

ADVOCATES FOR RESPONSIBLE TREATMENT

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March 31, 2018

Mr. Reyes Diaz, Consultant
Senate Health Committee
State Capitol, Room 2191
Sacramento, CA 95814

SB 1268 (Bradford)
OPPOSE
Assembly Health Committee
Hearing Date: April 11, 2018

Dear Mr. Diaz,

Advocates for Responsible Treatment, is an all-volunteer, citizens' advocacy group representing Southern California which wishes to ensure recovery businesses operate in a safe, humane and legal manner. We look for win-wins for both recovering addicts AND neighbors. While we can understand why well-intentioned organizations concerned about the mistreatment of recovering addicts might support SB 1268 based on a first glance, support for the bill with its current provisions is a mistake. We are writing today to **OPPOSE SB 1268** (Bradford), unless amended.

To understand the purpose of SB 1268, one must both start with the fact that patient brokering in for-profit addiction treatment is rampant, both nationally and in California. Why? Is it because California doesn't have enough laws? Or is it because its laws don't address the addiction treatment industry or the people engaged in brokering? Or is it because the laws don't serve as a deterrent? Or is it because law enforcement isn't interested in prosecuting?

Indeed, California already has a number of laws that make patient brokering illegal. These laws include:

- **Health & Safe Code Section 445:** "No person, firm partnership, association or corporation, or agent or employee thereof, shall for profit refer or recommend a person to a physician, hospital, health-related facility, or dispensary for any form of medical care or treatment of any ailment or physical condition."

- **Insurance Code Section 1871.1(a):** "It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer."

- **B&P Sec. 2273(a):** "Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct."

- **B&P Sec. 650(a):** "Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful."



Looking at the penalties for a violation of B&P Sec. 650 shows a reasonably stiff penalty:

(h) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code , or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code , or by that imprisonment and a fine of fifty thousand dollars (\$50,000).

What compensation do those brokering in addiction treatment currently receive? The fact sheet for SB 1268 indicates:

"Reports of \$5,000 to \$10,000 payments for patient referrals are not uncommon."

Florida and California are linked on the issue of patient brokering for addiction treatment by their common traits: both states have attractive, warm, vacation-like settings and until recently, both had terribly lax addiction licensing and oversight with low penalties. As a result, both states have enabled the for-profit addiction treatment industry to become a breeding ground for crime. We reference the following Orange County Register articles as examples:

5/21/17	How some California drug rehab centers exploit addiction
5/30/17	Rehab brokering is rampant, but it's hard to stop, industry says
6/13/17	Federal agents searching Sovereign Health rehab in San Clemente, elsewhere
6/16/17	Addiction Treatment: The New Gold Rush. "It's Almost Chic."
6/23/17	California the Over-Regulator? Not for addiction treatment
7/13/17	Hundreds ensnared in Justice Department health-care fraud crackdown on \$1.3 billion
false billings	
12/17/17	Detox can end in death at some "non-medical" Southern California rehabs
1/19/18	Quest for Sobriety Often Ends in Sexual Assault at Some Rehabs in Southern California

Under these circumstances, does California NEED a bill like SB 1268? Certainly. Indeed, SB 1268 is the ONLY bill of three in 2018, including SB 1290 and SB 1228 as written to date, to propose actual penalties. However, we would note that the target criminal of the bill is too narrowly defined and the penalty--so strongly endorsed by industry, as seen by its sponsor and promoters--is fundamentally pathetic.

SB 1268 is restricted to addressing licensed facility personnel, and employees in certified facilities. In contrast, Florida's newly introduced anti-patient brokering laws determine it is unlawful for **ANY PERSON** to engage in patient brokering. In other words, the way SB 1268 is presently written, it lets the actual **BROKERS** go free. A true, anti-patient brokering bill would address *everyone* engaged in brokering, from employees at drug laboratories, partial investors in licensed facilities, hospital staff, homeowners and real estate agents to the unscrupulous people who prowl homeless shelters and AA meetings looking to convince people into treatment. It is imperative that the California legislature similarly address **ALL** people engaged in this form of human trafficking. To address only the smaller circle of constituents this bill proposes will be inadequate to eradicate current networks.

SB 1268 also proposes the mere penalty of a misdemeanor and a \$2500 fine. Why would California make addiction treatment patient brokering a misdemeanor? Because industry is sponsoring the legislation. This bill basically proposes that businesses and individuals engaged in brokering be let off with a slap on the hand.

As the SB 1268 fact sheet points out, patient brokering of 5 figures is not uncommon. Indeed, Brokers, Moles, Poachers, and Marketers can make \$30,000 per month. Therefore, a \$2500 fine is laughable. Industry knows a misdemeanor won't cause a District Attorney to lift an eyebrow, so they support that SB 1268's current penalties will serve neither to provide deterrent nor enforcement nor prosecution. Patient brokering is **human trafficking** with the intent to obtain the revenue stream of that person's insurance policy and worthy of penalties that reflect such criminal intent, especially when it lures people across state lines. Per California Penal Code, Part. 1, Title 8, Chapter 8 for False Imprisonment and Human Trafficking, 236.1(a): human trafficking...

... shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

In contrast, Florida's anti-patient-brokering penalties (Title XLVI Crimes, Chapter 817 Fraudulent Practices, Section 505) are more in line with existing California B&P Sec. 650 (h) penalties:

*(4)(a) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section **commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084, and shall be ordered to pay a fine of \$50,000.***

*(b) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 10 or more patients but fewer than 20 patients, **commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084, and shall be ordered to pay a fine of \$100,000.***

*(c) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 20 or more patients, **commits a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084, and shall be ordered to pay a fine of \$500,000.***

In the context of existing California and Florida regulations, it would appear that SB 1268 actually LOWERS current penalties for patient brokering.

In short, the concept of SB 1268 is right. California needs to end patient brokering for addiction treatment. But it needs to end patient brokering by penalizing everyone involved in the process. California's anti-patient-brokering law must also have the types of penalties that Florida has: a minimum \$50,000 fine and felony-level consequences. Such penalties would serve as both a

deterrent, and an incentive to police and prosecutors to pursue this crime. Anything less is just stigma toward addicts and a wink of the eye at this industry.

As well, California legislators must keep in mind that any Brokers that might have sent out-of-state addicts to Florida will rejoice in California's SB 1268 and send addicts to California instead.

We ask that the Senate Health Committee finally instate real anti-patient brokering laws for addiction treatment. We call on you to **OPPOSE SB 1268** unless amended to (1) target anyone participating in patient brokering and to (2) levy real consequences and not just election-year, window dressing that benefits legislators and industry for appearance's sake, without saving addicts from this abhorrent practice.

Sincerely,



Laurie Girand
Steering Committee Member
Advocates for Responsible Treatment
<http://www.responsible-treatment.org>