

ADVOCATES FOR RESPONSIBLE TREATMENT

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April 17, 2017

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

**SB 1290 (Bates)
SUPPORT
Senate Health Committee
Hearing Date: April 25, 2018**

Dear Mr. Diaz,

Advocates for Responsible Treatment, is an all-volunteer, citizens' advocacy group covering 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. We are writing today in **SUPPORT of SB 1290 (Bates), which is the best bill proposed in the California Legislature so far to end patient-brokering inside of and "into" the State of California.**

To understand the purpose of SB 1290, one must both start with the fact that patient brokering in for-profit addiction treatment is rampant, both nationally and in California. On a national level, the House Subcommittee on Oversight and Investigations held a hearing on December 12, 2017, entitled, "Examining Concerns of Patient Brokering and Addiction Treatment Fraud." The following national news articles have been published about this abhorrent practice that harms addicts by not only routing them to "highest bidder" treatment, which is not necessarily most appropriate for their condition, but also by encouraging recovering addicts to relapse, so that their insurance contracts can be renewed with a new provider:

[Patent Brokering: Making profit off opioid addiction \(2/12/18\)](#)

[Google temporarily bans addiction center ads globally following exposure of seedy referral deals \(1/12/18\)](#)

[A Doctor with a Phone and A Mission \(1/3/18\)](#)

[Review Sites Have Deep Ties to the Rehabs They Promote \(11/3/17\)](#)

[25 Investigates revisited: Deadly consequences or some who seek addiction rehab \(10/27/17\)](#)

[Body Brokering: Profiting off of Addicts \(10/9/17\)](#)

["Body Brokers killed my daughter" \(8/30/17\)](#)

[Some Rehab Centers Want Addicts to Relapse \(8/25/17\)](#)

[How recovering drug addicts are getting bought and sold by corrupt treatment centers \(8/22/17\)](#)

["Body Brokers" Get Kickbacks To Lure People With Addictions to Bad Rehab \(8/15/17\)](#)

[In South Florida's Addiction Treatment Industry, Recovering Drug Users Can Be Bought and Sold \(8/15/17\)](#)

[Sober Homes Task Force arrests two on patient brokering charges \(8/11/17\)](#)

[Desperate for addiction treatment, patients are pawns in lucrative insurance fraud scheme \(7/7/17\)](#)

[Haven for Recovering Addicts Now Profits From Their Relapses \(6/20/17\)](#)

[Rehab patient brokering is rampant, but it's hard to stop, industry says \(5/31/17\)](#)

[The addict brokers: Middlemen profit as desperate patients are "treated like paychecks" \(5/28/17\)](#)

[Patient brokering exacerbates opioid crisis in Florida \(4/2/17\)](#)

[The Underbelly of Addiction Treatment: A look at the Unethical and Illegal Practices of "Saving Lives" \(3/6/17\)](#)

[Editorial: Put an end to Arizona's "patient brokers." \(2/15/17\)](#)

[Woman pleads guilty in sober home fraud scheme, allowing drug use \(2/15/17\)](#)

[Saving lives or selling souls? Dark side of addiction recovery \(1/26/17\)](#)



First woman arrested in sober home crackdown - human trafficking addiction (12/3/16)
"Body Brokering" Casts Shadow Over Substance Abuse Treatment Industry (9/7/16)

Brokers may or may not be physically inside of California while engaged in practices that may "hook" addicts over the internet and then, via phone banks, ensure that they get to California by providing free plane tickets and the offer of free housing while here. Indeed, the situation has been SO out of control that, before it could be formally accused of abetting brokering, Google admitted that it was playing a role in inter-state transfer of addicts and slowly began reducing its online advertising on behalf of for-profit addiction treatment centers, which had completely dwarfed the marketing of non-profit addiction treatment:

Why It Took Google So Long to End Shady Rehab Center Ads: There Could Be A Billion Reasons (9/26/17)
Google is pulling addiction treatment center ads worldwide (1/13/18)

In addition to the evidence of this important, online step in reducing national soliciting, the Committee must understand that California's industry members are coming forward in public hearings, potentially at their own risk, to describe their experiences with patient brokering IN California. On January 31, 2018, Tony Senella, CEO of Tarzana Treatment Centers, spoke at an Informational Hearing of the Senate Health Committee. He prefaced his testimony by saying that he was concerned his remarks would not make him popular.

Senator Newman (1:02:06) You touched on patient brokering in your testimony and mentioned that your org opposes this practice and supports legislative proposals to prohibit it. Is there current legislation that you are supporting or if not, do you have suggestions?

*Senella: There is a bill I think a two year bill that is trying to address this issue that we are supportive of. I don't recall the bill number off the top of my head...certainly we can forward that to you. I would love if there was a place where these folks that engage in this brokering could be turned in. A hot line or something else. I got to tell you, **I must get contacted 5 or 6 times a month from one person or another trying to sell me patients. Literally, every single month. Many of them are not located in this state. They are out of state.** They want to hustle for you across the nation and then feed them in to you for fees. Literally, four, five six times a month I get contacted by these people. Would love to be able to take that contact information and turn it over to you.*

In addition, Nancy Clark, an addiction treatment operator based out of Costa Mesa, spoke at a hearing held by the District Attorney of Orange County on March 12, 2018, indicating that she had been approached repeatedly about how much she was willing to pay for customers. At the same hearing, an addict named April spoke of being brokered from Virginia to California with an offer of a free airplane ticket.

Why is patient brokering happening in California? Is it because:

- California doesn't have enough laws? Or
- California's laws don't address the addiction treatment industry or the actual brokers? Or
- California's laws don't serve as a deterrent? Or
- California's laws are not significant enough to make enforcement interesting?

Answer: all of the above.

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 co-ownership in or with any person to whom these patients, clients, or customers are referred is unlawful."*

Given rampant brokering, clearly these laws don't definitively address the addiction treatment industry or the specific brokers involved; they do not offer significant enough penalties to perpetrators; and they do not offer commensurate "rewards" to law enforcement to end this practice.

Before approving a new regulation, California Senators should ask, "What is the competitive, regulatory environment into which new regulations will fit?" In other words, to reduce brokering into and within California, the state must have regulations that at least achieve parity with those of other states; to do otherwise, is to ensure that addicts will continue to be sent to California.

Florida State Attorney Dave Aronberg has identified similarities between practices of bad operators in Florida and those of bad operators in California.¹ He indicates that by changing their patient brokering laws, Florida has "really cleaned up the industry." What are key characteristics of the Florida laws?

First, they address ANYONE engaged in brokering, just as SB 1290 does. This is imperative. For some reason, opponents to real anti-brokering legislation grow misty-eyed and sympathetic toward brokers and want to imply they are just misguided individuals, frequently addicts themselves, who are being manipulated. This is ridiculous; brokers can make \$5000 to \$10,000 per person, according to the Fact Sheet for SB 1268, and in the vicinity of \$30,000 per month, according to industry insiders. In reality, if an addict is unwittingly involved, the addict is making next to nothing as the "front person" for criminals. California can and should write legislation that enables the courts to recognize a person who has been duped or used such that the penalty is lower for them.

¹ Saavedra, Tony; "Florida prosecutor Dave Aronberg sees parallels in rogue rehabs in Florida and Southern California," OC Register, 3/27/18

Who are the real brokers, the people getting away with murder? They are phone banks and internet advertisers. They are unscrupulous people who go out into the streets or to AA meetings to identify addicts who aren't ready or appropriate for treatment. They are lab technicians who, when they learn of a positive result on a urine screen for drugs, text multiple facilities for the highest bidder. They are hospital staff who know when a patient has fallen off the wagon. They are drug dealers who have learned that they can make money off of addicts not just by providing drugs but by getting them clean and then providing them with drugs again. They are investors in treatment centers; they are real estate agents; they are even sometimes relatives of addicts. Let's stop industry's charade of trying to protect people engaged in human trafficking that can lead to death, in other words CRIMINALS, under the pretense that we must protect the handfuls of addicts who broker other addicts.

Whom does Florida's anti-brokering regulation address? Fortunately, the same people SB 1290 addresses:

817.505 Patient brokering prohibited; exceptions; penalties. –

- (1) It is unlawful for any person, including any health care provider or health care facility, to:
- (a) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a health care provider or health care facility;
 - (b) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a health care provider or health care facility;
 - (c) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or
 - (d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).

Florida's anti-patient brokering regulations start and end with ANYONE engaged in this criminal activity.

Second, California must have penalties that stop patient brokering once and for all, and do so by serving as a deterrent to criminals and an incentive for county prosecutors to investigate and prosecute. Clearly, the bulk of California's current penalties for brokering are insufficient as a deterrent because patient brokering is lucrative. Financial penalties MUST dwarf the substantial revenues patient brokering provides.

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).

While penalties for a few of the California laws already on the books are very low, looking at the penalties for a violation of California B&P Sec. 650 shows a deterrent-level 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).

Similarly, 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.***

Note that the Florida law specifically addresses increasing penalties for those who employ mass patient brokering as a business practice, which is appropriate.

While at the writing of this letter, SB 1290 still did not have any penalties or consequences amended to it, we remind the Legislature that addict brokering has very real life-or-death consequences for those who are brokered; it creates incentives for everyone around the addict to encourage relapse. The State Legislature's inability to act with significant punitive consequence due to a misunderstanding of how patient brokering works or due to stigma toward or insufficient empathy for those who are brokered, results in death.

As well, California legislators must keep in mind that, so long as California's regulations are more lax than Florida's, any Brokers that might have sent out-of-state addicts to Florida will send them instead to California. Addict-brokering is a machine; it is organized crime. While its greatest consequence is tragic, unnecessary deaths, the influx of out-of-state addicts seeking treatment is exacerbating the homelessness situation in the state, according to multiple sheriffs in Orange County.

SB 1290 would be an important start in an area of addiction treatment that needs a massive

overhaul. As of the writing of this letter, it needed strong penalties, comparable to those in Florida. **We support SB 1290 (Bates) and urge the Health Committee to vote "AYE." We urge amending the bill to support significant, felony level penalties and fines; without such consequences, the bill is flawed. We have sent copies of this letter to the entire Senate Health Committee.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Laurie Girand', with a stylized flourish at the end.

Laurie Girand
Steering Committee Member