MEDICAL BOARD OF CALIFORNIA
EXECUTIVE OFFICE
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
(916) 263-2389 FAX (916) 263-2387
www.mbc.ca.gov

EXECUTIVE COMMITTEE MEETING

March 25, 2009

Holiday Inn Capitol Plaza
El Dorado Room
300 J Street
Sacramento, CA 95814
916-446-0100

Teleconference Location:
UCLA Medical Center
10833 Le Conte Avenue, 44-138 CHS
Los Angeles, CA 90095-1684
310-825-7501

MEMBERS OF THE COMMITTEE

Richard D. Fantozzi, M.D.
President
Hedy Chang
Gary Gitnick, M.D.
Barbara Yaroslavsky
Frank Zerunyan, J.D.

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

AMENDED AGENDA

1:30 p.m. – 4:00 p.m.
(or until completion of business)

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 Minutes from the November 6, 2008 and December 8, 2008 Meetings
3. Legislation – Ms. Whitney
   A. 2009 Legislation
4. Public Comment
5. 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 President 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 no later than five working days before the meeting to the Board by contacting Cheryl Thompson at (916) 263-2389 or sending a written request to that person at the Medical Board of California, 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815. Requests for further information should be directed to Ms. Thompson at the same address and telephone number

LEGISLATIVE PACKET

EXECUTIVE COMMITTEE MEETING

Sacramento, CA
March 25, 2009

Medical Board of California
Tracker - Legislative Bill File
3/20/2009

BILL	AUTHOR	TITLE	STATUS	POSITION	VERSION
AB 245	Ma (spot)	Physicians and Surgeons	Introduced	Rec: Watch	2/10/2009
AB 252	Carter	Practice of Med.: cosmetic surgery: employment of physicians	Introduced	Rec: Support	2/11/2009
AB 501	Emmerson	Physicians and Surgeons: Limited License	Introduced	Sponsor/Support	2/24/2009
AB 526	Fuentes	Public Protection and Physician Health Program Act of 2009	Introduced	Rec: Watch	2/25/2009
AB 583	Hayashi	Health Care Practitioners: disclosure of education and hours	Introduced	Rec: Support	2/25/2009
AB 646	Swanson	Physicians and Surgeons: employment: delete pilot project	Introduced	Rec: Oppose	2/25/2009
AB 648	Chesbro	Rural Hospitals: physician employment	Introduced	Rec: Oppose	2/25/2009
AB 718	Emmerson	Prescription Drugs: electronic prescribing	Introduced	Rec: Support	2/26/2009
AB 721	Nava	Physical Therapists: scope of practice	Introduced	Rec: Oppose unless amended	2/26/2009
AB 832	Jones	Clinic Licensing: minor services	Introduced	Rec: Support	2/26/2009
AB 834	Solorio	Health Care Practitioners: peer review	Introduced	Rec: Watch	2/26/2009
AB 1070	Hill	Healing Arts: discipline: public reprimand	Introduced	Sponsor/Support	2/27/2009
AB 1094	Conway	MBC: physician and surgeon well-being	Introduced	Sponsor/Support	2/27/2009
AB 1116	Carter	Cosmetic Surgery: Donda West Law	Introduced	Rec: Support	2/27/2009

* **Board Sponsored** * **Employment of Physicians** * **Peer Review**

Medical Board of California
Tracker - Legislative Bill File
3/20/2009

BILL	AUTHOR	TITLE	STATUS	POSITION	VERSION
SB 58	Aanestad	Physicians and Surgeons: peer review	Introduced	Rec: Watch	1/20/2009
SB 132	Denham	Polysomnographic Technologists (urgent)	Introduced	Rec: Neutral if amended	2/9/2009
SB 294	Negrete McLeod	Nurse Practitioners: expand scope of practice	Introduced	Rec: Oppose	2/25/2009
SB 389	Negrete McLeod	Professions and Vocations: finger printing	Introduced	Rec: Support	2/26/2009
SB 470	Corbett	Prescriptions: labeling	Introduced	Rec: Support	2/26/2009
SB 638	Negrete McLeod	Regulatory Boards: joint committee on operations	Introduced	Rec: Support	2/27/2009
SB 674	Negrete McLeod	Healing Arts: outpatient settings; advertising	Introduced	Rec: Support if amended	2/27/2009
SB 700	Negrete McLeod	Healing Arts: peer review	Introduced	Rec: Support	2/27/2009
SB 726	Ashburn	Hospitals: employment of physician: pilot project revision	Introduced	Rec: Support if amended	2/27/2009
SB 774	Ashburn	Nurse Practitioners: scope of practic: define	Introduced	Rec: Watch	2/27/2009
SB 819	B&P Comm.	Omnibus: provisions from 2008	Introduced	Rec: Support MBC provisions	3/10/2009
SB 821	B&P Comm.	Omnibus: MBC provisions	Introduced	Rec: Support MBC provisions	3/1/2009

* **Board Sponsored** * **Employment of Physicians** * **Peer Review**

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 245
Author: Ma
Bill Date: February 10, 2009, introduced
Subject: Internet Posting
Sponsor: Union of American Physicians and Dentists

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes nonsubstantive changes to the internet posting requirements for the Board's disciplinary actions.

ANALYSIS:

Currently the Board is required to post on its Web site specified information regarding license status and enforcement actions. This bill makes minor changes to these provisions.

Future amendments are planned for this bill but have not yet been made clear by the author.

FISCAL: None

POSITION: Recommendation: Watch

March 14, 2009

ASSEMBLY BILL No. 245

Introduced by Assembly Member Ma

February 10, 2009

An act to amend Section 2027 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 245, as introduced, Ma. Physicians and surgeons.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to post certain information on the Internet regarding licensed physicians and surgeons.

This bill would make technical, nonsubstantive changes to that provision.

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 2027 of the Business and Professions
2 Code is amended to read:
3 2027. (a) ~~On or after July 1, 2001, the~~ *The* board shall post on
4 the Internet the following information in its possession, custody,
5 or control regarding licensed physicians and surgeons:
6 (1) With regard to the status of the license, whether or not the
7 licensee is in good standing, subject to a temporary restraining
8 order (TRO), subject to an interim suspension order (ISO), or
9 subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the ~~Medical Board of California~~ *board* unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.

(7) Any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(8) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(9) Any information required to be disclosed pursuant to Section 803.1.

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the

board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 252
Author: Carter
Bill Date: February 11, 2009, introduced
Subject: Cosmetic surgery: employment of physicians and surgeons
Sponsor: American Society for Dermatological Surgery

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill:

1) Declares it illegal for physicians to be employed by a corporation or artificial entity to practice cosmetic procedures, as prohibited by Business and Professions Code section 2400 (restating current law).
2) Adds 2417.5 to the B&P Code, which:
   - Codifies that it is grounds for license revocation for physicians who knowingly violate the corporate practice prohibitions by working for or contracting with a business providing cosmetic medical treatments or procedures.
   - Establishes the legal presumption that physicians "knowingly" are violating the corporate practice prohibitions by contracting to serve as a medical director or otherwise become employed by an organization that they do not own.
   - Makes it a felony for an entity to provide cosmetic medical treatments or hire or contract with physicians for the providing of treatments, establishing that such a practice violates Penal Code section 550.

ANALYSIS:

Current law already prohibits the corporate practice of medicine, that is to say, lay entities employing or contracting with physicians to practice medicine. Current law also grants authority to the Board to take disciplinary actions, including revocation, against physicians who violate the law. There are two provisions of this bill, however, that are significant:

1) Violations of the corporate practice bar are deemed to be a violation of Penal Section 550, thereby making it a felony punishable up to 5 years in prison, as well as other penalties, and;
2) Establishes the legal presumption that physicians violating the law by becoming employees or contractors of businesses that they do not own "knowingly" are violating the law; thus, removing the difficult burden to prosecutors to provide evidence to establish that physicians knew they were breaking the law.

In summary, this bill addresses violations of the corporate practice of medicine in the cosmetic medicine industry. It specifies that non-physician entities owning cosmetic medicine practices providing medical treatments (laser hair removal, laser resurfacing, Botox and filler injections) are in violation of the corporate practice prohibition of B&P Code Section 2400. This bill would make a violation of the corporate practice bar a felony for the artificial (non-medically owned) entities, and grounds for license revocation for physicians who knowingly work or contract with these entities.

FISCAL: Unknown

POSITION: Recommendation: Support

March 18, 2009

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0062
(916) 319-2062
FAX (916) 319-2162

DISTRICT OFFICE
335 NORTH RIVERSIDE AVENUE
RIALTO, CA 92376
(909) 820-5008
FAX (909) 820-5098

Assembly California Legislature

WILMER AMINA CARTER
ASSEMBLYMEMBER, SIXTY-SECOND DISTRICT

COMMITTEES
AGING AND LONG-TERM CARE
BUSINESS AND PROFESSIONS
INSURANCE
RULES
TRANSPORTATION
VETERANS AFFAIRS

SELECT COMMITTEES
CHAIR, INLAND EMPIRE TRANSPORTATION ISSUES
SELECT COMMITTEE ON THE CENSUS

SUBCOMMITTEE
SEXUAL HARASSMENT PREVENTION AND RESPONSE

19 March 2009

VIA FACSIMILE (916) 263-2387 and USPS

Richard D. Fantozzi, M.D., President
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95814

RE: Request for Medical Board of California Support for AB 252 (Carter)
Patient Safety in Cosmetic Medical Procedures

Dear Dr. Fantozzi and Members of the Medical Board:

I write to respectfully request that the Medical Board of California **support** my Assembly Bill 252 to help deter the casual offering of elective cosmetic medical procedures in California, and to stiffen penalties for the unlawful corporate practice of medicine common to settings offering and rendering medical procedures characterized as "cosmetic" in nature. Elective cosmetic medical procedures or treatments are those performed to alter or reshape normal structures of the body solely in order to improve appearance.
I am authoring AB 252 as a solid and necessary enforcement match to my AB 1116.

Last session, a prior version of AB 252 was supported by the Board and received overwhelming votes of bipartisan support without a single "no" vote in the Assembly and, only 2 "no" votes in the Senate (a total of 116 votes for the bill, and only 2 in opposition).

AB 252

Corporate entities unlawfully engaged in the practice of medicine in California in violation of existing law, and those "for rent" physicians that facilitate their unlawful practice of medicine are the focus of AB 252 enforcement tools. AB 252 will help achieve the Board's goal of strengthening enforcement of current laws by targeting the most frequent and pernicious offenders -- unlawful, corporate-owned, chain med-spa operators -- who want to practice medicine without proper licensure or ownership structure. AB 252 will help support the commitment of enforcement resources to these kinds of cases by the MBC, and other consumer protection agencies. It signals tougher deterrents to violation of the Medical Practice Act to would be scofflaws.

The findings of the joint Medical Board of California and Board of Registered Nursing hearings into cosmetic medical procedures in California, in no small part, centered around strategies to improve enforcement in the face of always-limited resources and competing priorities for the Boards' investigation and enforcement actions ranging from "cite-and-fine" actions, to full-on criminal prosecutions.

Medi-Spa Practices in California Warrant Legislative Action

I am alarmed at the "commodity" mentality that has developed in California regarding the performance of medical procedures that happen to be "cosmetic," and the false sense of security generated by pleasant

surroundings and unqualified or poorly supervised personnel dressed in medical-style white coats. Most alarming to me as a policymaker, and as a consumer, is the disregard in these phony settings for basic patient evaluation and the need for a medical determination that treatment is appropriate simply because certain medical procedures that are cosmetic in nature are asserted to be "minor" or "noninvasive," or may be regarded by some as the less-than-serious rendering of medical care.

Public guidance from the MBC in its January 2008 on-line article, Medical Spas – What You Need to Know surely captures the problem targeted by my AB 252:

> **"Medical spas are marketing vehicles for medical procedures. If they are offering medical procedures, they must be owned by physicians. The use of the term 'medical spa' is for advertising purposes to make the procedures seem more appealing. In reality, however, it is the practice of medicine.**

The Medical Board, however, is concerned when medicine is being marketed like a pedicure, and consumers are led to believe that being injected, lasered, and resurfaced requires no more thought than changing hair color.

> Medical treatments should be performed by medical professionals only. There is risk to any procedure, however minor, and consumers should be aware of those risks. While it is illegal for unlicensed personnel to provide these types of treatments, consumers should be aware that some persons and firms are operating illegally. Cosmetologists, while licensed professionals and highly qualified in superficial treatments such as facials and microdermabrasion, may never inject the skin, use lasers, or perform medical-level dermabrasion or skin peels. Those types of treatments must be performed by qualified medical personnel. In California, that means a physician, or a registered nurse or physician assistant under the supervision of a physician." (Emphases added.)

In the spirit of the Board's statements, I respectfully request that the Medical Board become a full advocacy partner in this effort, and vote to support my AB 252. Should you have any questions regarding my request, please do not hesitate to contact me.

Sincerely,

Wilmer Amina Carter

WILMER AMINA CARTER
Assembly Member, 62nd District

cc: Ms. Linda Whitney
Chief of Legislation
Medical Board of California

Ms. Barbara Johnston, Executive Officer
Medical Board of California

ASSEMBLY BILL No. 252

Introduced by Assembly Member Carter
(Principal coauthor: Senator Correa)

February 11, 2009

An act to add Section 2417.5 to the Business and Professions Code, relating to the practice of medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 252, as introduced, Carter. Practice of medicine: cosmetic surgery: employment of physicians and surgeons.

Existing law, the Medical Practice Act, establishes the Medical Board of California under the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

The Medical Practice Act restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law makes it unlawful to knowingly make, or cause to be made, any false or fraudulent claim for payment of a health care benefit, or to aid, abet, solicit, or conspire with any person to do so, and makes a violation of this prohibition a public offense.

This bill would authorize the revocation of the license of a physician and surgeon who practices medicine with, or serves or is employed as the medical director of, a business organization that provides outpatient elective cosmetic medical procedures or treatments, as defined, knowing that the organization is owned or operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists. The bill would also make a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is

owned and operated in violation of the prohibition, and that contracts with or employs a physician and surgeon to facilitate the offer or provision of those procedures or treatments that may only be provided by a licensed physician and surgeon, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

This bill would state that its provisions are declaratory of existing law.

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. The Legislature finds and declares that the
2 Medical Practice Act restricts the employment of physicians and
3 surgeons by a corporation or other artificial legal entity, as
4 described in Article 18 (commencing with Section 2400) of Chapter
5 5 of Division 2 of the Business and Professions Code, and that the
6 prohibited conduct described in subdivisions (a) and (b) of Section
7 2417.5 of the Business and Professions Code, as added by this act,
8 is declaratory of existing law.
9 SEC. 2. Section 2417.5 is added to the Business and Professions
10 Code, to read:
11 2417.5. (a) In addition to any other remedies for a violation
12 of Section 2400 involving any other types of medical procedures,
13 a physician and surgeon who practices medicine with a business
14 organization that offers to provide, or provides, outpatient elective
15 cosmetic medical procedures or treatments, knowing that the
16 organization is owned or operated in violation of Section 2400,
17 may have his or her license to practice revoked. A physician and
18 surgeon who contracts to serve as, or otherwise allows himself or
19 herself to be employed as, the medical director of a business
20 organization that he or she does not own and that offers to provide

or provides outpatient elective cosmetic medical procedures or treatments that may only be provided by the holder of a valid physician's and surgeon's certificate under this chapter shall be deemed to have knowledge that the business organization is in violation of Section 2400.

(b) A business organization that offers to provide, or provides, outpatient elective cosmetic medical procedures or treatments, that is owned or operated in violation of Section 2400, and that contracts with, or otherwise employs, a physician and surgeon to facilitate its offers to provide, or the provision of, outpatient elective cosmetic medical procedures or treatments that may only be provided by the holder of a valid physician's and surgeon's certificate is guilty of violating paragraph (6) of subdivision (a) of Section 550 of the Penal Code.

(c) For purposes of this section, "outpatient elective cosmetic medical procedures or treatments" means a medical procedure or treatment that is performed to alter or reshape normal structures of the body solely in order to improve appearance.

SEC. 3. 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 501
Author: Emmerson
Bill Date: February 24, 2009, introduced
Subject: Limited License
Sponsor: Medical Board of California

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow the Board to issue an initial limited license to an applicant for licensure who is otherwise eligible for a medical license in California but is unable to practice all aspects of medicine safely due to a disability.

ANALYSIS:

Currently the Board does not have the authority to issue a limited medical license at the time of initial licensure. The law allows the Board to issue a probationary license initially with restrictions against engaging in certain types of practice. Although the Board is authorized to limit a license of an existing licensee, there are various individuals who wish to practice in California and are not eligible to obtain a full and unrestricted medical license but can practice safely with a limited license.

All applicants for a limited license would be required to sign a statement agreeing to limit his or her practice to whatever areas are recommended by a reviewing physician who may be recommended by the Board. Several other states have laws that allow for the initial issuance of limited, restricted, or special licenses to address applicants with disabilities. There are qualified applicants who wish to be licensed in California, who will be able to practice safely with a limited license.

Future amendments for this bill may include the language for the licensing "fee cap" and fund reserve provisions and the language for the "use of M.D."

FISCAL: None

POSITION: Sponsor/ Support

March 13, 2009

ASSEMBLY BILL No. 501

Introduced by Assembly Member Emmerson

February 24, 2009

An act to add Section 2088 to the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as introduced, Emmerson. Physicians and surgeons: limited license.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes a licensee who demonstrates that he or she unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician.

This bill would authorize an applicant for a license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license fee and signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed by the board. By requiring that the agreement be signed under penalty of perjury, the bill would expand

the scope of a crime, thereby imposing a state-mandated local program. The bill would authorize the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license.

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 2088 is added to the Business and
2 Professions Code, to read:
3 2088. (a) An applicant for a physician's and surgeon's license
4 who is otherwise eligible for that license but is unable to practice
5 some aspects of medicine safely due to a disability may receive a
6 limited license if he or she does both of the following:
7 (1) Pays the initial license fee.
8 (2) Signs an agreement on a form prescribed by the board, signed
9 under penalty of perjury, in which the applicant agrees to limit his
10 or her practice in the manner prescribed by the reviewing physician
11 and agreed to by the board.
12 (b) The board may require the applicant described in subdivision
13 (a) to obtain an independent clinical evaluation of his or her ability
14 to practice medicine safely as a condition of receiving a limited
15 license under this section.
16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 526
Author: Fuentes
Bill Date: February 25, 2009, introduced
Subject: Public Protection and Physician Health Program of 2009
Sponsor: California Medical Association

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Public Protection and Physician Health Program Act of 2009.

ANALYSIS:

This bill's intent states that it is necessary to create a program in California that will permit physicians to obtain treatment and monitoring of alcohol or substance abuse/dependency, or of mental disorder recovery so that physicians do not treat patients while impaired.

The exact program has not been developed, but the author, sponsor and interested parties, including the Medical Board, are in discussions regarding what this program would entail.

FISCAL: None

POSITION: Recommendation: Watch

March 14, 2009

ASSEMBLY BILL No. 526

Introduced by Assembly Member Fuentes

February 25, 2009

An act to add Article 14 (commencing with Section 2340) to Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as introduced, Fuentes. Public Protection and Physician Health Program Act of 2009.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards, as specified, and a designee of the State Department of Alcohol and Drug Programs. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees. The Medical Practice Act establishes in the Department of Consumer Affairs the Medical Board of California which provides for the licensure and regulation of physicians and surgeons.

This bill would enact the Public Protection and Physician Health Program Act of 2009, and would make specified findings and declarations in that regard.

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. The Legislature hereby finds and declares that:
2 (a) The protection of the public from harm by physicians and
3 surgeons who may be impaired by alcohol or substance abuse or
4 dependence or mental disorder is paramount.
5 (b) It is essential for the public interest and the public health,
6 safety, and welfare to focus on early intervention, assessment,
7 monitoring, and treatment of physicians and surgeons with
8 significant health impairments that may impact their ability to
9 practice.
10 (c) It is necessary to create a program in California that will
11 permit physicians and surgeons to obtain treatment and monitoring
12 of alcohol or substance abuse or dependence or mental disorder
13 recovery so that they do not treat patients while impaired.
14 SEC. 2. Article 14 (commencing with Section 2340) is added
15 to Chapter 5 of Division 2 of the Business and Professions Code,
16 to read:
17
18 Article 14. Public Protection and Physician Health Program
19
20 2340. This article shall be known and may be cited as the Public
21 Protection and Physician Health Program Act of 2009.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 583
Author: Hayashi
Bill Date: February 25, 2009, introduced
Subject: Disclosure of Education and Office Hours
Sponsor: CA Medical Association and CA Society of Plastic Surgeons

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require health care practitioners to disclose their license type and highest level of educational degree to patients and physicians would additionally be required to disclose their board certification. Physicians who supervise locations outside their primary office would be required to post the hours they are present at each location.

ANALYSIS:

Existing law requires health care practitioners to either wear a nametag or prominently display their license status in their office. This bill requires health care practitioners to disclose certain information to help the public better understand the qualifications of the health care practitioner they are considering.

This bill intends to make consumers aware of the exact educational level and particular specialty certifications of their health care practitioner. Providing the public with more complete information on health care practitioners will help to alleviate any confusion about the exact qualifications of health care practitioners.

These provisions can be satisfied by either wearing the required information on a name tag, prominently posting the information in the health care practitioner's office (diploma, certificate), or by giving the information to the patient in writing at the initial patient encounter.

This bill will also require a physician, when supervising more than one location, to post the hours the physician is present. In addition, the public may not know that when they seek care at a physician's office, the physician may not be present. By requiring

physicians to post when they are present in the office it will help the patient better understand the physician's availability.

FISCAL: None

POSITION: Recommendation: Support

March 13, 2009

ASSEMBLY BILL No. 583

Introduced by Assembly Member Hayashi

February 25, 2009

An act to amend Section 680 of the Business and Professions Code, relating to health care practitioners.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as introduced, Hayashi. Health care practitioners: disclosure of education and office hours.

Existing law requires a health care practitioner to disclose, while working, his or her name and practitioner's license status on a name tag in at least 18-point type or prominently display his or her license in his or her office, except as specified.

This bill would require those health care practitioners to also display the type of license and, except for nurses, the highest level of academic degree he or she holds either on a name tag in at least 18-point type, in his or her office, or in writing given to patients. The bill would require a physician and surgeon, osteopathic physician and surgeon, and doctor of podiatric medicine who is certified in a medical specialty, as specified, to disclose the name of the certifying board or association either on a name tag in at least 18-point type, in writing given to the patient on the patient's first office visit, or in his or her office. The bill would require a physician and surgeon who supervises an office in addition to his or her primary practice location to conspicuously post in each office a schedule of the regular hours when he or she will be present in that office and the office hours during which he or she will not be present.

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 680 of the Business and Professions Code
2 is amended to read:
3 680. (a) *(1)* Except as otherwise provided in this section, a
4 health care practitioner shall disclose, while working, his or her
5 name ~~and~~, practitioner's license status *and license type*, as granted
6 by this state, *and the highest level of academic degree he or she*
7 *holds,* on a name tag in at least 18-point type. A health care
8 practitioner in a practice or an office, whose license ~~is~~ *and highest*
9 *level of academic degree are* prominently displayed *or who has*
10 *communicated in writing to the practice's or office's patients his*
11 *or her license status, license type, and highest level of academic*
12 *degree,* may opt to not wear a name tag. If a health care practitioner
13 or a licensed clinical social worker is working in a psychiatric
14 setting or in a setting that is not licensed by the state, the employing
15 entity or agency shall have the discretion to make an exception
16 from the name tag requirement for individual safety or therapeutic
17 concerns. In the interest of public safety and consumer awareness,
18 it shall be unlawful for any person to use the title "nurse" in
19 reference to himself or herself and in any capacity, except for an
20 individual who is a registered nurse or a licensed vocational nurse,
21 or as otherwise provided in Section 2800. Nothing in this section
22 shall prohibit a certified nurse assistant from using his or her title.
23 *(2) An individual licensed under Chapter 6 (commencing with*
24 *Section 2700) is not required to disclose the highest level of*
25 *academic degree he or she holds.*
26 (b) Facilities licensed by the State Department of Social
27 Services, the State Department of Mental Health, or the State
28 Department of *Public* Health ~~Services~~ shall develop and implement
29 policies to ensure that health care practitioners providing care in
30 those facilities are in compliance with subdivision (a). The State
31 Department of Social Services, the State Department of Mental
32 Health, and the State Department of *Public* Health ~~Services~~ shall
33 verify through periodic inspections that the policies required
34 pursuant to subdivision (a) have been developed and implemented
35 by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(d) An individual licensed under Chapter 5 (commencing with Section 2000) or under the Osteopathic Act, who is certified by (1) an American Board of Medical Specialties member board, (2) a board or association with equivalent requirements approved by that person's medical licensing authority, or (3) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty, shall disclose the name of the board or association by one of the following methods:

(1) On a name tag in at least 18-point type.

(2) In writing to a patient at the patient's initial office visit.

(3) In a prominent display in his or her office.

(e) A physician and surgeon who supervises an office in addition to his or her primary practice location shall conspicuously post in each of those offices a current schedule of the regular hours when he or she is present in the respective office, and the hours during which each office is open and he or she is not present.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 646
Author: Swanson
Bill Date: February 25, 2009, introduced
Subject: Authorizing District Hospitals to Employ Physicians
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill eliminates a current pilot program which allows for the limited direct employment of physicians by district hospitals, and instead, this bill allows for the direct employment of physicians by 1) rural health care districts, to work at any district facility or clinic, or 2) by any public or non-profit hospitals or clinics located in health care districts which serve medically underserved urban populations and communities.

ANALYSIS:

Current law (commonly referred to as the "Corporate Practice of Medicine" - B&P Code section 2400) generally prohibits corporations or other entities that are not controlled by physicians from practicing medicine, to ensure that lay persons are not controlling or influencing the professional judgment and practice of medicine by physicians.

The Board presently administers a pilot project to provide for the direct employment of physicians by qualified district hospitals; this project is set to expire on January 1, 2011. (Senate Bill 376/Chesbro, Chap. 411, Statutes of 2003). The Board supported SB 376 because the program was created as a limited pilot program, and required a final evaluation to assess whether this exemption will promote access to health care.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in the bill. Support for this bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law required the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally.

The Board was challenged in evaluating the program and preparing the required report because the low number of participants did not afford us sufficient information to prepare a valid analysis of the pilot. In summary, while the Board supports the ban on the corporate practice of medicine, it also believes there may be justification to extend the pilot so that a better evaluation can be made. However, until there is sufficient data to perform a full analysis of an expanded pilot, the Board's position as spelled out in the report to the Legislature (September 10, 2008) was that the statutes governing the corporate practice of medicine should not be amended as a solution to solve the problem of access to healthcare.

The pilot provided safeguards and limitations. That program provided for the direct employment of no more than 20 physicians in California by qualified district hospitals at any time and limited the total number of physicians employed by such a hospital to no more than two at a time. The Medical Board was notified of any physicians hired under the pilot, and the contracts were limited to four years of service.

This bill eliminates the pilot program and instead would allow *carte blanche* for the direct employment of physicians by 1) rural health care districts, to work at any district facility or clinic, or 2) by any public or non-profit hospitals or clinics located in health care districts which serve medically underserved urban populations and communities.

In this bill, there are no limitations as to which hospitals could participate. As an example, in the current pilot program: 1) the hospital must be located in smaller counties (a population of less than 750,000); 2) the hospital must provide a majority of care to underserved populations; 3) the hospital must notify the Medical Board.

Also, the intent of the original pilot was to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities. This was seen as one avenue through which to improve access to care for underserved populations. Since this bill does not include such intent, it appears to be an unwarranted infringement on the prohibition of the corporate practice of medicine.

Although this bill offers limited parameters for implementation, it appears to lack adequate constraints to ensure public protections. Patients would be unaware that the physician is an employee. Information about the atypical employment relationship should be provided to patients so they can make an informed decision; informed consent is a cornerstone of patient care. Additional signage should clearly indicate that physicians are licensed by the State (with contact information for the Board) in case a patient has a need to contact the Board.

An important element of the current pilot is missing from this bill – an independent evaluation should be required to define the successes, problems, if any, and overall effectiveness of this program for the hospital, employed physicians, and on consumer protection. Additional input should be sought as to how the program could be strengthened.

Until a pilot program can be extended and evaluated, this bill seems premature with an unwarranted expansion. Further, although under current law and under this bill the participating hospital is prohibited from interfering with, controlling, or otherwise directing the physician's professional judgment, it is still of concern that there would be an unlimited number of physicians in California who could be employed.

FISCAL: Unknown at this time.

POSITION: Recommendation: Oppose. Additional elements should be required of participating hospitals to ensure informed consent by patients. Further, a full evaluation of an expanded pilot program should be completed before such a broad variance to the prohibition against the corporate practice of medicine is allowed.

March 17, 2009

ASSEMBLY BILL No. 646

Introduced by Assembly Member Swanson
(Coauthor: Assembly Member Chesbro)

February 25, 2009

An act to amend Section 2401 of, and to repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as introduced, Swanson. Physicians and surgeons: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50 percent of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals to provide medically necessary services in rural and medically underserved communities, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete the pilot project, and would instead authorize a health care district, as defined, that is located in a rural area, or a public or nonprofit hospital or clinic located in a health care district serving medically underserved urban populations and communities, to

employ physicians and surgeons if specified requirements are met and the district, hospital, or clinic does not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon.

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 2401 of the Business and Professions
2 Code is amended to read:
3 2401. (a) Notwithstanding Section 2400, a clinic operated
4 primarily for the purpose of medical education by a public or
5 private nonprofit university medical school, which is approved by
6 the Division of Licensing or the Osteopathic Medical Board of
7 California, may charge for professional services rendered to
8 teaching patients by licensees who hold academic appointments
9 on the faculty of the university, if the charges are approved by the
10 physician and surgeon in whose name the charges are made.
11 (b) Notwithstanding Section 2400, a clinic operated under
12 subdivision (p) of Section 1206 of the Health and Safety Code
13 may employ licensees and charge for professional services rendered
14 by those licensees. However, the clinic shall not interfere with,
15 control, or otherwise direct the professional judgment of a
16 physician and surgeon in a manner prohibited by Section 2400 or
17 any other provision of law.
18 (c) Notwithstanding Section 2400, a narcotic treatment program
19 operated under Section 11876 of the Health and Safety Code and
20 regulated by the State Department of Alcohol and Drug Programs,
21 may employ licensees and charge for professional services rendered
22 by those licensees. However, the narcotic treatment program shall
23 not interfere with, control, or otherwise direct the professional
24 judgment of a physician and surgeon in a manner prohibited by
25 Section 2400 or any other provision of law.
26 (d) Notwithstanding Section 2400, a ~~hospital owned and~~
27 ~~operated by a~~ health care district *in a rural area that is operated*
28 pursuant to Division 23 (commencing with Section 32000) of the
29 Health and Safety Code may employ ~~a licensee pursuant to Section~~
30 ~~2401.1~~ *physicians and surgeons*, and may charge for professional
31 services rendered by ~~the licensee~~ *a physician and surgeon*, if the
32 physician and surgeon in whose name the charges are made

approves the charges. However, the ~~hospital~~ *district* shall not interfere with, control, or otherwise direct ~~the~~ *a* physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

(e) Notwithstanding Section 2400, a public or nonprofit hospital or clinic located in a health care district serving medically underserved urban populations and communities, pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, may employ physicians and surgeons, and may charge for professional services rendered by a physician and surgeon, if the physician and surgeon in whose name the charges are made approves the charges. However, the hospital or clinic shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

SEC. 2. Section 2401.1 of the Business and Professions Code is repealed.

~~2401.1. (a) The Legislature finds and declares as follows:~~

~~(1) Due to the large number of uninsured and underinsured Californians, a number of California communities are having great difficulty recruiting and retaining physicians and surgeons.~~

~~(2) In order to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities, many district hospitals have no viable alternative but to directly employ physicians and surgeons in order to provide economic security adequate for a physician and surgeon to relocate and reside in their communities.~~

~~(3) The Legislature intends that a district hospital meeting the conditions set forth in this section be able to employ physicians and surgeons directly, and to charge for their professional services.~~

~~(4) The Legislature reaffirms that Section 2400 provides an increasingly important protection for patients and physicians and surgeons from inappropriate intrusions into the practice of medicine, and further intends that a district hospital not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.~~

~~(b) A pilot project to provide for the direct employment of a total of 20 physicians and surgeons by qualified district hospitals is hereby established in order to improve the recruitment and~~

~~retention of physicians and surgeons in rural and other medically underserved areas.~~

~~(c) For purposes of this section, a qualified district hospital means a hospital that meets all of the following requirements:~~

~~(1) Is a district hospital organized and governed pursuant to the Local Health Care District Law (Division 23 (commencing with Section 32000) of the Health and Safety Code).~~

~~(2) Provides a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days.~~

~~(3) Is located in a county with a total population of less than 750,000.~~

~~(4) Has net losses from operations in fiscal year 2000-01, as reported to the Office of Statewide Health Planning and Development.~~

~~(d) In addition to the requirements of subdivision (c), and in addition to other applicable laws, a qualified district hospital may directly employ a licensee pursuant to subdivision (b) if all of the following conditions are satisfied:~~

~~(1) The total number of physicians and surgeons employed by all qualified district hospitals under this section does not exceed 20.~~

~~(2) The medical staff and the elected trustees of the qualified district hospital concur by an affirmative vote of each body that the physician and surgeon's employment is in the best interest of the communities served by the hospital.~~

~~(3) The licensee enters into or renews a written employment contract with the qualified district hospital prior to December 31, 2006, for a term not in excess of four years. The contract shall provide for mandatory dispute resolution under the auspices of the board for disputes directly relating to the licensee's clinical practice.~~

~~(4) The total number of licensees employed by the qualified district hospital does not exceed two at any time.~~

~~(5) The qualified district hospital notifies the board in writing that the hospital plans to enter into a written contract with the licensee, and the board has confirmed that the licensee's employment is within the maximum number permitted by this section. The board shall provide written confirmation to the hospital within five working days of receipt of the written notification to the board.~~

1 ~~(e) The board shall report to the Legislature not later than~~
2 ~~October 1, 2008, on the evaluation of the effectiveness of the pilot~~
3 ~~project in improving access to health care in rural and medically~~
4 ~~underserved areas and the project's impact on consumer protection~~
5 ~~as it relates to intrusions into the practice of medicine.~~
6 ~~(f) Nothing in this section shall exempt the district hospital from~~
7 ~~any reporting requirements or affect the board's authority to take~~
8 ~~action against a physician and surgeon's license.~~
9 ~~(g) This section shall remain in effect only until January 1, 2011,~~
10 ~~and as of that date is repealed, unless a later enacted statute that~~
11 ~~is enacted before January 1, 2011, deletes or extends that date.~~

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 648
Author: Chesbro
Bill Date: February 25, 2009, introduced
Subject: Authorizing Rural Hospitals to Employ Physicians
Sponsor: California Hospital Association

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill allows rural hospitals, as defined, to employ physicians and surgeons to provide medical services at the hospital or any other health facility that the rural hospital owns or operations.

ANALYSIS:

Current law (commonly referred to as the "Corporate Practice of Medicine" - B&P Code section 2400) generally prohibits corporations or other entities that are not controlled by physicians from practicing medicine, to ensure that lay persons are not controlling or influencing the professional judgment and practice of medicine by physicians.

The Board presently administers a pilot project to provide for the direct employment of physicians by qualified district hospitals; this project is set to expire on January 1, 2011. (Senate Bill 376/Chesbro, Chap. 411, Statutes of 2003). The Board supported SB 376 because the program was created as a limited pilot program, and required a final evaluation to assess whether this exemption will promote access to health care.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in the bill. Support for this bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for

physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law required the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally.

The Board was challenged in evaluating the program and preparing the required report because the low number of participants did not afford sufficient information to prepare a valid analysis of the pilot. In summary, while the Board supports the ban on the corporate practice of medicine, it also believes there may be justification to extend the pilot so that a better evaluation can be made. However, until there is sufficient data to perform a full analysis of an expanded pilot, the Board's position as spelled out in the report to the Legislature (September 10, 2008) was that the statutes governing the corporate practice of medicine should not be amended as a solution to solve the problem of access to healthcare.

The current pilot provided safeguards and limitations. That program provided for the direct employment of no more than 20 physicians in California by qualified district hospitals at any time and limited the total number of physicians employed by such a hospital to no more than two at a time. The Medical Board was notified of any physicians hired under the pilot, and the contracts were limited to four years of service.

This bill allows rural hospitals, as defined, to employ physicians and surgeons to provide medical services at the hospital or any other health facility that the rural hospital owns or operations. None of the safeguards and limitations of the pilot are included in this bill. Instead, this bill includes few parameters:

1) The rural hospital that employs a physician shall develop and implement a written policy to ensure that each employed physician exercises his or her independent medical judgment in providing care to patients.

2) Each physician employed by a rural hospital shall sign a statement biennially indicating that the physician and surgeon:

a) Voluntarily desires to be employed by the hospital.

b) Will exercise independent medical judgment in all matters relating to the provision of medical care to his or her patients.

c) Will report immediately to the Medical Board of California any action or event that the physician reasonably and in good faith believes constitutes a compromise of his or her independent medical judgment in providing patient care

3) The signed statement shall be retained by the rural hospital for a period of at least three years. A copy of the signed statement shall be submitted by the rural hospital to the Board within 10 working days after the statement is signed by the physician.

4) If a report is filed per 2) c), above, and the Board believes that a rural hospital has violated this prohibition, the Board shall refer the matter to the Department of Public Health (DPH), which shall investigate the matter. If the department believes that the rural

hospital has violated the prohibition, it shall notify the rural hospital. Certain due process procedures are set forth and penalties are outlined.

Although this bill offers limited parameters for implementation, it appears to lack adequate constraints to ensure public protections. Patients would be unaware the physician is an employee. Information about the atypical employment relationship should be provided to patients so they can make an informed decision; informed consent is a cornerstone of patient care. Additional signage should clearly indicate that physicians are licensed by the State (with contact information for the Board) in case a patient has a need to contact the Board.

The written policy and statement (required per Items 1) and 2), above) should be more appropriately submitted to both the Board and the DPH, so both agencies are aware of the policy the hospital has established for the physicians as it relates to public protection.

Further, employment protection must be provided for all employed physicians, so that any report filed per Item 4), above, does not lead to retaliatory action by the hospital.

Lastly, an important element of the current pilot is missing from this bill – an independent evaluation should be required to define the successes, problems, if any, and overall effectiveness of this program for the hospital, employed physicians, and on consumer protection. Additional input should be sought as to how the program could be strengthened.

Until a pilot program as originally envisioned by SB 376 is fully functional and evaluated, this bill seems premature with an unwarranted expansion. Further, it is still of concern that there would be an unlimited number of physicians in California who could be employed, even if the participating hospital is prohibited from interfering with, controlling, or otherwise directing the physician's professional judgment.

FISCAL: Unable to determine.

POSITION: Recommendation: Oppose. Additional elements should be required of participating hospitals to ensure informed consent by patients. Further, a full evaluation of an expanded pilot program should be completed before such a broad variance to the prohibition against the corporate practice of medicine is allowed.

March 17, 2009

ASSEMBLY BILL No. 648

Introduced by Assembly Member Chesbro
(Coauthor: Assembly Member Swanson)

February 25, 2009

An act to add Chapter 6.5 (commencing with Section 124871) to Part 4 of Division 106 of the Health and Safety Code, relating to rural hospitals.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, as introduced, Chesbro. Rural hospitals: physician services.

Existing law generally provides for the licensure of health facilities, including rural general acute care hospitals, by the State Department of Public Health.

Existing law requires the department to provide expert technical assistance to strategically located, high-risk rural hospitals, as defined, to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. Existing law also requires the department to continue to provide regulatory relief when appropriate through program flexibility for such items as staffing, space, and physical plant requirements.

This bill would authorize a rural hospital, as defined, to employ a physician to provide medical services at the rural hospital or other health facility that the rural hospital owns or operates and retain all or part of the income generated by the physician for these medical services and billed and collected by the rural hospital. It would require a rural hospital that employs a physician and surgeon pursuant to this bill to develop and implement a policy regarding the independent medical judgment of the physician.

The bill would require these physicians to biennially sign a specified statement.

The bill would impose various duties on the department and the Medical Board of California.

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. The Legislature finds and declares all of the
2 following:
3 (a) Many hospitals in the state are having great difficulty
4 recruiting and retaining physicians.
5 (b) There is a shortage of physicians in communities across
6 California, particularly in rural areas, and this shortage limits access
7 to health care for Californians in these communities.
8 (c) Allowing rural hospitals to directly employ physicians will
9 allow rural hospitals to provide economic security adequate for a
10 physician to relocate and reside in the communities served by the
11 rural hospitals and will help rural hospitals recruit physicians to
12 provide medically necessary services in these communities.
13 (d) Allowing rural hospitals to directly employ physicians will
14 provide physicians with the opportunity to focus on the delivery
15 of health services to patients without the burden of administrative,
16 financial, and operational concerns associated with the
17 establishment and maintenance of a medical office.
18 (e) It is the intent of the Legislature by enacting this act to
19 authorize a rural hospital that meets the conditions set forth in
20 Chapter 6.5 (commencing with Section 124871) of the Health and
21 Safety Code to be able to employ physicians directly and to charge
22 for their professional services.
23 (f) It is the further intent of the Legislature to prevent a rural
24 hospital that employs a physician from interfering with, controlling,
25 or otherwise directing the physician's medical judgment or medical
26 treatment of patients.
27 SEC. 2. Chapter 6.5 (commencing with Section 124871) is
28 added to Part 4 of Division 106 of the Health and Safety Code, to
29 read:

Chapter 6.5. Rural Hospital Physician and Surgeon Services

124871. For purposes of this chapter, a rural hospital means all of the following:

(a) A general acute care hospital located in an area designated as nonurban by the United States Census Bureau.

(b) A general acute care hospital located in a rural-urban commuting area code of 4 or greater as designated by the United States Department of Agriculture.

(c) A rural general acute care hospital, as defined in subdivision (a) of Section 1250.

124872. Notwithstanding Article 18 (commencing with Section 2400) of Chapter 5 of Division 2 of the Business and Professions Code, a rural hospital may employ a physician and surgeon to provide medical services at the rural hospital or other health facility, as defined in Section 1250, that the rural hospital owns or operates. The rural hospital may retain all or part of the income generated by the physician and surgeon for these medical services and billed and collected by the rural hospital.

124873. (a) A rural hospital that employs a physician and surgeon pursuant to Section 124872 shall develop and implement a written policy to ensure that each employed physician and surgeon exercises his or her independent medical judgment in providing care to patients.

(b) Each physician and surgeon employed by a rural hospital pursuant to Section 124872 shall sign a statement biennially indicating that the physician and surgeon:

(1) Voluntarily desires to be employed by the hospital.

(2) Will exercise independent medical judgment in all matters relating to the provision of medical care to his or her patients.

(3) Will report immediately to the Medical Board of California any action or event that the physician and surgeon reasonably and in good faith believes constitutes a compromise of his or her independent medical judgment in providing care to patients in a rural hospital or other health care facility owned or operated by the rural hospital.

(c) The signed statement required by subdivision (b) shall be retained by the rural hospital for a period of at least three years. A copy of the signed statement shall be submitted by the rural

1 hospital to the Medical Board of California within 10 working
2 days after the statement is signed by the physician and surgeon.
3 (d) A rural hospital shall not interfere in a physician and
4 surgeon's exercise of his or her independent medical judgment in
5 providing medical care to patients. If, pursuant to a report to the
6 Medical Board of California required by paragraph (3) of
7 subdivision (a), the Medical Board of California believes that a
8 rural hospital has violated this prohibition, the Medical Board of
9 California shall refer the matter to the State Department of Public
10 Health, which shall investigate the matter. If the department
11 believes that the rural hospital has violated the prohibition, it shall
12 notify the rural hospital. The rural hospital shall have 20 working
13 days to respond in writing to the department's notification,
14 following which the department shall make a final determination.
15 If the department finds that the rural hospital violated the
16 prohibition, it shall assess a civil penalty of five thousand dollars
17 ($5,000) for the first violation and twenty-five thousand dollars
18 ($25,000) for any subsequent violation that occurs within three
19 years of the first violation. If no subsequent violation occurs within
20 three years of the most recent violation, the next civil penalty, if
21 any, shall be assessed at the five thousand dollar ($5,000) level.
22 If the rural hospital disputes a determination by the department
23 regarding a violation of the prohibition, the rural hospital may
24 request a hearing pursuant to Section 131071. Penalties, if any,
25 shall be paid when all appeals have been exhausted and the
26 department's position has been upheld.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 718
Author: Emmerson
Bill Date: February 26, 2009, introduced
Subject: Prescription Drugs: Electronic Transmissions
Sponsor: Reed Elsevier Inc.

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require every licensed prescriber or pharmacy to have the ability to electronically transmit prescriptions in California by January 1, 2012.

ANALYSIS:

Electronically created and transmitted prescriptions can reduce or eliminate errors both at the physician's office, at the point of prescribing, and at the pharmacy when a written or oral prescription is entered into a pharmacy's computer system. An electronic prescribing system in California would greatly increase safety and efficiency within the practices of medicine and pharmacy, and would streamline the prescribing process and enhance communication among health care professionals.

In addition to increased patient safety, there are several other benefits to electronic prescribing. Physicians will know which pharmacy a prescription has been sent to and have the ability to track whether the patient has picked it up. This will offer opportunities for physicians and pharmacists to better ensure patient compliance. Prescriptions will be completely legible and physicians will have an electronic record of what has been prescribed. This will make pharmacy prescription records immediately retrievable. Prescriptions will be received only through trusted partners or agents and will be securely authorized with electronic signatures.

E-prescribing will make improvements in health care quality and efficiency overall by ensuring that patients with multiple physicians are not being over prescribed or taking medications that are contradictory in nature. This will also ensure that only Medi-Cal approved medications are prescribed as a physician will be immediately notified if the medication is not on the formulary.

Future amendments to this bill are intended to address providers, hospitals, and pharmacies bearing the cost of e-prescribing.

A question that may be of issue is whether this requirement can be met by the date prescribed in all areas of the state and at what cost.

FISCAL: None to MBC.

POSITION: Recommendation: Support

March 13, 2009

ASSEMBLY BILL No. 718

Introduced by Assembly Member Emmerson

February 26, 2009

An act to add Section 4071.2 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 718, as introduced, Emmerson. Prescription drugs: electronic transmissions.

The Pharmacy Law regulates, among other matters, the dispensing by prescription of dangerous devices and dangerous drugs, which include controlled substances. Existing law authorizes the electronic transmission of prescriptions under specified circumstances. Under existing law, a violation of the Pharmacy Law is a crime.

This bill would require every licensed prescriber, or prescriber's authorized agent, or pharmacy operating in California to have the ability, on or before January 1, 2012, to transmit and receive prescriptions by electronic data transmission. Because a knowing violation of that provision would constitute a crime under the Pharmacy Law, the bill 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 4071.2 is added to the Business and
2 Professions Code, to read:
3 4071.2. On or before January 1, 2012, every licensed prescriber,
4 prescriber's authorized agent, or pharmacy operating in California
5 shall have the ability to transmit and receive prescriptions by
6 electronic data transmission.
7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 721
Author: Nava
Bill Date: February 26, 2009, introduced
Subject: Physical Therapist: Scope of Practice
Sponsor: California Physical Therapy Association

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize a physical therapist (PT) to initiate treatment of conditions within the scope of practice of a PT. It would require the PT to refer the patient to a specified health care provider if the condition requires treatment beyond the scope of a PT.

ANALYSIS:

This is a change in the scope of practice of a PT by allowing that practitioner to initiate treatments rather than be limited to referrals. There is no additional training that is required to be able to preform this new level of evaluating the health care needs of a patient. The PT makes his or her own assessment of the patient and if necessary, may refer that patient to another health care practitioner if there are signs or symptoms that the condition requires treatment beyond the scope of a PT. This referral can be made to a physician, dentist, podiatrist, or chiropractor.

According to the sponsor, currently, patients must incur additional co-pays in order to receive referrals for evaluation and treatment from a physical therapist. Additionally, patients often experience delays in treatment when waiting for referrals, which can result in higher costs to consumers and insurance companies, along with decreased functional outcomes. California's current medical referral system for physical therapy is inefficient, costly, and unnecessary.

The author hopes to improve the lives and health outcomes of consumers by removing an obstacle to, and reducing the cost of, health care through this bill.

FISCAL: None to the board

POSITION: Recommendation: Oppose unless amended to allow for an evaluation of this new authority by an outside entity paid for by the PT board.

March 16, 2009

Assembly Bill 721 (Pedro Nava)
Physical Therapy Direct Access

Reason AB 721 is Necessary

Currently, patients must incur additional co-pays in order to receive referrals for evaluation and treatment from a physical therapist. Additionally, patients often experience delays in treatment when waiting for referrals, which can result in higher costs to consumers and insurance companies, along with decreased functional outcomes. California's current medical referral system for physical therapy is inefficient, costly, and unnecessary.

Existing Law

California **Business and Professions Code Section 2620** defines physical therapy as "the art and science of physical or corrective rehabilitation or treatment of a bodily or mental condition by a person" through a variety of methods.

The **Physical Therapy Board of California** is established within the Department of Consumer Affairs by **Business and Professions Code Section 2602** for the purpose of licensing and regulating physical therapists.

In 1965, then **State Attorney General Thomas Lynch** issued an opinion that interpreted the Legislature's intent of the **Physical Therapy Practice Act** (Business and Professions Code 2600), thereafter requiring that any person in California seeking the help of a physical therapist must first go to a medical doctor for a referral for those services.

This Bill

AB 721 (Nava) will allow patients to see a physical therapist directly for evaluation and treatment of movement related conditions.

Facts

- California law does not state that a diagnosis is needed from a physician in order to begin treatment by a physical therapist.
- Physical therapy evaluation, treatment, instruction and consultation services include active, passive and resistive exercise, or the use of the physical or chemical properties of light, heat, water, electricity, sound and massage.
- Currently, 16 other states allow patients to see physical therapists directly[1].
- Medicare allows for patients to see a physical therapist directly. Under Medicare, the physical therapist needs a physician to sign off on a patient's treatment plan within 30 days.
- The United States Military also allows for direct access to physical therapist services by patients and has been successfully using this model for decades.
- A Master's Degree is the minimum requirement for licensure of a physical therapist in California.

Assemblymember Pedro Nava, through AB 721, hopes to improve the lives and health outcomes of consumers by removing an obstacle to, and reducing the cost of, health care.

---

[1] Alaska, Arizona, Colorado, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Vermont and West Virginia.

Support

CA Physical Therapy Association (sponsor)
Attachi Physical Therapy (Santa Barbara)
BAK Physical Therapy Assoc. (Menlo Park)
Baudendistel Physical Therapy (Carmichael)
Children's Therapy Network, Inc. (Ventura)
Congress of California Seniors
E-Rehab
Rob Landel, University of Southern CA
Orthopaedic and Spine Care (Santa Ana)
Pass Physical Therapy (Beaumont)
Cheryl Resnik, University of Southern CA
San Francisco Sport and Spine Physical Therapy
San Luis Therapy & Orthopedic Rehab.
Total Body Development (Alameda)
29 individual constituent letters

Opposition

California Orthopaedic Association

Votes

N/A

For More Information

Consultant: Jackie Koenig (916) 319-2035

ASSEMBLY BILL No. 721

Introduced by Assembly Member Nava
(Coauthors: Assembly Members Adams, Chesbro, Emmerson, Galgiani, Knight, Niello, and Silva)
(Coauthor: Senator Walters)

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 721, as introduced, Nava. 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 violate any of its provisions.

This bill would revise the definition of "physical therapy," would authorize a physical therapist to initiate treatment of conditions within the scope of physical therapist practice, and would 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: yes. State-mandated local program: 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 *examining, evaluating, and*
4 *testing a person with mechanical, physiological, and developmental*
5 *movement-related impairments, functional limitations, and*
6 *disabilities or other health and movement-related conditions in*
7 *order to develop a plan of therapeutic intervention and to initiate*
8 *treatment. Physical therapy is* the art and science of physical or
9 corrective rehabilitation or of physical or corrective treatment of
10 ~~any~~ *a* bodily or mental condition of ~~any~~ *a* person by the use of the
11 physical, chemical, and other properties of heat, light, water,
12 electricity, sound, massage, and active, passive, and resistive
13 exercise, and shall include physical therapy evaluation, treatment
14 planning, instruction, and consultative services. The practice of
15 physical therapy includes the promotion and maintenance of
16 physical fitness to enhance the bodily ~~movement related~~
17 *movement-related* health and wellness of individuals through the
18 use of physical therapy interventions. The use of roentgen rays
19 and radioactive materials, for diagnostic and therapeutic purposes,
20 and the use of electricity for surgical purposes, including
21 cauterization, are not authorized under the term "physical therapy"
22 as used in this chapter, and a license issued pursuant to this chapter
23 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*
30 *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 832
Author: Jones
Bill Date: February 26, 2009, introduced
Subject: Outpatient Facility Licensing
Sponsor: California Department of Public Health (CDPH)

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill attempts to remedy the problems created by the *Capen v. Shewry* decision by amending and adding to the Health and Safety (H&S) Codes within the California Outpatient Surgery Patient Safety and Improvement Act (Code sections 1200 through 1248.1).

The bill makes a number of technical changes to allow physician owned clinics to be subject or eligible for licensure, as well as providing exemptions for various facilities, such as public health screening clinics, among others.

ANALYSIS:

This bill attempts to remedy significant problems created by a court decision, *Capen v. Shewry* (2007) 155 Cal.App. 4th 378. In summary, Dr. Capen is a licensed physician who was building a clinic for use by physicians that would have no ownership interest. The Department of Health Services (now the CDPH) informed Dr. Capen that the facility must be licensed under Section 1204 of the H&S Code to be eligible for reimbursement for services provided to Medicare patients. Dr. Capen disagreed and sought injunctive relief, claiming that it need not be licensed, as it was an outpatient surgery center defined in H&S code section 1204(b)(1) and exempt by H&S code section 1206. The court agreed.

Unfortunately, the decision contained a number of technical errors and thereby provided a number of possible but contradictory interpretations. The CDPH interpreted the decision to mean that the department could no longer license physician-owned clinics, and ceased issuing licenses in 2008. The lack of the ability for physicians owning facilities to obtain licenses has caused a number of problems for physicians, patients, and accreditation agencies. Physicians must be either licensed or accredited by an agency that has "deemed status" for Medicare in order to be reimbursed or obtain pharmacy

permits, among other things. Accreditation agencies with "deemed status" have been working to provide accreditation services to facilities losing their licensing status, however, the workload is beyond immediate remedy for those in need of quick service. For all of those reasons, a legislative remedy is needed to allow the CDPH to continue to issue licenses to facilities owned by physicians.

It is important to note that this bill, as introduced, contains a number of technical errors and inconsistencies with the Business and Professions Code (Some of these inconsistencies are not only within the amended or additions to the code, but are contained in the existing codes). As an example, in some sections, it would appear that the bill's intent is to make licensure permissive, while in other sections it would appear to be required. It is likely that over the course of the legislative process these problems will be addressed.

The efforts of the CDPH to address the substantial problems created by the *Capen v. Shewry* decision should be supported.

FISCAL: None to MBC.

POSITION: Recommendation: Support and direct staff to work with the author, sponsor, and interested parties to address technical issues to ensure consistency of all codes.

March 18, 2009

ASSEMBLY BILL No. 832

Introduced by Assembly Member Jones

February 26, 2009

An act to amend Sections 1200, 1204, 1206, and 1248.1 of, and to add Sections 1204.6, 1212.5, 1212.6, and 1212.7 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 832, as introduced, Jones. Clinic licensing.

(1) Existing law establishes various programs for the prevention of disease and the promotion of the public health under the jurisdiction of the State Department of Public Health, including, but not limited to, provisions for the licensing, with certain exceptions, of clinics, as defined. A violation of these provisions is a crime.

This bill would exclude a place, establishment, or institution that solely provides immunizations, or screenings for blood pressure, cholesterol, or bone density, or a combination of those services, from the definition of "clinic" for these purposes.

(2) Existing law defines "surgical clinic" as a clinic that provides ambulatory surgical care and is not part of a hospital or is a place that is owned, leased, or operated as a clinic or office by one or more physicians or dentists.

This bill would recast that definition, would define "ambulatory surgical care" for this purpose, and would delete the exemption for a place that is owned, leased, or operated by one or more physicians or dentists. The bill would require surgical clinics to be licensed regardless of physician ownership, but would exclude a doctor's office or other

place that provides only prescribed services, and would make conforming changes.

This bill would require any person seeking licensure as a surgical clinic to provide documentation of satisfactory completion of prescribed structural building requirements.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

This bill would declare the intent of the Legislature to subsequently appropriate funds to the department as a loan to support the licensing and certification program relating to surgical clinics.

(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. This act shall be known, and may be cited, as the
2 California Outpatient Surgery Patient Safety and Improvement
3 Act.
4 SEC. 2. Section 1200 of the Health and Safety Code is amended
5 to read:
6 1200. As used in this chapter, "clinic" means an organized
7 outpatient health facility ~~which~~ *that* provides direct medical,
8 surgical, dental, optometric, or podiatric advice, services, or
9 treatment to patients who remain less than 24 hours, and which
10 may also provide diagnostic or therapeutic services to patients in
11 the home as an incident to care provided at the clinic facility.
12 Nothing in this section shall be construed to prohibit the provision
13 of nursing services in a clinic licensed pursuant to this chapter. In
14 no case shall a clinic be deemed to be a health facility subject to
15 the provisions of Chapter 2 (commencing with Section 1250) of
16 this division. A place, establishment, or institution ~~which~~ *that*
17 solely provides advice, counseling, information, or referrals on
18 the maintenance of health or on the means and measures to prevent
19 or avoid sickness, disease, or injury, where such advice, counseling,
20 information, or referrals does not constitute the practice of

medicine, surgery, dentistry, optometry, or podiatry, shall not be deemed a clinic for purposes of this chapter. *A place, establishment, or institution that solely provides immunizations, or screenings for blood pressure, cholesterol, or bone density, or any combination of these services, shall not be deemed a clinic for purposes of this chapter.*

References in this chapter to "primary care clinics" shall mean and designate all the types of clinics specified in subdivision (a) of Section 1204, including community clinics and free clinics. References in this chapter to specialty clinics shall mean and designate all the types of clinics specified in subdivision (b) of Section 1204, including surgical clinics, chronic dialysis clinics, and rehabilitation clinics.

SEC. 3. Section 1204 of the Health and Safety Code is amended to read:

1204. Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) (1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or

apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering into managed care contracts for services provided to private or public health plan subscribers, as long as the clinic meets the requirements identified in subparagraphs (A) and (B). For purposes of this subdivision, any payments made to a community clinic by a third-party payer, including, but not limited to, a health care service plan, shall not constitute a charge to the patient. This paragraph is a clarification of existing law.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital *or a primary care clinic that is either licensed pursuant to this section, or exempt pursuant to subdivision (b) of Section 1206,* and that provides ambulatory surgical care *as defined in Section 1204.6* for patients who remain less than 24 hours. ~~A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.~~ *Surgical clinics shall be subject to licensure by the department regardless of physician ownership.*

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following

rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

(c) In accordance with subdivision (d) of Section 1248.1, licensure as a surgical clinic shall satisfy the requirements of Chapter 1.3 (commencing with Section 1248).

SEC. 4. Section 1204.6 is added to the Health and Safety Code, to read:

1204.6. (a) "Ambulatory surgical care" for purposes of licensure as a surgical clinic, means the incision, partial or complete excision, destruction, resection, or other structural alteration of human tissue by any means except any of the following:

(1) Minor skin repair procedures, including, but not limited to, any of the following:

(A) Repair of minor lacerations.

(B) Excision of moles, warts, or other minor skin lesions.

(C) Incision and drainage of superficial abscesses.

(2) Procedures using only local anesthesia, topical anesthesia, or no anesthesia.

(3) Procedures not using general anesthesia or conscious sedation.

(b) "General anesthesia" for purposes of licensure as a surgical clinic, means a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

(c) "Conscious sedation" for purposes of licensure as a surgical clinic, means a minimally depressed level of consciousness produced by a pharmacologic or nonpharmacologic method, or a combination thereof, that retains the patient's ability to maintain independently and continuously an airway, and respond appropriately to physical stimulation or verbal command. Conscious sedation does not include the administration of oral medications or the administration of a mixture of nitrous oxide

and oxygen, whether administered alone or in combination with each other.

(d) A doctor's office or other place, establishment, or institution that provides no surgical services other than those described in paragraphs (1), (2), and (3) of subdivision (a) shall not be required to obtain licensure as a surgical clinic.

SEC. 5. Section 1206 of the Health and Safety Code is amended to read:

1206. ~~This~~ *The licensure and other requirements of this* chapter ~~does~~ *do* not apply to *any of* the following:

(a) ~~Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any~~ *Any* place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used *by the practitioner* as an office for the practice of ~~their~~ *his or her* profession, within the scope of ~~their~~ *his or her* license *in any lawful form of organization, so long as each licensed health care practitioner who practices at the clinic has some ownership or leasehold interest in, and some degree of control over and responsibility for, the operation of the clinic*, regardless of the name used publicly to identify the place or establishment. *The exemption pursuant to this subdivision shall not apply to either of the following:*

(1) Any surgical clinic as described in paragraph (1) of subdivision (b) of Section 1204, regardless of any health care practitioner ownership interest in the clinic.

(2) Any chronic dialysis clinic as described in paragraph (2) of subdivision (b) of Section 1204.

(b) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 that is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations that utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, that is located on land recognized as tribal land by the federal government.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning that teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art. *The exemption pursuant to this subdivision shall not apply to any surgical clinic as described in paragraph (1) of subdivision (b) of Section 1204.*

(h) A clinic that is operated by a primary care community or free clinic and that is operated on separate premises from the licensed clinic and is only open for limited services of no more than 20 hours a week. An intermittent clinic as described in this subdivision shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340).

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exemption to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act (Chapter 7

(commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(*l*) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, that conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center, as defined in Section 5601.5 of the Welfare and Institutions Code.

(p) (1) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, as an entity organized and operated exclusively for scientific and charitable purposes and that satisfied all of the following requirements on or before January 1, 2005:

(A) Commenced conducting medical research on or before January 1, 1982, and continues to conduct medical research.

(B) Conducted research in, among other areas, prostatic cancer, cardiovascular disease, electronic neural prosthetic devices, biological effects and medical uses of lasers, and human magnetic resonance imaging and spectroscopy.

(C) Sponsored publication of at least 200 medical research articles in peer-reviewed publications.

(D) Received grants and contracts from the National Institutes of Health.

(E) Held and licensed patents on medical technology.

(F) Received charitable contributions and bequests totaling at least five million dollars ($5,000,000).

(G) Provides health care services to patients only:

(i) In conjunction with research being conducted on procedures or applications not approved or only partially approved for payment (I) under the Medicare program pursuant to Section 1359y(a)(1)(A) of Title 42 of the United States Code, or (II) by a health care service plan registered under Chapter 2.2 (commencing with Section 1340), or a disability insurer regulated under Chapter 1 (commencing with Section 10110) of Part 2 of Division 2 of the Insurance Code; provided that services may be provided by the clinic for an additional period of up to three years following the approvals, but only to the extent necessary to maintain clinical expertise in the procedure or application for purposes of actively providing training in the procedure or application for physicians and surgeons unrelated to the clinic.

(ii) Through physicians and surgeons who, in the aggregate, devote no more than 30 percent of their professional time for the entity operating the clinic, on an annual basis, to direct patient care activities for which charges for professional services are paid.

(H) Makes available to the public the general results of its research activities on at least an annual basis, subject to good faith protection of proprietary rights in its intellectual property.

(I) Is a freestanding clinic, whose operations under this subdivision are not conducted in conjunction with any affiliated or associated health clinic or facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "affiliated" only if it directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "associated" only if more than 20 percent of the directors or trustees of the clinic are also the directors or trustees of any individual clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). Any activity by a

clinic under this subdivision in connection with an affiliated or associated entity shall fully comply with the requirements of this subdivision. This subparagraph shall not apply to agreements between a clinic and any entity for purposes of coordinating medical research.

(2) By January 1, 2007, and every five years thereafter, the Legislature shall receive a report from each clinic meeting the criteria of this subdivision and any other interested party concerning the operation of the clinic's activities. The report shall include, but not be limited to, an evaluation of how the clinic impacted competition in the relevant health care market, and a detailed description of the clinic's research results and the level of acceptance by the payer community of the procedures performed at the clinic. The report shall also include a description of procedures performed both in clinics governed by this subdivision and those performed in other settings. The cost of preparing the reports shall be borne by the clinics that are required to submit them to the Legislature pursuant to this paragraph.

SEC. 6. Section 1212.5 is added to the Health and Safety Code, to read:

1212.5. (a) Commencing January 1, 2010, in addition to other licensing requirements of this chapter, any person, firm, association, partnership, or corporation seeking a license for a surgical clinic shall provide the department with documentation of satisfactory completion of the structural and building requirements set forth in Section 1226 of Title 24 of the California Code of Regulations, or compliance with the 2000 Medicare Life and Safety Code requirements.

(b) Commencing January 1, 2010, a surgical clinic shall also meet all of the following standards:

(1) Only those patients who have given full informed consent about the inherent risks of receiving surgery in facilities with limited post surgical rescue potential that would be available in a general acute care hospital shall receive services in the surgical clinic.

(2) Comply with the conditions of coverage as set forth in Subpart C of Part 416 of Title 42 of the Code of Federal Regulations, as those conditions exist on January 1, 2008. The conditions of coverage shall be conditions of providing services regardless of the source of payment for those services.

(3) Limit surgical procedures to those that comply with all of the following:

(A) Do not require the presence of more than one surgeon during the procedure.

(B) Are not expected to require a blood transfusion.

(C) Are not expected to require major or prolonged invasion of body cavities.

(D) Are not expected to involve major blood vessels.

(E) Are not inherently life threatening.

(F) Are not emergency surgeries.

(G) Are not experimental surgeries.

(4) A preanesthesia evaluation, including an ASA Physical Status Classification, shall be completed on all surgical anesthesia patients. Surgical procedures shall not be performed on a patient with severe systemic disease that is a constant threat to life (ASA Classification 4) or on a moribund patient who is not expected to survive for 24 hours without the operation (ASA Classification 5). A patient with severe systemic disease (ASA Classification 3) shall have a presurgical consultation with a physician specialist appropriate for the patient's severe systemic disease in order to obtain medical clearance for surgery.

(5) Establish and implement policies and procedures compliant with the conditions of coverage. The policies and procedures shall comply with both of the following:

(A) The policies and procedures shall include, but need not be limited to, all of the following:

(i) Surgical services, as provided by physicians, dentists, or podiatrists.

(ii) Anesthesia services.

(iii) Nursing services.

(iv) Evaluation of quality assessment and performance improvement.

(v) Infection control.

(vi) Pharmaceutical services.

(vii) Laboratory and radiology services.

(viii) Housekeeping services, including provisions for maintenance of a safe, clean environment.

(ix) Patient health records, including provisions that shall be developed with the assistance of a person skilled in record maintenance and preservation.

(x) Personnel policies and procedures.

(B) The policies and procedures shall provide for appropriate staffing ratios for all care provided to patients receiving general anesthesia in compliance with both of the following:

(i) In each surgical room there shall be at least one registered nurse assigned to the duties of the circulating nurse and a minimum of one additional person serving as scrub assistant for each patient-occupied operating room. The scrub assistant may be a licensed nurse, an operating room technician, or other person who has demonstrated current competence to the clinic as a scrub assistant, but shall not be a physician or other licensed health professional who is assisting in the performance of surgery.

(ii) The licensed nurse-to-patient ratio in a postanesthesia recovery unit of the anesthesia service shall be one-to-two or fewer at all times, regardless of the type of general anesthesia the patient receives.

SEC. 7. Section 1212.6 is added to the Health and Safety Code, to read:

1212.6. Every clinic for which a license has been issued under Section 1212.5 shall be subject to the reporting requirements contained in Section 1279.1 and the penalties imposed under Sections 1280.1, 1280.3, and 1280.4.

SEC. 8. Section 1212.7 is added to the Health and Safety Code, to read:

1212.7. It is the intent of the Legislature to provide funding through an appropriation in the Budget Act or other measure to the State Department of Public Health, for a loan for the support the operations of the Licensing and Certification Program for activities authorized by this chapter relating to the licensure of surgical clinics. The loan shall be repaid with proceeds from fees collected pursuant to Section 1266.

SEC. 9. Section 1248.1 of the Health and Safety Code is amended to read:

1248.1. No association, corporation, firm, partnership, or person shall operate, manage, conduct, or maintain an outpatient setting in this state, unless the setting is one of the following:

(a) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act.

(b) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, and located on land recognized as tribal land by the federal government.

(c) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies.

(d) Any primary care clinic licensed under subdivision (a) and any surgical clinic licensed under subdivision (b) of Section 1204.

(e) Any health facility licensed as a general acute care hospital under Chapter 2 (commencing with Section 1250).

(f) Any outpatient setting to the extent that it is used by a dentist or physician and surgeon in compliance with Article 2.7 (commencing with Section 1646) or Article 2.8 (commencing with Section 1647) of Chapter 4 of Division 2 of the Business and Professions Code.

(g) An outpatient setting accredited by an accreditation agency approved by the division pursuant to this chapter.

(h) A setting, including, but not limited to, a mobile van, in which equipment is used to treat patients admitted to a facility described in subdivision (a), (d), or (e), and in which the procedures performed are staffed by the medical staff of, or other healthcare practitioners with clinical privileges at, the facility and are subject to the peer review process of the facility but which setting is not a part of a facility described in subdivision (a), (d), or (e).

Nothing in this section shall relieve an association, corporation, firm, partnership, or person from complying with all other provisions of law that are otherwise applicable, *including, but not limited to, licensure as a primary care or specialty clinic as set forth in Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code. Surgical clinics shall be subject to licensure regardless of any physician ownership interest.*

SEC. 10. 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

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 834
Author: Solorio
Bill Date: February 26, 2009, introduced
Subject: Peer Review
Sponsor: California Medical Association (CMA)

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill is a spot bill for language that will be developed by the CMA related to the hearing sections of the peer review process, commonly referred to as 809 (B&P code section) hearings.

ANALYSIS:

The hearing process set forth in 809 is for those who are subject to an 805 and desires the entitlements for the process. These sections do not set forth requirements for the Medical Board, but do relate to its licensees.

FISCAL: None to the Board

POSITION: Recommendation: Watch as this bill does not currently impact the board and the intention at this time is that it will not relate to the board.

March 17, 2009

ASSEMBLY BILL No. 834

Introduced by Assembly Member Solorio

February 26, 2009

An act relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 834, as introduced, Solorio. Health care practitioners: peer review.

Existing law requires peer review bodies, as defined, to file reports with the applicable state licensing agency of specified health care practitioners upon the occurrence of specified events, including, without limitation, a licensee being denied staff privileges for a medical disciplinary reason.

This bill would declare the Legislature's intent to enact legislation revising the health care practitioner peer review process in California to improve patient safety and care.

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. It is the intent of the Legislature to enact
2 legislation revising the current health care practitioner peer review
3 process in California in order to improve patient safety and care.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1070
Author: Hill
Bill Date: February 27, 2009, introduced
Subject: Enforcement Enhancements
Sponsor: Medical Board of California

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow an administrative law judge to recommend that a licensee be issued a public reprimand that includes additional requirements for education and training. It would prevent the Board from having to go through the process of modifying a recommendation made by an administrative law judge.

ANALYSIS:

Current law allows the Board to include requirements for specific education and training as part of rehabilitation for offenses in a public letter of reprimand in lieu of filing a formal accusation against a physician. Once the matter is heard before an administrative law judge, the licensee can be issued a public reprimand but that public reprimand cannot include any additional requirements without a modification by the Board. The law does not allow the administrative law judge to recommend a public reprimand be issued to the physician that includes required training or education.

In 2008 two bills sponsored by the Board (AB 2444 and AB 2445) were passed allowing the Board to issue public letters of reprimand with additional requirements for education and training both in enforcement proceedings and upon initial licensure.

Allowing an administrative law judge to recommend that a licensee be issued a public reprimand that includes additional requirements for education and training would prevent the Board from having to go through the process of modifying a proposed decision made by an administrative law judge.

Future amendments for this bill may include the language for additional enforcement enhancements approved by the Board.

FISCAL: None

POSITION: Sponsor/ Support

March 13, 2009

ASSEMBLY BILL No. 1070

Introduced by Assembly Member Hill

February 27, 2009

An act to amend Section 2227 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as introduced, Hill. Healing arts: discipline.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons and other healing arts practitioners, including doctors of podiatric medicine. Existing law prescribes the disciplinary action that may be taken against a physician and surgeon or podiatrist. Among other things, existing law authorizes the licensee to be publicly reprimanded.

This bill would authorize the public reprimand to include a requirement that the licensee complete educational courses selected by the board.

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 2227 of the Business and Professions
2 Code is amended to read:
3 2227. (a) A licensee whose matter has been heard by an
4 administrative law judge of the Medical Quality Hearing Panel as
5 designated in Section 11371 of the Government Code, or whose
6 default has been entered, and who is found guilty, or who has

entered into a stipulation for disciplinary action with the ~~division~~ *board*, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the ~~division~~ *board.*

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the ~~division~~ *board.*

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the ~~division~~ *board.*

(4) Be publicly reprimanded by the ~~division~~ *board. The public reprimand may include a requirement that the licensee complete relevant educational courses selected by the board.*

(5) Have any other action taken in relation to discipline as part of an order of probation, as the ~~division~~ *board* or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the ~~division~~ *board* and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1094
Author: Conway
Bill Date: February 27, 2009, introduced
Subject: Physician Well-being
Sponsor: Medical Board of California

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow the Medical Board (Board) to establish a well-being program for physician. Any program which is developed shall be accomplished within the existing resources of the Board.

ANALYSIS:

Currently, the Board is mandated to make the protection of healthcare consumers its first priority. This primarily is achieved through the proper licensing and regulation of licensees and through the vigorous, objective enforcement of the Medical Practice Act. However, the mission of the Board also is to promote access to quality medical care through a variety of avenues set forth in the Board's Strategic Plan.

This bill states that the Legislature finds and declares all of the following:

- One element in the protection of the health care consumer can be achieved by having healthy physicians care for their patients.
- Various studies document that stress factors in a physician's job can significantly impact the effectiveness of patient care.
- Studies indicate that physician stress has increased dramatically over the past 20 years, leading to physician burnout or discontent, resulting in early retirement from practice or the pursuit of a different career.
- Physician and surgeon's health and well-being is essential in order to maintain an adequate supply of physicians for the health care patients of California.
- In light of these findings, it is essential that the Medical Board of California is given the authority to create a committee to provide broad oversight of these issues and address ways to encourage the continued well-being of physician.

With these goals in mind, this bill will allow the Board to establish a program to promote the issues concerning physician well-being. This program shall include, but not be limited to, all of the following:

- An examination and evaluation of existing wellness education for medical students, postgraduate trainees, and licensed physicians and surgeons.
- A series of relevant articles published in the Board's newsletter.
- A consolidation of resources that promote physician wellness.
- An examination of incentives to encourage physicians to become knowledgeable regarding the issues concerning their well-being.
- An outreach effort to promote physician wellness.

The Board recognizes that healthy physicians can best contribute to the quality of care expected by patients, as stated by the Board's physician members and its members on the Board's Wellness Committee; thus, they sponsored this bill to codify its role in the well being of physicians.

The Board would like to pursue a variety of mechanisms that encourage wellness. Some of these will be to the exclusive benefit of physicians or medical students as part of their continuing training or initial training. Other information will be posted on the Board's web site, to the benefit of all who wish to read the information. All mechanisms will focus on the benefit of this information to the well being of the individual, which extends to family and patients as the individual becomes or stays a healthy person in the community. In addition, physicians are consumers, not all are practicing medicine, and they will communicate this information to colleagues.

The members of the Board believe that, as a regulatory body, the Board has jurisdiction over the well-being of its licensees. The mission is consumer protection and one of the means to protect consumers is by keeping the physicians healthy so they remain in practice and don't "burn-out." In addition, if this program can keep a physician from falling into trouble, because it helps that individual seek assistance early or not feel alone in his or her "stress," then the consumers of the state are better protected from a potentially negligent physician.

If the Board is to evolve and meet the changing needs of the health care consumers of this state, it must implement new and enhanced programs. This does not detract or take away from its requirements to enforce violations of the Medical Practice Act. The Board is using resources outside of its enforcement division to implement this program. As stated in Business and Professions Code 2229, the board is to take disciplinary action that is "calculated to aid in the rehabilitation of the licensee" and further states "where rehabilitation and protection are inconsistent, protection shall be paramount." The Board, through its wellness program, wants to provide better access to information, knowledge, and training that will help prevent the need for discipline, to aid in the mental and physical rehabilitation prior to the physician getting into a situation where a mishap can occur.

FISCAL: None. The bill requires this wellness program be developed within existing resources unless otherwise authorized in the annual Budget Act.

POSITION: Support/Sponsor

March 17, 2009

ASSEMBLY BILL No. 1094

Introduced by Assembly Member Conway

February 27, 2009

An act to add Section 2005 to the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1094, as introduced, Conway. Medical Board of California: physician and surgeon well-being.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and vests the board with certain responsibilities.

This bill would authorize the board to establish a program to promote the issues concerning physician and surgeon well-being and would require the program to include, among other things, an examination and evaluation of existing wellness education for medical students, postgraduate trainees, and licensed physicians and surgeons and an outreach effort to promote physician and surgeon wellness. The bill would require the program to be developed within existing resources unless otherwise authorized in the annual Budget Act.

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

(a) One element in the protection of the health care consumer can be achieved by having healthy physicians and surgeons care for their patients.

(b) Various studies document that stress factors in a physician and surgeon's job can significantly impact the effectiveness of patient care.

(c) Studies indicate that physician stress has increased dramatically over the past 20 years, leading to physician and surgeon burnout or discontent, resulting in early retirement from practice or the pursuit of a different career.

(d) Physician and surgeon's health and well-being is essential in order to maintain an adequate supply of physician and surgeons for the health care patients of California.

(e) In light of these findings, it is essential that the Medical Board of California is given the authority to create a committee to provide broad oversight of these issues and address ways to encourage the continued well-being of physician and surgeons.

SEC. 2. Section 2005 is added to the Business and Professions Code, to read:

2005. (a) The board may establish a program to promote the issues concerning physician and surgeon well-being. This program shall include, but not be limited to, all of the following:

(1) An examination and evaluation of existing wellness education for medical students, postgraduate trainees, and licensed physicians and surgeons.

(2) A series of relevant articles published in the board's newsletter.

(3) A consolidation of resources that promote physician and surgeon wellness.

(4) An examination of incentives to encourage physicians and surgeons to become knowledgeable regarding the issues concerning their well-being.

(5) An outreach effort to promote physician and surgeon wellness.

(b) The program described in subdivision (a) shall be developed within existing resources unless otherwise authorized in the annual Budget Act.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1116
Author: Carter
Bill Date: February 27, 2009, introduced
Subject: Cosmetic surgery: Physical examination prior to surgery
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill enacts the Donda West Law, and would require that physicians or dentists conduct a physical examination on patients prior to performing elective cosmetic surgery, including liposuction.

The legislation adds Business and Professions Code sections 1638.2 (dentists) and 2259.8 (physicians) which would prohibit performing cosmetic surgery unless the patient has received a physical examination and written clearance from one of the following:

- A licensed physician and surgeon, which may be the surgeon performing the surgery;
- A nurse practitioner;
- A physician assistant, or;
- A dentist licensed to perform surgery under section 1634 of the Business and Professions Code.

The examination must include the taking of a complete medical history.

ANALYSIS:

Donda West was a patient that, prior to finding a surgeon willing to perform her procedures, was rejected as a candidate for surgery by several practitioners due to existing physical conditions. She died shortly after undergoing surgery.

This bill is identical to AB 2968 (Carter), passed in 2008, but vetoed by the Governor. (The reason for the veto was that due to the budget negotiations there was insufficient time for review.) The Medical Board took a "support" position on that legislation.

Under the current standard of care, surgeons should be taking a complete history and performing a physical examination prior to performing any surgery to ensure the patient is sufficiently healthly to undergo the procedure. Unfortunately, some surgeons' practices do not rise to this standard of care. While probably unnecessary, stating this standard in law may serve to protect patients by clarifying that a prior examination is part of the cosmetic surgery process.

FISCAL: Minor and absorbable.

POSITION: Recommend: Support

March 17, 2009

ASSEMBLY BILL No. 1116

Introduced by Assembly Member Carter

February 27, 2009

An act to add Sections 1638.2 and 2259.8 to the Business and Professions Code, relating to cosmetic surgery.

LEGISLATIVE COUNSEL'S DIGEST

AB 1116, as introduced, Carter. Cosmetic surgery.

Existing law, the Dental Practice Act, establishes the Dental Board of California in the Department of Consumer Affairs, which licenses dentists and regulates their practice, including dentists who hold a permit to perform oral and maxillofacial surgery. Existing law, the Medical Practice Act, establishes the Medical Board of California in the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

The Medical Practice Act requires specified disclosures to patients undergoing procedures involving collagen injections, and also requires the Medical Board of California to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would enact the Donda West Law, which would prohibit the performance of an elective cosmetic surgery procedure on a patient unless, prior to surgery, the patient has received a physical examination by, and has received written clearance for the procedure from, the licensed physician and surgeon or dentist performing the cosmetic surgery or another licensed physician and surgeon, or a certified nurse practitioner or a licensed physician assistant, as specified. The bill would

require the physical examination to include the taking of a complete medical history. The bill would also provide that a violation of these provisions would not constitute a crime.

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. This act shall be known and may be cited as the
2 Donda West Law.
3 SEC. 2. Section 1638.2 is added to the Business and Professions
4 Code, to read:
5 1638.2. (a) Notwithstanding any other provision of law, a
6 person licensed pursuant to Section 1634 who holds a permit to
7 perform elective facial cosmetic surgery issued pursuant to this
8 article may not perform elective facial cosmetic surgery on a
9 patient, unless the patient has received a physical examination by,
10 and written clearance for the procedure from, either of the
11 following:
12 (1) A licensed physician and surgeon.
13 (2) The person licensed pursuant to Section 1634 who holds a
14 permit to perform elective facial cosmetic surgery issued pursuant
15 to this article and who will be performing the surgery.
16 (b) The physical examination described in subdivision (a) shall
17 include the taking of a complete medical history.
18 (c) A violation of this section shall not constitute a crime.
19 SEC. 3. Section 2259.8 is added to the Business and Professions
20 Code, to read:
21 2259.8. (a) Notwithstanding any other provision of law, a
22 cosmetic surgery procedure may not be performed on a patient
23 unless, prior to surgery, the patient has received a physical
24 examination by, and written clearance for the procedure from, any
25 of the following:
26 (1) The physician and surgeon who will be performing the
27 surgery.
28 (2) Another licensed physician and surgeon.
29 (3) A certified nurse practitioner, in accordance with a certified
30 nurse practitioner's scope of practice, unless limited by protocols
31 or a delegation agreement.

1 (4) A licensed physician assistant, in accordance with a licensed
2 physician assistant's scope of practice, unless limited by protocols
3 or a delegation agreement.
4 (b) The physical examination described in subdivision (a) shall
5 include the taking of a complete medical history.
6 (c) "Cosmetic surgery" means an elective surgery that is
7 performed to alter or reshape normal structures of the body in order
8 to improve the patient's appearance, including, but not limited to,
9 liposuction and elective facial cosmetic surgery.
10 (d) Section 2314 shall not apply to this section.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 58
Author: Aanestad
Bill Date: January 20, 2009, introduced
Subject: Peer Review
Sponsor: Author

STATUS OF BILL:

This bill has been referred to the Senate Business, Professions & Economic Development and the Judiciary Committees.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes findings and declarations regarding the need to implement findings of the "Comprehensive Study of Peer Review in California."

ANALYSIS:

This bill, as introduced, is a spot bill to initiate meetings related to changes in the peer review process as recommended in the Lumetra report, "Comprehensive Study of Peer Review in California"submitted to the Legislature in 2008 and paid for by the Medical Board. The report had a variety of recommendations and the author wanted the interested parties to start meeting on options to "fix" the peer review system at all levels. Although the bill suggests a pilot program and has some intent directing the board to establish guidelines, this may not be the direction the final bill takes.

Meetings continue and the final focus of the bill has not been developed.

FISCAL: Unknown at this time.

POSITION: Recommendation: Watch as it is premature to take a position on this bill.

March 17, 2009

SENATE BILL No. 58

Introduced by Senator Aanestad

January 20, 2009

An act to add Section 805.3 to the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

SB 58, as introduced, Aanestad. Physicians and surgeons: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California.

This bill require the board to conduct a pilot program to redesign the peer review process applicable to physicians and surgeons based on recommendations made in a specified report. The bill would state the intent of the Legislature to enact legislation that would establish guidelines for the board to follow in conducting that pilot program.

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 805.3 is added to the Business and
2 Professions Code, to read:
3 805.3. (a) The Legislature finds and declares all of the
4 following:
5 (1) A legislatively mandated report released in July 2008,
6 "Comprehensive Study of Peer Review in California: Final
7 Report," highlighted variations among health care entities in

1 conducting, selecting, and applying criteria for peer review of
2 physicians and surgeons.
3 (2) The report indicated that the peer review process fails in its
4 purpose to ensure the quality and safety of medical care in
5 California.
6 (3) In light of these serious patient safety concerns, an overhaul
7 of the peer review process applicable to physicians and surgeons
8 is necessary.
9 (b) The Medical Board of California shall conduct a pilot
10 program to redesign the peer review process, as it applies to
11 physicians and surgeons, based on the recommendations made in
12 the report identified in subdivision (a).
13 (c) It is the intent of the Legislature to enact legislation that
14 would establish guidelines for the Medical Board of California to
15 follow in conducting the pilot program described in subdivision
16 (b).

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 132
Author: Denham
Bill Date: February 9, 2009, introduced
Subject: Polysomnographic Technologists
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require registration for individuals assisting licensed physicians in the practice of sleep medicine. This bill further requires such individuals to meet certain qualifications including educational requirements, background checks, and other consumer protections.

ANALYSIS:

Sleep medicine has been recognized as a specialty by the American Medical Association since 1996. Physician sleep specialists are board certified, and the American Board of Sleep Medicine is one of the specialty boards officially recognized and approved by the Medical Board.

Recently, the California Respiratory Care Board has threatened to issue significant fines against those involved in assisting with the practice of sleep medicine. This has threatened the availability of these important medical services.

On August 24, 2007 the California Respiratory Care Board passed a motion to move forward with issuing citations against the unlicensed individuals engaged in the practice of sleep medicine. This has caused a great deal of concern and uncertainty amongst medical professionals who treat patients with sleep disorders.

This bill would provide consumer protections to patients seeking sleep disorder treatment, and helps clarify existing law as it relates to polysomnography. Specifically this bill:

a) establishes the criteria necessary for becoming a certified polysomnographic technologist;

b) requires that the polysomnographic technologists work under the supervision and direction of a licensed physician;
c) requires background checks for polysomnographic technologists;
d) defines the term "polysomnography" and permits polysomnographic technologists to engage in the practice of polysomnography as long as they satisfy the criteria in the bill (this bill places no limitations on other health care practitioners acting within their own scope of practice); and
e) Defines the terms "polysomnographic technician" and "polysomnographic trainee" and permits those individuals to act under the supervision of a certified polysomnographic technologist or licensed physician.

This bill requires the Board to develop regulations relative to the qualifications for registration of these three classifications. This must be done within a year of the effective date of the legislation. According to staff, the Board should be able to meet this requirement for adoption since most of the preliminary work on qualifications was done in the previous year.

In addition, within one year, the Board must adopt regulations regarding the employment of technicians and trainees by the physician. This may include the scope of services and level of supervision. This will require some work with the sponsor and interested parties but should be able to be accomplished in the time frame specified.

This bill needs to be amended to state that the services provided by these technologists cannot be provided unless they are registered by the Board. The author may wish to include criminal penalties similar to those found in current law for other licenses.

FISCAL: None

POSITION: Recommendation: Neutral if amended.

March 14, 2009

SENATE BILL No. 132

Introduced by Senator Denham

February 9, 2009

An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 132, as introduced, Denham. Polysomnographic technologists: sleep and wake disorders.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law prescribes the medical services that may be performed by a physician assistant under the supervision of a licensed physician and surgeon.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy and prohibits its practice without a license issued by the board, subject to certain exceptions.

This bill would require the Medical Board of California to adopt regulations within a year after the effective date of this act, relative to the qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, with a specified exception for that examination requirement for a 3-year period. The bill would prohibit a person from using the title "certified

polysomnographic technologist" or engaging in the practice of polysomnography unless he or she undergoes a Department of Justice background check, as specified, is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. The bill would define polysomnography to mean the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board, within a year after the effective date of this act, to adopt regulations related to the employment of polysomnographic technicians and trainees.

This bill would require polysomnographic technologists to register with the Medical Board of California for a fee to be fixed by the board at no more than $100, and to renew their registration biennially for a fee of no more than $50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, thereby making an appropriation. The bill would further set forth specified disciplinary standards and procedures.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 7.8 (commencing with Section 3575) is
2 added to Division 2 of the Business and Professions Code, to read:
3
4 CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS
5
6 3575. (a) For the purposes of this chapter, the following
7 definitions shall apply:
8 (1) "Board" means the Medical Board of California.
9 (2) "Polysomnography" means the treatment, management,
10 diagnostic testing, control, education, and care of patients with
11 sleep and wake disorders. Polysomnography shall include, but not
12 be limited to, the process of analysis, monitoring, and recording
13 of physiologic data during sleep and wakefulness to assist in the
14 treatment of disorders, syndromes, and dysfunctions that are

sleep-related, manifest during sleep, or disrupt normal sleep activities. Polysomnography shall also include, but not be limited to, the therapeutic and diagnostic use of oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bilevel modalities, adaptive servo-ventilation, and maintenance of nasal and oral airways that do not extend into the trachea.

(3) "Supervision" means that the supervising physician and surgeon shall remain available, either in person or through telephonic or electronic means, at the time that the polysomnographic services are provided.

(b) Within one year after the effective date of this chapter, the board shall promulgate regulations relative to the qualifications for the registration of individuals as certified polysomnographic technologists, polysomnographic technicians, and polysomnographic trainees. The qualifications for a certified polysomnographic technologist shall include all of the following:

(1) He or she shall have valid, current credentials as a polysomnographic technologist issued by a national accrediting agency approved by the board.

(2) He or she shall have graduated from a polysomnographic educational program that has been approved by the board.

(3) He or she shall have passed a national certifying examination that has been approved by the board, or in the alternative, may submit proof to the board that he or she has been practicing polysomnography for at least five years in a manner that is acceptable to the board. However, beginning three years after the effective date of this chapter, all individuals seeking to obtain certification as a polysomnographic technologist shall have passed a national certifying examination that has been approved by the board.

(c) In accordance with Section 144, any person seeking registration from the board as a certified polysomnographic technologist, a polysomnographic technician, or a polysomnographic trainee shall be subject to a state and federal level criminal offender record information search conducted through the Department of Justice as specified in paragraphs (1) to (5), inclusive, of this subdivision.

(1) The board shall submit to the Department of Justice fingerprint images and related information required by the

Department of Justice of all polysomnographic technologist, technician, or trainee certification candidates for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this subdivision. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board.

(3) The Department of Justice shall provide a response to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for persons described in this subdivision.

(5) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this subdivision. The individual seeking registration shall be responsible for this cost.

(d) Notwithstanding any other provision of law, an individual may use the title "certified polysomnographic technologist" and may engage in the practice of polysomnography only under the following circumstances:

(1) He or she is registered with the board.

(2) He or she works under the supervision and direction of a licensed physician and surgeon.

(3) He or she meets the requirements of this chapter.

(e) Within one year after the effective date of this chapter, the board shall adopt regulations that establish the means and circumstances in which a licensed physician and surgeon may employ polysomnographic technicians and polysomnographic trainees. The board may also adopt regulations specifying the scope of services that may be provided by a polysomnographic technician or polysomnographic trainee. Any regulation adopted pursuant to this section may specify the level of supervision that

polysomnographic technicians and trainees are required to have when working under the supervision of a certified polysomnographic technologist or licensed health care professional.

(f) This section shall not apply to California licensed allied health professionals, including, but not limited to, respiratory care practitioners, working within the scope of practice of their license.

(g) Nothing in this chapter shall be interpreted to authorize a polysomnographic technologist, technician, or trainee to treat, manage, control, educate, or care for patients other than those with sleep disorders or to provide diagnostic testing for patients other than those with suspected sleep disorders.

3576. (a) A registration under this chapter may be denied, suspended, revoked, or otherwise subjected to discipline for any of the following by the holder:

(1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant.

(2) An act of dishonesty or fraud.

(3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.

(4) Violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter.

(b) Proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all powers granted therein.

3577. (a) Each person to whom registration is granted under this chapter shall pay into the Contingent Fund of the Medical Board of California a fee to be fixed by the board at a sum not in excess of one hundred dollars ($100).

(b) The registration shall expire after two years. The registration may be renewed biennially at a fee which shall be paid into the Contingent Fund of the Medical Board of California to be fixed by the board at a sum not in excess of fifty dollars ($50).

(c) The money in the Contingent Fund of the Medical Board of California that is collected pursuant to this section shall be used for the administration of this chapter.

3578. Notwithstanding any other provision of law, nothing in this chapter shall prohibit a clinic or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the

1 Health and Safety Code from employing a certified
2 polysomnographic technologist.
3 SEC. 2. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety within
5 the meaning of Article IV of the Constitution and shall go into
6 immediate effect. The facts constituting the necessity are:
7 In order to protect the health and safety of the general public by
8 providing needed qualifications for, and oversight of, the practice
9 of polysomnography at the earliest possible time, it is necessary
10 that this act take effect immediately.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 294
Author: Negrete McLeod
Bill Date: February 26, 2009, introduced
Subject: Nurse Practitioners' Scope of Practice
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would expand the Nurse Practitioner scope of practice by allowing a health care entity to implement standardized procedures specifying (established in this legislation) the activities that a Nurse Practitioner can engage in. This bill specifically addresses admitting, ordering durable medical equipment, certifying disability, designation as primary care provider, and modification of a plan of treatment or plan of care under Medicare and Medi-Cal.

ANALYSIS:

Under current law, Nurse Practitioners have the same statutory authority to provide services and care as do Registered Nurses (RNs). However, the law allows those RNs that have advanced education and certification as Nurse Practitioners (NPs) to provide care and services beyond those specified in statute for RNs pursuant to standardized procedures and protocols adopted by each entity delivering health care services in which an NP practices. Per the author/sponsor, this bill seeks to address ambiguity in current law regarding which services and functions can be performed by NPs, but the admitting of patients requires staff privileges at hospitals.

FISCAL: None

POSITION: Recommendation: Oppose

March 14, 2009

SENATE BILL No. 294

Introduced by Senator Negrete McLeod

February 25, 2009

An act to add Section 2835.7 to the Business and Professions Code, relating to nurse practitioners.

LEGISLATIVE COUNSEL'S DIGEST

SB 294, as introduced, Negrete McLeod. Nurse practitioners.

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 qualification or certification as a nurse practitioner. Under the act, the practice of nursing is defined, in part, as providing direct and indirect patient care services, as specified, including the dispensing of drugs or devices under specified circumstances. The practice of nursing is also described as the implementation, based on observed abnormalities, of standardized procedures, defined as policies and protocols developed by specified facilities in collaboration with administrators and health professionals, including physicians and surgeons and nurses.

This bill would authorize the implementation of standardized procedures that would expand the duties of a nurse practitioner in the scope of his or her practice, as enumerated. The bill would make specified findings and declarations in that regard.

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

(a) Nurse practitioners play a vital and cost-effective role in the delivery of health care services both independently and in collaboration with physicians and surgeons and other health care providers. Nurse practitioners are involved in almost every setting in which health care services are delivered, and, in collaboration with physicians and surgeons, directly provide a wide range of services and care.

(b) Under current law, nurse practitioners have the same statutory authority to provide services and care as do registered nurses. However, the law allows those registered nurses that meet the education requirements for certification as nurse practitioners to provide care and services beyond those specified in statute for registered nurses pursuant to standardized procedures and protocols adopted by each entity delivering health care services in which a nurse practitioner practices.

(c) The Legislature reiterates its intention to allow each health care setting in which a nurse practitioner practices to select and control the services nurse practitioners may perform and provide pursuant to Section 2725 of the Business and Professions Code, and that it is not the intention of the Legislature to grant nurse practitioners the authority to independently perform services beyond the level set forth in statute for registered nurses outside of the standardized procedures.

(d) Notwithstanding the foregoing, the Legislature finds that there is ambiguity in current law regarding what services and functions to be performed by nurse practitioners may be included in standardized procedures and protocols. This ambiguity results in disruptions and delays in care, disputes over billings, and duplication of services.

(e) Therefore, it is the intent of the Legislature to provide clarification that standardized procedures and protocols may include the specified services and functions set forth in this act so that health care entities may allow nurse practitioners to engage in those activities if the entities choose to do so, and that third-party payors understand that those services and functions can be performed by nurse practitioners if they are included in an entity's standardized procedures and protocols.

SEC. 2. Section 2835.7 is added to the Business and Professions Code, to read:

2835.7. (a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in statute or regulation for inclusion in standardized procedures developed through collaboration among administrators and health professionals, including physicians and surgeons and nurses, standardized procedures may be implemented that authorize a nurse practitioner to do any of the following:

(1) Admit patients to a hospital, provided all admissions policies are followed by the nurse practitioner.

(2) Order durable medical equipment, subject to any limitations set forth in the standardized procedures. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payor to require prior approval.

(3) After performance of a physical examination by the nurse practitioner and collaboration with a physician and surgeon, certify disability pursuant to Section 2708 of the Unemployment Insurance Code.

(4) Permit a nurse practitioner to be designated by the nurse practitioner's supervising physician and surgeon as the primary care provider of record for an individual enrolled in a health care service plan. Notwithstanding that authority, nothing in this paragraph shall be construed to allow a nurse practitioner to operate independently of a standardized procedure.

(5) For individuals receiving home health services under Medicare or Medi-Cal, or personal care services, approve, sign, modify, or add to a plan of treatment or plan of care.

(b) Nothing in this section shall be construed to affect the validity of any standardized procedures in effect prior to the enactment of this section or those adopted subsequent to enactment.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 389
Author: Negrete McLeod
Bill Date: February 26, 2009, introduced
Subject: Fingerprinting
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill will require a licensee who has not been previously fingerprinted or for whom a record does not exist, to successfully complete a fingerprint record search at time of renewal. It will require notification by the licensee at time of renewal if he or she has been convicted of a felony or misdemeanor since the last renewal.

ANALYSIS:

The Medical Board has been fingerprinting its licensees for many years. Staff is in the process of verifying how far back this requirement has been in place, as it was a requirement prior to being placed in law. For purposes of this bill, staff will need to determine what records no longer exist at the Department of Justice (DOJ).

Staff has reported to the board that the number of physicians not fingerprinted may be up to 45,000, although through licensing record searches, this number may be lower than 11,000. The issue will be whether the DOJ still has a flag on the file of those licensed prior to 1986.

The Medical Board passed a motion in November of 2008 to have fingerprint records for all physicians who are licensed in this state.

FISCAL: One time cost of a technician over a two year period to assist in the processing of these reports. Additional cost to a licensee renewing his/her license is $51 for the fingerprinting.

POSITION: Recommendation: Support

March 18, 2009

SENATE BILL No. 389

Introduced by Senator Negrete McLeod

February 26, 2009

An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as introduced, Negrete McLeod. Professions and vocations.

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 various grounds, including, but not limited to, conviction 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. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciary Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require applicants for a license and, commencing January 1, 2011, licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete a state and federal level criminal offender record information search, as specified. The bill would require licensees to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill

would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she has been convicted, as defined, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

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 144 of the Business and Professions Code
2 is amended to read:
3 144. (a) Notwithstanding any other provision of law, an agency
4 designated in subdivision (b) shall require an applicant *for a license*
5 to furnish to the agency a full set of fingerprints for purposes of
6 conducting criminal history record checks *and shall require the*
7 *applicant to successfully complete a state and federal level criminal*
8 *offender record information search conducted through the*
9 *Department of Justice as provided in subdivision (c) or as*
10 *otherwise provided in this code.* ~~Any agency designated in~~
11 ~~subdivision (b) may obtain and receive, at its discretion, criminal~~
12 ~~history information from the Department of Justice and the United~~
13 ~~States Federal Bureau of Investigation.~~
14 (b) Subdivision (a) applies to the following:
15 (1) California Board of Accountancy.
16 (2) State Athletic Commission.
17 (3) Board of Behavioral Sciences.
18 (4) Court Reporters Board of California.
19 (5) State Board of Guide Dogs for the Blind.
20 (6) California State Board of Pharmacy.
21 (7) Board of Registered Nursing.
22 (8) Veterinary Medical Board.
23 (9) Registered Veterinary Technician Committee.
24 (10) Board of Vocational Nursing and Psychiatric Technicians.
25 (11) Respiratory Care Board of California.
26 (12) Hearing Aid Dispensers ~~Advisory Commission~~ *Bureau.*
27 (13) Physical Therapy Board of California.
28 (14) Physician Assistant Committee of the Medical Board of
29 California.
30 (15) Speech-Language Pathology and Audiology Board.

(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) ~~The~~ California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors' State License Board.
(26) Bureau of Naturopathic Medicine.
(27) Dental Board of California.
(28) Dental Hygiene Committee of California.
(27) Professional Fiduciaries Bureau.
(28) California Board of Podiatric Medicine.
(29) Osteopathic Medical Board of California.
(30) State Board of Chiropractic Examiners.

~~(c) The provisions of paragraph (24) of subdivision (b) shall become operative on July 1, 2004. The provisions of paragraph (25) of subdivision (b) shall become operative on the date on which sufficient funds are available for the Contractors' State License Board and the Department of Justice to conduct a criminal history record check pursuant to this section or on July 1, 2005, whichever occurs first.~~

(c) Except as otherwise provided in this code, each agency listed in subdivision (b) shall direct applicants for a license to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

SEC. 2. Section 144.5 is added to the Business and Professions Code, to read:

144.5. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) of Section 144 shall require a licencee who has not previously submitted fingerprints or for whom a record of the submission of fingerprints no longer exists to, as a condition of license renewal, successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice as provided in subdivision (d).

(b) (1) A licensee described in subdivision (a) shall, as a condition of license renewal, certify on the renewal application that he or she has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

(2) The licensee shall retain for at least three years, as evidence of the certification made pursuant to paragraph (1), either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees who did not use an electronic fingerprinting system, a receipt evidencing that the licensee's fingerprints were taken.

(c) Failure to provide the certification required by subdivision (b) renders an application for renewal incomplete. An agency shall not renew the license until a complete application is submitted.

(d) Each agency listed in subdivision (b) of Section 144 shall direct licensees described in subdivision (a) to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(e) An agency may waive the requirements of this section if the license is inactive or retired, or if the licensee is actively serving in the military. The agency may not activate an inactive license or return a retired license to full licensure status for a licensee described in subdivision (a) until the licensee has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

(f) With respect to licensees that are business entities, each agency listed in subdivision (b) of Section 144 shall, by regulation, determine which owners, officers, directors, shareholders, members, agents, employees, or other natural persons who are representatives of the business entity are required to submit fingerprint images to the Department of Justice and disclose the information on its renewal forms, as required by this section.

(g) A licensee who falsely certifies completion of a state and federal level criminal record information search under subdivision (b) may be subject to disciplinary action by his or her licensing agency.

(h) This section shall become operative on January 1, 2011.

SEC. 3. Section 144.6 is added to the Business and Professions Code, to read:

144.6. (a) An agency described in subdivision (b) of Section 144 shall require a licensee, as a condition of license renewal, to notify the board on the license renewal form if he or she has been convicted, as defined in Section 490, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

(b) The reporting requirement imposed under this section shall apply in addition to any other reporting requirement imposed under this code.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 470
Author: Corbett
Bill Date: February 26, 2009, introduced
Subject: Prescriptions
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow patients to request that their health care provider, when writing a prescription, include the intended purpose of the medication on the prescription label.

ANALYSIS:

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. The condition 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. This bill would change the word "condition" to "purpose."

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 has been introduced in previous legislative sessions. The Board has supported the concept in the past because it did 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. In this bill, it still allows the patient to ask but the physician will put the purpose of the drug on the label instead of the condition and continues to have no penalty for the provider.

FISCAL: None

POSITION: Recommendation: Support

March 14, 2009

Senate Bill 470

Rx Drug Labeling-Purpose

Author – Senator Ellen Corbett (D – 10)

SUMMARY

SB 470 would allow patients to have the purpose of the medication listed on their prescription drug label if they so desire.

BACKGROUND

The Board of Pharmacy is responsible for the regulation of pharmacies and the dispensing of prescription medications throughout the State of California. Existing law requires that certain information is contained on the outside label of prescription drugs, including the name of the drug, the patient's name, the name of the prescribing physician, the strength of the drug, and instructions for use, among other items.

In 2007, as a result of SB 472 (Corbett, Statutes of 2007), the Board was charged with standardizing the prescription drug label to make it patient-centered. As part of this mandate, the Board was required to seek information from specified groups and to consider this information in the development of these requirements. The Board has held public meetings, attended community events and conducted consumer surveys designed to elicit information from consumers. A majority of those consumers who were surveyed have so far expressed a desire to have the purpose of the medication included on the label. This finding builds upon an earlier recommendation stemming from the SCR 49 (Speier, 2005) panel report which also recommended that the purpose be included.

PROBLEM

According to the Journal of the American Medical Association, 46 percent of adults cannot understand the information listed on their prescription drug labels. Furthermore, the Institute of Medicine of the National Academies, medication errors are among the most common medical errors, harming at least 1.5 million people annually. Senior citizens are especially vulnerable. Families USA reports that 90 percent of Medicare patients take medications for chronic conditions with nearly half of them taking five or more medications a day. Given the large numbers of prescriptions that may be prescribed, it is not easily discernable what the purpose for each of these medications is. This increases the chances that a patient may take the wrong medication increasing the likelihood of serious injury or death.

SB 470

- Changes existing law by allowing the patient to request that the *purpose* rather than the *condition* be included on a prescription drug label.

STATUS

Senate Bill 470 was introduced on February 26, 2009. It is currently awaiting its first policy committee hearing.

SUPPORT

CA Board of Pharmacy (sponsor)
Pharmacy Foundation of California

FOR MORE INFORMATION

Contact:
Satinder Malhi
(916) 651-4010

SENATE BILL No. 470

Introduced by Senator Corbett

February 26, 2009

An act to amend Sections 4040 and 4076 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 470, as introduced, Corbett. Prescriptions.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and a knowing violation of the law is a crime. Existing law authorizes a prescription, as defined, to include the condition for which the drug is prescribed if requested by the patient. Existing law prohibits a pharmacist from dispensing any prescription unless it is in a specified container and the prescription label includes, among other information, the condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

This bill would revise that requirement to instead require the label to include the purpose for which the drug was prescribed if requested by the patient or if the purpose is indicated on the prescription. The bill would also make a conforming change.

By revising this requirement, the knowing violation of which would be a crime, the bill 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 4040 of the Business and Professions
2 Code is amended to read:
3 4040. (a) "Prescription" means an oral, written, or electronic
4 transmission order that is both of the following:
5 (1) Given individually for the person or persons for whom
6 ordered that includes all of the following:
7 (A) The name or names and address of the patient or patients.
8 (B) The name and quantity of the drug or device prescribed and
9 the directions for use.
10 (C) The date of issue.
11 (D) Either rubber stamped, typed, or printed by hand or typeset,
12 the name, address, and telephone number of the prescriber, his or
13 her license classification, and his or her federal registry number,
14 if a controlled substance is prescribed.
15 (E) A legible, clear notice of the ~~condition~~ *purpose* for which
16 the drug is being prescribed, if requested by the patient or patients.
17 (F) If in writing, signed by the prescriber issuing the order, or
18 the certified nurse-midwife, nurse practitioner, physician assistant,
19 or naturopathic doctor who issues a drug order pursuant to Section
20 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist
21 who issues a drug order pursuant to either subparagraph (D) of
22 paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
23 (5) of, subdivision (a) of Section 4052.
24 (2) Issued by a physician, dentist, optometrist, podiatrist,
25 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,
26 if a drug order is issued pursuant to Section 2746.51, 2836.1,
27 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,
28 physician assistant, or naturopathic doctor licensed in this state,
29 or pursuant to either subparagraph (D) of paragraph (4) of, or
30 clause (iv) of subparagraph (A) of paragraph (5) of, subdivision
31 (a) of Section 4052 by a pharmacist licensed in this state.
32 (b) Notwithstanding subdivision (a), a written order of the
33 prescriber for a dangerous drug, except for any Schedule II
34 controlled substance, that contains at least the name and signature
35 of the prescriber, the name and address of the patient in a manner
36 consistent with paragraph (3) of subdivision (b) of Section 11164
37 of the Health and Safety Code, the name and quantity of the drug
38 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. 2. 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) Th~~e condition~~ *purpose* for which the drug was prescribed if requested by the patient ~~and~~ *or* th~~e condition~~ *purpose* 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. 3. 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

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 638
Author: Negrete McLeod
Bill Date: February 27, 2009, introduced
Subject: Sunset Review Process
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would revise the process of Sunset Review. This bill seeks to establish new sunset dates for various boards and bureaus.

ANALYSIS:

This bill would establish a new process for Sunset Review and establish a new sunset date for the Board. This bill does not yet specify what the sunset date for the Board will be. Currently, the Board is due to Sunset on January 1, 2010.

FISCAL: None

POSITION: Recommendation: Support

March 13, 2009

SENATE BILL No. 638

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 638, as introduced, Negrete McLeod. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief

within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and the Tax Education Council to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if their annual report contains certain information, to post it on its Internet Web site. The bill would make other conforming changes.

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 22 of the Business and Professions Code
2 is amended to read:
3 22. ~~(a)~~ "Board," as used in any provision of this code, refers
4 to the board in which the administration of the provision is vested,
5 and unless otherwise expressly provided, shall include "bureau,"
6 "commission," "committee," "department," "division," "examining
7 committee," "program," and "agency."
8 ~~(b) Whenever the regulatory program of a board that is subject~~
9 ~~to review by the Joint Committee on Boards, Commissions, and~~
10 ~~Consumer Protection, as provided for in Division 1.2 (commencing~~
11 ~~with Section 473), is taken over by the department, that program~~
12 ~~shall be designated as a "bureau."~~
13 SEC. 2. Section 101.1 of the Business and Professions Code
14 is repealed.
15 ~~101.1. (a) It is the intent of the Legislature that all existing~~
16 ~~and proposed consumer-related boards or categories of licensed~~
17 ~~professionals be subject to a review every four years to evaluate~~
18 ~~and determine whether each board has demonstrated a public need~~
19 ~~for the continued existence of that board in accordance with~~
20 ~~enumerated factors and standards as set forth in Division 1.2~~
21 ~~(commencing with Section 473).~~

~~(b) (1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.~~

~~(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.~~

~~(3) Notwithstanding Section 107, any provision of law authorizing the appointment of an executive officer by a board subject to the review described in Division 1.2 (commencing with Section 473), or prescribing his or her duties, shall not be implemented and shall have no force or effect while the applicable board is inoperative or repealed. Any reference to the executive officer of an inoperative or repealed board shall be deemed to be a reference to the director or his or her designee.~~

~~(c) It is the intent of the Legislature that subsequent legislation to extend or repeal the inoperative date for any board shall be a separate bill for that purpose.~~

SEC. 3. Section 101.1 is added to the Business and Professions Code, to read:

101.1. (a) Notwithstanding any other provision of law, if the terms of office of the members of a board are terminated in accordance with the act that added this section or by subsequent acts, successor members shall be appointed that shall succeed to, and be vested with, all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the members that they are succeeding. The successor members shall be appointed by the same appointing authorities, for the remainder of the previous members' terms, and shall be subject to the same membership requirements as the members they are succeeding.

(b) Notwithstanding any other provision of law, if the term of office for a bureau chief is terminated in accordance with the act that added this section or by subsequent acts, a successor bureau chief shall be appointed who shall succeed to, and be vested with,

all the duties, powers, purposes, responsibilities, and jurisdiction not otherwise repealed or made inoperative of the bureau chief that he or she is succeeding. The successor bureau chief shall be appointed by the same appointing authorities, for the remainder of the previous bureau chief's term, and shall be subject to the same requirements as the bureau chief he or she is succeeding.

SEC. 4. Section 473 of the Business and Professions Code is repealed.

~~473. (a) There is hereby established the Joint Committee on Boards, Commissions, and Consumer Protection.~~

~~(b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consist of three members appointed by the Senate Committee on Rules and three members appointed by the Speaker of the Assembly. No more than two of the three members appointed from either the Senate or the Assembly shall be from the same party. The Joint Rules Committee shall appoint the chairperson of the committee.~~

~~(c) The Joint Committee on Boards, Commissions, and Consumer Protection shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.~~

~~(d) The Speaker of the Assembly and the Senate Committee on Rules may designate staff for the Joint Committee on Boards, Commissions, and Consumer Protection.~~

~~(e) The Joint Committee on Boards, Commissions, and Consumer Protection is authorized to act until January 1, 2012, at which time the committee's existence shall terminate.~~

SEC. 5. Section 473 is added to the Business and Professions Code, to read:

473. Whenever the provisions of this code refer to the Joint Committee on Boards, Commissions and Consumer Protection, the reference shall be construed to be a reference to the appropriate policy committees of the Legislature.

SEC. 6. Section 473.1 of the Business and Professions Code is amended to read:

473.1. This chapter shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to ~~become inoperative and to be repealed~~ *have its membership reconstituted* on a specified date as provided by ~~the specific act relating to the board~~ *subdivision (a) of Section 473.12.*

(b) ~~The Bureau for Postsecondary and Vocational Education. For purposes of this chapter, "board" includes the bureau~~*Every bureau that is named in subdivision (b) of Section 473.12.*

(c) ~~The Cemetery and Funeral Bureau~~*Every entity that is named in subdivision (c) of Section 473.12.*

SEC. 7. Section 473.12 is added to the Business and Professions Code, to read:

473.12. (a) Notwithstanding any other provision of law, the term of office of each member of the following boards in the department shall terminate on the date listed, unless a later enacted statute, that is enacted before the date listed for that board, deletes or extends that date:

(1) The Dental Board of California: January 1, ____.

(2) The Medical Board of California: January 1, ____.

(3) The State Board of Optometry: January 1, ____.

(4) The California State Board of Pharmacy: January 1, ____.

(5) The Veterinary Medical Board: January 1, ____.

(6) The California Board of Accountancy: January 1, ____.

(7) The California Architects Board: January 1, ____.

(8) The State Board of Barbering and Cosmetology: January 1, ____.

(9) The Board for Professional Engineers and Land Surveyors: January 1, ____.

(10) The Contractors' State License Board: January 1, ____.

(11) The Structural Pest Control Board: January 1, ____.

(12) The Board of Registered Nursing: January 1, ____.

(13) The Board of Behavioral Sciences: January 1, ____.

(14) The State Athletic Commission: January 1, ____.

(15) The State Board of Guide Dogs for the Blind: January 1, ____.

(16) The Court Reporters Board of California: January 1, ____.

(17) The Board of Vocational Nursing and Psychiatric Technicians: January 1, ____.

(18) The Landscape Architects Technical Committee: January 1, ____.

(19) The Board for Geologists and Geophysicists: January 1, ____.

(20) The Respiratory Care Board of California: January 1, ____.

(21) The Acupuncture Board: January 1, ____.

(22) The Board of Psychology: January 1, ____.

(23) The California Board of Podiatric Medicine: January 1, ____.

(24) The Physical Therapy Board of California: January 1, ____.

(25) The Physician Assistant Committee, Medical Board of California: January 1, ____.

(26) The Speech-Language Pathology and Audiology Board: January 1, ____.

(27) The California Board of Occupational Therapy: January 1, ____.

(28) The Dental Hygiene Committee of California: January 1, ____.

(b) Notwithstanding any other provision of law, the term of office for the bureau chief of each of the following bureaus shall terminate on the date listed, unless a later enacted statute, that is enacted before the date listed for that bureau, deletes or extends that date:

(1) Arbitration Review Program: January 1, ____.

(2) Bureau for Private Postsecondary Education: January 1, ____.

(3) Bureau of Automotive Repair: January 1, ____.

(4) Bureau of Electronic and Appliance Repair: January 1, ____.

(5) Bureau of Home Furnishings and Thermal Insulation: January 1, ____.

(6) Bureau of Naturopathic Medicine: January 1, ____.

(7) Bureau of Security and Investigative Services: January 1, ____.

(8) Cemetery and Funeral Bureau: January 1, ____.

(9) Hearing Aid Dispensers Bureau: January 1, ____.

(10) Professional Fiduciaries Bureau: January 1, ____.

(11) Telephone Medical Advice Services Bureau: January 1, ____.

(12) Division of Investigation: January 1, ____.

(c) Notwithstanding any other provision of law, the following shall be subject to review under this chapter on the following dates:

(1) Interior design certification organizations: January 1, ____.

(2) State Board of Chiropractic Examiners pursuant to Section 473.15: January 1, ____.

(3) Osteopathic Medical Board of California pursuant to Section 473.15: January 1, ____.

(4) California Tax Education Council: January 1, ____.

(d) Nothing in this section or in Section 101.1 shall be construed to preclude, prohibit, or in any manner alter the requirement of Senate confirmation of a board member, chief officer, or other appointee that is subject to confirmation by the Senate as otherwise required by law.

(e) It is not the intent of the Legislature in enacting this section to amend the initiative measure that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 8. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The ~~Joint Committee on Boards, Commissions, and Consumer Protection established pursuant to Section 473~~ *appropriate policy committees of the Legislature* shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* on or before September 1, 2010.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* on or before September 1, 2011.

(d) The ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall, during the interim recess of ~~2004~~ *2011* for the Osteopathic Medical Board of California, and during the interim

recess of 2011 for the State Board of Chiropractic Examiners, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall evaluate and make determinations pursuant to Section 473.4 ~~and shall report its findings and recommendations to the department as provided in Section 473.5~~.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in ~~requiring a review under~~ *enacting* this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 9. Section 473.16 of the Business and Professions Code is repealed.

~~473.16. The Joint Committee on Boards, Commissions, and Consumer Protection shall examine the composition of the Medical Board of California and its initial and biennial fees and report to the Governor and the Legislature its findings no later than July 1, 2008.~~

SEC. 10. Section 473.2 of the Business and Professions Code is amended to read:

473.2. *(a)* All boards ~~to which this chapter applies~~ *or bureaus listed in Section 473.12* shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* no later than 22 months before that ~~board~~ *board's membership or the bureau chief's term* shall ~~become inoperative~~ *be terminated*

pursuant to Section 473.12. The analysis and report shall include, at a minimum, all of the following:

~~(a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.~~

~~(b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average- and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.~~

~~(c) The board's~~

(1) The number of complaints it received per year, the number of complaints per year that proceeded to investigation, the number of accusations filed per year, and the number and kind of disciplinary actions taken, including, but not limited to, interim suspension orders, revocations, probations, and suspensions.

(2) The average amount of time per year that elapsed between receipt of a complaint and the complaint being closed or referred to investigation; the average amount of time per year elapsed between the commencement of an investigation and the complaint either being closed or an accusation being filed; the average amount of time elapsed per year between the filing of an accusation and a final decision, including appeals; and the average and median costs per case.

(3) The average amount of time per year between final disposition of a complaint and notice to the complainant.

(4) A copy of the enforcement priorities including criteria for seeking an interim suspension order.

(5) A brief description of the board's or bureau's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.

~~(d) The board's description of its licensing process including the time and costs~~

(6) A brief description of the cost per year required to implement and administer its licensing examination, ownership of the license examination, *the last assessment of the* relevancy and validity of the licensing examination, ~~and~~ *the* passage rate *for each of the last four years,* and areas of examination.

~~(e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.~~

(7) A copy of sponsored legislation and a description of its budget change proposals.

(8) A brief assessment of its licensing fees as to whether they are sufficient, too high, or too low.

(9) A brief statement detailing how the board or bureau over the prior four years has improved its enforcement, public disclosure, accessibility to the public, including, but not limited to, Web casts of its proceedings, and fiscal condition.

(b) If an annual report contains information that is required by this section, a board or bureau may submit the annual report to the committees and it shall post it on the board's or bureau's Internet Web site.

SEC. 11. Section 473.3 of the Business and Professions Code is amended to read:

473.3. ~~(a)~~ Prior to the termination~~, continuation, or reestablishment~~ *of the terms of office* of *the membership of* any board or ~~any of the board's functions, the Joint Committee on Boards, Commissions, and Consumer Protection shall~~ *the chief of any bureau described in Section 473.12, the appropriate policy committees of the Legislature*, during the interim recess preceding the date upon which a ~~board becomes inoperative~~ *board member's or bureau chief's term of office is to be terminated, may* hold public hearings to receive *and consider* testimony from the Director of Consumer Affairs, the board *or bureau* involved, ~~and~~ *the Attorney General, members of* the public, and *representatives of the* regulated industry~~. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare~~ *regarding whether the board's or bureau's policies and practices, including enforcement, disclosure, licensing exam, and fee structure, are sufficient to protect consumers and are fair to licensees and prospective licensees, whether licensure of the profession is required to protect the public, and whether an enforcement monitor may be necessary to obtain further information on operations.*

~~(b) In addition to subdivision (a), in 2002 and every four years thereafter, the committee, in cooperation with the California Postsecondary Education Commission, shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the~~

~~Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.~~

~~(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.~~

~~(d) In addition to subdivision (a), in 2003 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the Bureau of Automotive Repair. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.~~

~~(e) The committee shall evaluate and review the effectiveness and efficiency of the Bureau of Automotive Repair based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.~~

SEC. 12. Section 473.4 of the Business and Professions Code is amended to read:

473.4. (a) The ~~Joint Committee on Boards, Commissions, and Consumer Protection shall~~ *appropriate policy committees of the Legislature may* evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the ~~board or~~ regulatory program and for the degree of regulation the board or regulatory program

implements based on the following factors and minimum standards of performance:

(1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

(2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.

(3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.

(4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.

(5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.

(6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.

(7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.

(8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.

(9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

(10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.

(11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.

~~(b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.~~

~~(c)~~

(b) Nothing in this section precludes any board from submitting other appropriate information to the ~~Joint Committee on Boards, Commissions, and Consumer Protection.~~ *appropriate policy committees of the Legislature.*

SEC. 13. Section 473.5 of the Business and Professions Code is repealed.

~~473.5. The Joint Committee on Boards, Commissions, and Consumer Protection shall report its findings and preliminary recommendations to the department for its review, and, within 90 days of receiving the report, the department shall report its findings and recommendations to the Joint Committee on Boards, Commissions, and Consumer Protection during the next year of the regular session that follows the hearings described in Section 473.3. The committee shall then meet to vote on final recommendations. A final report shall be completed by the committee and made available to the public and the Legislature. The report shall include final recommendations of the department and the committee and whether each board or function scheduled for repeal shall be terminated, continued, or reestablished, and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.~~

SEC. 14. Section 473.6 of the Business and Professions Code is amended to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to ~~the Joint Committee on Boards, Commissions, and Consumer Protection for~~ *interim study* review of any legislative issues or proposals to create new licensure or regulatory categories, change licensing requirements, modify scope of practice, or create a new licensing board under the provisions of this code or pursuant to Chapter 1.5 (commencing with Section 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

SEC. 15. Section 473.7 is added to the Business and Professions Code, to read:

473.7. The appropriate policy committees of the Legislature may, through their oversight function, investigate the operations of any entity to which this chapter applies and hold public hearings on any matter subject to public hearing under Section 473.3.

SEC. 16. Section 9882 of the Business and Professions Code is amended to read:

9882. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and declaring the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) In 2003 and every four years thereafter, the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall hold a public hearing to receive *and consider* testimony from the Director of Consumer Affairs ~~and~~, the bureau~~. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare~~, *the Attorney General, members of the public, and representatives of this industry regarding the bureau's policies and practices as specified in Section 473.3.* The ~~committee shall~~ *appropriate policy committees of the Legislature may* evaluate and review the effectiveness and efficiency of the bureau based on factors and minimum standards of performance that are specified in Section 473.4. ~~The committee shall report its findings and recommendations as specified in Section 473.5.~~ The bureau shall prepare an analysis and submit a report to the ~~committee~~ *appropriate policy committees of the Legislature* as specified in Section 473.2.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 674
Author: Negrete McLeod
Bill Date: February 27, 2009, introduced
Subject: Outpatient settings/Advertising
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill covers a variety of subjects, including advertising, outpatient setting accreditation requirements, supervision of laser and IPL device procedures, the wearing of nametags for healthcare professionals, and public information.

ANALYSIS:

This bill makes some significant changes to sections of the Business and Professions (B&P) Code and the Health and Safety (H&S) Code that may benefit the public.

Amends B&P Code section 651, which would require, effective January 1, 2011, advertising to include the license designation following the licensee's name:

- Chiropractors -"DC";
- Dentists - "DDS";
- Physicians - "MD" or "DO", as appropriate;
- Podiatrists – "DPM"
- Registered Nurses – "RN"
- Vocational Nurses – "LVN"
- Psychologists – "Ph.D."
- Optometrists – "OD"
- Physician Assistants – "PA"
- Naturopathic doctor – "ND"

This bill also defines advertising as virtually any promotional communications, including direct mail, television, radio, motion picture, newspaper, book, Internet, or any

other form of communication. It does not include insurance provider directories, billing statements, or appointment reminders.

Amends B&P Code section 680:

Current law requires that health care practitioners wear name tags that includes their type of license (MD, RN, PA, etc.), but provides for an exemption to that rule if their license is prominently displayed. The law would now require practitioners to wear name tags with their license designation *or* tell patients their license designation verbally.

Advertisements for many practices or procedures often do not include sufficient information about the licensing status of the practitioners. Chiropractors, optometrists, podiatrists, nurses, nurse practitioners, physician assistants, among others, may be mistaken for licensed M.D.s. The public has a right to be informed of the qualifications of those providing their treatment.

Amends B&P Code section 2023.5:

This amendment would require that the Nursing and Medical Boards adopt regulations by July 1, 2010 relating to the appropriate level of physician availability needed for use of prescriptive lasers or intense pulse light devices.

These two Boards held three public forums to study this subject as mandated by B&P Code section 2023.5 (added to statutes by SB 1423; Figueroa, Chap 873, Stats of 2006). As a result of that study, it was determined that current law and regulations were sufficient related to supervision --- it was lack of enforcement that was contributing to the problems occurring in the use of lasers and IPL devices, among other cosmetic procedures.

Adds B&P Code section 2027.5:

This new section requires the Board to post on its Web site a comprehensive fact sheet on cosmetic surgery. This will enhance consumer awareness and protection.

Amends H&S Code section 1248:

This section clarifies that any references to Division of Licensing are deemed to refer to the Medical Board. More importantly is adds in vitro fertilization facilities or other assisted reproduction technology services to the definition of "Outpatient setting." These settings, providing in vitro services, will be required to meet the accreditation standards for current outpatient settings.

Amends H&S Code section 1248.15:

This section makes technical changes and adds the requirement for accreditation agencies that they not only require of the settings emergency plans for outpatient settings, but also require the inclusion of standardized procedures and protocols to be followed in the event of emergencies or complications that place patients at risk of injury or harm. This is added to address concerns that detailed procedures were not in place at these settings.

Amends H&S Code section 1248.2:

This section replaces "Division" or "Division of Licensing" with "Board" to reflect the current organization of the Medical Board. This section also makes minor technical changes and requires the Medical Board to disclose to the public if an outpatient setting has been suspended, placed on probation, or received a reprimand by the approved accreditation agency. This will allow the public access to the status of all outpatient settings.

Amends H&S Code sections 1248.25 and 1248.35, and 1248.5:

These sections make technical changes and do the following:

- Requires the Board or the Board's approved accreditation agencies to periodically inspect accredited outpatient settings. Inspections must be performed no less than once every three years. This will help the settings remain in compliance with the law, thus providing enhanced consumer protection. It is not clear who will pay for these inspections.
- Current law requires accreditation agencies to provide outpatient settings a notice of deficiencies and a reasonable time to remedy them before revoking accreditation. This legislation would require the outpatient setting to prominently post the notice of deficiencies. This will allow the public access to issues that the settings may have or had to remedy.
- Requires that reports on the results of outpatient setting inspections be kept on file by the Board or accrediting agency, along with proposed corrective action and recommendations for reinspection. These reports will be public information - disclosable to the public.
- Requires the approved accrediting agencies to immediately inform the Board when they issue a reprimand, suspend or revoke accreditation, or place an outpatient setting on probation. This will alert the Board of an issue that may need action.
- Requires the Board to:
    1. Evaluate the accreditation agencies every three years;
    2. Evaluate in response to complaints against an agency;
    3. Evaluate complaints against the accreditation of outpatient settings.

FISCAL: Unknown

POSITION: Recommend: Support if amended.

March 17, 2009

SENATE BILL No. 674

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 651, 680, and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, and 1248.5 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 674, as introduced, Negrete McLeod. Healing arts: outpatient settings.

(1) Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status on a specified name tag. However, existing law exempts from this requirement a health care practitioner, in a practice or office, whose license is prominently displayed.

This bill would delete that exemption and would instead authorize a health care practitioner, in a practice or office, to disclose his or her name and his or her type of license verbally.

(3) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by July 1, 2010, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(4) Existing law requires the board to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations.

This bill would include, among those specified aspects, the submission for approval by an accrediting agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined, and assisted reproduction technology treatments.

(6) Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

(7) Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

(8) Existing law authorizes the Medical Board of California as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements, and the bill would require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

(9) Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(10) 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 651 of the Business and Professions Code
2 is amended to read:
3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public

communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim

that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall

condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board

or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board

or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) (1) Advertising by the following licensees shall include the designations as follows:

(A) Advertising by a chiropractor licensed under Chapter 2 (commencing with Section 1000) shall include the designation "DC" immediately following the chiropractor's name.

(B) Advertising by a dentist licensed under Chapter 4 (commencing with Section 1600) shall include the designation "DDS" immediately following the dentist's name.

(C) Advertising by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) shall include the designation "MD" immediately following the physician and surgeon's name.

(D) Advertising by an osteopathic physician and surgeon certified under Article 21 (commencing with Section 2450) shall include the designation "DO" immediately following the osteopathic physician and surgeon's name.

(E) Advertising by a podiatrist certified under Article 22 (commencing with Section 2460) of Chapter 5 shall include the designation "DPM" immediately following the podiatrist's name.

(F) Advertising by a registered nurse licensed under Chapter 6 (commencing with Section 2700) shall include the designation "RN" immediately following the registered nurse's name.

(G) Advertising by a licensed vocational nurse under Chapter 6.5 (commencing with Section 2840) shall include the designation "LVN" immediately following the licensed vocational nurse's name.

(H) Advertising by a psychologist licensed under Chapter 6.6 (commencing with Section 2900) shall include the designation "Ph.D." immediately following the psychologist's name.

(I) Advertising by an optometrist licensed under Chapter 7 (commencing with Section 3000) shall include the designation "OD" immediately following the optometrist's name.

(J) Advertising by a physician assistant licensed under Chapter 7.7 (commencing with Section 3500) shall include the designation "PA" immediately following the physician assistant's name.

(K) Advertising by a naturopathic doctor licensed under Chapter 8.2 (commencing with Section 3610) shall include the designation "ND" immediately following the naturopathic doctor's name.

(2) For purposes of this subdivision, "advertisement" includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.

(3) Advertisements do not include any of the following:

(A) A medical directory released by a health care service plan or a health insurer.

(B) A billing statement from a health care practitioner to a patient.

(C) An appointment reminder from a health care practitioner to a patient.

(4) This subdivision shall not apply until January 1, 2011, to any advertisement that is published annually and prior to July 1, 2010.

(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.

~~(i)~~

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

~~(j)~~

(k) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys,

county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

~~(k)~~

(l) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

SEC. 2. Section 680 of the Business and Professions Code is amended to read:

680. (a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and *the* practitioner's *type of* license~~ status~~, as granted by this state, on a name tag in at least 18-point type.~~ A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag.~~ *A health care practitioner in a practice or office may opt to disclose this information verbally.* If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of *Public* Health~~ Services~~ shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of *Public* Health~~ Services~~ shall verify through periodic inspections that the policies required

pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

(c) For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

SEC. 3. Section 2023.5 of the Business and Professions Code is amended to read:

2023.5. (a) The board, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, shall review issues and problems surrounding the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants. The review shall include, but need not be limited to, all of the following:

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

(3) Guidelines for standardized procedures and protocols that address, at a minimum, all of the following:

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

(b) On or before January 1, 2009, the board and the Board of Registered Nursing shall promulgate regulations to implement changes determined to be necessary with regard to the use of laser or intense pulse light devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

(c) On or before July 1, 2010, the board shall adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by the federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.

SEC. 4. Section 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its Internet Web site an easy-to-understand factsheet to educate the public and about cosmetic surgery and procedures, including their risks. Included with the factsheet shall be a comprehensive list of questions for patients to ask their physician and surgeon regarding cosmetic surgery.

SEC. 5. Section 1248 of the Health and Safety Code is amended to read:

1248. For purposes of this chapter, the following definitions shall apply:

(a) "Division" means the ~~Division of Licensing of the~~ Medical Board of California. *All references in this chapter to the division, the Division of Licensing of the Medical Board of California, or the Division of Medical Quality shall be deemed to refer to the Medical Board of California pursuant to Section 2002 of the Business and Professions Code.*

~~(b) "Division of Medical Quality" means the Division of Medical Quality of the Medical Board of California.~~

~~(c)~~

(b) "Outpatient setting" means any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, as defined in Section 1250, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes. *"Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55, or facilities that offer assisted reproduction technology treatments.*

"Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

~~(d)~~

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the ~~division~~ *board* pursuant to Sections 1248.15 and 1248.4.

SEC. 6. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ *board* shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~(iii) Submit~~

(D) Submission for approval by an accrediting agency *of* a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(E) Submission for approval by an accrediting agency at the time of accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations.

~~(D)~~

(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of *Public* Health ~~Services~~, and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of* the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of* the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of* the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division~~ *board.* The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ *board* to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division~~ *board*, and no standard included in any certification program of any accreditation agency approved by the ~~division~~ *board*, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards

established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

SEC. 7. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the ~~division~~ *board* under this chapter.

(b) The ~~division~~ *board* shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies approved by the ~~division~~ *board*, and shall notify the public~~, upon inquiry,~~ whether a setting is accredited, certified, or licensed, or ~~whether~~ the setting's accreditation, certification, or license has been revoked, *suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.*

SEC. 8. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the ~~division~~ *board*, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. *The accrediting agency shall immediately report to the board if the outpatient setting's certificate for accreditation has been denied.*

SEC. 9. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. (a) ~~The Division of Medical Quality~~*Every outpatient setting which is accredited shall be periodically inspected by the Medical Board of California* or ~~an~~ *the* accreditation agency ~~may,~~. *The frequency of inspection shall depend* upon ~~reasonable prior notice~~ *the type* and ~~presentation~~ *complexity* of ~~proper identification,~~ *the outpatient setting to be inspected. Inspections shall be conducted no less often than once every three years and as often as necessary to ensure the quality of care provided. The Medical Board of California or the accreditation agency may* enter and inspect any outpatient setting that is accredited by an accreditation

agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

(b) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the ~~division~~ *board* or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

(c) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and *the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting* reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. *During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view.* The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

(d) If the ~~division~~ *board* determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the ~~division~~ *board*, the ~~division~~ *board* may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.

(e) Reports on the results of each inspection shall be kept on file with the board or the accrediting agency along with the plan

of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

(f) The accrediting agency shall immediately report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

SEC. 10. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. Th~~e division may~~ *board shall* evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by th~~e division~~ *board.*

SEC. 11. 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: SB 700
Author: Negrete McLeod
Bill Date: February 27, 2009, introduced
Subject: Peer Review
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill adds a definition of peer review. In addition, it adds that the peer review minutes or reports may be obtained by the Board.

ANALYSIS:

This bill will focus on enhancements to the peer review system as it relates to the Medical Board and oversight by the California Department of Public Health.

This bill adds a definition of what peer review is by specifying that it is the process in which the basic qualifications, staff privileges, employment, outcomes and conduct of licentiates are reviewed to determine if licensees may continue to practice in the facility and if so, under any parameters.

This bill adds that minutes or reports of a peer review are included in the documents that the Board may inspect.

This bill will be amended to include additional provisions to enhance consumer protection.

FISCAL: None.

POSITION: Recommendation: Support and direct staff to continue to work with the author to enhance consumer protections in the bill.

March 18, 2009

SENATE BILL No. 700

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 805 and 805.1 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as introduced, Negrete McLeod. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law defines the term "peer review body" as including a medical or professional staff of any health care facility or clinic licensed by the State Department of Public Health.

This bill would define the term "peer review" and would revise the definition of the term "peer review body" to include a medical or professional staff of other specified health care facilities or clinics.

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board if a peer review body takes one of several specified actions against a person licensed by that board. Existing law requires the board to maintain the report for a period of 3 years after receipt.

This bill would require the board to maintain the report electronically.

Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report.

This bill would authorize those boards to also inspect any peer review minutes or reports in those records.

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 805 of the Business and Professions Code
2 is amended to read:
3 805. (a) As used in this section, the following terms have the
4 following definitions:
5 *(1) (A) "Peer review" means a process in which a peer review*
6 *body reviews the basic qualifications, staff privileges, employment,*
7 *medical outcomes, and professional conduct of licentiates to*
8 *determine whether the licentiate may practice or continue to*
9 *practice in a health care facility, clinic, or other setting providing*
10 *medical services and, if so, to determine the parameters of that*
11 *practice.*
12 ~~(1)~~
13 *(B)* "Peer review body" includes:
14 ~~(A)~~
15 *(i)* A medical or professional staff of any health care facility or
16 clinic ~~licensed~~ *specified* under Division 2 (commencing with
17 Section 1200) of the Health and Safety Code or of a facility
18 certified to participate in the federal Medicare Program as an
19 ambulatory surgical center.
20 ~~(B)~~
21 *(ii)* A health care service plan registered under Chapter 2.2
22 (commencing with Section 1340) of Division 2 of the Health and
23 Safety Code or a disability insurer that contracts with licentiates
24 to provide services at alternative rates of payment pursuant to
25 Section 10133 of the Insurance Code.
26 ~~(C)~~
27 *(iii)* Any medical, psychological, marriage and family therapy,
28 social work, dental, or podiatric professional society having as
29 members at least 25 percent of the eligible licentiates in the area
30 in which it functions (which must include at least one county),
31 which is not organized for profit and which has been determined
32 to be exempt from taxes pursuant to Section 23701 of the Revenue
33 and Taxation Code.
34 ~~(D)~~

(iv) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by

the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained *electronically* by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged

to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

1 SEC. 2. Section 805.1 of the Business and Professions Code
2 is amended to read:
3 805.1. (a) The Medical Board of California, the Osteopathic
4 Medical Board of California, and the Dental Board of California
5 shall be entitled to inspect and copy the following documents in
6 the record of any disciplinary proceeding resulting in action that
7 is required to be reported pursuant to Section 805:
8 (1) Any statement of charges.
9 (2) Any document, medical chart, or exhibits in evidence.
10 (3) Any opinion, findings, or conclusions.
11 *(4) Any peer review minutes or reports.*
12 (b) The information so disclosed shall be kept confidential and
13 not subject to discovery, in accordance with Section 800, except
14 that it may be reviewed, as provided in subdivision (c) of Section
15 800, and may be disclosed in any subsequent disciplinary hearing
16 conducted pursuant to the Administrative Procedure Act (Chapter
17 5 (commencing with Section 11500) of Part 1 of Division 3 of
18 Title 2 of the Government Code).

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 726
Author: Ashburn
Bill Date: February 27, 2009, introduced
Subject: Pilot Program Authorizing Acute Care Hospitals to Employ Physicians
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes revisions to a current pilot program administered by the Medical Board of California (Board), relating to the direct employment of physicians by certain hospitals.

ANALYSIS:

Current law (commonly referred to as the "Corporate Practice of Medicine" - B&P Code section 2400) generally prohibits corporations or other entities that are not controlled by physicians from practicing medicine, to ensure that lay persons are not controlling or influencing the professional judgment and practice of medicine by physicians.

The Board presently administers a pilot project to provide for the direct employment of physicians by qualified district hospitals; this project is set to expire on January 1, 2011. (Senate Bill 376/Chesbro, Chap. 411, Statutes of 2003). The Board supported SB 376 because the program was created as a limited pilot program, and required a final evaluation to assess whether this exemption will promote access to health care.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in the bill. Support for this bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law required the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally.

The Board was challenged in evaluating the program and preparing the required report because the low number of participants did not afford us sufficient information to prepare a valid analysis of the pilot. In summary, while the Board supports the ban on the corporate practice of medicine, it also believes there may be justification to extend the pilot so that a better evaluation can be made. However, until there is sufficient data to perform a full analysis of an expanded pilot, the Board's position as spelled out in the report to the Legislature (September 10, 2008) was that the statutes governing the corporate practice of medicine should not be amended as a solution to solve the problem of access to healthcare.

The pilot provided safeguards and limitations. That program provided for the direct employment of no more than 20 physicians in California by qualified district hospitals at any time and limited the total number of physicians employed by such a hospital to no more than two at a time. The Medical Board was notified of any physicians hired under the pilot, and the contracts were limited to four years of service. Further, per the current pilot program: 1) the hospital must be located in smaller counties (a population of less than 750,000); 2) the hospital must provide a majority of care to underserved populations; 3) the hospital must notify the Board.

This bill revises the existing pilot program by:

- Allowing any general acute care hospital (instead of only certain district hospitals) to participate so long as the hospital is located in a medically underserved population, a medically underserved area, or a health professional shortage area.
- Removing the statewide limit of 20 physicians who may participate in the pilot.
- Increasing the number of physicians who may be employed at any hospital from two to five.
- Requiring physicians and hospitals to enter into a written contract, not in excess of four years, by December 31, 2011. This document, together with other information, shall be submitted to the Board for approval, and the Board must provide written confirmation to the hospital within five working days.
- Requiring the Board to submit a report to the Legislature by October 1, 2013.
- Repealing the pilot effective on January 1, 2016 unless deleted or extended by subsequent legislation.

The author's office is uncertain what the impact of this framework would be; for example, they have not been able to identify the number of California acute care hospitals in those underserved areas. However, by limiting participation to those hospitals in underserved areas, this ensures that the intent of the pilot program is continued – an avenue to improve access to health care.

It also remains unclear what impact, if any, would be realized by removing the current limit of 20 physicians statewide or by increasing the number of physicians at each hospital from two to five. As SB 376 was being debated before the Legislature, the Board discussed the potential impact of the bill with the author's office. While recognizing that the limitations of the pilot (a statewide total of 20 participants with no more than two physicians at any one hospital) would make only a small first-step towards increasing access to healthcare, the Board anticipated that all 20 slots soon would be filled. After the Governor signed the bill and the law took effect on January 1, 2004, staff was prepared to promptly process the applications as they were submitted. The Board recognized that to have an adequate base of physicians to use in preparing a valid analysis of the pilot, as many as possible of the 20 positions would need to be filled. However, such a significant response failed to materialize. Unexpectedly, the first application was not received until six months after the pilot became operational, and that hospital elected to hire a physician for only three years instead of the four years allowed by the pilot. Further, during the years that the pilot was operational, only six physicians were hired by five eligible hospitals. So, unless there is an unexpected groundswell of interest in the revised pilot, this workload could be accomplished within existing resources. Again, expanding the pool of available positions to be filled could increase access to health care.

One issue of import with bill is the implementation dates. If the bill is signed, the law would not become effective until January 2010. Hospitals would only have 24 months during which to hire physicians—for contracts up to four years. However, the report would be due to the Legislature only 21 months thereafter. This limited time for the pilot to be operational and for the Board to collect information is not practical for conducting a full and valuable evaluation.

FISCAL: Unknown at this time.

POSITION: Recommendation: Support, if amended. The implementation dates should be adjusted to allow for a longer operational period and for a full evaluation to be conducted.

March 17, 2009

SENATE BILL No. 726

Introduced by Senator Ashburn

February 27, 2009

An act to amend Sections 2401 and 2401.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as introduced, Ashburn. Hospitals: employment of physicians and surgeons.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals, as defined, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. Existing law requires the Medical Board of California to report to the Legislature not later than October 1, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to authorize the direct employment by general acute care hospitals meeting specified requirements of an unlimited number of physicians and surgeons under the pilot project, and would authorize such a hospital to employ up to 5 licensees at a time. The bill would extend the pilot project until January 1, 2016, would require the board to report to the Legislature not later than October 1, 2013, on the evaluation of the effectiveness of the pilot project, and would make conforming changes.

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. The Legislature hereby finds and declares that a
2 2001 University of California, San Francisco, study found that the
3 Inland Empires, Central Valley/Sierra Nevada, and South
4 Valley/Sierra Nevada regions have at least 30 percent fewer
5 physicians and surgeons than the Los Angeles and San Francisco
6 Bay area regions.
7 SEC. 2. Section 2401 of the Business and Professions Code is
8 amended to read:
9 2401. (a) Notwithstanding Section 2400, a clinic operated
10 primarily for the purpose of medical education by a public or
11 private nonprofit university medical school, which is approved by
12 the Division of Licensing or the Osteopathic Medical Board of
13 California, may charge for professional services rendered to
14 teaching patients by licensees who hold academic appointments
15 on the faculty of the university, if the charges are approved by the
16 physician and surgeon in whose name the charges are made.
17 (b) Notwithstanding Section 2400, a clinic operated under
18 subdivision (p) of Section 1206 of the Health and Safety Code
19 may employ licensees and charge for professional services rendered
20 by those licensees. However, the clinic shall not interfere with,
21 control, or otherwise direct the professional judgment of a
22 physician and surgeon in a manner prohibited by Section 2400 or
23 any other provision of law.
24 (c) Notwithstanding Section 2400, a narcotic treatment program
25 operated under Section 11876 of the Health and Safety Code and
26 regulated by the State Department of Alcohol and Drug Programs,
27 may employ licensees and charge for professional services rendered
28 by those licensees. However, the narcotic treatment program shall
29 not interfere with, control, or otherwise direct the professional
30 judgment of a physician and surgeon in a manner prohibited by
31 Section 2400 or any other provision of law.
32 (d) Notwithstanding Section 2400, a *qualified* hospital ~~owned~~
33 ~~and operated by a health care district pursuant to Division 23~~
34 ~~(commencing with Section 32000) of the Health and Safety Code~~
35 may employ a licensee pursuant to Section 2401.1, and may charge

for professional services rendered by the licensee, if the physician and surgeon in whose name the charges are made approves the charges. However, the hospital shall not interfere with, control, or otherwise direct the physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

SEC. 3. Section 2401.1 of the Business and Professions Code is amended to read:

2401.1. (a) The Legislature finds and declares as follows:

(1) Due to the large number of uninsured and underinsured Californians, a number of California communities are having great difficulty recruiting and retaining physicians and surgeons.

(2) In order to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities, many ~~district~~ hospitals have no viable alternative but to directly employ physicians and surgeons in order to provide economic security adequate for a physician and surgeon to relocate and reside in their communities.

(3) The Legislature intends that a ~~district~~ hospital meeting the conditions set forth in this section be able to employ physicians and surgeons directly, and to charge for their professional services.

(4) The Legislature reaffirms that Section 2400 provides an increasingly important protection for patients and physicians and surgeons from inappropriate intrusions into the practice of medicine, and further intends that a ~~district~~ hospital not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.

(b) A pilot project to provide for the direct employment of ~~a total of 20~~ physicians and surgeons by qualified ~~district~~ hospitals is hereby established in order to improve the recruitment and retention of physicians and surgeons in rural and other medically underserved areas.

(c) For purposes of this section, a qualified ~~district~~ hospital means a hospital that meets ~~all~~ *both* of the following requirements:

~~(1) Is a district hospital organized and governed pursuant to the Local Health Care District Law (Division 23 (commencing with Section 32000) of the Health and Safety Code).~~

~~(2) Provides a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days.~~

~~(3) Is located in a county with a total population of less than 750,000.~~

~~(4) Has net losses from operations in fiscal year 2000-01, as reported to the Office of Statewide Health Planning and Development.~~

(1) Is a general acute care hospital, as defined in Section 1250 of the Health and Safety Code.

(2) Is located within a medically underserved population, medically underserved area, or health professions shortage area, so designated by the federal government pursuant to Section 254b, 254c-14, or 254e of Title 42 of the United States Code, or is a rural hospital as defined in Section 124840 of the Health and Safety Code.

(d) In addition to the requirements of subdivision (c), and in addition to other applicable laws, a qualified ~~district~~ hospital may directly employ a licensee pursuant to subdivision (b) if all of the following conditions are satisfied:

~~(1) The total number of physicians and surgeons employed by all qualified district hospitals under this section does not exceed 20.~~

~~(2)~~

(1) The medical staff and the elected trustees of the qualified ~~district~~ hospital concur by an affirmative vote of each body that the physician and surgeon's employment is in the best interest of the communities served by the hospital.

~~(3)~~

(2) The licensee enters into or renews a written employment contract with the qualified ~~district~~ hospital prior to December 31, ~~2006~~ *2011*, for a term not in excess of four years. The contract shall provide for mandatory dispute resolution under the auspices of the board for disputes directly relating to the licensee's clinical practice.

~~(4)~~

(3) The total number of licensees employed by the qualified ~~district~~ hospital does not exceed ~~two~~ *five* at any time.

~~(5)~~

(4) The qualified ~~district~~ hospital notifies the board in writing that the hospital plans to enter into a written contract with the licensee, and the board has confirmed that the licensee's employment is within the maximum number permitted by this

1 section. The board shall provide written confirmation to the hospital
2 within five working days of receipt of the written notification to
3 the board.
4 (e) The board shall report to the Legislature not later than
5 October 1, ~~2008~~ *2013*, on the evaluation of the effectiveness of
6 the pilot project in improving access to health care in rural and
7 medically underserved areas and the project's impact on consumer
8 protection as it relates to intrusions into the practice of medicine.
9 (f) Nothing in this section shall exempt the ~~district~~ hospital from
10 any reporting requirements or affect the board's authority to take
11 action against a physician and surgeon's license.
12 (g) This section shall remain in effect only until January 1, ~~2011~~
13 *2016*, and as of that date is repealed, unless a later enacted statute
14 that is enacted before January 1, ~~2011~~ *2016*, deletes or extends
15 that date.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 774
Author: Ashburn
Bill Date: February 27, 2009, introduced
Subject: Nurse Practitioners
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is a spot bill for language that will be developed regarding the scope of practice for Nurse Practitioners.

ANALYSIS:

At this time, it is unclear what the author plans to do to address the scope of practice for Nurse Practitioners. This bill does intend to change the scope of services that a Nurse Practitioner can provide. This author has sponsored bills in the past that made significant changes to the scope of practice, thus this bill is being tracked.

FISCAL: None

POSITION: Recommendation: Watch

March 17, 2009

SENATE BILL No. 774

Introduced by Senator Ashburn

February 27, 2009

An act relating to nurse practitioners.

LEGISLATIVE COUNSEL'S DIGEST

SB 774, as introduced, Ashburn. Nurse practitioners.

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 qualification or certification as a nurse practitioner. Under the act, the practice of nursing is defined, in part, as providing direct and indirect patient care services, as specified. The practice of nursing is also described as the implementation, based on observed abnormalities, of standardized procedures, defined as policies and protocols developed by specified facilities in collaboration with administrators and health professionals, including physicians and surgeons and nurses.

This bill would provide that it is the intent of the Legislature to enact legislation to define the scope of practice for nurse practitioners.

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. It is the intent of the Legislature to enact
2 legislation to define the scope of practice for nurse practitioners
3 in the State of California.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 819
Author: Committee on Business, Professions, and Economic Development
Bill Date: March 10, 2009, introduced
Subject: Omnibus
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act. The provisions in this bill were those previously carried in SB 1779 (2008) which was vetoed.

ANALYSIS:

This bill proposed non-substantive and non-controversial changes to law. The provisions relating to the Medical Board are in the Business and Professions Code and are as follows (only these sections of the bill are attached):

- 801.01 – Clarifying whether or not malpractice actions have to be in California to be reported.
- 2089.5 – Specifying the type of residency programs; and technical changes.
- 2096 – Specifying the type of residency programs; and technical changes.
- 2102 – Since the Federation of State Medical Boards (FSMB) will not test anyone without a state license eliminates this option; and technical changes.
- 2107 – Technical changes.
- 2135 –
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency among all licensing pathways.
  - Technical changes.

- 2168.4 & 2169 – Making the renewal requirements for the special faculty permit the same as those for the physician's certificate renewal.

- 2172 – Repeal; board no longer administers examinations.

- 2173 – Repeal; board no longer administers examinations.

- 2174 – Repeal; board no longer administers examinations.

- 2175 – Requiring the Board to maintain examination records until June 1, 2070.

- 2221 – Making the process by which an applicant's probationary certificate can be modified or terminated consistent with the process that a licensee on probation must follow to modify or terminate probation.

- 2307 – Specify that recommendations can come from physicians licensed in <u>any</u> state; and technical changes.

- 2335 – Re-amending section from AB 253 (2007), the Board's restructuring bill, due to subsequent section amendments in a bill that was signed afterward. This section was included in a bill that was signed after ours, which did not include the amendments we were requesting. Our amendments add 10 days to the 90-day period by which provisions and proposed decisions must be issued by the Board. This provision will make the requirements consistent with the Administrative Procedures Act.

FISCAL: None

POSITION: Recommendation: Support MBC provisions.

March 13, 2009

SENATE BILL No. 819

Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)

March 10, 2009

An act to amend Sections 27, 101, 128.5, 144, 146, 149, 683, 733, 800, 801, 801.01, 803, 2089.5, 2096, 2102, 2107, 2135, 2168.4, 2175, 2221, 2307, 2335, 2486, 2488, 2570.5, 2570.6, 2570.7, 2570.185, 2760.1, 3503, 3517, 3518, 3625, 3633.1, 3635, 3636, 3685, 3750.5, 3753.5, 3773, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4161, 4174, 4231, 4301, 4305, 4329, 4330, 4857, 4980.30, 4980.43, 4996.2, 4996.17, 4996.18, 5801, 6534, 6536, 6561, 7616, 7629, 8740, and 8746 of, to add Sections 2169, 2570.36, 4036.5, 4980.04, 4990.09, 5515.5, and 9855.15 to, and to repeal Sections 2172, 2173, 2174, 4981, 4994.1, 4996.20, 4996.21, and 6761 of, the Business and Professions Code, to amend Section 8659 of the Government Code, to amend Sections 8778.5, 11150, and 11165 of the Health and Safety Code, and to amend Section 14132.100 of the Welfare and Institutions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as introduced, Committee on Business, Professions and Economic Development. Professions and vocations.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs.

Existing law requires certain boards and bureaus to disclose on the Internet information on licensees.

Medical Board sections on pages 20-40

to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient. The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (*l*) of Section 12940 of the Government Code.

(c) For the purposes of this section, "prescription drug or device" has the same meaning as the definition in Section 4022.

(d) The provisions of this section shall apply to the drug therapy described in ~~paragraph (8) of subdivision (a) of Section 4052~~ *Section 4052.3*.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third-party payer accepted by the licentiate or payment of any required copayment by the patient.

(f) The notice to consumers required by Section 4122 shall include a statement that describes patients' rights relative to the requirements of this section.

SEC. 9. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of

Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, ~~and~~ the Speech-Language Pathology and Audiology Board, *the California Board of Occupational Therapy, and the Acupuncture Board* shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her

complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 10. Section 801 of the Business and Professions Code is amended to read:

801. (a) Except as provided in Section 801.01 and subdivisions (b), (c), and (d) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral ~~Science Examiners~~ *Sciences* as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), or (c) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on

1 the parties, or the date of entry of the civil judgment, the attorney
2 shall make the report to the agency.
3 (f) Notwithstanding any other provision of law, no insurer shall
4 enter into a settlement without the written consent of the insured,
5 except that this prohibition shall not void any settlement entered
6 into without that written consent. The requirement of written
7 consent shall only be waived by both the insured and the insurer.
8 This section shall only apply to a settlement on a policy of
9 insurance executed or renewed on or after January 1, 1971.
10 SEC. 11. Section 801.01 of the Business and Professions Code
11 is amended to read:
12 801.01. (a) A complete report shall be sent to the Medical
13 Board of California, the Osteopathic Medical Board, or the
14 California Board of Podiatric Medicine, with respect to a licensee
15 of the board as to the following:
16 (1) A settlement over thirty thousand dollars ($30,000) or
17 arbitration award of any amount or a civil judgment of any amount,
18 whether or not vacated by a settlement after entry of the judgment,
19 that was not reversed on appeal, of a claim or action for damages
20 for death or personal injury caused by the licensee's alleged
21 negligence, error, or omission in practice *in California*, or by his
22 or her rendering of unauthorized professional services *in*
23 *California*.
24 (2) A settlement over thirty thousand dollars ($30,000) if it is
25 based on the licensee's alleged negligence, error, or omission in
26 practice *in California*, or by the licensee's rendering of
27 unauthorized professional services *in California*, and a party to
28 the settlement is a corporation, medical group, partnership, or other
29 corporate entity in which the licensee has an ownership interest
30 or that employs or contracts with the licensee.
31 (b) The report shall be sent by the following:
32 (1) The insurer providing professional liability insurance to the
33 licensee.
34 (2) The licensee, or his or her counsel, if the licensee does not
35 possess professional liability insurance.
36 (3) A state or local governmental agency that self-insures the
37 licensee.
38 (c) The entity, person, or licensee obligated to report pursuant
39 to subdivision (b) shall send the complete report if the judgment,
40 settlement agreement, or arbitration award is entered against or

1 paid by the employer of the licensee and not entered against or
2 paid by the licensee. "Employer," as used in this paragraph, means
3 a professional corporation, a group practice, a health care facility
4 or clinic licensed or exempt from licensure under the Health and
5 Safety Code, a licensed health care service plan, a medical care
6 foundation, an educational institution, a professional institution,
7 a professional school or college, a general law corporation, a public
8 entity, or a nonprofit organization that employs, retains, or contracts
9 with a licensee referred to in this section. Nothing in this paragraph
10 shall be construed to authorize the employment of, or contracting
11 with, any licensee in violation of Section 2400.
12 (d) The report shall be sent to the Medical Board of California,
13 the Osteopathic Medical Board of California, or the California
14 Board of Podiatric Medicine, as appropriate, within 30 days after
15 the written settlement agreement has been reduced to writing and
16 signed by all parties thereto, within 30 days after service of the
17 arbitration award on the parties, or within 30 days after the date
18 of entry of the civil judgment.
19 (e) If an insurer is required under subdivision (b) to send the
20 report, the insurer shall notify the claimant, or if the claimant is
21 represented by counsel, the claimant's counsel, that the insurer
22 has sent the report to the Medical Board of California, the
23 Osteopathic Medical Board of California, or the California Board
24 of Podiatric Medicine. If the claimant, or his or her counsel, has
25 not received this notice within 45 days after the settlement was
26 reduced to writing and signed by all of the parties or the arbitration
27 award was served on the parties or the date of entry of the civil
28 judgment, the claimant or the claimant's counsel shall make the
29 report to the appropriate board.
30 (f) If the licensee or his or her counsel is required under
31 subdivision (b) to send the report, the licensee or his or her counsel
32 shall send a copy of the report to the claimant or to his or her
33 counsel if he or she is represented by counsel. If the claimant or
34 his or her counsel has not received a copy of the report within 45
35 days after the settlement was reduced to writing and signed by all
36 of the parties or the arbitration award was served on the parties or
37 the date of entry of the civil judgment, the claimant or the
38 claimant's counsel shall make the report to the appropriate board.
39 (g) Failure of the licensee or claimant, or counsel representing
40 the licensee or claimant, to comply with subdivision (f) is a public

1 offense punishable by a fine of not less than fifty dollars ($50) and
2 not more than five hundred dollars ($500). A knowing and
3 intentional failure to comply with subdivision (f) or a conspiracy
4 or collusion not to comply with subdivision (f), or to hinder or
5 impede any other person in the compliance, is a public offense
6 punishable by a fine of not less than five thousand dollars ($5,000)
7 and not more than fifty thousand dollars ($50,000).
8 (h) (1) The Medical Board of California, the Osteopathic
9 Medical Board of California, and the California Board of Podiatric
10 Medicine may develop a prescribed form for the report.
11 (2) The report shall be deemed complete only if it includes the
12 following information:
13 (A) The name and last known business and residential addresses
14 of every plaintiff or claimant involved in the matter, whether or
15 not the person received an award under the settlement, arbitration,
16 or judgment.
17 (B) The name and last known business and residential address
18 of every physician and surgeon or doctor of podiatric medicine
19 who was alleged to have acted improperly, whether or not that
20 person was a named defendant in the action and whether or not
21 that person was required to pay any damages pursuant to the
22 settlement, arbitration award, or judgment.
23 (C) The name, address, and principal place of business of every
24 insurer providing professional liability insurance to any person
25 described in subparagraph (B), and the insured's policy number.
26 (D) The name of the court in which the action or any part of the
27 action was filed, and the date of filing and case number of each
28 action.
29 (E) A brief description or summary of the facts of each claim,
30 charge, or allegation, including the date of occurrence.
31 (F) The name and last known business address of each attorney
32 who represented a party in the settlement, arbitration, or civil
33 action, including the name of the client he or she represented.
34 (G) The amount of the judgment and the date of its entry; the
35 amount of the arbitration award, the date of its service on the
36 parties, and a copy of the award document; or the amount of the
37 settlement and the date it was reduced to writing and signed by all
38 parties. If an otherwise reportable settlement is entered into after
39 a reportable judgment or arbitration award is issued, the report
40 shall include both the settlement and the judgment or award.

(H) The specialty or subspecialty of the physician and surgeon or the doctor of podiatric medicine who was the subject of the claim or action.

(I) Any other information the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine may, by regulation, require.

(3) Every professional liability insurer, self-insured governmental agency, or licensee or his or her counsel that makes a report under this section and has received a copy of any written or electronic patient medical or hospital records prepared by the treating physician and surgeon or podiatrist, or the staff of the treating physician and surgeon, podiatrist, or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the report, or a copy of any deposition in the matter that discusses the care, treatment, or medical condition of the person, shall include with the report, copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. If confidentiality is required by court order and, as a result, the reporter is unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer, self-insured governmental agency, or licensee or his or her counsel shall maintain the records and depositions referred to in this paragraph for at least one year from the date of filing of the report required by this section.

(i) If the board, within 60 days of its receipt of a report filed under this section, notifies a person named in the report, that person shall maintain for the period of three years from the date of filing of the report any records he or she has as to the matter in question and shall make those records available upon request to the board to which the report was sent.

(j) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

SEC. 12. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral ~~Science Examiners~~ *Sciences* or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

SEC. 13. Section 2089.5 of the Business and Professions Code is amended to read:

2089.5. (a) Clinical instruction in the subjects listed in subdivision (b) of Section 2089 shall meet the requirements of this section and shall be considered adequate if the requirements of subdivision (a) of Section 2089 and the requirements of this section are satisfied.

(b) Instruction in the clinical courses shall total a minimum of 72 weeks in length.

(c) Instruction in the core clinical courses of surgery, medicine, family medicine, pediatrics, obstetrics and gynecology, and psychiatry shall total a minimum of 40 weeks in length with a minimum of eight weeks instruction in surgery, eight weeks in medicine, six weeks in pediatrics, six weeks in obstetrics and gynecology, a minimum of four weeks in family medicine, and four weeks in psychiatry.

(d) Of the instruction required by subdivision (b), including all of the instruction required by subdivision (c), 54 weeks shall be

performed in a hospital that sponsors the instruction and shall meet one of the following:

(1) Is a formal part of the medical school or school of osteopathic medicine.

(2) Has ~~an~~ *a residency program,* approved ~~residency program~~ *by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC),* in family practice or in the clinical area of the instruction for which credit is being sought.

(3) Is formally affiliated with an approved medical school or school of osteopathic medicine located in the United States or Canada. If the affiliation is limited in nature, credit shall be given only in the subject areas covered by the affiliation agreement.

(4) Is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada.

(e) If the institution, specified in subdivision (d), is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada, it shall meet the following:

(1) The formal affiliation shall be documented by a written contract detailing the relationship between the medical school, or a school of osteopathic medicine, and hospital and the responsibilities of each.

(2) The school and hospital shall provide to the ~~division~~ *board* a description of the clinical program. The description shall be in sufficient detail to enable the ~~division~~ *board* to determine whether or not the program provides students an adequate medical education. The ~~division~~ *board* shall approve the program if it determines that the program provides an adequate medical education. If the ~~division~~ *board* does not approve the program, it shall provide its reasons for disapproval to the school and hospital in writing specifying its findings about each aspect of the program that it considers to be deficient and the changes required to obtain approval.

(3) The hospital, if located in the United States, shall be accredited by the Joint Commission on Accreditation of Hospitals, and if located in another country, shall be accredited in accordance with the law of that country.

(4) The clinical instruction shall be supervised by a full-time director of medical education, and the head of the department for

each core clinical course shall hold a full-time faculty appointment of the medical school or school of osteopathic medicine and shall be board certified or eligible, or have an equivalent credential in that specialty area appropriate to the country in which the hospital is located.

(5) The clinical instruction shall be conducted pursuant to a written program of instruction provided by the school.

(6) The school shall supervise the implementation of the program on a regular basis, documenting the level and extent of its supervision.

(7) The hospital-based faculty shall evaluate each student on a regular basis and shall document the completion of each aspect of the program for each student.

(8) The hospital shall ensure a minimum daily census adequate to meet the instructional needs of the number of students enrolled in each course area of clinical instruction, but not less than 15 patients in each course area of clinical instruction.

(9) The ~~division~~ *board*, in reviewing the application of a foreign medical graduate, may require the applicant to submit a description of the clinical program, if the ~~division~~ *board* has not previously approved the program, and may require the applicant to submit documentation to demonstrate that the applicant's clinical training met the requirements of this subdivision.

(10) The medical school or school of osteopathic medicine shall bear the reasonable cost of any site inspection by the ~~division~~ *board* or its agents necessary to determine whether the clinical program offered is in compliance with this subdivision.

SEC. 14. Section 2096 of the Business and Professions Code is amended to read:

2096. In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), shall show by evidence satisfactory to the ~~Division of Licensing~~ *board* that he or she has satisfactorily completed at least one year of postgraduate training, which includes at least four months of general medicine, in ~~an approved~~ *a* postgraduate training program *approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC).*

The amendments made to this section at the 1987 portion of the 1987–88 session of the Legislature shall not apply to applicants who completed their one year of postgraduate training on or before July 1, 1990.

SEC. 15. Section 2102 of the Business and Professions Code is amended to read:

2102. Any applicant whose professional instruction was acquired in a country other than the United States or Canada shall provide evidence satisfactory to the ~~division~~ *board* of compliance with the following requirements to be issued a physician's and surgeon's certificate:

(a) Completion in a medical school or schools of a resident course of professional instruction equivalent to that required by Section 2089 and issuance to the applicant of a document acceptable to the ~~division~~ *board* that shows final and successful completion of the course. However, nothing in this section shall be construed to require the ~~division~~ *board* to evaluate for equivalency any coursework obtained at a medical school disapproved by the ~~division~~ *board* pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the ~~division~~ *board.* This subdivision shall apply to all applicants who are subject to this section and who have not taken and passed the written examination specified in subdivision (d) prior to June 1, 1986.

(c) Satisfactory completion of the postgraduate training required under Section 2096. An applicant shall be required to have substantially completed the professional instruction required in subdivision (a) and shall be required to make application to the ~~division~~ *board* and have passed steps 1 and 2 of the written examination relating to biomedical and clinical sciences prior to commencing any postgraduate training in this state. In its discretion, the ~~division~~ *board* may authorize an applicant who is deficient in any education or clinical instruction required by Sections 2089 and 2089.5 to make up any deficiencies as a part of his or her postgraduate training program, but that remedial training shall be in addition to the postgraduate training required for licensure.

(d) Pass the written examination as provided under Article 9 (commencing with Section 2170). ~~If an applicant has not satisfactorily completed at least two years of approved postgraduate~~

~~training, the applicant shall also pass the clinical competency written examination.~~ An applicant shall be required to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

Nothing in this section prohibits the ~~division~~ *board* from disapproving any foreign medical school or from denying an application if, in the opinion of the ~~division~~ *board*, the professional instruction provided by the medical school or the instruction received by the applicant is not equivalent to that required in Article 4 (commencing with Section 2080).

SEC. 16. Section 2107 of the Business and Professions Code is amended to read:

2107. (a) The Legislature intends that the ~~Division of Licensing~~ *board* shall have the authority to substitute postgraduate education and training to remedy deficiencies in an applicant's medical school education and training. The Legislature further intends that applicants who substantially completed their clinical training shall be granted that substitute credit if their postgraduate education took place in an accredited program.

(b) To meet the requirements for licensure set forth in Sections 2089 and 2089.5, the ~~Division of Licensing~~ *board* may require an applicant under this article to successfully complete additional education and training. In determining the content and duration of the required additional education and training, the ~~division~~ *board* shall consider the applicant's medical education and performance on standardized national examinations, and may substitute approved postgraduate training in lieu of specified undergraduate requirements. Postgraduate training substituted for undergraduate training shall be in addition to the ~~year of~~ postgraduate training required by Sections 2102 and 2103.

SEC. 17. Section 2135 of the Business and Professions Code is amended to read:

2135. The ~~Division of Licensing~~ *board* shall issue a physician and surgeon's certificate to an applicant who meets all of the following requirements:

(a) The applicant holds an unlimited license as a physician and surgeon in another state or states, or in a Canadian province or Canadian provinces, which was issued upon:

(1) Successful completion of a resident course of professional instruction *leading to a degree of medical doctor* equivalent to

that specified in Section 2089. However, nothing in this section shall be construed to require the ~~division~~ *board* to evaluate for equivalency any coursework obtained at a medical school disapproved by the ~~division~~ *board* pursuant to Article 4 (commencing with Section 2080).

(2) Taking and passing a written examination that is recognized by the ~~division~~ *board* to be equivalent in content to that administered in California.

(b) The applicant has held an unrestricted license to practice medicine, in a state or states, in a Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program, for a period of at least four years. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the ~~division~~ *board* shall not be included in the calculation of this four-year period.

(c) The ~~division~~ *board* determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine that the ~~division~~ *board* determines constitutes evidence of a pattern of negligence or incompetence.

(d) The applicant (1) *has satisfactorily completed at least one year of approved postgraduate training and* is certified by a specialty board approved by the American Board of Medical Specialties or approved by the ~~division~~ *board* pursuant to subdivision (h) of Section 651; (2) has satisfactorily completed at least two years of approved postgraduate training; or (3) *has satisfactorily completed at least one year of approved postgraduate training and* takes and passes the clinical competency written examination.

(e) The applicant has not committed any acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475) or Article 12 (commencing with Section 2220).

(f) Any application received from an applicant who has held an unrestricted license to practice medicine, in a state or states, or Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program for four or more years shall be reviewed and

processed pursuant to this section. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the ~~division~~ *board* shall not be included in the calculation of this four-year period. This subdivision does not apply to applications that may be reviewed and processed pursuant to Section 2151.

SEC. 18. Section 2168.4 of the Business and Professions Code is amended to read:

2168.4. (a) A special faculty permit expires and becomes invalid at midnight on the last day of the permitholder's birth month during the second year of a two-year term, if not renewed.

(b) A person who holds a special faculty permit shall show at the time of license renewal that he or she continues to meet the eligibility criteria set forth in Section 2168.1. After the first renewal of a special faculty permit, the permitholder shall not be required to hold a full-time faculty position, and may instead be employed part-time in a position that otherwise meets the requirements set forth in paragraph (1) of subdivision (a) of Section 2168.1.

(c) A person who holds a special faculty permit shall show at the time of license renewal that he or she meets the continuing medical education requirements of Article 10 (commencing with Section 2190).

~~(c)~~

(d) In addition to the requirements set forth above, a special faculty permit shall be renewed in accordance with Article 19 (commencing with Section 2420) in the same manner as a physician's and surgeon's certificate.

~~(d)~~

(e) Those fees applicable to a physician's and surgeon's certificate shall also apply to a special faculty permit and shall be paid into the State Treasury and credited to the Contingent Fund of the Medical Board of California.

SEC. 19. Section 2169 is added to the Business and Professions Code, to read:

2169. A person who holds a special faculty permit shall meet the continuing medical education requirements set forth in Article 10 (commencing with Section 2190).

SEC. 20. Section 2172 of the Business and Professions Code is repealed.

~~2172. The Division of Licensing may appoint qualified persons to give the whole or any portion of any examination as provided in this chapter, who shall be designated as examination commissioners. The board may fix the compensation of such persons subject to the provisions of applicable state laws and regulations.~~

SEC. 21. Section 2173 of the Business and Professions Code is repealed.

~~2173. The examination shall be conducted in the English language. Upon the submission of satisfactory proof from the applicant that he or she is unable to meet the requirements of the examination in English, the Division of Licensing may allow the use of an interpreter, either to be present in the examination room or thereafter to interpret and transcribe the answers of the applicant. The division in its discretion may select an examinee's interpreter or approve the selection of an interpreter by the examinee. The expenses of the interpreter shall be paid by the examinee and shall be paid before the examination is administered.~~

SEC. 22. Section 2174 of the Business and Professions Code is repealed.

~~2174. The examinations may be conducted in any part of the state or another state designated by the Division of Licensing. A notice of each examination administered by the divison shall specify the time and place of the examination.~~

SEC. 23. Section 2175 of the Business and Professions Code is amended to read:

2175. ~~Examination~~ *State examination* records shall be kept on file by the ~~Division of Licensing for a period of two years or more~~ *board until June 1, 2070.* Examinees shall be known and designated by number only, and the name attached to the number shall be kept secret until the examinee is sent notification of the results of the examinations.

SEC. 24. Section 2221 of the Business and Professions Code is amended to read:

2221. (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant

subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

(b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. *The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.*

~~(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the board in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code, and the review procedures set forth in Section 2335.~~

~~(d)~~

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

~~(e)~~

(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the ~~final decision or action regarding the~~ denial of his or her application, except that the board may, in its discretion

and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the ~~final decision or action regarding the~~ denial.

SEC. 25. Section 2307 of the Business and Professions Code is amended to read:

2307. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the ~~Division of Medical Quality~~ *board* for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the ~~division~~ *board* may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the ~~division~~ *board*. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed ~~by the board~~ *in any state* who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the ~~division~~ *board*. The ~~division~~ *board* may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the ~~division~~ *board* or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the ~~division~~ *board* or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for

which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The ~~division~~ *board* may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) This section is applicable to and may be carried out with regard to licensees of the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from ~~podiatrists~~ *doctors of podiatric medicine* licensed ~~by the board~~ *in any state* who have personal knowledge of the activities of the petitioner since the date the disciplinary penalty was imposed.

(i) Nothing in this section shall be deemed to alter Sections 822 and 823 ~~of the Business and Professions Code~~.

SEC. 26. Section 2335 of the Business and Professions Code is amended to read:

2335. (a) All proposed decisions and interim orders of the Medical Quality Hearing Panel designated in Section 11371 of the Government Code shall be transmitted to the executive director of the board, or the executive director of the California Board of Podiatric Medicine as to the licensees of that board, within 48 hours of filing.

(b) All interim orders shall be final when filed.

(c) A proposed decision shall be acted upon by the board or by any panel appointed pursuant to Section 2008 or by the California Board of Podiatric Medicine, as the case may be, in accordance

with Section 11517 of the Government Code, except that all of the following shall apply to proceedings against licensees under this chapter:

(1) When considering a proposed decision, the board or panel and the California Board of Podiatric Medicine shall give great weight to the findings of fact of the administrative law judge, except to the extent those findings of fact are controverted by new evidence.

(2) The board's staff or the staff of the California Board of Podiatric Medicine shall poll the members of the board or panel or of the California Board of Podiatric Medicine by written mail ballot concerning the proposed decision. The mail ballot shall be sent within 10 calendar days of receipt of the proposed decision, and shall poll each member on whether the member votes to approve the decision, to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of additional evidence, to defer final decision pending discussion of the case by the panel or board as a whole, or to nonadopt the decision. No party to the proceeding, including employees of the agency that filed the accusation, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the decision, may communicate directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any member of the panel or board, without notice and opportunity for all parties to participate in the communication. The votes of a majority of the board or of the panel, and a majority of the California Board of Podiatric Medicine, are required to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of further evidence, or to nonadopt the decision. The votes of two members of the panel or board are required to defer final decision pending discussion of the case by the panel or board as a whole. If there is a vote by the specified number to defer final decision pending discussion of the case by the panel or board as a whole, provision shall be made for that discussion before the ~~90-day~~ *100-day* period specified in paragraph (3) expires, but in no event shall that ~~90-day~~ *100-day* period be extended.

(3) If a majority of the board or of the panel, or a majority of the California Board of Podiatric Medicine vote to do so, the board

or the panel or the California Board of Podiatric Medicine shall issue an order of nonadoption of a proposed decision within ~~90~~ *100* calendar days of the date it is received by the board. If the board or the panel or the California Board of Podiatric Medicine does not refer the case back to the administrative law judge for the taking of additional evidence or issue an order of nonadoption within ~~90~~ *100 calendar* days, the decision shall be final and subject to review under Section 2337. Members of the board or of any panel or of the California Board of Podiatric Medicine who review a proposed decision or other matter and vote by mail as provided in paragraph (2) shall return their votes by mail to the board within 30 days from receipt of the proposed decision or other matter.

(4) The board or the panel or the California Board of Podiatric Medicine shall afford the parties the opportunity to present oral argument before deciding a case after nonadoption of the administrative law judge's decision.

(5) A vote of a majority of the board or of a panel, or a majority of the California Board of Podiatric Medicine, are required to increase the penalty from that contained in the proposed administrative law judge's decision. No member of the board or panel or of the California Board of Podiatric Medicine may vote to increase the penalty except after reading the entire record and personally hearing any additional oral argument and evidence presented to the panel or board.

SEC. 27. Section 2486 of the Business and Professions Code is amended to read:

2486. The ~~division~~ *Medical Board of California* shall issue, upon the recommendation of the board, a certificate to practice podiatric medicine if the applicant *has submitted directly to the board from the credentialing organizations verification that he or she* meets all of the following requirements:

(a) The applicant has graduated from an approved school or college of podiatric medicine and meets the requirements of Section 2483.

(b) The applicant, within the past 10 years, has passed parts I, II, and III of the examination administered by the National Board of Podiatric Medical Examiners of the United States or has passed a written examination that is recognized by the board to be the equivalent in content to the examination administered by the

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 821
Author: Committee on Business, Professions, and Economic Development
Bill Date: March 10, 2009, introduced
Subject: Omnibus
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act.

ANALYSIS:

This bill proposed non-substantive and non-controversial changes to law. The provisions relating to the Medical Board are in the Business and Professions Code and are as follows (only these sections of the bill are attached):

- **805(a)(2)** – Add the category of Special Faculty Permit holders to the definition of "Licentiate."
- **821.5** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.
- **821.6** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.

Amendments to this bill are planned to repeal Business and Professions Code sections 821.5 and 821.6 instead of amending them.

FISCAL: None

POSITION: Recommendation: Support MBC provisions.

March 14, 2009

SENATE BILL No. 821

Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (Chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)

March 10, 2009

An act to amend Sections 805, 821.5, 821.6, 2530.2, 2570.2, 2570.3, 2570.4, 2570.5, 2570.6, 2570.7, 2570.9, 2570.10, 2570.13, 2570.16, 2570.18, 2570.20, 2570.26, 2570.28, 2571, 2872.2, 3357, 3362, 3366, 3456, 3740, 3750.5, 3773, 4101, 4112, 4113, 4160, 4196, 4510.1, 4933, 4980.45, 4980.48, 4982, 4982.2, 4989.22, 4989.54, 4992.1, 4992.3, 4996.23, 4996.28, 4996.5, and 4999.2 of, and to add Sections 2570.17, 2570.186, 4013, 4146, 4989.49, 4992.2, and 4996.24 to, the Business and Professions Code, and to amend Section 123105 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as introduced, Committee on Business, Professions and Economic Development. Healing arts: licensees.

(1) Existing law provides for the professional review of specified healing arts licentiates through a peer review process, and requires the peer review body to report to the relevant agency upon certain circumstances.

This bill would include within the definition of "licentiate" a holder of a special faculty permit to practice medicine within a medical school. Within the peer review provisions, the bill would delete obsolete diversion program references and would instead require the peer review body to report to the executive director of the Medical Board of California or a designee.

(2) Existing law provides for the licensure and regulation of speech-language pathologists and audiologists by the Speech-Language

pages 6-16 contain MBC sections

(12) 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 805 of the Business and Professions Code
2 is amended to read:
3 805. (a) As used in this section, the following terms have the
4 following definitions:
5 (1) "Peer review body" includes:
6 (A) A medical or professional staff of any health care facility
7 or clinic licensed under Division 2 (commencing with Section
8 1200) of the Health and Safety Code or of a facility certified to
9 participate in the federal Medicare Program as an ambulatory
10 surgical center.
11 (B) A health care service plan registered under Chapter 2.2
12 (commencing with Section 1340) of Division 2 of the Health and
13 Safety Code or a disability insurer that contracts with licentiates
14 to provide services at alternative rates of payment pursuant to
15 Section 10133 of the Insurance Code.
16 (C) Any medical, psychological, marriage and family therapy,
17 social work, dental, or podiatric professional society having as
18 members at least 25 percent of the eligible licentiates in the area
19 in which it functions (which must include at least one county),
20 which is not organized for profit and which has been determined
21 to be exempt from taxes pursuant to Section 23701 of the Revenue
22 and Taxation Code.
23 (D) A committee organized by any entity consisting of or
24 employing more than 25 licentiates of the same class that functions
25 for the purpose of reviewing the quality of professional care
26 provided by members or employees of that entity.
27 (2) "Licentiate" means a physician and surgeon, doctor of
28 podiatric medicine, clinical psychologist, marriage and family
29 therapist, clinical social worker, or dentist. "Licentiate" also

1 includes a person authorized to practice medicine pursuant to
2 Section 2113 *or 2168*.
3 (3) "Agency" means the relevant state licensing agency having
4 regulatory jurisdiction over the licentiates listed in paragraph (2).
5 (4) "Staff privileges" means any arrangement under which a
6 licentiate is allowed to practice in or provide care for patients in
7 a health facility. Those arrangements shall include, but are not
8 limited to, full staff privileges, active staff privileges, limited staff
9 privileges, auxiliary staff privileges, provisional staff privileges,
10 temporary staff privileges, courtesy staff privileges, locum tenens
11 arrangements, and contractual arrangements to provide professional
12 services, including, but not limited to, arrangements to provide
13 outpatient services.
14 (5) "Denial or termination of staff privileges, membership, or
15 employment" includes failure or refusal to renew a contract or to
16 renew, extend, or reestablish any staff privileges, if the action is
17 based on medical disciplinary cause or reason.
18 (6) "Medical disciplinary cause or reason" means that aspect
19 of a licentiate's competence or professional conduct that is
20 reasonably likely to be detrimental to patient safety or to the
21 delivery of patient care.
22 (7) "805 report" means the written report required under
23 subdivision (b).
24 (b) The chief of staff of a medical or professional staff or other
25 chief executive officer, medical director, or administrator of any
26 peer review body and the chief executive officer or administrator
27 of any licensed health care facility or clinic shall file an 805 report
28 with the relevant agency within 15 days after the effective date of
29 any of the following that occur as a result of an action of a peer
30 review body:
31 (1) A licentiate's application for staff privileges or membership
32 is denied or rejected for a medical disciplinary cause or reason.
33 (2) A licentiate's membership, staff privileges, or employment
34 is terminated or revoked for a medical disciplinary cause or reason.
35 (3) Restrictions are imposed, or voluntarily accepted, on staff
36 privileges, membership, or employment for a cumulative total of
37 30 days or more for any 12-month period, for a medical disciplinary
38 cause or reason.
39 (c) The chief of staff of a medical or professional staff or other
40 chief executive officer, medical director, or administrator of any

peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing

agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances

shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 2. Section 821.5 of the Business and Professions Code is amended to read:

821.5. (a) A peer review body, as defined in Section 805, that reviews physicians and surgeons, shall, within 15 days of initiating a formal investigation of a physician and surgeon's ability to practice medicine safely based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care, report to the ~~diversion program of the~~ Medical Board *of California* the name

of the physician and surgeon under investigation and the general nature of the investigation. A peer review body that has made a report *under this section* to ~~the diversion program under this section~~ *board's executive director or designee, who is not in the enforcement program,* shall also notify the ~~diversion program~~ *executive director or designee* when it has completed or closed an investigation.

(b) The ~~diversion program administrator~~ *executive director or designee*, upon receipt of a report pursuant to subdivision (a), shall contact the peer review body that made the report within 60 days in order to determine the status of the peer review body's investigation. The ~~diversion program administrator~~ *executive director or designee* shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the ~~diversion program administrator~~ *executive director or designee* determines that the progress of the investigation is not adequate to protect the public, the ~~diversion program administrator~~ *executive director or designee* shall notify the chief of enforcement of the ~~Division of Medical Quality of the~~ Medical Board of California, who shall promptly conduct an investigation of the matter. Concurrently with notifying the chief of enforcement, the ~~diversion program administrator~~ *executive director or designee* shall notify the reporting peer review body and the chief executive officer or an equivalent officer of the hospital of its decision to refer the case for investigation by the chief of enforcement.

(c) For purposes of this section "formal investigation" means an investigation ordered by the peer review body's medical executive committee or its equivalent, based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care. "Formal investigation" does not include the usual activities of the well-being or assistance committee or the usual quality assessment and improvement activities undertaken by the medical staff of a health facility in compliance with the licensing and certification requirements for health facilities set forth in Title 22 of the California Code of Regulations, or preliminary deliberations or inquiries of the executive committee to determine whether to order a formal investigation.

For purposes of this section, "usual activities" of the well-being or assistance committee are activities to assist medical staff

members who may be impaired by chemical dependency or mental illness to obtain necessary evaluation and rehabilitation services that do not result in referral to the medical executive committee.

(d) Information received by the ~~diversion program~~ *board* pursuant to this section shall be ~~governed by, and shall be~~ deemed confidential ~~to the same extent as program records under, Section 2355~~. The records shall not be further disclosed by the ~~diversion program~~ *board*, except as provided in subdivision (b).

(e) Upon receipt of notice from a peer review body that an investigation has been closed and that the peer review body has determined that there is no need for further action to protect the public, the ~~diversion program~~ *board* shall purge and destroy all records in its possession pertaining to the investigation unless the ~~diversion program administrator~~ *executive director or designee* has referred the matter to the chief of enforcement pursuant to subdivision (b).

(f) A peer review body that has made a report under subdivision (a) shall not be deemed to have waived the protections of Section 1157 of the Evidence Code. It is not the intent of the Legislature in enacting this subdivision to affect pending litigation concerning Section 1157 or to create any new confidentiality protection except as specified in subdivision (d). ~~"Pending litigation" shall include Arnett v. Dal Cielo (No. S048308), pending before the California Supreme Court.~~

(g) The report required by this section shall be submitted on a short form developed by the board. The board shall develop the short form, the contents of which shall reflect the requirements of this section, within 30 days of the effective date of this section. The board shall not require the filing of any report until the short form is made available by the board.

(h) This section shall become operative on January 1, ~~1997~~ *2010*, unless the regulations required to be adopted pursuant to Section 821.6 are adopted prior to that date, in which case this section shall become operative on the effective date of the regulations.

SEC. 3. Section 821.6 of the Business and Professions Code is amended to read:

821.6. The board shall adopt regulations to implement the monitoring responsibility of the ~~diversion program administrator~~ *executive director or designee* described in subdivision (b) of

Section 821.5, and the short form required to be developed pursuant to subdivision (g), on or before January 1, ~~1997~~ *2010*.

SEC. 4. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) The practice of speech-language pathology means all of the following:

(1) The application of principles, methods, instrumental procedures, and noninstrumental procedures for measurement, testing, screening, evaluation, identification, prediction, and counseling related to the development and disorders of speech, voice, language, or swallowing.

(2) The application of principles and methods for preventing, planning, directing, conducting, and supervising programs for habilitating, rehabilitating, ameliorating, managing, or modifying disorders of speech, voice, language, or swallowing in individuals or groups of individuals.

(3) Conducting hearing screenings.

(4) Performing suctioning in connection with the scope of practice described in paragraphs (1) and (2), after compliance with a medical facility's training protocols on suctioning procedures.

(e) (1) Instrumental procedures referred to in subdivision (d) are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy.

(2) Nothing in this subdivision shall be construed as a diagnosis. Any observation of an abnormality shall be referred to a physician and surgeon.

(f) A licensed speech-language pathologist shall not perform a flexible fiberoptic nasendoscopic procedure unless he or she has received written verification from an otolaryngologist certified by the American Board of Otolaryngology that the speech-language pathologist has performed a minimum of 25 flexible fiberoptic nasendoscopic procedures and is competent to perform these procedures. The speech-language pathologist shall have this written verification on file and readily available for inspection upon request by the board. A speech-language pathologist shall pass a flexible fiberoptic nasendoscopic instrument only under the direct authorization of an otolaryngologist certified by the American Board of Otolaryngology and the supervision of a physician and surgeon.

(g) A licensed speech-language pathologist shall only perform flexible endoscopic procedures described in subdivision (e) in a setting that requires the facility to have protocols for emergency medical backup procedures, including a physician and surgeon or other appropriate medical professionals being readily available.

(h) "Speech-language pathology aide" means any person meeting the minimum requirements established by the board, who works directly under the supervision of a speech-language pathologist.

(i) (1) "Speech-language pathology assistant" means a person who meets the academic and supervised training requirements set forth by the board and who is approved by the board to assist in the provision of speech-language pathology under the direction and supervision of a speech-language pathologist who shall be responsible for the extent, kind, and quality of the services provided by the speech-language pathology assistant.

(2) The supervising speech-language pathologist employed or contracted for by a public school may hold a valid and current license issued by the board, a valid, current, and professional clear clinical or rehabilitative services credential in language, speech, and hearing issued by the Commission on Teacher Credentialing, or other credential authorizing service in language, speech, and hearing issued by the Commission on Teacher Credentialing that is not issued on the basis of an emergency permit or waiver of requirements. For purposes of this paragraph, a "clear" credential is a credential that is not issued pursuant to a waiver or emergency permit and is as otherwise defined by the Commission on Teacher

Credentialing. Nothing in this section referring to credentialed supervising speech-language pathologists expands existing exemptions from licensing pursuant to Section 2530.5.

(j) An "audiologist" is one who practices audiology.

(k) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading.

(*l*) "Audiology aide" means any person, meeting the minimum requirements established by the board~~, who works directly under the supervision of an audiologist~~. *An audiology aide may not perform any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist. The board may by regulation exempt certain functions performed by an industrial audiology aide from supervision provided that his or her employer has established a set of procedures or protocols that the aide shall follow in performing those functions.*

(m) "Medical board" means the Medical Board of California ~~or a division of the board~~.

(n) A "hearing screening" performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

(o) "Cerumen removal" means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not simultaneously supervise more than two audiologists for purposes of cerumen removal.

SEC. 5. Section 2570.2 of the Business and Professions Code is amended to read:

2570.2. As used in this chapter, unless the context requires otherwise:

(a) "Appropriate supervision of an aide" means that the responsible occupational therapist *or occupational therapy assistant* shall provide direct in-sight supervision when the aide is providing delegated client-related tasks and shall be readily available at all times to provide advice or instruction to the aide. The occupational therapist *or occupational therapy assistant* is responsible for documenting the client's record concerning the delegated client-related tasks performed by the aide.

(b) "Aide" means an individual who provides supportive services to an occupational therapist and who is trained by an occupational therapist to perform, under appropriate supervision, delegated, selected client and nonclient-related tasks for which the aide has demonstrated competency. An occupational therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the occupational therapist in his or her practice of occupational therapy. ~~An occupational therapy assistant shall not supervise an aide engaged in client-related tasks.~~

(c) "Association" means the Occupational Therapy Association of California or a similarly constituted organization representing occupational therapists in this state.

Medical Board of California
2008 Tracker II - Legislative Bills
3/19/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Unbilical Cord Blood Collection Program	Amended	03/05/09
AB 82	Evans	Dependent Children: psychotropic medications	Introduced	
AB 120	Hayashi	Health Care Providers: disclosure of reproductive choices	Introduced	
AB 175	Galgiani	Medical Telemedicine: optometrists	Introduced	
AB 259	Skinner	Health Care Coverage: certified nurse-midwives: direct access	Introduced	
AB 356	Fletcher	Radologic Technology: licentiates of the healing arts	Introduced	
AB 361	Lowenthal	Workers' Compensation: treatment authorization	Introduced	
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Introduced	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Introduced	
AB 456	Emmerson	State Agencies: period review	Introduced	
AB 497	Block	Vehicles: HOV lanes: used by physicians	Introduced	
AB 520	Carter	Public Records: limiting requests	Introduced	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Introduced	
AB 602	Price	Dispensing Opticians	Introduced	
AB 657	Hernandez	Health Professions Workforce: task force	Introduced	
AB 681	Hernandez	Confidentiality of Medical Information: psychotherapy	Introduced	
AB 830	Cook	Drugs and Devices	Introduced	
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Introduced	
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Introduced	
AB 931	Fletcher	Emergency Supplies: increase amount	Introduced	
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Introduced	
AB 1005	Block	CA Board of Accountancy: live broadcast of board meetings	Introduced	
AB 1113	Lowenthal	Prisoners: professional mental health providers: MFTs	Introduced	

Medical Board of California
2008 Tracker II - Legislative Bills
3/19/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1140	Niello	Healing Arts (spot)	Introduced	
AB 1152	Anderson	Professional Corporations: licensed physical therapists	Introduced	
AB 1162	Carter	Health Facilities: licensure	Introduced	
AB 1168	Carter	Professions and Vocations (spot)	Introduced	
AB 1194	Strickland	State Agency Internet Web Sites: information	Introduced	
AB 1310	Hernandez	Healing Arts: database	Introduced	
AB 1317	Block	Assisted Oocute Production: advertisment	Introduced	
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Introduced	
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Introduced	
AB 1540	Health Comm.	Health	Introduced	
AB 1542	Health Comm.	Medical Records: centralized location	Introduced	
AB 1544	Health Comm.	Health Facilities: licensure	Introduced	
SB 26	Simitian	Home-generated Pharmaceutical Waste	Introduced	
SB 33	Correa	Marriage and Family Therapy: licensure and registration	Introduced	
SB 39	Benoit	Torts: personal liability immunity	Introduced	
SB 43	Alquist	Health Prof.: cultural and linguistic competency infofmation	Introduced	
SB 112	Oropeza	Hemodialysis Technicians	Introduced	
SB 171	Pavley	Certified Employees: physician assistants: medical certificates	Introduced	
SB 186	DeSaulnier	Workers' Compensation: treatment: predesignationof physician	Introduced	
SB 238	Calderon	Medical Information: prescription refil requirements	Introduced	
SB 268	Harman	Alcoholism or Drug Abuse Treatment Facilities: licensing	Introduced	
SB 303	Alquist	Nursing Facility Residents: informed consent	Introduced	

Medical Board of California
2008 Tracker II - Legislative Bills
3/19/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 368	Maldonado	Confidential Medical Information: unlawful disclsure	Introduced	
SB 374	Calderon	Health Care Providers: resonable disclosure: reproductive choices	Introduced	
SB 395	Wyland	Medical Practice	Introduced	
SB 442	Ducheny	Clinic Corporation: licensing	Introduced	
SB 482	Padilla	Healing Arts: Medical Practice	Introduced	
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Introduced	
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Introduced	
SB 599	Negrete McLeod	Licensing Boards: disciplinary actions: posting	Introduced	
SB 606	Ducheny	Physicians and Surgeons: loan repayment	Introduced	
SB 620	Wiggins	Healing Arts: osteopaths	Introduced	
SB 630	Steinberg	Health care Coverage: reconstructive surgery: dental	Introduced	
SB 719	Huff	State Agency Internet Web Sites: information searchability	Introduced	
SB 744	Strickland	Clinical Laboratories: public health labs	Introduced	
SB 762	Aanestad	Professions and Vocations: healing arts	Introduced	
SB 788	Wyland	Licensed Professional Clinical Counselors	Introduced	
SB 810	Leno	Single-Payer Health Care Coverage	Introduced	
SB 820	B&P Comm.	Consumer Affiars: professions and vocations	Introduced	