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THE STATE PERSONNEL BOARD has asked for an opinion on the following question.

Do the reporting requirements of section 410(1) of the Health and Safety Code apply to state physicians who review medical reports and health questionnaires of applicants for state employment but take no part in the diagnosis and treatment of particular conditions?

CONCLUSION

In appropriate circumstances described herein the reporting requirements of section 410(1) of the Health and Safety Code apply to state physicians who review medical reports and health questionnaires of applicants for state employment even though they take no part in the diagnosis and treatment of particular conditions.

ANALYSIS

Section 410 of the Health and Safety Code requires "*all physicians* [to] report immediately to the local health officer . . . the name, date of birth, and address of every person diagnosed as a case of a disorder characterized by lapses of consciousness." (§ 410(1).) As required by the section, the local health officer then transmits that information to the State Department of Health (§ 410(2)) which in turn reports it to the Department of Motor Vehicles (§ 410(3)) where it is kept confidential and used solely for the purpose of determining the eligibility of the person to operate a motor vehicle on the highways of this state. (§ 410(4); 58 Ops.Cal.Atty.Gen. 338, 339 (1975).)

Section 410 does not itself define the phrase "disorders characterized by lapses of consciousness" but provides instead for the State Department of Health to do so for its purposes.[1] (§ 410.) Pursuant to that charge, at section 2572 of its regulations the State Department of Health has defined "what shall constitute a reportable case of a disorder characterized by lapses of consciousness" as follows:

> "Any person aged 14 years or older who during the preceding three years, has experienced on one or more occasions, either a lapse of consciousness or an episode of marked confusion, caused by any condition which may bring about recurrent lapses, including momentary lapses of consciousness or episodes of marked confusion, shall be considered to have a disorder characterized by lapses of consciousness and shall be reportable.

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[1] Section 410 reads in full:

"The State Department of Health Services shall define disorders characterized by lapses of consciousness for the purposes of the reports hereinafter referred to:

"(1) All physicians shall report immediately to the local health officer in writing, the name, date of birth, and address of every person diagnosed as a case of a disorder characterized by lapses of consciousness.

"(2) The local health officer shall report in writing to the state department the name, age, and address, of every person reported to it as a case of a disorder characterized by lapses of consciousness.

"(3) The state department shall report to the State Department of Motor Vehicles the names, dates of birth, and addresses, of all persons reported as a case of a disorder characterized by lapses of consciousness by the physicians and local health officers.

"(4) Such reports shall be for the information of the State Department of Motor Vehicles in enforcing the provisions of the Vehicle Code of California, and shall be kept confidential and used solely for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this state."

> "This definition includes, but is not limited to persons subject to lapses of consciousness or episodes of marked confusion resulting from neurological disorders, senility, diabetes mellitus, cardiovascular disease, alcoholism or excessive use of alcohol sufficient to bring about blackouts (retrograde amnesia for their activities while drinking). (17 Cal. Admin. Code, § 2572.)

As is apparent, the two saliencies of this definition are (1) that symptomatology of either a lapse of consciousness or an episode of marked confusion has been demonstrated within the three preceding years; and (2) that the condition producing those symptoms be one that may bring about their recurrence. The focus of the definition then, i.e., what is to "trigger" reporting under the statute, is *not the existence* of *any particular disorder*, although six are named, but rather, the existence of one which has previously brought about (manifested itself in) symptomatic lapses or episodes and which has the ability to cause or bring about their recurrence in the future. (58 Ops.Cal.Atty.Gen., *supra*, at 339, 340, 341.) However, although the section (2572) thus "eschews enumeration of particular disorders as falling within its definition and instead generically identifies reportable disorders on the basis of certain commonly-shared [symptomatic] characteristics" (*id.*, at 339), the need for a medical identification of their cause "is explicit in the statute and implicit in the Department's definition," and thus *a diagnosis* of the causative condition is also a "precondition to reporting." (*Id.*, at 341; accord *Lopez* v. *Southern Cal. Permanente Group* (1981) 115 Cal.App.3d 673, 678.) In sum then, under the statutory scheme "persons . . . become reportable when the combination of symptomatology [i.e., the demonstrated characteristics of lapses of consciousness or episodes of marked confusion] and etiology [i.e., causes of the condition] which the Department has structured as its definition of 'disorders characterized by lapses of consciousness' is medically identified" (*id.*, at 344), i.e., when it is *diagnosed*.

In 1975 we concluded that *both* the physician who may originally have diagnosed a person's reportable condition (e.g., a neurologist) and a physician who, being apprised of the diagnosis, subsequently treats it are required to report a patient to the local health officer under section 410(a). (58 Ops.Cal.Atty.Gen., *supra*, at 338, 344.) The question now arises whether state physicians (medical officers) who take no part in the diagnosis or treatment of a particular patient's "reportable disorder" but who learn about it while "administratively" reviewing an application for state employment are required to report under the section. We conclude that they are and, accordingly, that when a state medical officer becomes possessed of sufficient information to trigger the section's reporting requirement, that is, where the medical officer "learns" (1) about an applicant's having experienced either a lapse of consciousness or an episode of marked confusion *and* (2) about the condition causing such symptoms (i.e., their diagnosis) *and* (3) about a

likelihood that such condition may bring about their reoccurrence, he or she is required to report the applicant to the local health officer.[2]

Our primary objective in answering this question is to ascertain the Legislature's intention in its regard (*Great Lake Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal.3d 152, 163; *Select Base Materials, Inc.* v. *Board of Equal.* (1959) 51 Cal.2d 640, 645) and to do so we turn first to the words of the statute itself. (Cf. *California Teachers' Assn.* v. *San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698; *People* v. *Belleci* (1979) 24 Cal.3d 879, 884.) So doing we see that section 410(1) requires that:

> "*All physicians* . . . report immediately to the local health officer in writing, the name, date of birth, and address of *every person* diagnosed as a case of disorder characterized by lapses of consciousness." (Emphases added.)

Needless to say, the legislative prescription of who is to report under the clause is most broadly cast. When the Legislature used the word "all" to designate those physicians "it could not have chosen a more inclusive word." (*City of Ukiah* v. *Board of Trustees* (1961) 195 Cal.App.2d 344, 347.) The adjective "all" means "every member or individual component" of the specified class it modifies. (*City of Ukiah* v. *Board of Trustees*, *supra*.) It thus includes "everyone . . . and it does not 'admit of an exception or exclusion not

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[2] The focus of the question on the fact that state medical officers neither diagnose nor treat particular patients (and thus presumably should not be covered by the section's reporting requirements) should not distract us from at least noting that a threshold issue is presented as to whether the section is meant to apply at all to physicians who work for the state. Following the general rule that governmental agencies are excluded from the operation of general statutory provisions in the absence of express words to the contrary if their inclusion would result in an infringement upon sovereign powers, we have concluded, for example, that a statute prohibiting *any person* from practicing electrical engineering without being registered under the Professional Engineers Act (Bus. & Prof. Code, § 6730) did not prevent the employment of an unlicensed electrical engineer by the state (63 Ops.Cal.Atty.Gen. 24, 29, 31 (1980)), and that a statute declaring it unlawful for "*any person*, firm or corporation" to practice veterinary medicine without a license did not apply to the state. (34 Ops.Cal.Atty.Gen. 194, 195 (1959); and see 6 Ops.Cal.Atty.Gen. 202 (1945); Ops.Cal.Atty.Gen. No. NS-298 (1937).) The crucial question in this regard is whether the particular legislation affects the fundamental purposes and functions of the governmental body; "immunity is granted if statutorily mandated activities are impaired [citations], while no exception is provided when the agency's public purposes are unaffected. [Citations.]" (63 Ops.Cal.Atty.Gen., *supra*, at 27.) Here we find that, unlike defining requisites for employment, the reporting requirement of section 410(1) does not impair the efficacy of the State (Personnel Board) or infringe upon the sovereign's powers. The imposition is minimal and the state policy served by it is one of paramount importance.

specified.'" (*Stewart Title Co.* v. *Herbert* (1970) 6 Cal.App.3d 957, 962; accord *Dalton* v. *Baldwin* (1944) 64 Cal.App.2d 259, 263; *Schutz* v. *Merrill* (1928) 96 Cal.App. 58, 60.) Inasmuch as the statutory designation of the class of physicians who are to report under the section is without further qualification,[3] it would appear from a literal reading of the clause that the Legislature meant just what it said and that such reporting would be incumbent on *all* physicians who have knowledge of a reportable case. At least we so stated in 58 Ops.Cal.Atty.Gen. 338, *supra*, in affirmatively answering whether section 410(1) would require reporting by a physician treating a reportable condition who personally had not made its diagnosis but who was apprised of it by the diagnosing physician. (58 Ops.Cal.Atty.Gen., *supra*, at 344.)[4] Nevertheless, that literal open-ended meaning of the reporting requirement, as we now see, must be tempered by reason (cf. *Younger* v. *Superior Court (Mack)* (1978) 21 Cal.3d 102, 113-114; *People* v. *Hannon* (1971) 5 Cal.3d 330, 335; *Silver* v. *Brown* (1966) 63 Cal.2d 841, 845; *People* v. *Kuhn* (1963) 216 Cal.App.2d 695, 698) and it must be read in light of the overall purposes, goals, and design for which the section was enacted (cf. *Pacific Coast etc. Bank of San Francisco* v. *Roberts* (1940) 16 Cal.2d 800, 806; cf. *Palos Verdes Faculty Association* v. *Palos Verde Peninsula School District* (1978) 21 Cal.3d 650, 659; *Tripp* v. *Swoap* (1976) 17 Cal.3d 671, 679; *Moyer* v. *Workmen's Compensation Appeals Board* (1973) 10 Cal.3d 222, 230; *Select Base Materials* v. *Board of Equal.*, *supra*, 51 Cal.2d 640; *People* v. *Kuhn*, *supra*).

The basic purpose for the reporting requirements of section 410 is to ensure a particular aspect of the "public safety"—to wit, "the reduction of traffic hazards caused by persons having any tendency to lose consciousness while driving." (58

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[3] It has been offered that the term "physician" is modified by the term "diagnosed" and that therefore only physicians who actually diagnose a reportable condition need report it. (Cf. *Lopez* v. *Southern Cal. Permanente Medical Group* (1981) 115 Cal.App.3d 673, 678, discussed, *infra*.) That suggestion rests on a faulty premise; the word "diagnosed" in the phrase "every person diagnosed as a case of . . ." modifies "person" and not "physician." The statute does *not* read "all diagnosing physicians" nor does it speak of physician's reporting "every person whom he or she has diagnosed as a case of . . . ."

[4] In that opinion we concluded that:

> ". . . the omission to qualify the term 'physician' in stating the requirement that '[a]ll physicians shall immediately report . . .' is indicative of the legislature's resolve to accomplish the objectives of the section by establishment of a positive flow of pertinent information to the administrative agency having primary authority over the licensing of those who drive on the State's highways, for the relatively narrow but necessary purpose of rendering the grant of the driving privilege commensurate with the public's safety. In these circumstances, it would be well observed that by declining to further specify the physician upon whom the burden of reporting is to fall, the legislature reasonably and practically sought to ensure that the potentially dangerous driver would be reported in fact by making the report the responsibility of all physicians."

Ops.Cal.Atty.Gen., *supra*, at 344.) The section seeks to achieve that desideratum through a mechanism which "establish[es] a positive flow of pertinent information to the administrative agency having primary authority over the licensing of those who drive on the state's highways." (*Ibid.*) The requirement of clause (1) for *all* physicians to report every person diagnosed as having a condition producing such tendencies to the local health officer serves to start that flow of information to the Department of Motor Vehicles so that the latter might take appropriate action under the Vehicle Code with respect to the person, such as refusing to issue (Veh. Code, § 12805), to renew (*id*, § 12814) or suspending or revoking his or her driver's license (*id.*, § 13359; cf. *id.*, §§ 13101, 13102). Needless to say, in that overall scheme the initial reporting by a physician is of prime importance, for it is there, at the bottom of the reporting "pyramid" or "inverted funnel," that the crucial information is gleaned for channeling to the DMV for action. Indeed, it was just that consideration which led us to conclude that the Legislature deliberately declined to further qualify which physicians were to report, seeking thereby "to ensure that the potentially dangerous driver would be reported in fact, by making the report the responsibility of *all* physicians." (58 Ops.Cal.Atty.Gen., *supra*, at 344, quoted as fn. 4, *ante*.) Nonetheless, reason dictates that there be limitations on who is to report under the section. We find them in the preconditions to the section's reporting requirements and in what must be a "certain relationship" of the physician to the person to be reported.

As explained introductorily, there are three preconditions to the necessity of a physician reporting a person under section 410(1): the physician must know (1) of a *diagnosis* of a reportable condition, (2) that it has *previously caused* a lapse of consciousness or an episode of momentary confusion, and (3) that it *may do so* in the future. If any one of these particulars is not known—the history of definitional symptoms, the medical identification of their cause, or the determination that such would be likely to bring about their reoccurrence—there is no duty for a physician to report a person under section 410(1). (58 Ops.Cal.Atty.Gen., *supra*, at 339, 340, 341; accord *Lopez* v. *Southern Cal. Permanente Medical Group*, *supra*, 115 Cal.App.3d at 678.) It therefore follows that not "all physicians" who might tangentially be involved in a case involving a reportable condition or disorder need report under the section. For example, a physician who has knowledge of a previous diagnosis of diabetes but no knowledge of the past symptomatology (and *vice versa*), or a physician without an inkling that the condition might produce a recurrence of those symptoms, need not report the patient to the local health officer. Only when all *three* "preconditions" are known does the duty of a physician to report arise.

But surely even then, the Legislature could not have meant that literally *all* physicians who might come to know of a reportable case would have to report it under section 410(1), for taken at face value that demand could lead to absurd results. (Cf. *People* v. *Hannon*, *supra*, 5 Cal.3d at 335; *People* v. *Medina* (1971) 15 Cal.App.3d 845, 848;

People v. *Darling* (1964) 230 Cal.App.2d 615, 620.) One might imagine, for example, the spectre of a hoard of physicians attending a medical society meeting at which a reportable case is fully discussed rushing to the nearest telephone to call their local health officer. Or all physician subscribers to a medical journal reporting a person who was the subject of an article in it. Clearly not "all" physicians who might "know" of a case were contemplated to be within the purview of the statute and another line was meant to be drawn defining those "knowledgeable" physicians who were. We believe it is found in the physician's "relationship" to the person to be reported, i.e., the reason for which the reportable diagnostic information is received and what will be done with it once it is.

Section 410(1), as we have seen, makes it incumbent on "all physicians" to report "a person diagnosed as a case of a disorder characterized by a lapse of consciousness." We have also seen how a physician's "knowledge" of a diagnosis is a precondition to his or her duty to report under the section. (58 Ops.Cal.Atty.Gen., *supra*, at 341, *Lopez* v. *Southern Cal. Permanente Group*, *supra*, 115 Cal.App.3d at 678.) Under the statutory scheme however, while the physician need not personally have made the diagnosis to be liable to report, we believe he or she must at least have come to know of it in the course of the exercise of his or her duties as a physician with respect to the particular individual. This would mean (1) that the receipt of the information must follow a physician's requesting it for a medical need in a particular individual's case; (2) that the information is received from and through "sources" upon which physicians normally rely in the course of their practice (e.g., another physician and not the patient); and (3) that the information is to be "used" by the physician for his or her specific involvement in the person's case, i.e., that following its receipt the physician will bring additional professional judgment to bear on evaluating it for the purposes for which he or she is involved with the individual. (Compare, 58 Ops.Cal.Atty.Gen., *supra*, at 343-344 (treating physician seeks diagnosis of suspected neurological disorder from a specialist (neurologist) to whom he refers the patient, and learning it, treats the patient thereon for a "reportable condition"; both diagnosing physician and treating physician must report), with *Lopez* v. *Southern Cal. Permanente Group*, *supra*, at 678 (physician (orthopedic surgeon) treating for back problem (non-reportable condition) learns *from patient* that he had once been diagnosed as being diabetic (a reportable condition if accompanied by reportable symptomatology) but physician is *not* involved in treating patient therefor; physician need not report under § 410(1), as that is not "knowledge of a diagnosis").) While these factors will normally occur in the traditional physician-patient relationship, they need not necessarily be confined to that setting. As long as a physician receives the diagnostic information upon his or her request, for his or her further professional evaluation and use in an individual case, and as long as it is received from and through "medically acceptable channels," there is a statutory duty to report under section 410(1) where the other information (past symptomatology, likelihood of its future recurrence) upon which the section is premised is learned about as well.

Having thus set the stage, we can finally proceed to emplace the players of concern upon it. One of the functions of our state medical officers is to review applications for state employment, including Health Questionnaires (Form Std. 610 HQ (6/82)) and if need be Medical Examination Reports (Form 610 (11/82)) to determine whether an applicant's "state of health [is] consistent with the ability to perform . . . assigned duties" (2 Cal. Admin. Code, § 172; cf. Gov. Code, § 18931) and whether any limitation on that performance is advisable.[5] Among the questions an applicant must answer is whether he or she has or has ever had any seizure disorder or loss of consciousness (Std. 610 HQ, #14) or fainting spells or dizziness (*id.*, #24) or any disorder of the nervous system (*id.*, #13). If the answer is affirmative the applicant is asked to explain, providing an account, a personal evaluation, and *a diagnosis and a list of physicians* who were consulted for treatment of the condition. (*Ibid.*) Where necessary, further clarifying or amplifying medical information is sought from a physician. (SPB Form 610.)

It is thus apparent that there will be situations in which a state medical officer, whose job it is to assess an applicant's ability to safely perform in a certain position *in the future*, will be presented in the course of his or her duties as a physician with sufficient information to comprise a reportable case under section 410(1). For example, in response to an inquiry, a state medical officer might be informed by a physician that an applicant for state employment has recently had seizures [past symptoms], that they were diagnosed as having been caused by a certain condition or disorder [knowledge of diagnosis] and that the condition is such that it may produce or bring about a recurrence of the seizures in the future [likelihood of recurrence]. That is exactly the type of information that a medical officer would need and seek to properly determine an applicant's ability or fitness for a particular employment position. Not surprisingly, it is also exactly the type of information which section 410 seeks to have reach the DMV to determine a person's ability and fitness to drive. Since the medical officer will have personally sought that information for his or her personal evaluation of one aspect of the applicant's medical condition, and will have received it from "medically acceptable sources," and will personally bring his or her professional judgment to bear in evaluating it for specific purposes with respect to the particular individual, the reporting requirement of the section would be "triggered" with

[5] All applicants for state employment must complete a Health Questionnaire (Std. 610 HQ); completion of a Medical Examination Report (Std. 610) is also required for appointment to certain positions, i.e., classes which contain specific physical requirements as part of the specifications, certain peace officer classes, and certain other classes which functionally or environmentally require task performances of high physical or environmental demand (such as operating heavy vehicles, operating at heights, repetitive lifting, working long shifts, preparing and/or serving food, and custody of the incarcerated or institutionalized. (See California State Personnel Board, *Memorandum* (dated Dec. 17, 1982) *re: New Medical Clearance Forms and Procedures*, at pp. 2-3.) In addition, where a Health Questionnaire indicates a medical problem, the S.P.B. Medical Officer may require a Medical Examination Report from other employees. (*Id.*, at 3.)

the information so received. Inasmuch as clause (1) of section 410 was designedly written broadly, we conclude that when state medical officers do so receive that kind of information in the performance of their duties, they are required to report the person to whom it pertains to their local health officer.

Accordingly, we conclude that the reporting requirement of section 410(1) is applicable to state medical officers. Where a medical officer learns in the medical review process (1) that an applicant has experienced either a lapse of consciousness or an episode of marked confusion, *and* (2) that such was caused by a particular condition (i.e., their diagnosis), *and* (3) that such condition is likely to bring about their reoccurrence, he or she is required to report the applicant to the local health officer under the section.

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