require a thorough review of criminal history and risk assessment of any individuals before resentencing to ensure that they do not pose a risk to public safety.

(6) This measure will save significant state corrections dollars on an annual basis. Preliminary estimates range from \$150 million to \$250 million per year. This measure will increase investments in programs that reduce crime and improve public safety, such as prevention programs in K–12 schools, victim services, and mental health and drug treatment, which will reduce future expenditures for corrections.

SEC. 4. Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 33. CREATION OF SAFE NEIGHBORHOODS AND SCHOOLS FUND

7599. (a) *A fund to be known as the "Safe Neighborhoods and Schools Fund" is hereby created within the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated without regard to fiscal year for carrying out the purposes of this chapter.*

(b) *For purposes of the calculations required by Section 8 of Article XVI of the California Constitution, funds transferred to the Safe Neighborhoods and Schools Fund shall be considered General Fund revenues which may be appropriated pursuant to Article XIII B.*

7599.1. *Funding Appropriation.*

(a) *On or before July 31, 2016, and on or before July 31 of each fiscal year thereafter, the Director of Finance shall calculate the savings that accrued to the state from the implementation of the act adding this chapter ("this act") during the fiscal year ending June 30, as compared to the fiscal year preceding the enactment of this act. In making the calculation required by this subdivision, the Director of Finance shall use actual data or best available estimates where actual data is not available. The calculation shall be final and shall not be adjusted for any subsequent changes in the underlying data. The Director of Finance shall certify the results of the calculation to the Controller no later than August 1 of each fiscal year.*

(b) *Before August 15, 2016, and before August 15 of each fiscal year thereafter, the Controller shall transfer from the General Fund to the Safe Neighborhoods and Schools Fund the total amount calculated pursuant to subdivision (a).*