

Client Alert: Under AB 2760, Physicians Who Fail To Offer Naloxone Under Certain Circumstances May Face Professional Discipline

Starting in 2019, physicians and other prescribers caring for patients in California may face professional discipline for failing to take certain steps to counter the risk of opioid overdoses when specific conditions are present.

AB 2760 was signed into law in September 2018 with an effective date of January 1, 2019. The law requires physicians and other prescribers to:

1. Offer a prescription of naloxone hydrochloride or other FDA-approved drug for the complete/partial reversal of opioid depression when certain conditions are present; and
2. Provide education to a patient and his or her designee on overdose prevention and the use of naloxone or other similar drug approved by the FDA.

Prescribers should be familiar with the basic definitions and requirements of AB 2760:

1. Who is a “prescriber” under this new law?

“Prescriber” means a person licensed, certified, registered, or otherwise subject to regulation pursuant to the Healing Arts Division, or an initiative act referred to in the Healing Arts Division, who is authorized to prescribe prescription drugs. Relevant prescribers include physicians and nurse practitioners (NPs).

2. Is the law limited to the prescriber at the time of prescription?

No. According to the Medical Board of California, “[t]he requirement to offer a prescription for naloxone or other similar opioid reversal drug would apply anytime the conditions specified in the law are present.”

3. General requirements.

AB 2760 requires a prescriber to offer a prescription of naloxone hydrochloride (or other FDA approved drug used for the complete/partial reversal of opioid depression) to a patient when one or more of the following conditions are present:

- i. The prescription dosage for the patient is 90 or more morphine milligram equivalents of an opioid medication per day.
- ii. An opioid medication is prescribed concurrently with a prescription for benzodiazepine.
- iii. The patient presents with an increased risk for overdose, including a patient with a history of overdose, a patient with a history of substance use disorder, or a patient at risk for returning to a high dose of opioid medication to which the patient is no longer tolerant.

The bill also requires that a prescriber, consistent with the existing standard of care, provide education on overdose prevention and the use of naloxone hydrochloride (or other FDA approved drug) to (i) patients receiving such prescription, and (ii) one or more persons designated by the patient, or, for a patient who is a minor, to the minor’s parent or guardian. According to the Medical Board, the prescriber will need to make the determination on the appropriate method to provide that education to the appropriate individual.

4. What are the consequences for failing to adhere to these requirements?

A prescriber who fails to comply with the foregoing requirements shall be referred to his or her licensing board for the imposition of administrative sanctions. The law does not create a private right of action against a prescriber.

5. Does this law exclude patients in an inpatient facility?

According to the Medical Board, the law “does not exempt inpatient facilities from its requirements.”

1. Does the requirement to offer a prescription for naloxone apply to medications being administered in hospitals?

According to the Medical Board, the law’s requirements “do not apply to medications being administered in hospitals because the language uses the word ‘prescribing,’ which is different than a doctor giving an order for medication to be administered in an inpatient facility.”

1. **Offering prescription once is not sufficient.**

Prescribers must offer a prescription of naloxone to a patient when one or more of the conditions listed above are present. According to the Medical Board, offering the prescription once is not sufficient.

1. **Exception**

The only exception to these requirements occurs where a prescriber is prescribing to an inmate or a youth under the jurisdiction of the Department of Corrections and Rehabilitation (DCR) or the Division of Juvenile Justice within the DCR.

The Medical Board's FAQs can be found [here](#) and AB 2760's text can be found [here](#).

If you have questions about AB 2760, please contact Kristina Sherry (ksherry@nelsonhardiman.com) or Kathryn Edgerton (kedgerton@nelsonhardiman.com) for additional information.

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