MEDICAL BOARD OF CALIFORNIA
Executive Office

EXECUTIVE COMMITTEE

MEMBERS OF THE COMMITTEE

Richard Fantozzi, M.D., President
Steve Alexander
Cesar Aristeiguieta, M.D.
Hedy Chang
Gary Gitnick, M.D.

January 10, 2008

UCLA Medical Center
200 Medical Plaza, Suite 206
Los Angeles, CA 90095
(310) 825-7501

Action may be taken on any item listed on the agenda.

AGENDA

11:00 a.m. – 1:00 p.m.
(or at the conclusion of Special Faculty Review Committee)

ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE
If a quorum of the Board is present, members of the Board who are not members of the Committee may attend only as observers.

1. Call to Order
2. Approval of the June 18, 2007 Minutes
3. President's Report
4. Committee Reorganization
5. 2007 - 2008 Legislation Session
6. Public Comment on Items not on the Agenda
7. Adjournment

The mission of the Medical Board of California is to protect healthcare consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions and through the vigorous, objective enforcement of the Medical Practice Act and to promote access to quality medical care through the Board's licensing and regulatory functions.
Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Public Meetings Act. The audience will be given appropriate opportunities to comment on any issue before the Board, but the Chair may apportion available time among those who wish to speak. For additional information call (916) 263-2389.
NOTICE: The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request to the Board no later than five working days before the meeting by contacting Teresa Schaeffer at (916) 263-2389 or sending a written request to Ms. Schaeffer at the Medical Board of California, 1426 Howe Avenue, Suite 54, Sacramento, CA 95825. Requests for further information should be directed to the same address and telephone number

Medical Board of California
Tracker - Legislative Bill File
1/3/2008

BILL	AUTHOR	TITLE	STATUS	POSITION	VERSION of BILL POS. BASED
AB 311	Dymally	Colon Hydrotherapy (draft)	Asm. Health	Rec: Oppose	Amended
AB 547	Ma	"Cap" on Fees (draft)	Health	Rec: Sponsor	Amended
AB 1154	Leno	Diabetes	Health (1/15)	Refer to Access to Care	Amended
AB 1276	Karnette	Pharmacies: Prescription Containers: Labels	B&P	Support	Amended
AB 1436	Hernandez	Nurse Practitioners: Scope of Practice	B&P (1/15)	Oppose	Amended
AB 1444	Emmerson	Physical Therapists: Scope of Practice	B&P (1/15)	Oppose	Amended
AB 1643	Niello	Nurese Practitioners	B&P	Oppose unless amend	Introduced
SB 761	Ridley-Thomas	Diversion and Vertical Prosecution	Asm. Approps.	Sponsor/Support	Amended
SB 797	Ridley-Thomas	Professions and Vocations	Floor #145	Contained VE/P - Support	Amended
SB 809	Ashburn	Nurse Practitioners: Scope of Practice	B&P (1/14)	Oppose	Amended
SB 907	Calderon	Physicians and Surgeons: Referrals	B&P (1/14)	Oppose	Amended

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 311 (draft)
Author: Dymally
Bill Date: February 9, 2007, introduced
Subject: Colon Hydrotherapy
Sponsor: Author

STATUS OF BILL:

This bill is in the Assembly Health Committee and has not been set for hearing, although it is planned to have this heard in Assembly Business and Professions on January 15, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill states the intent of the legislature to regulate colon hydrotherapists and colon hydrotherapy establishments by establishing a Board of Colon Hydrotherapy (Board). The purpose of this Board is to license colon hydrotherapists.

ANALYSIS:

This bill would establish a new board under the Department of Consumer Affairs to license and regulate colon hydrotherapists and colon hydrotherapy establishments. This five member board would consist of five practicing colon hydrotherapists.

There are several consumer protection concerns with the provisions of this bill:

- Training is "certified" by DCA and is only 100 hours in length.
- The bill allows for a colon hydrotherapy establishment to be located at a private residence.
- The bill allows for the licensing of student trainees as long as they are enrolled in a colon hydrotherapy school and have completed 50 hours of study.
- The Board would conduct its own written examination for applicants.
- The bill allows for a colon hydrotherapist who has been practicing and has been certified at the foundation level or higher since January 1, 2007 to be exempt from the requirements of completing the 60 classroom hours of anatomy and physiology, taking the written examination, completing the 100 hours of colon hydrotherapy instruction, and submitting written proof of interning.

There is no "sunrise" report justifying the need for the licensed practice, nor the consumer harm related to "unlicensed" practice. Section 2053.5 (a)(1) prohibits this procedure by unlicensed personnel which is the reason for the bill. There has been no data presented justifying the need for this therapy outside of current licensed health care professionals.

FISCAL: None

POSITION: Recommendation: Oppose

January 2, 2008

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RN 07 31103 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 311

Amendment 1

Strike out lines 1 and 2 of the title, and insert:

An act to add Chapter 16 (commencing with Section 4999.80) to Division 2 of the Business and Professions Code, relating to colon hydrotherapy.

Amendment 2

On page 1, before line 1, insert:

SECTION 1. Chapter 16 (commencing with Section 4999.80) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 16. COLON HYDROTHERAPY

4999.80. (a) This chapter shall be known and may be cited as the Colon Hydrotherapy Act.

(b) It is the intent of the Legislature that the provisions of this chapter regulate colon hydrotherapists and colon hydrotherapy establishments so that they serve the health and therapeutic colon hydrotherapy needs of the residents of California. It is also the legislative intent that those individuals and establishments be regulated in order to provide their services in compliance with standards of safety, hygiene, and professional ethics for the purpose of maintaining the health and welfare of the residents of California.

4999.81. For purposes of this chapter the following definitions shall apply:

(a) "Board" means the Board of Colon Hydrotherapy.

(b) "Client" means a person receiving a colon hydrotherapy session from a colon hydrotherapist at a colon hydrotherapy establishment. A colon hydrotherapy client is not a medical patient.

(c) "Colon hydrotherapist" means a person who has been trained to perform a colon hydrotherapy session.

(d) "Colon hydrotherapy session" means a session where water enters a client's bowels, softening and loosening waste, and creating the reflex for evacuation. The client's colon evacuates through normal peristalsis. This process may be repeated several times during a session, thereby exercising the muscles which make up the colon.

(e) "Colon hydrotherapy establishment" means a place of business where colon hydrotherapy is administered or practiced for compensation. A colon hydrotherapy establishment shall comply with local building and safety codes, fire codes, and health codes in the city, county, or city and county of its location. Colon hydrotherapy establishments may be located in either business or residential zones, and shall comply with all the requirements of Section 4999.83.

(f) "Colon hydrotherapy school" means any institution of learning that has as its purpose the in-depth instruction in the theory, practice, application, and ethics of colon hydrotherapy. The institution shall offer a residential course of study and require a 100-hour course of study with no less than 100 hours of classroom instruction, and 25 intern sessions (colonics). The institution shall issue a certificate or diploma upon successful completion of the course of study and provide an official transcript. In addition, an institution shall be approved by the International Association of Colon Hydrotherapy (I-ACT) and be certified by the Department of Consumer Affairs.

(g) "Colon hydrotherapy equipment" means equipment that has been approved by the FDA as a Class II Medical Device for the purpose of performing a colon hydrotherapy session. Colon hydrotherapy equipment does not have a motor or a generator, and it does not generate force. Instead, the equipment controls force. The equipment is designed to provide temperature controlled, pressure controlled filtered water to the client's rectum and colon. The colon hydrotherapy equipment should be connected to the public water supply in order to meet all local plumbing codes and ordinances and to ensure that the water supply is sanitary.

(h) "Obturator" means a stick with a smooth, half sphere on one end and a small handle on the other end. It is placed within the speculum to allow the speculum to enter the anal canal without disturbing the tissue.

(i) "Rectal tube or rectal nozzle" means the sterile, disposable, small hollow plastic tube that is inserted approximately 3 inches into the rectum and allows water to flow into the rectum and colon. This tube remains in place during the evacuation of waste, and shall be for a one-time-only use and shall be disposable.

(j) "Speculum" means a rigid tube about five and a half inches long and approximately three quarters of an inch in diameter that enters approximately two and a half to three inches into the anal canal. A water tube one quarter inch in diameter attaches to the side of the speculum that is away from the body, with a waste tube one inch in diameter attached on the far end. A speculum shall be for a one-time-only use and shall be disposable.

(k) "Table" and "base" mean the cushioned surface upon which a client of colon hydrotherapy rests during a colon hydrotherapy session.

4999.82. There is hereby established in the Department of Consumer Affairs the Board of Colon Hydrotherapy for the purpose of administering and maintaining examinations to reflect current trends in the profession, consumer protection, and quality control. The board shall consist of five practicing colon hydrotherapists of integrity and ability, each of whom shall be licensed, and have been practicing as a colon hydrotherapist for a period of at least two years. Board members shall be appointed by the Governor for terms of three years.

4999.83 (a) It shall be unlawful for any person to practice or administer any subject or method of treatment listed in Section 4999.81 without first obtaining and maintaining in effect a colon hydrotherapist license or student trainee license as required by this chapter. It shall also be unlawful for a student trainee to charge a fee for colon hydrotherapy.

(b) It shall be unlawful for any person, association, firm, or corporation to conduct or operate a colon hydrotherapy establishment without first obtaining and maintaining in effect a colon hydrotherapy establishment license as required by this chapter.

(c) It shall be unlawful for any person, association, firm, or corporation to employ as a colon hydrotherapist any person who does not hold a current unrevoked and unsuspended colon hydrotherapist license as required by this chapter.

(d) It shall be unlawful for any person, association, firm, or corporation licensed pursuant to this chapter to operate under any name or conduct business under any designation not specified in its license.

4999.84. (a) Any person, association, firm, or corporation desiring to obtain a colon hydrotherapist license or colon hydrotherapy establishment license shall submit an application to the board. Persons desiring licenses authorizing them to perform the activities of a colon hydrotherapist and, in addition, to conduct or operate a colon hydrotherapy establishment shall submit two separate applications.

(b) An application for licensure as a colon hydrotherapist shall be accompanied by a nonrefundable fee to be established by the board. These fees shall be deposited in the Colon Hydrotherapy Fund.

(c) An application for licensure as a colon hydrotherapy establishment shall be accompanied by a nonrefundable fee to be established by the board. These fees shall be deposited in the Colon Hydrotherapy Fund.

4999.85. An applicant for licensure as a colon hydrotherapist or a colon hydrotherapy establishment shall include all of the following in the application:

(a) The applicant's full legal name and current residence address.

(b) Any other name by which the applicant has been known during the previous five years.

(c) The address at which the applicant desires to do business.

(d) The two residence addresses immediately prior to the present address of each applicant, and the dates of residence at each address.

(e) Personally written letters of character reference from three adults who are not related to and who have known the applicant for at least three years. The letters shall include addresses and telephone numbers of the references.

(f) Written proof that the applicant is at least twenty-one years of age if applying for a colon hydrotherapy establishment license, or at least eighteen years of age if applying for a colon hydrotherapist license. Any one of the following written instruments shall be the only acceptable types of identification:

(1) A valid driver's license issued by any state, provided that the license includes a picture of the licensee.

(2) A valid armed forces identification card.

(3) A valid government issued passport that contains a photograph of the applicant and his or her date of birth.

(g) The applicant's height, weight, and hair and eye color.

(h) Two passport-size portrait photographs of the applicant, approximately two inches by two inches in size, taken within the previous six months.

(i) The business, occupation, or employment history of the applicant during the previous five years.

(j) The business license history of the applicant, including whether the applicant, while previously operating in this state under license, has had his or her license revoked or suspended, the reason for the suspension or revocation, and the business applicant's activity or occupation subsequent to the suspension or revocation.

(k) All felony and misdemeanor convictions, excluding those for civil traffic offenses, and the grounds for the convictions.

(*l*) A certificate from a health care provider stating that the applicant has, within 30 days immediately prior to issuance of the certificate, been examined and found to be free of any contagious or communicable disease.

(m) Documentation of the applicant's education, training, and experience from a colon hydrotherapy school and from colon hydrotherapy establishments in the administration and practice of the subjects and methods relative to the practice of colon hydrotherapy.

(n) Any other identification and information as the board may require to be included in the application.

4999.86. Any applicant for a license pursuant to this chapter shall present the application to the board containing the information required under Section 4999.85. This information shall be reviewed by the board.

4999.87. A colon hydrotherapy establishment license shall not be issued or renewed unless the establishment satisfies all of the following requirements:

(a) A readable sign shall be permanently posted at the main entrance identifying the establishment as a colon hydrotherapy establishment. The sign shall not be smaller than 3" x 5" and shall be of a durable material.

(b) Required minimum lighting shall be provided in accordance with the Uniform Building Code, and at least one artificial light of not less than twenty-five watts shall be provided in each room or enclosure where colon hydrotherapy services are performed on clients. This lighting shall be used when colon hydrotherapy services are performed.

(c) Minimum ventilation shall be provided in accordance with the Uniform Building Code.

(d) Colon hydrotherapy establishments shall utilize single-use-only disposable rectal nozzles and speculums.

(e) Hot and cold running water, tempered by means of a mixing valve faucet, shall be available to clients at all times.

(f) Closed containers shall be provided and used for the storage of clean linens.

(g) Adequate dressing and toilet facilities shall be provided for clients. The bathroom shall be within the confines of the establishment. One dressing room, which may be the same as the colon hydrotherapist treatment room, one toilet, and one wash basin shall be provided by every colon hydrotherapy establishment with one to three treatment rooms, inclusive. Another toilet and wash basin shall be provided when there are four or more treatment rooms in an establishment.

(h) All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the colon hydrotherapy establishment shall be in good repair and maintained in a clean and sanitary condition. Cabinets, toilets, and wash basins shall be thoroughly cleaned each day the business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use.

(i) Clean and sanitary materials, including, sheets and towels, shall be provided for each client of the colon hydrotherapy establishment.

(j) All wash basins within a colon hydrotherapy establishment shall have hot and cold running water, tempered by means of a mixing valve faucet. Sanitary towels shall be placed in permanently installed dispensers or upon a permanently attached roll dispenser. A soap dispenser shall be placed on or near each wash basin.

(k) If a colon hydrotherapy establishment is located in a residence, the following requirements shall be satisfied:

(1) A separate room that is not used as a living space shall be used as the colon hydrotherapy treatment room.

(2) Only one colon hydrotherapy treatment room shall be located within a residence.

(3) Toilet and wash basin facilities shall be located on the same floor as the colon hydrotherapy treatment room and shall be easily accessible to the colon hydrotherapy treatment room. No nonresidential plumbing fixtures shall be installed to accommodate this use.

(4) Adequate parking space for no less than two cars shall be available.

(5) A colon hydrotherapy establishment in a residence shall be accessible by a separate outside entrance that does not provide access to the residence. If installation of an outside entrance is necessary, the entrance shall be constructed to the side or back of the residence and conform to all building codes.

(6) A colon hydrotherapy establishment shall be separated from the residence by complete partitioning and solid, self-closing doors. Raised panel doors shall not satisfy the requirements of this paragraph.

(*l*) The colon hydrotherapy establishment shall pass the inspection of the city, county, or city and county where it is located.

4999.88. (a) A student trainee license may be issued if the applicant has furnished written proof that he or she is enrolled in a colon hydrotherapy school, as defined by subdivision (f) of Section 4999.81, and has completed 50 hours of the required course of study. A student trainee license shall be valid as long as the student trainee is enrolled in a colon hydrotherapy school. Within 60 days of completion of the course and upon submitting a certificate or diploma of graduation from the colon hydrotherapy school, the student trainee shall be eligible to be examined by the board. Upon approval by the board, a student trainee license may be converted to that of a regular colon hydrotherapist license at no additional cost. A student trainee license shall not qualify that licensee to be employed as a colon hydrotherapist in this state at any time. If a student trainee does not submit a certificate from a colon hydrotherapy school within that 60-day period, he or she shall be required to reapply, paying all application fees in full.

(b) A colon hydrotherapist license may be issued to an applicant who meets all of the following requirements:

(1) The applicant submits a diploma, certificate, or transcript documenting 60 classroom hours in the subjects of anatomy and physiology of the alimentary tract from a colon hydrotherapy school that offers a residential course of study, or submits a transcript documenting no less than two semesters of college-level anatomy and physiology showing a passing grade of C or better.

(2) The applicant submits a diploma or certificate and a transcript documenting no less than 100 hours of colon hydrotherapy instruction and supervised practice from a colon hydrotherapy school, as defined in Section 4999.81.

(3) The applicant provides written proof of interning experience that includes colon hydrotherapy sessions with a minimum of 25 clients. This written proof may be documented by the school, an employer, private client receipts, or colon hydrotherapy session appointment calendars.

(4) All applicants shall pass a written examination, with a score of at least 75 percent, prepared and conducted by the board, establishing the applicant's competency and ability to practice colon hydrotherapy. The examination shall require the applicant to demonstrate basic knowledge of the subjects and methods listed in Section 4999.81. The board shall provide applicants with study guidelines to prepare for the written examination. Examination text or outlines shall not be provided to any colon hydrotherapy school.

(c) An applicant who either fails to score a passing grade on the written examination described in subdivision (b) or who fails to appear for a scheduled examination shall be entitled to be rescheduled, for a fee to be established by the board. The rescheduling shall be within a 6-month period. If reexamination is not applied for within the 6-month period, an applicant shall be required to pay a new application fee. If the reexamination is not applied for within a 12-month period, a new application process shall be initiated. Applicants who are rescheduled will be given priority on the list of applicants to be examined.

(d) All colon hydrotherapy schools, as defined in Section 4999.81, shall provide the board with a complete list of students graduated or students terminated within 10 working days following the granting of graduate status to, or the termination of, each student or group of students graduated or terminated.

(e) A colon hydrotherapist who has been practicing and has been certified at the foundation level or higher by the International Association for Colon Hydrotherapy since January 1, 2007, shall be provided a license as a colon hydrotherapist pursuant to this chapter and shall not be required to satisfy the requirements of subdivision (b).

4999.89. (a) A colon hydrotherapy establishment license or colon hydrotherapist license shall not be issued or renewed if the applicant has been convicted within the last 5 years of any felony or other offense involving moral turpitude or dangerous or narcotic drugs.

(b) For purposes of this chapter, "moral turpitude" means acts that adversely affect one's honesty, integrity, or personal values, and may be defined as an act of baseness, vileness, or depravity in the private and social duties owed to the community.

4999.90. (a) Every person, association, firm, or corporation to which a colon hydrotherapist license or colon hydrotherapy establishment license has been issued pursuant to this chapter shall display the license in a conspicuous place upon the colon hydrotherapy business premises. A recent photograph of the colon hydrotherapist licensee or the owner of a colon hydrotherapy establishment shall be attached to the license. The board may inspect all places of business subject to the provisions of this chapter and the books and records of those colon hydrotherapy businesses.

(b) A change of location of a colon hydrotherapy establishment may be approved by the board upon receiving an appropriate inspection report and a facility transfer fee that the board shall establish at the beginning of each fiscal year.

4999.91. (a) Every licensed colon hydrotherapist and colon hydrotherapy establishment shall pay a yearly renewal fee according to a schedule that the board shall establish for each category of license at the beginning of each fiscal year.

(b) An individual issued a colon hydrotherapist trainee license shall not be subject to the renewal fee required by subdivision (a) until the board issues him or her a colon hydrotherapist license.

4999.92. (a) Upon the sale or transfer of any interest in a colon hydrotherapy establishment, the license for that establishment shall expire. To receive a new colon hydrotherapy establishment license, an application that satisfies all the colon hydrotherapy establishment license application requirements of this chapter shall be submitted to the board by the person, association, firm, or corporation desiring to own or operate the establishment.

(b) Any colon hydrotherapy establishment that plans to enlarge or expand the building or other place of business of its establishment shall also satisfy the requirements of subdivision (a).

4999.93. (a) All of the following shall be unlawful acts:

(1) For any person, association, firm, or corporation to conduct or operate a colon hydrotherapy establishment on the same premises where alcohol is sold, unless operated by a nonprofit corporation or duly licensed athletic club, spa, or resort.

(2) For any person, association, firm, or corporation to conduct or operate a colon hydrotherapy establishment on the same premises where an adult bookstore, adult motion picture theater, or adult entertainment enterprise is located.

(3) For any person to practice or administer any subject or method of colon hydrotherapy service, whether for a fee or gratuity, under the following circumstances:

(A) With the intent to arouse, appeal to, or gratify sexual desires.

(B) During a session when the client is not draped, whether with a sheet, towel, or both. Exposure of the genital area is prohibited.

(C) While wearing clothing that does not reflect the general standard of colon hydrotherapist professional attire, as determined by the board.

(D) With the intent to diagnose any disease or prescribe any drugs or supplements to a colon hydrotherapy client for any specific conditions, unless the colon hydrotherapist is licensed under Chapter 5 (commencing with Section 2000), the Medical Practice Act, and is authorized under that act to make the diagnosis and prescribe the drugs or supplements.

(E) To operate outside of the scope of practice of a colon hydrotherapist, as established by this chapter.

(b) Any person who violates any provision of this chapter is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200) or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

4999.94. (a) The board may revoke, suspend, or deny renewal of a colon hydrotherapist license or a colon hydrotherapy establishment license upon a finding of any of the following conditions:

(1) The licensee has engaged in fraud in conducting the business of a colon hydrotherapist or colon hydrotherapy establishment, or of fraud or deceit in obtaining a license to conduct that business.

(2) The licensee has been convicted within the last five years in a court of competent jurisdiction of a felony or of any offense involving moral turpitude or dangerous or narcotic drugs.

(3) The licensee has engaged in false, fraudulent, misleading, or deceptive advertising.

(4) The licensee is grossly ignorant or guilty of willful negligence in the business of colon hydrotherapy or a colon hydrotherapy establishment.

(5) The licensee is engaged in the business of a colon hydrotherapist or colon hydrotherapy establishment under a false or assumed name or is impersonating another practitioner.

(6) The licensee has violated any of the provisions of this chapter.

(b) Any person having a complaint regarding the performance or conduct of a colon hydrotherapist relative to the provisions of this chapter may submit that complaint to the board for review. Upon receipt of the complaint, the board shall give written notice to the licensee that a review hearing will be held at a place and time specified in the notice. That hearing shall not be sooner than 10 days nor more than 30 days from the date of the notice. The notice shall state the grounds set forth in the complaint and the licensee shall be allowed to appear and offer evidence. A record shall be kept, including proof offered and a transcript of testimony. The board shall, within three days of hearing, determine whether there is sufficient cause to move forward with proceedings to revoke or suspend the colon hydrotherapist's license. Within 10 days of determining that there is sufficient cause to move forward with revocation or suspension proceedings, the board shall provide the licensee written notice as required for a review hearing.

(c) Complaints received by the board that involve possible criminal conduct of a colon hydrotherapist, in that capacity, shall be immediately forwarded to the Attorney General for investigation. If the Attorney General determines that criminal conduct is not involved or prosecution is not warranted, that information shall be provided to the board.

(d) If the board finds that a colon hydrotherapist has violated the provisions of this chapter, the board may do any of the following:

(1) Suspend his or her license within one year of the board's finding, unless within that one-year period the licensee has fulfilled requirements of additional education in an amount to be determined by the board.

(2) Suspend his or her license for a six-month period, one-year period, or permanently revoke the license following the board's finding.

(e) To suspend or revoke a license, the board shall deliver to the licensee, or by certified mail at his or her business address as shown on the application or other more recent record, a written notice of the board's decision. The cause of the suspension or revocation shall be set forth in the notice. A suspended or revoked license shall be surrendered to the board on demand.

4999.95. (a) No person, association, firm, or corporation shall apply for any colon hydrotherapist license or colon hydrotherapy establishment license within one year from the denial of that license to the applicant or from the suspension, revocation, or nonrenewal of that license, except where the denial of the license is the result of a failure to pass the licensing examination, or the cause of the denial, suspension, revocation, or renewal has been, to the satisfaction of the board, removed within that time.

(b) Any person denied a license pursuant to the provisions of this chapter, or whose license has been suspended, revoked, or not renewed, may appeal in writing to the board within 10 days from the action, stating the reasons why the action was improper. The board shall hear the appeal on its merits not less than seven days nor

more than 30 days following the filing of the appeal. The board may uphold, modify, or reverse the previous action, and its decision shall be binding on the applicant. If the applicant fails to appear at the hearing, the board may conduct the hearing and the decision of the board shall become binding upon the parties.

4999.96. The provisions of this chapter shall not apply to any of the following persons when they are practicing in their licensed profession and that profession overlaps the field of colon hydrotherapy:

(a) Licensees under the Medical Practice Act, Chapter 5 (commencing with Section 2000).

(b) Licensees under the Chiropractic Act.

(c) Registered nurses when acting under the supervision of a licensed physician and surgeon.

4999.97. It shall be unlawful for persons practicing colon hydrotherapy for compensation within this state to advertise their practice using the term "colon hydrotherapist," or any other term that implies a colon hydrotherapy technique or method in any public or private publication or communication, if they are not licensed as a colon hydrotherapist under this chapter.

4999.98. All fees collected by the board shall be paid into the State Treasury and shall be credited to the Colon Hydrotherapy Fund which is hereby created. The money in the fund shall be available, upon appropriation by the Legislature, for expenditure by the board to defray its expenses and to otherwise administer this chapter.

4999.99. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Amendment 3

On page 1, strike out lines 1 to 3, inclusive, and strike out pages 2 and 3

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 547 (draft)
Author: Ma
Bill Date: April 19, 2007, amended
Subject: "Cap" on Fees
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is currently in the Health Committee and has not been set for hearing but it is planned to have this heard in Assembly Business and Professions on January 15, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is set to be amended to included language that will establish a "cap" or "ceiling" on the physician licensing fees instead of a fixed amount as in current law. The initial licensing fee will be fixed by the Board at no greater than seven hundred ninety dollars ($790). The biennial renewal fee will also be fixed at no greater than seven hundred ninety dollars ($790).

ANALYSIS:

This bill is a result of a fiscal audit by the Bureau of State Audits where it concluded that the Board had excess in its reserve fund and should reduce the fee. In order to reduce the fee the Board would need legislation to allow for a fee set by regulation. The Board, in November 2007, authorized staff to seek legislation allowing for a "cap" on the current ($790) physician initial and renewal fees. Inserting the "fixed by the board" language into the law will allow the Board to set and revise the fee by regulatory action up to the "cap."

In addition, the Board authorized staff to seek authority to have a fund reserve between two and six months instead of at approximately two months. This amendment has not been accepted by the author to date. Staff continues to work with the author's office on this amendment.

FISCAL: None

POSITION: Recommendation: Sponsor/Support if amended to provide flexibility in the fund's reserve.

January 2, 2008

AMENDMENTS TO ASSEMBLY BILL NO. 547
AS AMENDED IN ASSEMBLY APRIL 19, 2007

Amendment 1

Strike out lines 1 and 2 of the title, and insert:

An act to amend Section 2435 of the Business and Professions Code, relating to medicine, and making an appropriation therefor.

Amendment 2

On page 2, before line 1, insert:

SECTION 1. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to the licensure of physicians and surgeons:

(a) Each applicant for a certificate based upon a national board diplomate certificate, each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) The application and processing fee shall be fixed by the ~~Division of Licensing~~ board by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any, which fee shall be fixed by the board consistent with this section. The initial license fee shall be up to seven hundred ninety dollars ($790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be fixed by the board consistent with this section. The biennial renewal fee shall be up to seven hundred ninety dollars ($790).

(e) Notwithstanding subdivisions (c) and (d) and to ensure that subdivision (k) of Section 125.3 is revenue neutral with regard to the board, the board may, by regulation, increase the amount of the initial license fee and the biennial renewal fee by an amount required to recover both of the following:

(1) The average amount received by the board during the three fiscal years immediately preceding July 1, 2006, as reimbursement for the reasonable costs of investigation and enforcement proceedings pursuant to Section 125.3.

(2) Any increase in the amount of investigation and enforcement costs incurred by the board after January 1, 2006, that exceeds the average costs expended for investigation and enforcement costs during the three fiscal years immediately preceding July 1, 2006. When calculating the amount of costs for services for which the board paid an hourly rate, the board shall use the average number of hours for which the board paid for those costs over these prior three fiscal years, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. Beginning January 1, 2009,

the board shall instead use the average number of hours for which it paid for those costs over the three-year period of fiscal years 2005-06, 2006-07, and 2007-08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include probation monitoring costs and disciplinary costs, including those associated with the citation and fine process and those required to implement subdivision (b) of Section 12529 of the Government Code.

(f) Notwithstanding Section 163.5, the delinquency fee shall be 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars ($50), and the certification and letter of good standing fees shall each be ten dollars ($10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Medical Board of California equal to approximately two months' operating expenditures.

(i) ~~Not later than July 1, 2007, the Bureau of State Audits (BSA) shall conduct a review of the board's financial status, its financial projections and historical projections, including, but not limited to, its projections related to expenses, revenues, and reserves. The BSA shall, on the basis of the review, report to the Joint Legislative Audit Committee before January 1, 2008, on any adjustment to the amount of the licensure fee that is required to maintain the reserve amount in the Contingent Fund of the Medical Board of California pursuant to subdivision (h) of Section 2435, and whether a refund of any excess revenue should be made to licentiates~~ Not later than January 1, 2012, the Bureau of State Audits (BSA) shall conduct a review of the board's financial status, including, but not limited to, a review of the board's revenue projections. The BSA shall, on the basis of the review, report to the Joint Legislative Audit Committee on any adjustment to the fees imposed by this section required to maintain the reserve in the Contingent Fund of the Medical Board of California as provided by subdivision (h), and also taking into account the projected number of new licensees of the board. The review shall be funded from licensure fees in the fund.

Amendment 3

On page 2, strike out lines 1 to 31, inclusive

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1154
Author: Leno
Bill Date: April 10, 2007, amended
Subject: Diabetes Pilot Program
Sponsor: Author

STATUS OF BILL:

This bill has been referred to the Health Committee and is set for hearing on January 15, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

The bill as introduced contained intent language by which the State would create a program which gives free diabetes medicine/supplies to government employees who have diabetes if they volunteer counseling with their pharmacists.

As amended, this bill would require the Department of Health Services, in consultation with the California Health Alliance Commission, to develop a diabetes risk reduction pilot program within 24 counties to analyze and report the outcomes from integrative care to the causes of diabetes through proactive prevention.

ANALYSIS:

This bill as introduced declares the intent of the legislature to create a statewide pilot program which gives free diabetes medicine and supplies to state, county, and municipal employees who have diabetes. Free medicine and supplies are provided only if the program participants volunteer to undergo monthly counseling with specially trained pharmacists. The author's office has indicated that this program will be modeled after a similar program in North Carolina which has proven to be successful. However, staff has indicated that they are working on extensive amendments which will fully delineate the parameters of the program. The bill will not move until amendments are made.

The amendments to this bill would require the Department of Health Services (DHS) in consultation with the California Health Alliance Commission to develop a diabetes risk reduction pilot program. This bill fully describes the pilot program.

This program would use information technology and media to facilitate and reinforce messages of the benefits of more nutritious whole foods, along with good hydration and physical activity. The communities selected to enroll in the pilot program

shall be provided with dedicated health professionals and support personnel by the DHS to implement the pilot program, as recommended by the commission's Diabetes Risk Reduction Update. This pilot program is to analyze and report the outcomes of integrated care through proactive prevention.

At the same time, the DHS and the Department of Public Health are involved in a Diabetes Prevention and Management Initiative pursuant to the Governor's health care reform proposal. Many departments and professional groups are involved in this initiative, including the Medical Board. This initiative is to develop a diabetes care model for targeted medi-cal populations for short and long term savings to the state.

In addition the Board is involved with the Department of Managed Health Care (DMHC) and UC Davis in examining use of the telemedicine education model as a part of diabetes prevention and care. The Board has taken a support position on AB 329, a telemedicine bill giving the Board clear authority to pursue its efforts with DMHC and UC Davis.

FISCAL: None

POSITION: Refer to Access to Care Committee should this bill pass out of the Assembly.

January 2, 2008

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1154

Introduced by Assembly Member Leno

February 23, 2007

An act to add ~~Section 131086 to~~ *and repeal Section 131086 of* the Health and Safety Code, relating to diabetes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1154, as amended, Leno. Diabetes.

Existing law authorizes the State Department of Health Services to perform studies, demonstrate innovative methods, and disseminate information relating to the protection, preservation, and advancement of public health. Effective July 1, 2007, these duties will be transferred to the State Department of Public Health.

This bill would ~~declare the intent of the Legislature to enact legislation that establishes a statewide pilot project to provide free diabetes medicines and supplies to specified public employees~~ *require the department, in consultation with the California Health Alliance Commission, to develop a diabetes risk reduction pilot program within 24 counties to analyze and report the outcomes from integrative care to the causes of diabetes through proactive prevention.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

(a) Clear and substantial evidence indicates that a combination of better food and hydration, with prudent activity and a healthy attitude, promotes health and reduces the risk of chronic diseases, particularly diabetes. The benefits of this combination range from restorative sleep to enhanced hormone and neurochemical balance. All of these contribute to, and are synergistic in achieving, a healthy balance of sugar and energy in the body. As a result, effective habit modification is able to reduce the risk of diabetes, particularly in at-risk participants.

(b) Recent research confirms a rapid and accelerating increase in diabetes, particularly in California's children. The human and financial costs are staggering and avoidable. Access to healthier choices and resources facilitates the practice of healthy habits.

(c) Diabetes and its antecedents and consequences drain precious resources from the state.

(d) Diabetes negatively impacts productivity and quality of life, while increasing substantially the risk of complications ranging from heart attacks to kidney failure, stroke to blindness, and fragile blood vessels to amputation. The promotion of healthy habits that is reinforced with information and documentation of perceived and tangible benefits is more effective than communicating a general message of prevention while largely focusing on early disease detection and communicating the principles of prevention in the abstract rather than actionable terms.

(e) Proactive prevention in diabetes risk mitigation is a public health concept that supports community health promotion habits and practices that show evidence-based efficacy in at-risk populations. Proactive prevention programs include incentives for more whole foods, fruits, vegetables, pulses, nuts, seeds, and herbs along with adequate water, regular physical activity, and expression or receipt of appreciation and for the help we can be to ourselves and those in need. All this contributes to better weight maintenance by eating a balanced variety of nourishing foods and drinking adequate amounts of water and herbal teas, choosing moments in which to appreciate what we have, and enjoying the kind of regular activity appropriate to our functional age and abilities.

(f) A primary strategy of proactive prevention is to increase access to health enhancing practices, resources, and choices. Reinforcement of healthier choices and reduction of barriers

coupled with incentives for use are components of this approach. Incentives for health promoting actions are both financial and emotional.

(g) Existing law requires the State Department of Health Services to promote the public health and welfare.

(h) It is the intent of the Legislature that the program established pursuant to this act will document the program outcomes in rigorous tests and formal statistical measures, as well as by consumer quality of life outcome surveys performed by the California Health Alliance.

(i) It is the intent of the Legislature that the program established pursuant to this act will document the benefits of proactive prevention in diabetes risk mitigation at its cause.

(j) It is also the intent of the Legislature for the pilot program established pursuant to this act to improve the health and well-being of at-risk Californians by addressing the causes of diabetes and monitoring the benefits people enjoy through the application of proactive prevention.

SEC. 2. Section 131086 is added to the Health and Safety Code, to read:

131086. (a) As used in this section:

(1) "Commission" means the California Health Alliance Commission, a private nonprofit organization focused upon the health of the state's citizens.

(2) "Department" means the State Department of Public Health.

(3) "Director" means the state public health officer.

(b) The department shall, in consultation with the California Health Alliance, develop a diabetes risk reduction pilot program within 24 counties to analyze and report the outcomes from integrative care to the causes of diabetes through proactive prevention.

(c) The program shall include all of the following components:

(1) The use of information technology and media to facilitate and reinforce messages of the benefits of more nutritious whole foods, including fresh fruits and vegetables, seeds, nuts, and herbs along with good hydration. These messages and resources to increase physical activity shall be coupled with an appreciation of those who take these constructive steps. Specially trained pharmacists and nurses shall provide reminders that include, for example, the importance of mineral and water intake during

exercise or exposure to temperatures over 80°F or cold and dry conditions.

(2) The monitoring of risks that predict diabetes development or progression.

(3) Reporting, after review by the California Health Alliance Commission, to the director on the opportunities to improve quality of life outcomes and reduce lifetime costs through the application of the pilot program.

(4) Quarterly internal updates on how the program increases access, reinforces the benefits, and documents the results of the program. These quarterly updates shall be delivered to the commission no later than 30 days after the close of each quarter and to the department at least annually.

(5) Strategies to reduce diabetes risk within low-income, at-risk communities and populations.

(6) Strategies to promote the health of food stamp recipients and reduce health risk behaviors. These strategies shall be a priority of the program.

(7) Inclusion of the federal Centers for Disease Control and Prevention's Diabetes Prevention Guidelines to document the risk and harm reduction as well as to document the outcomes of this program.

(d) In communities selected to enroll in the pilot program, the department shall provide dedicated health professionals and support personnel to implement the pilot program, as recommended by the commission's Diabetes Risk Reduction Update.

(e) The department shall provide technical and logistical support as needed and predicated upon funding of the public-private partnership responsible for this pilot program.

(f) The department, in consultation with the State Department of Social Services, shall seek any necessary federal government approvals to allow the use of the Food Stamp Electronic Benefits Card, as provided in Chapter 3 (commencing with Section 10065) of Part 1 of Division 9 of the Welfare and Institutions Code, to provide incentives, and to implement this pilot program during the 2008–09 fiscal year.

(g) In developing the pilot program, the department shall include all of the following:

(1) At least two counties that have above the food stamp average county participation.

(2) At least two counties that have below the food stamp average county participation.

(3) At least two counties with above-average rates of diabetes.

(4) At least two counties with above-average rates of obesity.

(5) At least two counties with above-average rates of cardiovascular diseases.

(6) At least two counties with a predominantly Native American population.

(7) At least two counties with a predominantly African-American population.

(8) At least two counties with a predominantly Hispanic population.

(9) At least two urban counties.

(10) At least two rural counties.

(h) The department shall consider all of the following in choosing counties to participate in the program.

(1) The level of need in the community.

(2) The size of the food stamp population.

(3) The need for geographic diversity.

(4) The availability of technology in targeted counties and communities to implement the program and collect the data necessary to evaluate the pilot program.

(i) The department shall seek all necessary approvals to establish the pilot program, and shall apply for available, prequalified federal matching funds to support the work of the pilot program.

(j) The department shall develop, in consultation with the commission, a process for evaluating the effectiveness of the pilot program. The evaluation shall examine the impact of the various strategies employed in the pilot program on the use of healthier choices, particularly those aimed at diabetes risk reduction. The evaluation shall also test options that are appropriate to each community and implement those options with the highest likely benefit for that community. The department shall contract with the commission to conduct and perform real-time data collection and prompt data analysis of outcomes. The department shall make recommendations to the Legislature regarding the continuation of the pilot program, and any state or federal policy changes needed to support the goals of the pilot program.

(k) This section shall become inoperative on July 1 following the fourth fiscal year after the first appropriation is made in the annual Budget Act or other statute, and as of the following January 1 is repealed, unless a later enacted statute, that is enacted before that date deletes or extends that date.

~~SECTION 1. Section 131086 is added to the Health and Safety Code, to read:~~

~~131086. It is the intent of the Legislature enact legislation that establishes a statewide pilot project to provide free diabetes medicines and supplies to state, county, and municipal employees who have the disease, if the employee agree to undergo monthly counseling from specially trained pharmacists.~~

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1276
Author: Karnette
Bill Date: April 17, 2007, amended
Subject: Prescription containers: labels with purpose.
Sponsor: California Senior Legislature

STATUS OF BILL:

This bill is in the Business and Professions Committee and has not been set for hearing. This bill failed passage in this committee when heard on April 24, 2007.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require a patient's health care provider, when writing a prescription, to ask the patient if he or she wants the intended purpose of the drug to be indicated on the prescription label.

As amended, this bill excludes veterinarians from the labeling requirement and specifies that a person who violates the requirement for a 2nd or subsequent time may be subject to a citation and an administrative fine.

ANALYSIS:

The Under current law, Section 4076 of the Business and Professions Code, a prescription drug container label is required to contain certain information in addition to the drug name including: the names of the patient, prescriber and pharmacy; the date of issue; directions for use; strength and quantity of the drug dispensed; and expiration date. Currently, the condition or purpose for which the drug was prescribed may be indicated on the label, but only if the patient asks for the prescriber to include it on the prescription.

Many patients are unaware of their right to ask the prescriber to have the intended purpose included on the label. Individuals, including seniors, who have multiple prescriptions, have difficulty remembering the purpose of each medication and would greatly benefit from having it listed on the label.

According to the Medical Errors Panel report, "Prescription for Improving Patient Safety: Addressing Medication Errors," an estimated 150,000 Californians are sickened, injured or killed each year by medication errors, with an annual cost of $17.7 billion. One of the recommendations by the panel is to require the intended purpose of medication to be indicated on all prescriptions and included on the container label.

Adding the purpose of the drug to the label, for those who wish it, will help the patient, the care-giver and any other person who helps administer medications prevent illness or death due to medication errors.

This concept was introduced in the last legislative session but did not make it to the Governor's desk. The board supported this version of the bill because it does not require the purpose to be listed, but allowed for a physician to ask as long as there was no penalty if the provider forgets to ask the patient.

The amendments taken generally address the concerns of the board and allow for a year of "implementation time" so prescribers and pharmacists can get used to this requirement. Although the penalty of a possible cite and fine was added, similar to the language currently in law regarding the gynecological cancer brochure (B&P Code 2249), there is no requirement that the board issue a citation or fine. The bill specifies that no citation shall be issued and no fine shall be assessed for a first violation of the reporting requirement, however, a second or subsequent violation may result in a citation and administrative fine. This new section is effective January 1, 2009.

FISCAL: None

POSITION: Support

January 2, 2008

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1276

Introduced by Assembly Member Karnette

February 23, 2007

An act to amend Section 4076 of, and to add Section 4079 to, the Business and Professions Code, relating to pharmacies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, as amended, Karnette. Pharmacies: prescription containers: labels.

Existing law, the Pharmacy Law, makes the California State Board of Pharmacy responsible for the regulation of the practice of pharmacy. Existing law generally makes it a misdemeanor to knowingly violate the Pharmacy Law.

The Pharmacy Law prohibits a pharmacist from dispensing a prescription except in a container that meets the requirements of state and federal law and is correctly labeled with, among other things, the condition for which the drug was prescribed if requested by the patient and if the condition is indicated on the prescription.

This bill would eliminate the labeling requirement pertaining to the condition for which the drug was prescribed, and would instead require the container to be labeled with the intended purpose, as defined, of the drug if indicated on the prescription. The bill would, ~~except for veterinarians~~ *on and after January 1, 2009*, require a person who is authorized to write or issue a prescription, *other than a veterinarian,* to ask ~~the~~ *a* patient or his or her authorized representative whether to indicate the intended purpose of the prescription on the prescription's

label, *and would subject a person who violates this requirement for a 2nd or subsequent time to a citation and an administrative fine.*

Because the bill would specify additional requirements under the Pharmacy Law, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4076 of the Business and Professions
2 Code is amended to read:
3 4076. (a) A pharmacist shall not dispense any prescription
4 except in a container that meets the requirements of state and
5 federal law and is correctly labeled with all of the following:
6 (1) Except where the prescriber or the certified nurse-midwife
7 who functions pursuant to a standardized procedure or protocol
8 described in Section 2746.51, the nurse practitioner who functions
9 pursuant to a standardized procedure described in Section 2836.1,
10 or protocol, the physician assistant who functions pursuant to
11 Section 3502.1, the naturopathic doctor who functions pursuant
12 to a standardized procedure or protocol described in Section
13 3640.5, or the pharmacist who functions pursuant to a policy,
14 procedure, or protocol pursuant to either paragraph (4) of
15 subdivision (a) of Section 4052.1 or paragraph (4) of subdivision
16 (a) of Section 4052.2 orders otherwise, either the manufacturer's
17 trade name of the drug or the generic name and the name of the
18 manufacturer. Commonly used abbreviations may be used.
19 Preparations containing two or more active ingredients may be
20 identified by the manufacturer's trade name or the commonly used
21 name or the principal active ingredients.
22 (2) The directions for the use of the drug.
23 (3) The name of the patient or patients.
24 (4) The name of the prescriber or, if applicable, the name of the
25 certified nurse-midwife who functions pursuant to a standardized

procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either paragraph (4) of subdivision (a) of Section 4052.1 or paragraph (4) of subdivision (a) of Section 4052.2.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The intended purpose of the drug or drugs, if indicated on the prescription. As used in this section, "purpose" means a concise description of the symptom or symptoms that the drug is, or the drugs are, intended to treat.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or

other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either paragraph (4) of subdivision (a) of Section 4052.1 or paragraph (4) of subdivision (a) of Section 4052.2.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 2. Section 4079 is added to the Business and Professions Code, to read:

4079. *(a)* A person described in paragraph (2) of subdivision (a) of Section 4040 shall ask the patient, or the patient's authorized representative if the patient is either incapacitated or a minor who cannot provide informed consent, whether to indicate the intended purpose of the prescription on the prescription's label. This section does not apply to prescriptions dispensed by veterinarians.

(b) A prescriber who violates this section for a second or subsequent time may be cited and assessed an administrative fine. No citation shall be issued and no fine shall be assessed upon a first violation.

1 *(c) This section shall become operative on January 1, 2009.*
2 SEC. 3. No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1436
Author: Hernandez
Bill Date: May 30, 2007, amended
Subject: Scope of Practice – Nurse Practitioners
Sponsor: Author

STATUS OF BILL:

This bill is in the Business and Professions Committee and is set for hearing on January 15, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

As amended, this bill establishes in law the activities of certified nurse practitioners by setting forth a comprehensive scope of practice in which a nurse practitioner is authorized to engage. Further, this bill changes the supervision requirements for physician assistants.

ANALYSIS:

This bill would set forth the activities in which a nurse practitioner is authorized to engage, rather that leaving these activities to standardized procedures and protocols. Among other things, this bill would allow a nurse practitioner to:

- provide comprehensive health care services, including the diagnosis, psychosocial assessment, and management of health and illness needs, pursuant to the education and training of the nurse practitioner. This may include:
  - order, perform, and interpret laboratory, radiographic, and other diagnostic tests
  - identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health
- admit or discharge patients to/from hospitals, skilled nursing facilities, and other home or inpatient facilities in collaboration with a physician
- order drugs to be dispensed by a registered nurse, in effect supervising nurses

This bill defines the collaboration as both autonomous and cooperative decision making.

The bill would require a nurse practitioner to consult with or refer a patient to a physician or another appropriate health care provider if the referral will protect the health and welfare of the patient and if a situation or condition occurs in a patient that is beyond the nurse practitioner's knowledge and experience. This bill does not define the limits of this knowledge or experience, thus this is left to the interpretation of the Board of Registered Nursing, nurse experts, and the educational system.

This bill states that it does not expand the scope of practice of a registered nurse, but the elimination of supervision significantly changes the scope of practice of nurse practitioners. A patient will not know that the nurse practitioner is acting independently and thus may assume that there is physician oversight. This could lead to confusion and medical errors.

FISCAL: None

POSITION: Oppose

January 2, 2008

AMENDED IN ASSEMBLY MAY 30, 2007

AMENDED IN ASSEMBLY APRIL 17, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1436

Introduced by Assembly Member Hernandez
(~~Coauthors: Assembly Members Emmerson and Niello~~ *Coauthor: Assembly Member Niello*)

February 23, 2007

An act to amend Sections 2725, 2725.1, ~~2835.5, 2836.1, 3502.1, 3502.5, and 3516 of, to add Sections 2835.7 and 3502.01 to, and to repeal Section 3516.1 of,~~ *2835.5, and 2836.1 of, and to add Section 2835.7 to,* the Business and Professions Code, relating to th~~e healing arts~~ *nursing.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, Hernandez. ~~Healing arts~~ *Nurse practitioners*: scope of practice.

~~(1)~~ Existing law, the Nursing Practice Act, provides for the certification and regulation of nurse practitioners and nurse-midwives by the Board of Registered Nursing and specifies requirements for certification as a nurse practitioner. Under the act, the practice of nursing is defined, in part, as providing direct and indirect patient care service ordered by specified healing arts practitioners, including dispensing of drugs or devices upon their order in a clinic setting, as defined.

This bill would specify that the practice of nursing includes those actions taken pursuant to an order by a nurse practitioner or a nurse-midwife. The bill would provide that a nurse practitioner is

authorized to perform comprehensive health care services for which he or she is educationally prepared and competent to perform and to admit and discharge patients from health facilities in collaboration, as defined, with specified healing arts practitioners. The bill would deem specified authorizations by a physician and surgeon to include authorizations provided by a certified nurse practitioner. The bill would require a certified nurse practitioner to consult or refer a patient to another health care provider if a situation or condition ~~occurred~~ *occurs* beyond the nurse practitioner's knowledge and experience. The bill would revise the educational requirements for certification as a nurse practitioner and would require a nurse practitioner to be certified by a nationally recognized certifying body approved by the board.

Because this bill would impose additional requirements under the Nursing Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

~~(2) Existing law, the Physician Assistant Practice Act, provides for the licensure of physician assistants by the Physician Assistant Committee of the Medical Board of California. Under the act, a physician assistant is authorized to perform medical services under the supervision of a physician and surgeon who is limited to supervising no more than 2 physician assistants at a time, except in certain circumstances. The act prohibits a physician assistant from administering, providing, or issuing a drug order for controlled substances, as specified, without approval by the supervising physician and surgeon.~~

~~This bill would require a physician assistant and his or her supervising physician and surgeon to establish written supervision guidelines, as specified, and would require the supervising physician and surgeon to review medical records of a sample of patients treated by the physician assistant. The bill would delete the requirement of advance approval by a supervising physician and surgeon prior to a physician assistant administering, providing, or issuing a drug order for a controlled substance, as specified, and would delete the limitation on the number of physician assistants that may be supervised by a physician and surgeon.~~

~~(3)~~ The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2725 of the Business and Professions
2 Code is amended to read:
3 2725. (a) In amending this section at the 1973–74 session, the
4 Legislature recognizes that nursing is a dynamic field, the practice
5 of which is continually evolving to include more sophisticated
6 patient care activities. It is the intent of the Legislature in amending
7 this section at the 1973–74 session to provide clear legal authority
8 for functions and procedures that have common acceptance and
9 usage. It is the legislative intent also to recognize the existence of
10 overlapping functions between physicians and registered nurses
11 and to permit additional sharing of functions within organized
12 health care systems that provide for collaboration between
13 physicians and registered nurses. These organized health care
14 systems include, but are not limited to, health facilities licensed
15 pursuant to Chapter 2 (commencing with Section 1250) of Division
16 2 of the Health and Safety Code, clinics, home health agencies,
17 physicians' offices, and public or community health services.
18 (b) The practice of nursing within the meaning of this chapter
19 means those functions, including basic health care, that help people
20 cope with difficulties in daily living that are associated with their
21 actual or potential health or illness problems or the treatment
22 thereof, and that require a substantial amount of scientific
23 knowledge or technical skill, including all of the following:
24 (1) Direct and indirect patient care services that ensure the
25 safety, comfort, personal hygiene, and protection of patients; and
26 the performance of disease prevention and restorative measures.
27 (2) Direct and indirect patient care services, including, but not
28 limited to, the administration of medications and therapeutic agents,
29 necessary to implement a treatment, disease prevention, or
30 rehabilitative regimen ordered by and within the scope of licensure
31 of a physician, dentist, podiatrist, nurse practitioner, nurse-midwife,
32 or clinical psychologist, as defined by Section 1316.5 of the Health
33 and Safety Code.
34 (3) The performance of skin tests, immunization techniques,
35 and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

(c) "Standardized procedures," as used in this section, means either of the following:

(1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code through collaboration among administrators and health professionals including physicians and nurses.

(2) Policies and protocols developed through collaboration among administrators and health professionals, including physicians and nurses, by an organized health care system that is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

(d) Nothing in this section shall be construed to require approval of standardized procedures by the Division of Licensing of the Medical Board of California, or by the Board of Registered Nursing.

(e) No state agency other than the board may define or interpret the practice of nursing for those licensed pursuant to the provisions of this chapter, or develop standardized procedures or protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required under state or federal statute. "State agency" includes every state office, officer, department, division, bureau, board, authority, and commission.

SEC. 2. Section 2725.1 of the Business and Professions Code is amended to read:

2725.1. Notwithstanding any other provision of law, a registered nurse may dispense drugs or devices upon an order by

a licensed physician and surgeon, nurse practitioner, or ~~nurse midwife~~ *nurse-midwife* if the nurse is functioning within a licensed clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b) or (c) of Section 1206, of the Health and Safety Code.

No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy or keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51 or a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 13 (commencing with Section 4180) of Chapter 9.

SEC. 3. Section 2835.5 of the Business and Professions Code is amended to read:

2835.5. (a) A registered nurse who is holding himself or herself out as a nurse practitioner or who desires to hold himself or herself out as a nurse practitioner shall, within the time prescribed by the board and prior to his or her next license renewal or the issuance of an initial license, submit educational, experience, and other credentials and information as the board may require for it to determine that the person qualifies to use the title "nurse practitioner," pursuant to the standards and qualifications established by the board.

(b) Upon finding that a person is qualified to hold himself or herself out as a nurse practitioner, the board shall appropriately indicate on the license issued or renewed, that the person is qualified to use the title "nurse practitioner." The board shall also issue to each qualified person a certificate evidencing that the person is qualified to use the title "nurse practitioner."

(c) A person who has been found to be qualified by the board to use the title "nurse practitioner" prior to the effective date of this section, shall not be required to submit any further qualifications or information to the board and shall be deemed to have met the requirements of this section.

(d) On and after January 1, 2008, an applicant for initial qualification or certification as a nurse practitioner under this article who has not been qualified or certified as a nurse practitioner in California or any other state shall meet the following requirements:

(1) Hold a valid and active registered nursing license issued under this chapter.

(2) Possess a master's or doctoral degree in nursing.

(3) Satisfactorily complete a nurse practitioner program approved by the board.

(4) Be certified as a nurse practitioner by a nationally recognized certifying body approved by the board.

SEC. 4. Section 2835.7 is added to the Business and Professions Code, to read:

2835.7. (a) A certificate to practice as a nurse practitioner authorizes the holder to provide comprehensive health care services, including, but not limited to, diagnosis, psychosocial assessment, and management of health and illness needs, for which the nurse practitioner has been educationally prepared and is clinically competent to perform.

(b) Notwithstanding any other provision of law, a nurse practitioner in collaboration with a physician and surgeon or doctor of osteopathy, may admit patients to and discharge patients from hospitals, skilled nursing facilities, nursing facilities, home health care, hospice facilities, and other inpatient facilities. "Collaboration," for the purposes of this section, is defined as a relationship between a nurse practitioner and a physician and surgeon that includes both autonomous and cooperative decisionmaking, with the nurse practitioner and the physician and surgeon contributing their respective expertise.

(c) Notwithstanding any other provision of law, whenever any law or regulation requires a signature, certification, stamp, verification, affidavit, or endorsement by a physician and surgeon, it shall be deemed to include a signature, certification, stamp, verification, affidavit, or endorsement by a nurse practitioner.

(d) A nurse practitioner shall consult or refer a patient to a physician and surgeon or other health care provider if the referral will protect the health and welfare of the patient and a situation or condition occurs in a patient that is beyond the nurse practitioner's knowledge and experience.

(e) Nothing in this article shall be construed to limit, revise, or expand the current scope of practice of a registered nurse as defined in Section 2527.

(f) The board has sole authority to interpret the practice of nurse practitioners.

SEC. 5. Section 2836.1 of the Business and Professions Code is amended to read:

2836.1. Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon when the drugs or devices furnished or ordered are consistent with the practitioner's educational preparation or for which clinical competency has been established and maintained.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.

(c) (1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.

(2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.

(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration, as defined in Section 2835.7, on the development

of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.

(f) (1) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure.

(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

(g) (1) The board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed (1) at least six month's physician and surgeon-supervised experience in the furnishing or ordering of drugs or devices and (2) a course in pharmacology covering the drugs or devices to be furnished or ordered under this section.

(2) Nurse practitioners who are certified by the board and hold an active furnishing number, who are authorized through standardized procedures or protocols to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration, shall complete, as part of their continuing education requirements, a course including Schedule II controlled substances based on the standards developed by the board. The board shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance

with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.

(i) "Drug order" or "order" for purposes of this section means an order for medication ~~which~~ *that* is dispensed to or for an ultimate user, issued by a nurse practitioner as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

~~SEC. 6. Section 3502.01 is added to the Business and Professions Code, to read:~~

~~3502.01. (a) A physician assistant and his or her supervising physician and surgeon shall establish in writing, guidelines for the adequate supervision of the physician assistant. The supervising physician and surgeon may adopt protocols to satisfy this requirement for the performance of tasks by a physician assistant.~~

~~(b) The minimum content for a protocol governing diagnosis and management of a patient by a physician assistant shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, medications to recommend to the patient, and education to be provided to the patient. A protocol for procedures shall state the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the followup care for the patient.~~

~~(c) Protocols shall be developed by the physician and surgeon and adopted from, or referenced to, texts or other sources. The physician and surgeon and the physician assistant he or she supervises shall sign and date the protocols.~~

~~(d) The physician and surgeon shall review, countersign, and date a sample of medical records of patients treated within the last 30 days by the physician assistant he or she supervises and who functions under the protocols developed pursuant to this section.~~

~~The size of the sample shall be determined by the supervising physician and surgeon in his or her judgment. The physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.~~

~~SEC. 7. Section 3502.1 of the Business and Professions Code is amended to read:~~

~~3502.1. (a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).~~

~~(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.~~

~~(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.~~

~~(b) "Drug order" for purposes of this section means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their~~

~~supervising physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.~~

~~(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.~~

~~(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.~~

~~(2) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.~~

~~(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant. The requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.~~

~~(e) The medical record of any patient cared for by a physician assistant for whom the supervising physician and surgeon's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.~~

~~(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).~~

~~(g) The committee shall consult with the Medical Board of California and report during its sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.~~

~~SEC. 8. Section 3502.5 of the Business and Professions Code is amended to read:~~

~~3502.5. Notwithstanding any other provision of law, a physician assistant may perform those medical services permitted pursuant to Section 3502 during any state of war emergency, state of emergency, or state of local emergency, as defined in Section 8558 of the Government Code, and at the request of a responsible federal, state, or local official or agency, or pursuant to the terms of a mutual aid operation plan established and approved pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), regardless of whether the physician assistant's approved supervising physician is available to supervise the physician assistant, so long as a licensed physician is available to render the appropriate supervision. "Appropriate supervision" shall not require the personal or electronic availability of a supervising physician if that availability is not possible or practical due to the emergency. The local health officers and their designees may act as supervising physicians during emergencies without being subject to approval by the board. At all times, the local health officers or their designees supervising the physician assistants shall be licensed physicians and surgeons.~~

~~No responsible official or mutual aid operation plan shall invoke this section except in the case of an emergency that endangers the health of individuals. Under no circumstances shall this section~~

~~be invoked as the result of a labor dispute or other dispute concerning collective bargaining.~~

~~SEC. 9. Section 3516 of the Business and Professions Code is amended to read:~~

~~3516. Notwithstanding any other provision of law, a physician assistant licensed by the committee shall be eligible for employment or supervision by a physician and surgeon who is qualified to supervise physician assistants.~~

~~The board may restrict a physician and surgeon to supervising specific types of physician assistants including, but not limited to, restricting a physician and surgeon from supervising physician assistants outside of the field of specialty of the physician and surgeon.~~

~~SEC. 10. Section 3516.1 of the Business and Professions Code is repealed.~~

~~SEC. 11.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1444
Author: Emmerson
Bill Date: April 9, 2007, amended
Subject: Physical Therapists: Scope of Practice
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Business and Professions Committee and is set for hearing on January 15, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill, as amended, would revise the definition of "physical therapy" and would authorize a physical therapist to initiate treatment of conditions within the scope of practice of a physical therapist.

ANALYSIS:

The amendments to this bill would revise the definition of "physical therapy" to include examining and evaluating patients for referral to any person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or by a person licensed to practice dentistry, podiatric medicine, or chiropractic.

This bill expands the scope of practice for a physical therapist who has not had the authority to initiate treatment. This new authority would require that the physical therapist refer a patient for signs or symptoms that require treatment by another health care professional, but does not clarify, through training or oversight how the physical therapist would make that diagnosis. There are considerable negative consumer protection consequences of allowing a physical therapist to initiate treatment without oversight by a physician.

FISCAL: There would be no fiscal impact to the Medical Board.

POSITION: Oppose

January 2, 2008

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1444

Introduced by Assembly Member Emmerson
(Coauthor: Senator Alquist)

February 23, 2007

An act to amend Section 2620 of the Business and Professions Code, relating to physical therapists.

LEGISLATIVE COUNSEL'S DIGEST

AB 1444, as amended, Emmerson. Physical therapists: scope of practice.

Existing law, the Physical Therapy Practice Act, creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists. The act defines the term "physical therapy" for its purposes and makes it a crime to ~~practice physical therapy without a license issued by the board~~ *violate any of its provisions.*

This bill would ~~make nonsubstantive changes to this provision that defines "physical therapy."~~ *revise the definition of "physical therapy" and would authorize a physical therapist to initiate treatment of conditions within the scope of physical therapist practice and require a physical therapist to refer his or her patient to another specified healing arts practitioner if the physical therapist has reason to believe the patient has a condition requiring treatment or services beyond that scope of practice.*

Because the bill would specify additional requirements under the Physical Therapy Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2620 of the Business and Professions
2 Code is amended to read:
3 ~~2620. (a) Physical therapy means the art and science of~~
4 *2620. (a) Physical therapy means examining, evaluating, and*
5 *testing a person with mechanical, physiological, and developmental*
6 *movement-related impairments, functional limitations, and*
7 *disabilities or other health and movement-related conditions in*
8 *order to develop a plan of therapeutic intervention and to initiate*
9 *treatment. Physical therapy is the art and science of* physical or
10 corrective rehabilitation or of physical or corrective treatment of
11 a bodily or mental condition of a person by the use of the physical,
12 chemical, and other properties of heat, light, water, electricity,
13 sound, massage, and active, passive, and resistive exercise, and
14 shall include physical therapy evaluation, treatment planning,
15 instruction, and consultative services. The practice of physical
16 therapy includes the promotion and maintenance of physical fitness
17 to enhance the bodily movement related health and wellness of
18 individuals through the use of physical therapy interventions. The
19 use of roentgen rays and radioactive materials, for diagnostic and
20 therapeutic purposes, and the use of electricity for surgical
21 purposes, including cauterization, are not authorized under the
22 term "physical therapy" as used in this chapter, and a license issued
23 pursuant to this chapter does not authorize the diagnosis of disease.
24 *(b) A physical therapist may initiate treatment of conditions*
25 *within the scope of practice of a physical therapist. If at any time,*
26 *the physical therapist has reason to believe that the patient he or*
27 *she is treating has signs or symptoms of a condition that requires*
28 *treatment or services beyond the scope of practice of a physical*
29 *therapist, the physical therapist shall refer the patient to a person*

holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or by a person licensed to practice dentistry, podiatric medicine, or chiropractic.

~~(b)~~

(c) Nothing in this section shall be construed to restrict or prohibit other healing arts practitioners licensed or registered under this division from practice within the scope of their license or registration.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1643
Author: Niello (Coauthors: Assembly Members Benoit, Huff, Smyth, Strickland, Tran, and Villines)
Bill Date: February 23, 2007, introduced
Subject: Nurse Practitioners
Sponsor: Author and Assembly Republican Caucus Health Care Package

STATUS OF BILL:

This bill is in the Business and Professions Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill repeals the current prohibition against a physician supervising more than four nurse practitioners at one time.

ANALYSIS:

The ultimate goal of this legislation is to greatly expand the number of convenient and low-cost retail medical clinics. This would provide greater access to high-quality and affordable care for ill and injured Californians, decrease long waiting lines in hospital emergency rooms, free up highly-skilled ER physicians to focus on true emergency situations, and lower taxpayer expenditures.

The author contends that hundreds of clinics will open nationwide next year, but only six currently operate in California because of two state laws. State law requires health clinics to be owned and operated by licensed health care professionals. This issue is not being addressed by the authors in this bill. The second law requires at least one supervising physician for every four nurse practitioners and two physician assistants. In other states, the ratio requirement is larger, or does not exist, making operation of those clinics less expensive. A visit to the retail clinic can cost half as much as a visit to a traditional doctor's office. Uninsured or underinsured patients are targeted as the primary customer base for those retail clinics.

Clinics do not attempt to meet every health care need. Rather, they offer a low-cost, low-overhead approach to addressing needs not well-met by today's health care

system. Retail clinics dovetail well with the trend of consumer-driven health care. Using nurse practitioners and physician's assistants in greater numbers to work in these clinics will decrease healthcare costs while increasing access to care.

FISCAL: None

POSITION: Oppose unless amended

January 2, 2008

ASSEMBLY BILL No. 1643

Introduced by Assembly Member Niello
(Coauthors: Assembly Members Benoit, Huff, Smyth, Strickland, Tran, and Villines)

February 23, 2007

An act to amend Sections 2836.1, 2836.3, and 3640.5 of the Business and Professions Code, relating to nurse practitioners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1643, as introduced, Niello. Nurse practitioners.

Existing law does not prohibit a nurse practitioner from furnishing or ordering drugs or devices under conditions that require physician and surgeon supervision. For purposes of these conditions, a physician and surgeon is prohibited from supervising more than 4 nurse practitioners at one time.

This bill would repeal the prohibition against a physician and surgeon supervising more than 4 nurse practitioners at one time. It would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2836.1 of the Business and Professions
2 Code is amended to read:
3 2836.1. Neither this chapter nor any other provision of law
4 shall be construed to prohibit a nurse practitioner from furnishing
5 or ordering drugs or devices when all of the following apply:

(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon when the drugs or devices furnished or ordered are consistent with the practitioner's educational preparation or for which clinical competency has been established and maintained.

(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.

(c) (1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.

(2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.

(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.

~~(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.~~

(e) (1) Drugs or devices furnished or ordered by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed

upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure.

(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.

~~(g)~~

(f) (1) The board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed ~~(1)~~ *(A)* at least six ~~month's~~ *months'* physician and surgeon-supervised experience in the furnishing or ordering of drugs or devices and ~~(2)~~ *(B)* a course in pharmacology covering the drugs or devices to be furnished or ordered under this section.

(2) Nurse practitioners who are certified by the board and hold an active furnishing number, who are authorized through standardized procedures or protocols to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration, shall complete, as part of their continuing education requirements, a course including Schedule II controlled substances based on the standards developed by the board. The board shall establish the requirements for satisfactory completion of this subdivision.

~~(h)~~

(g) Use of the term "furnishing" in this section, in health facilities defined in Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.

~~(i)~~

(h) "Drug order" or "order" for purposes of this section means an order for medication which is dispensed to or for an ultimate user, issued by a nurse practitioner as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law,

(1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

SEC. 2. Section 2836.3 of the Business and Professions Code is amended to read:

2836.3. (a) The furnishing of drugs or devices by nurse practitioners is conditional on issuance by the board of a number to the nurse applicant who has successfully completed the requirements of subdivision ~~(g)~~ *(f)* of Section 2836.1. The number shall be included on all transmittals of orders for drugs or devices by the nurse practitioner. The board shall make the list of numbers issued available to the Board of Pharmacy. The board may charge the applicant a fee to cover all necessary costs to implement this section.

(b) The number shall be renewable at the time of the applicant's registered nurse license renewal.

(c) The board may revoke, suspend, or deny issuance of the numbers for incompetence or gross negligence in the performance of functions specified in Sections 2836.1 and 2836.2.

SEC. 3. Section 3640.5 of the Business and Professions Code is amended to read:

3640.5. Nothing in this chapter or any other provision of law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when all of the following apply:

(a) The drugs are furnished or ordered by a naturopathic doctor in accordance with standardized procedures or protocols developed by the naturopathic doctor and his or her supervising physician and surgeon.

(b) The naturopathic doctor is functioning pursuant to standardized procedure, as defined by subdivisions (a), (b), (d)~~,~~ ~~(e)~~ *(g)*, *and* (h), ~~and (i)~~ of Section 2836.1 and paragraph (1) of subdivision (c) of Section 2836.1, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the naturopathic doctor, and, where applicable, the facility administrator or his or her designee.

(c) The standardized procedure or protocol covering the furnishing of drugs shall specify which naturopathic doctors may furnish or order drugs, which drugs may be furnished or ordered under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the naturopathic doctor's competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing or ordering of drugs by a naturopathic doctor occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

(1) Collaboration on the development of the standardized procedure.

(2) Approval of the standardized procedure.

(3) Availability by telephonic contact at the time of patient examination by the naturopathic doctor.

(e) For purposes of this section, a physician and surgeon shall not supervise more than four naturopathic doctors at one time.

(f) Drugs furnished or ordered by a naturopathic doctor may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a naturopathic doctor, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the naturopathic doctor's standardized procedure relating to controlled substances shall be provided upon request, to a licensed pharmacist who dispenses drugs, when there is uncertainty about the naturopathic doctor furnishing the order.

(g) The bureau has certified that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be furnished or ordered under this section. The bureau shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include both of the following:

(1) Ordering a drug in accordance with the standardized procedure.

(2) Transmitting an order of a supervising physician and surgeon.

(i) For purposes of this section, "drug order" or "order" means an order for medication which is dispensed to or for an ultimate user, issued by a naturopathic doctor as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations.

(j) Notwithstanding any other provision of law, the following apply:

(1) A drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician.

(2) All references to prescription in this code and the Health and Safety Code shall include drug orders issued by naturopathic doctors.

(3) The signature of a naturopathic doctor on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 761
Author: Ridley-Thomas
Bill Date: July 18, 2007, amended
Subject: Healing arts: diversion and investigations
Sponsor: Medical Board of California
Board Position: Sponsor/Support

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would extend the dates on which the provisions for the diversion program are repealed from January 1, 2009 to January 1, 2011. It would have required the board to create and appoint a Diversion Advisory Council (DAC). It would have extended the sunset date of the Vertical Enforcement/Prosecution (E/P) model, extending the dates on which the provisions for the vertical (E/P) model are repealed from January 1, 2009 to January 1, 2011. It would authorize the board to employ special agents and to transition investigators who are peace officers to a special agents classification. It would delete the requirement that an investigator be under the direction of the deputy attorney general who is simultaneously assigned a complaint, and instead, required that investigator assist the deputy attorney general, who would be responsible for the legal direction of the case.

This bill was set to be amended to delete all the provisions related to Diversion once it passed out of the Assembly Appropriations Committee. This bill was held in the committee due to concerns related to the legislative reclassification of investigators.

The provisions of this bill regarding Vertical Enforcement/Prosecution were incorporated into SB 797 (see analysis) which was held on the Assembly Floor.

FISCAL: None

POSITION: Sponsor/Support

January 2, 2008

AMENDED IN ASSEMBLY JULY 18, 2007

AMENDED IN SENATE MARCH 27, 2007

SENATE BILL No. 761

Introduced by Senator Ridley-Thomas

February 23, 2007

An act to amend Sections 2006, *2020,* and 2358 of, and to add Section 2347 to, the Business and Professions Code, and to amend Sections 12529, 12529.5, and 12529.6 of the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 761, as amended, Ridley-Thomas. Healing arts: diversion: investigations.

Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Existing law, until July 1, 2010, authorizes the board to employ an executive director and to employ investigators, legal counsel, medical consultants, and other assistance as it deems necessary.

This bill would also authorize the board to employ special agents, and would require the board, commencing on July 1, 2008, to transition investigators who are peace officers and who handle the most complex and varied types of disciplinary investigations into a special agent classification, as specified. The bill would require the first reclassification to be completed on or before June 30, 2009.

~~Existing law, the~~

The Medical Practice Act~~,~~ provides for the Division of Medical Quality of the Medical Board of California to oversee diversion programs for physician and surgeons with impairment due to abuse of drugs or alcohol, or due to mental or physical illness. Under existing

law, these provisions become inoperative on July 1, 2008, and are repealed on January 1, 2009.

This bill would extend the dates on which the provisions become inoperative to July 1, 2010, and would extend the dates on which the provisions are repealed to January 1, 2011. The bill would also require the board to create and appoint a Diversion Advisory Council. The council would be required to make recommendations and provide clinical quality improvement advice on matters specified by the board or a committee of the board. The council would also be required to elect a chairperson who would be required to report to the board, or a committee of the board, at its regularly scheduled meetings, as specified.

Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. Existing law requires that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. Existing law also simultaneously assigns a complaint received by the medical board to an investigator and a deputy attorney general in the Health Quality Enforcement Section, *and provides that, for the duration of the assignment, the investigator is under the direction of the deputy attorney general.* Existing law makes these provisions inoperative on July 1, 2008, and repeals them on January 1, 2009, unless a later enacted statute deletes or extends those dates.

This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, unless a later enacted statute deletes or extends those dates, and would make other related changes. *The bill would delete the requirement that an investigator be under the direction of the deputy attorney general simultaneously assigned to a complaint, and would instead require that the investigator assist the deputy attorney general, who would be responsible for legal case direction.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2006 of the Business and Professions
2 Code is amended to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions, shall be deemed to refer to an investigation conducted by employees of the Department of Justice.

(b) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 2020 of the Business and Professions Code is amended to read:

2020. *(a)* The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ *special agents,* investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. ~~The~~

(b) The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. ~~Investigators~~

(c) Investigators employed by the board shall be provided special training in investigating medical practice activities.

~~The~~

(d) The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it. ~~This~~

(e) The board shall begin the transition of investigators who are peace officers and who handle the most complex and varied types of disciplinary investigations into the special agent classification used by the Attorney General pursuant to Article 6 (commencing with Section 12570) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code. The first reclassification shall be initiated on or before July 1, 2008, and shall be completed on or before June 30, 2009.

(f) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 2.~~

SEC. 3. Section 2347 is added to the Business and Professions Code, to read:

2347. (a) The board shall create and appoint a Diversion Advisory Council.

(b) The council shall make recommendations and provide clinical quality improvement advice on matters specified by the board or a committee of the board. The council shall elect from its membership a chairperson. The chairperson, or his or her designee, shall report to the board, or a committee of the board, at its regularly scheduled meetings.

(c) For purposes of this section, "committee" means a committee created by the board.

~~SEC. 3.~~

SEC. 4. Section 2358 of the Business and Professions Code is amended to read:

2358. This article shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 4.~~

SEC. 5. Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the

most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 5.~~

SEC. 6. Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, 2010.

~~SEC. 6.~~

SEC. 7. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 7.~~

SEC. 8. Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, 2010.

~~SEC. 8.~~

SEC. 9. Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall~~, under the direction of the deputy attorney general,~~ *assist the deputy attorney general, who shall provide legal case direction, and shall* be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute,

1 that is enacted before January 1, 2011, deletes or extends the dates
2 on which it becomes inoperative and is repealed.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 797
Author: Ridley-Thomas
Bill Date: September 7, 2007, amended
Subject: Professions and Vocations
Sponsor: Author
Board Position: Support

STATUS OF BILL:

This bill is currently the Assembly Floor.

DESCRIPTION OF LEGISLATION:

This bill would extend the provisions of the Health Quality Enforcement Section within the Department of Justice which is responsible for investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, and would make other related changes.

The bill would specify that an investigator is not under the supervision of the deputy attorney general who is simultaneously assigned to a complaint. The bill would require the medical board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices. The bill would require the Medical Board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

FISCAL: Within existing resources.

POSITION: Support MBC provisions.

January 2, 2008

AMENDED IN ASSEMBLY SEPTEMBER 7, 2007

SENATE BILL **No. 797**

Introduced by Senator Ridley-Thomas

February 23, 2007

THIS COPY ONLY CONTAINS PAGES RELATED TO THE BOARD:

Pages 5 – 7, and 28 – 37

An act to amend Sections ~~7026.1 and 7028~~ *490, 2006, 2531, 2531.75, 2841, 2847, 3041.3, 4501, 4503, 4982, 4989.54, 4990.32, 4992.3, 5552.5, 7026.1, 7028, 7303, 8005, 22258, and 22259* of the Business and Professions Code, *and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code,* relating to ~~contractors~~ *professions and vocations*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Ridley-Thomas. ~~Contractors.~~ *Professions and vocations.*

~~Existing~~

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on certain bases, including the licensee's conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

This bill would specify that this authorization to suspend or revoke a license is in addition to any other action that a board is permitted to take against the licensee.

(2) Existing law, the Speech-Language Pathologists and Audiologists Licensure Act, establishes the Speech-Language Pathology and Audiology Board and provides for its issuance of a speech-language pathology license and an audiology license to qualified applicants and for its regulation of those licensees. Under existing law, the provisions

make recommendations to the Governor and the Legislature on this prosecution model by July 1, 2007.

This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, and would make other related changes. The bill would specify that an investigator is not under the supervision of the deputy attorney general simultaneously assigned to a complaint. The bill would require the medical board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices. The bill would also require the medical board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

(12) This bill would incorporate additional changes in Section 490 of the Business and Professions Code, proposed by AB 1025, to be operative only if AB 1025 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

(13) This bill would incorporate additional changes in Sections 12529 and 12529.5 of the Government Code, proposed by SB 1048, to be operative only if SB 1048 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

(14) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 490 of the Business and Professions Code*
2 *is amended to read:*
3 490. ~~A~~ *(a) In addition to any other action that a board is*
4 *permitted to take against a licensee, a* board may suspend or revoke
5 a license on the ground that the licensee has been convicted of a
6 crime, if the crime is substantially related to the qualifications,
7 functions, or duties of the business or profession for which the
8 license was issued.~~A~~

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action ~~which~~ *that* a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007–08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

SEC. 1.5 Section 490 of the Business and Professions Code is amended to read:

490. ~~A~~*(a) In addition to any other action that a board is permitted to take against a licensee, a* board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. ~~A~~

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications,

functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action ~~which~~ *that* a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence~~, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code~~.

(d) No license shall be suspended or revoked based solely on any criminal conviction that has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code, since that dismissal creates a presumption of rehabilitation for purposes of this section, unless the board provides substantial evidence to the contrary in writing to the person justifying the board's suspension or revocation of the license based solely on his or her dismissed conviction that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was made.

(e) The department shall annually prepare a report, to be submitted to the Legislature on October 1, that documents board suspensions or revocations of licenses based solely on dismissed criminal convictions as specified in subdivision (d).

(f) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007–08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

SEC. 2. Section 2006 of the Business and Professions Code is amended to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions,

(2) Paragraph (7) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by an employer described in paragraph (7) of subdivision (a).

(3) No person described in this subdivision as an employee may sign a tax return, unless that employee is otherwise exempt under this section, is registered as a tax preparer with the Council, or is an employee of either a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a).

(4) In the case of any employee of a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a), the exemption provided under this subdivision shall only apply to activities conducted by that employee that are within the scope of his or her employment.

(c) For purposes of this section, preparation of a tax return includes the inputting of tax data into a computer.

SEC. 20. Section 22259 of the Business and Professions Code is amended to read:

22259. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends that date on which it becomes inoperative and is repealed.

SEC. 21. Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed

to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 21.5 Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California ~~including all committees~~, *the California Board of Podiatric Medicine, the Board of Psychology, or any committee* under the jurisdiction of the ~~board~~ *Medical Board of California* or a division of the board~~, including the Board of Podiatric Medicine, and the Board of Psychology~~.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the

management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, *the Board of Psychology,* and the committees under the jurisdiction of the Medical Board of California or a division of the board~~, and the Board of Psychology,~~ with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1,~~2008~~ *2010*, and, as of January 1,~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1,~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, ~~2008~~ *2010.*

SEC. 22.5 Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California ~~including all committees~~, *the California Board of Podiatric Medicine, the Board of Psychology, or any committee* under the jurisdiction of the ~~board~~ *Medical Board of California* or a division of the board~~,~~ ~~including the Board of Podiatric Medicine, and the Board of Psychology~~, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the

most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, *the Board of Psychology,* and the committees under the jurisdiction of the Medical Board of California or a division of the board~~, and the Board of Psychology,~~ with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, ~~2008~~ *2010.*

SEC. 23. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010,* and, as of January 1, ~~2009~~ *2011,* is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011,*

deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23.5. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, *the California Board of Podiatric Medicine,* or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or ~~allied health committees, including the Board of Podiatric Medicine,~~ *committees* in designing and providing initial and in-service training programs for staff of the division, boards, or ~~allied health~~ committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, ~~the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology~~ *boards, or committees*, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24. Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of

California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, ~~2008~~ *2010*.

SEC. 24.5 Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of

California, *the California Board of Podiatric Medicine,* or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or ~~allied health committees, including the Board of Podiatric Medicine,~~ *committees* in designing and providing initial and in-service training programs for staff of the division, boards, or ~~allied health~~ committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, ~~the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology~~ *boards, or committees,* as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, ~~2008~~ *2010.*

SEC. 26. Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety

of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical *enforcement and* prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction *but not the supervision* of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

(e) It is the intent of the Legislature to enhance the vertical enforcement and prosecution model as set forth in subdivision (a). The Medical Board of California shall do both of the following:

(1) Increase its computer capabilities and compatibilities with the Health Quality Enforcement Section in order to share case information.

(2) Establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in

the same offices, as appropriate, in order to carry out the intent of the vertical enforcement and prosecution model.

~~(e)~~

(f) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that is enacted before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 12529.7 of the Government Code is amended to read:

12529.7. By July 1, ~~2007~~ *2009*, the Medical Board of California, in consultation with the Department of Justice, the Department of Consumer Affairs, the Department of Finance, and the Department of Personnel Administration, shall report and make recommendations to the Governor and the Legislature on the vertical *enforcement and* prosecution model created under Section 12529.6.

SEC. 28. Section 1.5 of this bill incorporates amendments to Section 490 of the Business and Professions Code proposed by both this bill and AB 1025. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 490 of the Business and Professions Code, and (3) this bill is enacted after AB 1025, in which case Section 1 of this bill shall not become operative.

SEC. 29. Sections 21.5 and 22.5 of this bill incorporate amendments to Section 12529 of the Government Code proposed by both this bill and SB 1048. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12529 of the Government Code, and (3) this bill is enacted after SB 1048, in which case Sections 21 and 22 of this bill shall not become operative.

SEC. 30. Sections 23.5 and 24.5 of this bill incorporate amendments to Section 12529.5 of the Government Code proposed by both this bill and SB 1048. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12529.5 of the Government Code, and (3) this bill is enacted after SB 1048, in which case Sections 23 and 24 of this bill shall not become operative.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 809
Author: Ashburn
Bill Date: March 26, 2007, as amended
Subject: Scope of Practice -- Nurse Practitioners
Sponsor: Author

STATUS OF BILL:

This bill has been referred to the Senate Business, Professions and Economic Development Committee and is set for hearing on January 14, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill establishes in law the activities of certified nurse practitioners by setting forth the scope of practice in which a nurse practitioner is authorized to engage.

ANALYSIS:

This bill would set forth the activities that a nurse practitioner is authorized to engage in, and would delete the requirement that the board consult with physicians and surgeons in establishing categories of nurse practitioners. Among other things, this bill would allow a nurse practitioner to:

- establish diagnoses for physical, mental, or emotional ailments or potential ailments
- order, perform, and interpret laboratory, radiographic, and other diagnostic tests
- identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health
- order drugs to be dispensed by a registered nurse, allowing nurse practitioners to supervise other nurses

The bill would require a nurse practitioner to consult or refer a patient to a physician and surgeon or another health care provider if the referral will protect the health and welfare of the patient and if a situation or condition occurs in a patient that is beyond the nurse practitioner's knowledge and experience. This bill leaves this interpretation up to the individual nurse practitioner, the Board of Registered Nursing, or lawsuit.

These proposed changes to law makes a nurse practitioner, in many ways, equal to a general medicine specialist.

In line with these additional responsibilities, the bill also would, among other things:

- revise the educational requirements for certification as a nurse practitioner by deleting the educational option of a master's degree in a clinical field related to nursing yet allowing a doctorate of nursing degree.
- require a nurse practitioner to be certified by a nationally recognized certifying body approved by the board.

Under current law, the Board of Registered Nursing shall consult with, among others, physicians and surgeons with expertise in the nurse practitioner field, as the Board sets standards and other parameters governing the practice of nurse practitioners.

This bill deletes the requirement for consultation with physicians who have experience in the nurse practitioner field.

Lastly, the bill would require that any regulations promulgated by a state department, board, commission, or bureau that affect the scope of practice of a nurse practitioner shall be developed in consultation with the Board of Registered Nursing.

FISCAL: None

POSITION: Oppose

January 2, 2008

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL No. 809

Introduced by ~~Senator Ashburn~~ *Senators Ashburn and Runner*

February 23, 2007

~~An act relating to primary care services.~~ *An act to amend Sections 2725.1, 2835.5, 2836, 2836.1, 2836.2, 2836.3, 3640, 3640.5, 4024, 4040, 4060, 4061, 4076, 4170, and 4174 of, and to add Section 2835.7 to, the Business and Professions Code, to amend Sections 11150 and 120582 of the Health and Safety Code, and to amend Sections 14111, 14111.5, and 16952 of the Welfare and Institutions Code, relating to nursing.*

LEGISLATIVE COUNSEL'S DIGEST

SB 809, as amended, Ashburn. ~~Primary care clinics: underserved areas: improved access.~~ *Nurse practitioners: scope of practice.*

(1) Existing law, the Nursing Practice Act, provides for the certification and regulation of nurse practitioners and nurse-midwives by the Board of Registered Nursing and requires the board to establish categories of, and standards for, nurse practitioners in consultation with specified health care practitioners, including physicians and surgeons with expertise in the nurse practitioner field. Existing law requires nurse practitioners to meet certain requirements, including educational requirements, and authorizes a nurse practitioner who has been issued a board number for the furnishing or ordering of drugs to furnish or order drugs under certain conditions, including pursuant to standardized procedures or protocols and under the supervision of a physician and surgeon. Existing law prohibits a physician and surgeon from supervising more than 4 nurse practitioners at one time. A violation of the Nursing Practice Act is a crime.

This bill would set forth the activities that a nurse practitioner is authorized to engage in, and would delete the requirement that the board consult with physicians and surgeons in establishing categories of nurse practitioners. The bill would revise the educational requirements for certification as a nurse practitioner and would require a nurse practitioner to be certified by a nationally recognized certifying body approved by the board. The bill would allow a nurse practitioner to prescribe drugs and devices if he or she has been certified by the board to have satisfactorily completed at least 6 months of supervised experience in the prescribing of drugs and devices and if such prescribing is consistent with his or her education or established clinical competency, would delete the requirement of standardized procedures and protocols, and would delete the requirement of physician supervision. The bill would require that a nurse practitioner be issued a board number prior to prescribing drugs and devices and would allow revocation or suspension or denial of a board number for incompetence or gross negligence. The bill would delete the prohibition against a physician and surgeon supervising more than 4 nurse practitioners at one time.

Because this bill would impose additional requirements under the Nursing Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

(2) Existing law, the Medi-Cal Act, provides for the Medi-Cal program, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. The act authorizes certain covered health care services provided under in a long-term health care facility to be delegated to a nurse practitioner if specified conditions are met, including mandatory supervision by a physician and surgeon.

This bill would remove the requirement of mandatory supervision of the nurse practitioner by a physician and surgeon in order for the services to be delegated to a nurse practitioner.

(3) Existing law, the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act, authorizes a county to establish an emergency medical services fund for reimbursement of emergency medical service related costs. Existing law makes physician and surgeons eligible to receive payment from the fund for patient care services, as specified, performed by a nurse practitioner or nurse-midwife under the direct supervision of a physician and surgeon.

This bill would also make a nurse practitioner eligible to receive payment for those patient care services and would remove the requirement of supervision of the services by a physician and surgeon. The bill would authorize a nurse practitioner to receive reimbursement for emergency services and inpatient and outpatient obstetric pediatric services that the nurse practitioner determines to be medically necessary.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for licensing of clinics by the State Department of Health Services, and establishes the Primary Clinic Revolving Fund for the purposes of providing payments to clinics. Effective July 1, 2007, these duties will be transferred to the State Department of Public Health.~~

~~This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would improve access to primary care in underserved areas by encouraging establishment of additional clinics by allowing registered nurse practitioners greater flexibility to operate clinics.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 2725.1 of the Business and Professions*
2 *Code is amended to read:*
3 2725.1. Notwithstanding any other provision of law, a
4 registered nurse may dispense drugs or devices upon an order by
5 a licensed physician and surgeon*, nurse practitioner, or nurse*
6 *midwife* if the nurse is functioning within a licensed clinic as
7 defined in paragraphs (1) and (2) of subdivision (a) of Section
8 1204 of, or within a clinic as defined in subdivision (b) or (c) of
9 Section 1206, of the Health and Safety Code.
10 No clinic shall employ a registered nurse to perform dispensing
11 duties exclusively. No registered nurse shall dispense drugs in a
12 pharmacy~~,~~ *or* keep a pharmacy, open shop, or drugstore for the

retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51 or a nurse practitioner ~~who functions pursuant to a standardized procedure described in Section 2836.1, or protocol~~, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 13 (commencing with Section 4180) of Chapter 9.

SEC. 2. Section 2835.5 of the Business and Professions Code is amended to read:

2835.5. (a) A registered nurse who is holding himself or herself out as a nurse practitioner or who desires to hold himself or herself out as a nurse practitioner shall, within the time prescribed by the board and prior to his or her next license renewal or the issuance of an initial license, submit educational, experience, and other credentials and information as the board may require for it to determine that the person qualifies to use the title "nurse practitioner," pursuant to the standards and qualifications established by the board.

(b) Upon finding that a person is qualified to hold himself or herself out as a nurse practitioner, the board shall appropriately indicate on the license issued or renewed, that the person is qualified to use the title "nurse practitioner." The board shall also issue to each qualified person a certificate evidencing that the person is qualified to use the title "nurse practitioner."

(c) A person who has been found to be qualified by the board to use the title "nurse practitioner" prior to the effective date of this section, shall not be required to submit any further qualifications or information to the board and shall be deemed to have met the requirements of this section.

(d) On and after January 1, 2008, an applicant for initial qualification or certification as a nurse practitioner under this article who has not been qualified or certified as a nurse practitioner in California or any other state shall meet the following requirements:

(1) Hold a valid and active registered nursing license issued under this chapter.

(2) Possess a master's degree in nursing~~, a master's degree in a clinical field related to nursing,~~ or a ~~graduate~~ *doctoral* degree in nursing.

(3) Satisfactorily complete a nurse practitioner program approved by the board.

(4) Be certified as a nurse practitioner by a nationally recognized certifying body approved by the board.

SEC. 3. Section 2835.7 is added to the Business and Professions Code, to read:

2835.7. (a) A nurse practitioner may do all of the following:

(1) Perform a comprehensive history and physical examination.

(2) Establish diagnoses for physical, mental, or emotional ailments or potential ailments.

(3) Admit patients to hospitals and nursing facilities.

(4) Order, perform, and interpret laboratory, radiographic, and other diagnostic tests.

(5) Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.

(6) Perform therapeutic procedures that the nurse practitioner is qualified by education and experience to perform.

(7) Prescribe treatments.

(8) Prescribe and dispense medications when granted authority by the board.

(9) Refer patients to appropriate licensed physician and surgeons or other health care providers.

(10) Provide emergency care.

(11) Perform additional acts that the nurse practitioner is educationally prepared and clinically competent to perform.

(12) Sign death certificates, return-to-work, school certificates, and other related health certification forms.

(13) Certify incapacity for the purpose of activating durable power of attorney for health care.

(14) Sign handicapped parking applications.

(15) Order home health services.

(16) Order durable medical equipment.

(17) Order home schooling or tutoring.

(b) A nurse practitioner shall consult or refer a patient to a physician and surgeon or another health care provider if the referral will protect the health and welfare of the patient and if a

situation or condition occurs in a patient that is beyond the nurse practitioner's knowledge and experience.

SEC. 4. Section 2836 of the Business and Professions Code is amended to read:

2836. (a) The board shall establish categories of nurse practitioners and standards for nurses to hold themselves out as nurse practitioners in each category. Such standards shall take into account the types of advanced levels of nursing practice ~~which~~ *that* are or may be performed and the clinical and didactic education, experience, or both needed to practice safely at those levels. In setting ~~such~~ *the* standards, the board shall consult with nurse practitioners~~, physicians and surgeons with expertise in the nurse practitioner field,~~ and health care organizations utilizing nurse practitioners. Established standards shall apply to persons without regard to the date of meeting such standards. ~~If the board sets standards for use of nurse practitioner titles which include completion of an academically affiliated program, it shall provide equivalent standards for registered nurses who have not completed such a program.~~

(b) Any regulations promulgated by a state department*, board, commission, or bureau* that affect the scope of practice of a nurse practitioner shall be developed in consultation with the board.

SEC. 5. Section 2836.1 of the Business and Professions Code is amended to read:

~~2836.1. Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:~~

~~(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon~~

2836.1. (a) A nurse practitioner may prescribe drugs and devices when the drugs or devices ~~furnished or ordered~~ *prescribed* are consistent with the practitioner's educational preparation or for which clinical competency has been established and maintained.

~~(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.~~

~~(c) (1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.~~

~~(2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.~~

~~(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by telephonic contact at the time of patient examination by the nurse practitioner.~~

~~(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.~~

~~(f) (1)~~

(b) Drugs or devices ~~furnished or ordered~~ *prescribed* by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) ~~and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure~~.

~~(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed~~

~~pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.~~

~~(g) (1) The~~

(c) A nurse practitioner may not prescribe drugs or devices under this section unless the board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed~~ (1)~~ at least six~~ month's physician and surgeon-supervised~~ *months' supervised* experience in the~~ furnishing or ordering~~ *prescribing* of drugs~~ or~~ *and* devices~~ and (2) a course in pharmacology covering the drugs or devices to be furnished or ordered under this section~~.

~~(2) Nurse practitioners who are certified by the board and hold an active furnishing number, who are authorized through standardized procedures or protocols to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration, shall complete, as part of their continuing education requirements, a course including Schedule II controlled substances based on the standards developed by the board. The board shall establish the requirements for satisfactory completion of this subdivision.~~

~~(h) Use of the term "furnishing" in this section, in health facilities defined in Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.~~

~~(i) "Drug order" or "order" for purposes of this section means an order for medication which is dispensed to or for an ultimate user, issued by a nurse practitioner as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.~~

SEC. 6. Section 2836.2 of the Business and Professions Code is amended to read:

2836.2. ~~Furnishing or ordering of drugs or devices by nurse practitioners is defined to mean the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure.~~ All nurse practitioners who are authorized pursuant to Section ~~2831.1~~ *2836.1* to ~~furnish or issue drug orders~~ *prescribe* for controlled substances shall register with the United States Drug Enforcement Administration.

SEC. 7. Section 2836.3 of the Business and Professions Code is amended to read:

2836.3. (a) The ~~furnishing~~ *prescribing* of drugs or devices by nurse practitioners is conditional on issuance by the board of a number to the nurse *practitioner* applicant who has successfully completed the requirements of subdivision ~~(g)~~ *(c)* of Section 2836.1. The number shall be included on all ~~transmittals of orders~~ *prescriptions* for drugs or devices by the nurse practitioner. The board shall make the list of numbers issued available to the Board of Pharmacy. The board may charge the applicant a fee to cover all necessary costs to implement this section.

(b) The number shall be renewable at the time of the applicant's registered nurse license renewal.

(c) The board may revoke, suspend, or deny issuance of the numbers for incompetence or gross negligence in the performance of functions specified in Sections 2836.1 and 2836.2.

SEC. 8. Section 3640 of the Business and Professions Code is amended to read:

3640. (a) A naturopathic doctor may order and perform physical and laboratory examinations for diagnostic purposes, including, but not limited to, phlebotomy, clinical laboratory tests, speculum examinations, orificial examinations, and physiological function tests.

(b) A naturopathic doctor may order diagnostic imaging studies, including X-ray, ultrasound, mammogram, bone densitometry, and others, consistent with naturopathic training as determined by the bureau, but shall refer the studies to an appropriately licensed health care professional to conduct the study and interpret the results.

(c) A naturopathic doctor may dispense, administer, order, and prescribe or perform the following:

(1) Food, extracts of food, ~~nutraceuticals~~ *neutraceuticals*, vitamins, amino acids, minerals, enzymes, botanicals and their

extracts, botanical medicines, homeopathic medicines, all dietary supplements and nonprescription drugs as defined by the federal Food, Drug, and Cosmetic Act, consistent with the routes of administration identified in subdivision (d).

(2) Hot or cold hydrotherapy; naturopathic physical medicine inclusive of the manual use of massage, stretching, resistance, or joint play examination but exclusive of small amplitude movement at or beyond the end range of normal joint motion; electromagnetic energy; colon hydrotherapy; and therapeutic exercise.

(3) Devices, including, but not limited to, therapeutic devices, barrier contraception, and durable medical equipment.

(4) Health education and health counseling.

(5) Repair and care incidental to superficial lacerations and abrasions, except suturing.

(6) Removal of foreign bodies located in the superficial tissues.

(d) A naturopathic doctor may utilize routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular.

(e) The bureau may establish regulations regarding ocular or intravenous routes of administration that are consistent with the education and training of a naturopathic doctor.

(f) Nothing in this section shall exempt a naturopathic doctor from meeting applicable licensure requirements for the performance of clinical laboratory tests.

~~(g) The authority to use all routes for furnishing prescription drugs as described in Section 3640.5 shall be consistent with the oversight and supervision requirements of Section 2836.1.~~

SEC. 9. Section 3640.5 of the Business and Professions Code is amended to read:

3640.5. Nothing in this chapter or any other provision of law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when all of the following apply:

(a) The drugs are furnished or ordered by a naturopathic doctor in accordance with standardized procedures or protocols developed by the naturopathic doctor and his or her supervising physician and surgeon.

(b) The naturopathic doctor is functioning pursuant to standardized procedure~~, as defined by subdivisions (a), (b), (d), (e), (h), and (i) of Section 2836.1 and paragraph (1) of subdivision~~

~~(c) of Section 2836.1,~~ or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the naturopathic doctor, and, where applicable, the facility administrator or his or her designee.

(c) The standardized procedure or protocol covering the furnishing of drugs shall specify which naturopathic doctors may furnish or order drugs, which drugs may be furnished or ordered under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the naturopathic doctor's competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing or ordering of drugs by a naturopathic doctor occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

(1) Collaboration on the development of the standardized procedure.

(2) Approval of the standardized procedure.

(3) Availability by telephonic contact at the time of patient examination by the naturopathic doctor.

(e) For purposes of this section, a physician and surgeon shall not supervise more than four naturopathic doctors at one time.

(f) Drugs furnished or ordered by a naturopathic doctor may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a naturopathic doctor, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the naturopathic doctor's standardized procedure relating to controlled substances shall be provided upon request, to a licensed pharmacist who dispenses drugs, when there is uncertainty about the naturopathic doctor furnishing the order.

(g) The bureau has certified that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology

covering the drugs to be furnished or ordered under this section. The bureau shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include both of the following:

(1) Ordering a drug in accordance with the standardized procedure.

(2) Transmitting an order of a supervising physician and surgeon.

(i) For purposes of this section, "drug order" or "order" means an order for medication which is dispensed to or for an ultimate user, issued by a naturopathic doctor as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations.

(j) Notwithstanding any other provision of law, the following apply:

(1) A drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician.

(2) All references to prescription in this code and the Health and Safety Code shall include drug orders issued by naturopathic doctors.

(3) The signature of a naturopathic doctor on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

SEC. 10. Section 4024 of the Business and Professions Code is amended to read:

4024. (a) Except as provided in subdivision (b), "dispense" means the furnishing of drugs or devices upon a prescription from a physician *and surgeon*, dentist, optometrist, podiatrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

(b) "Dispense" also means and refers to the furnishing of drugs or devices directly to a patient by a physician *and surgeon*, dentist, optometrist, podiatrist, or veterinarian, or by a certified

nurse-midwife, nurse practitioner, naturopathic doctor, or physician assistant acting within the scope of his or her practice.

SEC. 11. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, ~~2836.1,~~ 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(2) Issued by a physician *and surgeon*, dentist, optometrist, podiatrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, ~~2836.1,~~ 3502.1, or 3460.5, by a certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, or naturopathic doctor licensed in this state, or pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 by a pharmacist licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug

prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 12. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician *and surgeon*, dentist, podiatrist, optometrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, ~~a nurse practitioner pursuant to Section 2836.1,~~ a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician *and surgeon*, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, ~~a nurse practitioner,~~ a physician assistant, or a naturopathic doctor~~,~~ to order his or her own stock of dangerous drugs and devices.

SEC. 13. Section 4061 of the Business and Professions Code is amended to read:

4061. (a) No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician *and surgeon*, dentist, podiatrist, optometrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7. However, a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ a physician assistant who functions pursuant to a protocol described in Section 3502.1, or a naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5~~,~~ may sign for the request and receipt of complimentary samples of a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician *and surgeon.* A review process, consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the complimentary samples requested and received by a ~~nurse practitioner,~~ certified nurse-midwife, physician assistant, or naturopathic doctor~~,~~ shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, or naturopathic doctor, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

(c) Nothing in this section is intended to expand the scope of practice of a certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, or naturopathic doctor.

SEC. 14. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a

policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 15. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ a physician assistant who functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section 3640.5, may hand to a patient of the supervising physician and surgeon *or nurse practitioner* a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, *a nurse practitioner,* or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a ~~physician's~~ *physician* and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, ~~or~~ a certificate to practice podiatry, *or a license and certification as a nurse practitioner,* and who is duly registered by the Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, ~~or~~ the Board of Osteopathic Examiners, *or the Board of Registered Nursing* of this state.

SEC. 16. Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the drug order of ~~a nurse practitioner functioning pursuant to Section 2836.1 or~~ a certified nurse-midwife functioning pursuant to Section 2746.51, ~~a drug~~

~~order of~~ a physician assistant functioning pursuant to Section 3502.1, or a naturopathic doctor functioning pursuant to Section 3640.5, or the order of a pharmacist acting under Section 4052.

SEC. 17. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician *and surgeon*, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of ~~Section~~ *Sections 2835.7 and* 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

SEC. 18. Section 120582 of the Health and Safety Code is amended to read:

120582. (a) Notwithstanding any other provision of law, a physician and surgeon *or a nurse practitioner* who diagnoses a sexually transmitted chlamydia, gonorrhea, or other sexually transmitted infection, as determined by the department, in an individual patient may prescribe, dispense, furnish, or otherwise provide prescription antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. The department may adopt regulations to implement this section.

(b) Notwithstanding any other provision of law, ~~a nurse practitioner pursuant to Section 2836.1 of the Business and~~

~~Professions Code,~~ a certified nurse-midwife pursuant to Section 2746.51 of the Business and Professions Code~~,~~ and a physician assistant pursuant to Section 3502.1 of the Business and Professions Code may dispense, furnish, or otherwise provide prescription antibiotic drugs to the sexual partner or partners of a patient with a diagnosed sexually transmitted chlamydia, gonorrhea, or other sexually transmitted infection, as determined by the department, without examination of the patient's sexual partner or partners.

SEC. 19. Section 14111 of the Welfare and Institutions Code is amended to read:

14111. (a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed by Medicare, a physician and surgeon may delegate any of the following to a nurse practitioner:

(1) Alternating visits required by federal law and regulations with a physician and surgeon.

(2) Any duties consistent with federal law and regulations within the scope of practice of nurse practitioners, so long as all of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

~~(B) The medical care of each resident is supervised by a physician and surgeon.~~

~~(C)~~

(B) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal law or regulation.

~~(c) All responsibilities delegated to a nurse practitioner pursuant to this section shall be performed under the supervision of the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.~~

~~(d)~~

(c) No task that is required by federal law or regulation to be performed personally by a physician *and surgeon* may be delegated to a nurse practitioner.

~~(e)~~

(d) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ

nurse practitioners so long as that employment is consistent with federal law and within the scope of practice of a nurse practitioner.

SEC. 20. Section 14111.5 of the Welfare and Institutions Code is amended to read:

14111.5. (a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed under this chapter, a nurse practitioner may, to the extent consistent with his or her scope of practice, perform any of the following tasks otherwise required of a physician and surgeon:

(1) With respect to visits required by federal law or regulations, making alternating visits, or more frequent visits if the physician and surgeon is not available.

(2) Any duty or task that is consistent with federal and state law or regulation within the scope of practice of nurse practitioners, so long as all of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

~~(B) The medical care of each resident is supervised by a physician and surgeon.~~

~~(C)~~

(B) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal or state law or regulation.

~~(c) All responsibilities undertaken by a nurse practitioner pursuant to this section shall be performed in collaboration with the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.~~

~~(d)~~

(c) Except as provided in subdivisions (a) ~~to (c), inclusive~~ *and (b)*, any task that is required by federal law or regulation to be performed personally by a physician *and surgeon* may be delegated to a nurse practitioner who is not an employee of the long-term health care facility.

~~(e)~~

(d) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse practitioners so long as that employment is consistent with federal law and with the scope of practice of a nurse practitioner.

SEC. 21. Section 16952 of the Welfare and Institutions Code is amended to read:

16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.

(2) (A) Each county may encumber sufficient funds to reimburse physician *and surgeon* losses incurred during the fiscal year for which bills will not be received until after the fiscal year.

(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.

(C) All funds that are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Sections 16938 and 16980.

(b) (1) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician *and surgeon* services provided by ~~physicians~~ *physician and surgeons* employed by county hospitals.

(2) No physician *and surgeon* who provides physician *and surgeon* services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county ~~physician services account~~ *Physician Services Account* shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16809, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account, whether by the county or by the department through the emergency medical services contract-back program, shall be reimbursed by the account based on actual administrative costs, not to exceed 10 percent of the amount of the account.

(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer

this article, or the department, in the case of those CMSP counties electing to have the state administer this article on their behalf.

(f) The county Physician Services Account shall be used to reimburse~~ physicians~~ *physician and surgeons* for losses incurred for services provided during the fiscal year of allocation due to patients who do not have health insurance coverage for emergency services and care, who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government with the exception of claims submitted for reimbursement through Section 1011 of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(g) Nurse practitioners shall be eligible to receive payment for patient care services. Payment shall be limited to those claims that are substantiated by a medical record.

~~(g) Physicians~~

(h) Physician and surgeons shall be eligible to receive payment for patient care services provided by, or in conjunction with, a ~~properly credentialed nurse practitioner or~~ *licensed* physician's assistant for care rendered under the direct supervision of a physician and surgeon who is present in the facility where the patient is being treated and who is available for immediate consultation. Payment shall be limited to those claims that are substantiated by a medical record and that have been reviewed and countersigned by the supervising physician and surgeon in accordance with regulations established for the supervision of ~~nurse practitioners and~~ physician assistants in California.

~~(h)~~

(i) (1) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.

(2) It is the intent of this subdivision to allow reimbursement for all of the following:

(A) All inpatient and outpatient obstetric services~~ which~~ *that* are medically necessary, as determined by the attending physician *and surgeon or nurse practitioner*.

(B) All inpatient and outpatient pediatric services~~ which~~ *that* are medically necessary, as determined by the attending physician *and surgeon or nurse practitioner*.

~~(i)~~

(j) Any physician *and surgeon or nurse practitioner* may be reimbursed for up to 50 percent of the amount claimed pursuant to Section 16955 for the initial cycle of reimbursements made by the administering agency in a given year. All funds remaining at the end of the fiscal year shall be distributed proportionally, based on the dollar amount of claims submitted and paid to all ~~physicians~~ *physician and surgeons and nurse practitioners* who submitted qualifying claims during that year. The administering agency shall not disburse funds in excess of the total amount of a qualified claim.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. It is the intent of the Legislature to subsequently amend this act to include provisions that would improve access to primary care in underserved areas by encouraging establishment of additional clinics by allowing registered nurse practitioners greater flexibility to operate clinics.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 907
Author: Calderon
Bill Date: February 23, 2007, introduced
Subject: Physicians and surgeons: referrals
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate Business, Professions, and Economic Development Committee and is set for hearing on January 14, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would provide that a physician can lawfully provide compensation for a referral of an elective cosmetic procedure as long as specified conditions are met.

ANALYSIS:

Under current law, healing arts licensees are prohibited from offering, delivering, or accepting any rebate, refund, commission, discount, or other consideration as compensation for referring patients to any person. This bill would allow physicians to provide compensation for a referral as long as the following criteria are met:

- The referral is made by an employee of the physician.
- The referral is for an elective cosmetic procedure performed under local anesthetic.
- The individual referred made the initial contact.
- The physician charges no more than the usual fee he or she would charge for that procedure.
- The compensation does no exceed $250.
- The physician discloses the referral arrangement to the individual referred.

This bill would limit the referral fee to an employee of the physician who referred a person to the employer physician for a cosmetic surgery procedure. This opens the door to physicians providing/paying a referral fee. The author's office has not provided statistics on the number of referrals this might include, nor the justification for the need for this service.

FISCAL: None

POSITION: Recommendation: Oppose

January 2, 2008

SENATE BILL No. 907

Introduced by Senator Calderon

February 23, 2007

An act to add Section 650.03 to the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

SB 907, as introduced, Calderon. Physicians and surgeons: referrals.

Existing law, with certain exceptions, prohibits the offer, delivery, receipt, or acceptance by any healing arts licensee regulated by the Business and Professions Code or under the Chiropractic Initiative Act, of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, as compensation or an inducement for referring patients, clients, or customers to any person.

This bill would provide that it is not unlawful for a physician and surgeon to provide consideration for a referral for an elective cosmetic procedure if specified conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 650.03 is added to the Business and
2 Professions Code, to read:
3 650.03. Notwithstanding Section 650, or any other provision
4 of law, it shall not be unlawful for a physician and surgeon licensed
5 under this division to provide consideration for a referral if all of
6 the following conditions are satisfied:
7 (a) The referral is made by an employee of the physician and
8 surgeon.

(b) The referral is for an elective cosmetic procedure performed under local anesthetic.

(c) The individual referred made the initial contact or inquiry.

(d) The physician and surgeon charges no more than his or her usual and customary fee for the elective cosmetic procedure performed.

(e) The consideration does not exceed two hundred fifty dollars ($250).

(f) The physician and surgeon discloses the referral arrangement to the individual referred.

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Medical Board of California
2007 Tracker II - Legislative Bills
1/3/2008

BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
AB 54	Dymally	Health Care Coverage: Acupuncture	Health	03/08/07	
AB 64	Berg	Uniform Emergency Volunteer Health Practitioners Act	Sen. Rules	07/11/07	
AB 158	Ma	Public Health	Approps. Susp.	05/01/07	
AB 272	Garcia	HIV Tests	Health		
AB 309	Tran	State Boards and Commissions: Salaries: Suspension	B&P	04/12/07	
AB 325	Nava	Peace Officers: Recruitment	App-Susp.	03/19/07	
AB 374	Berg	California Compassionate Choices Act	Floor	05/25/07	
AB 436	Salas	Medical Records	Health	04/09/07	
AB 636	Levine	Acupuncture	B&P	03/27/07	
AB 644	Dymally	Workers' Comp.: medical treatment utilization reivew	Insurance	04/09/07	
AB 865	Davis	State Agencies: Live Customer Service Agents	B&P	04/23/07	
AB 871	Davis	Hypertension and Diabetes	Introduced		
AB 961	Hernandez	Diabetes	Appr. Susp.	05/01/07	
AB 1009	Benoit	Fetal Pain Prevention	Health		
AB 1039	Parra	Medical Referral Services	Introduced		
AB 1044	Strickland	Optometrists: Regulation	B&P	04/09/07	
AB 1057	Beall	Health Care: Traumatic Brain Injury: Pilot Program	Senate Health	07/03/07	
AB 1102	Nakanishi	Prescription Lenses: fitting of lenses	Introduced		
AB 1137	Eng	Chiropractors	Sen. B&P	06/04/07	
AB 1198	Benoit	Law Enf. Response Costs: Driving Under the Influence	Judiciary		
AB 1390	Huffman	Health Care Service Plans: Unfair Payment Patterns	Sen. Health		
AB 1399	Richardson	Pharmacies: Prescription Labels	Health		

Medical Board of California
2007 Tracker II - Legislative Bills
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BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
AB 1468	Garrick	Hospitals: Patient Data	Health	04/10/07	
AB 1480	Mendoza	Physicians and Surgeons: Medical Board of CA	Introduced		
AB 1486	Calderon	Licensed Professional Counselors	Sen. B&P	06/26/07	
AB 1555	Lieber	Health Care Services: Chronic Care Model Task Force	Approps.	04/26/07	
SB 136	Cedillo	Acupuncture: Tui Na	B&P	04/16/07	
SB 356	Negrete McLeod	List of Reportable Diseases and Conditions	Inactive File	08/20/07	
SB 618	Alquist	State Agencies: Electronic Records	Appr.-Susp		
SB 676	Ridley-Thomas	Health: Immunizations	Asm. Approps.	08/20/07	
SB 721	Ashburn	State Agencies: Succession Plans	Asm. Approps.		
SB 731	Oropeza	Massage Therapy	Asm. Approps.	07/09/07	
SB 743	Kuehl	Hospitals: Medical Errors	Floor	05/16/07	
SB 840	Kuehl	Single-Payer Health Care Coverage	Asm. Approps.	07/10/07	
SB 843	Calderon	Medical Information	Judiciary	04/18/07	
SB 963	Ridley-Thomas	Regulatory Boards: Operations	Asm. B&P	06/25/07	
SB 971	McClintock	Government Reorganization: Realignment of Closure	G.O.		
SB 1014	Kuehl	Taxation: Single-Payer Health Care Coverage Tax	Rev.&Tax	04/23/07	