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COMMENT

California Asks: Should Doctors Face Drug Tests?

By ADAM NAGOURNEY AUG. 1, 2014



Dr. Richard Thorp, president of the California Medical Association, called the measure for drug testing and to raise the cap on medical malpractice awards a “money grab by trial lawyers.”
Max Whittaker for The New York Times

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LOS ANGELES — At a time when random drug testing is part of the job for pilots, train operators, police officers and firefighters — to name a few — one high-profile line of work has managed to remain exempt: doctors.



That may be about to change. California would become the first state to require doctors to submit to random drug and alcohol tests under a measure to appear on the ballot this November. The proposal, which drew approval in early focus groups, was inserted as a sweetener in a broad initiative pushed by trial lawyers that also includes an unrelated measure to raise the state's financial cap on medical malpractice awards for the first time since 1975, to \$1.1 million from \$250,000. In California, it is permissible to bundle various measures into one ballot initiative, as long as they address a single subject.

The stage has thus been set for a battle that is being closely watched by doctors across the country. The medical industry, including doctors, hospitals and medical insurance companies, has already raised more than \$35 million to defeat it.

Lawyers, aligned with some consumer watchdog groups, say they cannot match that level of spending but they have signaled an equally aggressive campaign with [YouTube videos](#) asking why doctors should not have to “pee in a cup” when firefighters and pilots do.

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Daniel R. Levinson, inspector general for the Department of Health and Human Services, supports random drug testing for medical professionals, saying, "No one should be above suspicion." Drew Angerer for The New York Times

Given its potential to set a national precedent and the provocative questions it raises — substance abuse is a well-known issue in the medical profession — Proposition 46, as it is known, is drawing national attention and debate. It has been endorsed by some of the state's most powerful Democrats, including Senator Barbara Boxer and Representative Nancy Pelosi, the minority leader. Its opponents include unions, the state Chamber of Commerce and the California chapter of Planned Parenthood, which fears Proposition 46 would drive OB-GYN doctors into fields of medicine less subject to risk of litigation.

The drug-testing provision, its sponsors said, is an inducement that bubbled up in the course of a freewheeling focus group of voters testing arguments that could persuade people to support a higher damage ceiling in malpractice lawsuits. The enthusiasm voiced in the focus group, strategists for the campaign said, suggested that the clearly popular idea could overcome medical industry advertisements warning that raising malpractice award limits would push up insurance rates and costs to local government.

Under Proposition 46, the ceiling for pain and suffering awards in medical negligence suits, set at \$250,000 by the State Legislature in 1975, would be raised to \$1.1 million to reflect inflation. The results of

random drug tests on doctors would be reported to the California Medical Board; hospitals would be required to report the names of doctors suspected of abusing drugs or alcohol. Doctors would also be required to consult state prescription databases before prescribing controlled substances to patients, to guard against “doctor shopping.” Doctors predicted that voters would see through what they called political trickery. Dr. Richard Thorp, the president of the California Medical Association, described the measure as a “money grab by trial lawyers.” He added, “The decision about drug and alcohol testing shouldn’t be made by political consultants — it should be made by stakeholders in a careful, thoughtful way.”

Asked if California doctors could support drug testing in any form, Dr. Thorp said: “That’s a great theoretical question. But we’re not dealing with a theoretical initiative. We are dealing with this state initiative. We cannot pass this initiative as it is written today. It is a flawed, deceptive ballot initiative, with one goal in mind: to increase money for trial lawyers.”

Still, the measure threatens to put the medical profession in the difficult position of having to argue against the kind of scrutiny that an increasing number of workers — particularly in jobs affecting the public well-being — routinely undergo. Backers of Proposition 46 have begun putting out a steady stream of news releases about cases involving doctors with a history of drug and alcohol abuse. “It’s crucial: I can’t believe we haven’t done this already,” said Arthur L. Caplan, a medical ethicist at New York University. “We can argue about how often that is, and what to do if you are positive. But the idea that we wouldn’t be screening our surgeon, our anesthesiologist or our oncologist when we are going to screen our bus drivers and our airline pilots strikes me as ethically indefensible.”

Daniel R. Levinson, the inspector general for the Department of Health and Human Services, said in an interview that there should be random drug testing across the medical profession, given the access in hospitals to controlled substances. “I don’t think that a carve-out when it comes to the medical field is sensible public policy,” he said. “No one should be above suspicion or below suspicion. I think we all need to play by similar rules.”

In California, major laws are routinely made at the ballot box, and initiatives like this can be as hard-fought as a race for governor. Both sides expect this contest to dwarf anything else on the ballot, including

the lopsided race for governor (Jerry Brown, a popular Democrat, is widely expected to win re-election).

“From a national perspective, this is really historic,” said Jamie Court, the president of Consumer Watchdog, one of the groups supporting the initiative. “It will give the public a chance to put doctors in the same category as pilots and truck drivers and other workers who are tested for impairment because they have public-safety jobs. That will spread like wildfire if the voters of California give it a nod.”

Dr. Thorp of the California Medical Association said the issue was so important that the coalition opposing it was “very committed to ensuring that this ballot initiative doesn’t get passed.”

A big part of the battle will be how to frame the multipart measure for voters. It will be [titled](#): “Drug and Alcohol Testing of Doctors. Medical Negligence Lawsuits. Initiative Statute.” The first sentence of the official description says it “requires drug testing of doctors,” before listing the other provisions. But it also warns that the initiative could impose costs on state and local government “ranging from tens of millions to several hundred million dollars annually, offset to some extent by savings from requirements on health care providers.”

Gale Kaufman, a California political consultant helping to run the campaign against the measure, said that people would vote against it because of the potentially high cost. She noted that, as a rule, it is easier to defeat than to pass an ambitious initiative like this one.

“Voters always figure out — always figure out — what the real motivation is,” she said. “This has nothing to do with drug testing of doctors.”

Chris Lehane, a consultant working for the trial lawyers, disputed that. “Both sides can say what they want to say,” he said. “But there is no dispute about what will actually be in the black-and-white print on the ballot for the voters to consider.”

And Mr. Court of Consumer Watchdog argued that there was nothing wrong with drafting a proposition that reflected what voters would support. “The other side likes to say it’s all about playing for the polls,” he said. “The reality is, if you are doing a ballot measure for the public, you should give the public the type of reforms they are seeking.”

Correction: August 6, 2014


An article on Saturday about the possibility that California could become the first state to require random drug and alcohol tests for doctors quoted incorrectly from comments by Dr. Richard Thorp, the president of the California Medical Association, who was asked whether doctors could support testing in some form. Dr. Thorp said, “We’re not dealing with a theoretical initiative.” He did not say “theatrical initiative.”

A version of this article appears in print on August 2, 2014, on page A1 of the New York edition with the headline: California Asks: Should Doctors Face Drug Tests? .
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