State of California

State and Consumer Services Agency

MEDICAL BOARD OF CALIFORNIA

May 7 - 8, 2009

Education Committee	May 7	8:30 a.m. - 9:30 a.m.
Wellness Commitee	May 7	9:30 a.m. - 10:30 a.m.
Panel B	May 7	10:30 a.m. - 5:15 p.m.
Panel A	May 7	5:15 p.m. - 5:45 p.m.
Application Review Committee	May 8	8:00 a.m. - 8:30 a.m.
Full Board	May 8	8:30 a.m. - 2:00 p.m.

MEDICAL BOARD OF CALIFORNIA
BOARD MEETING SCHEDULE

Embassy Suites San Francisco Airport
150 Anza Boulevard
Burlingame, CA

May 7-8, 2009

Thursday, May 7

- **8:30 a.m. – 9:30 a.m.** — Education Committee – Mendocino/Burlingame Ball Room
  (Members: Yaroslavsky, Chang, Moran, Salomonson, Schipske)

- **9:30 a.m. – 10:30 a.m.** — Wellness Committee – Santa Cruz Ballroom
  (Members: Duruisseau, Chin, Giang, Gregg, Moskowitz, Norcross)

- **10:30 a.m. – 5:15 p.m.** — Panel B – Mendocino/Burlingame Ball Room
  (Members: Yaroslavsky, Chang, Gitnick, Moran, Salomonson, Schipske)

- **5:15 p.m. – 5:45 p.m.** — Panel A – Mendocino/Burlingame Ball Room
  (Members: Duruisseau, Carreon, Chin, Low, Yaroslavsky, Zerunyan)

Friday, May 8

- **8:00 a.m. - 8:30 a.m.** — Application Review Committee – Imperial Ball Room
  (Members: Gitnick, Low, Schipske)

- **8:30 a.m. – 2:00 p.m.** — Full Board Meeting – Imperial Ball Room
  (All Members)

MEDICAL BOARD OF CALIFORNIA
Executive Office

MEMBERS OF THE BOARD
Richard Fantozzi, M.D., President
Frank V. Zerunyan, J.D., 1st Vice President
Barbara Yaroslavsky, 2nd Vice President
Hedy Chang, Secretary
Jorge Carreon, M.D.
John Chin, M.D.
Shelton Duruisseau, Ph.D.
Gary Gitnick, M.D.
Sharon Levine, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.

QUARTERLY BOARD MEETING

May 8, 2009

Embassy Suites San Francisco Airport
Mendocino/Burlingame Ballroom
150 Anza Boulevard
Burlingame, CA 94010
(650) 342-4600

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

AGENDA

Friday, May 8, 2009
8:30 a.m. to 2:00 p.m.
(or at the conclusion of the Application Review Committee meeting until the conclusion of business)
ORDER OF ITEMS IS SUBJECT TO CHANGE

1. Call to Order / Roll Call

2. Introduction and Swearing In New Board Member

3. Approval of Minutes from the January 29-30, 2009 meeting

4. Presentation of Physician Humanitarian Award

5. Public Comment on Items not on the Agenda

6. 9:00 a.m. REGULATIONS – PUBLIC HEARING - Ms. Pellegrini and Ms. Scuri
   A. **Modification to Continuing Medical Education Audit**: Amend Section 1338 of Division 13 of Title 16 of the California Code of Regulations (CCR). This proposal will eliminate the requirement to perform the audit once each year and allow the Board to perform the audit throughout each year.

7. President's Report - Dr. Fantozzi

8. Appointment of Board Member to the Health Professions Education Foundation – Dr. Fantozzi

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.

9. Executive Director's Report – Ms. Johnston
   A. Budget Overview and Staffing Update
   B. Update on AB 329 Meeting on April 23, 2009

10. Approval of Amendments to Board Member Administrative Procedure Manual regarding Communication with Interested Parties – Ms. Johnston

11. Board Member Communications with Interested Parties – Dr. Fantozzi

12. Licensing Chief's Report – Ms. Pellegrini
   A. Licensing Program Update
   B. Midwifery Advisory Council Report – Ms. Gibson

13. Midwifery Advisory Council Appointments – Ms. Pellegrini

14. International Medical School Regulations: Request to Set for Hearing (CCR, Title 16, Section 1314.1) – Ms. Pellegrini

15. Legislation – Ms. Whitney
   A. Status of Regulatory Action
   B. 2009 Legislation and Proposals

16. Education Committee Update – Ms. Yaroslavsky
   A. Regulations Requiring Posting of Information by a Physician Regarding the Medical Board of California: Request to Set for Hearing

17. California Physician Corps Program Update – Ms. Yaroslavsky

18. Wellness Committee Update – Dr. Duruisseau

19. Physician Assistant Committee Update – Dr. Low

20. Ethical Decision Making for Regulators – Ms. Scuri and Mr. Heppler

21. Enforcement Chief's Report – Ms. Threadgill
   A. Approval of Orders Restoring License Following Satisfactory Completion of Probation, Orders Issuing Public Letter of Reprimand, and Orders for License Surrender During Probation
   B. Disciplinary Guidelines Regulations: Request to Set for Hearing (CCR, Title 16, Section 1316)
   C. Expert Utilization Report
   D. Enforcement Program Update
   E. Report on Classification Study for Investigators – Susan Lorenz

22. Vertical Enforcement Update – Ms. Threadgill and Mr. Ramirez
    A. Attorney General's Office Case Aging Statistics
    B. Vertical Enforcement Statistics
    C. Discussion on Status of Vertical Enforcement Report to Legislature – Integrated Solutions for Business and Government (ISBG)

23. Agenda Items for July 23-24, 2009 Meeting

24. Adjournment

NOTICE: The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications to participate in the meeting shall make a request to the Board no later than five working days before the meeting by contacting Cheryl Thompson at (916) 263-2389 or sending a written request to Ms. Thompson at the Medical Board of California, 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815. Requests for further information should be directed to the same address and telephone number.

Meetings of the Medical Board of California are open to the public except when specifically noticed otherwise in accordance with the Open Meetings Act. The audience will be given appropriate opportunities to comment on any issue presented in open session before the Board, but the President may apportion available time among those who wish to speak.

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For additional information call (916) 263-2389.

MEDICAL BOARD OF CALIFORNIA
Executive Office

Embassy Suites LAX South
1440 Imperial Highway
El Segundo, CA 90245

January 29-30, 2009

MINUTES

In order to remain consistent with the record, the agenda items presented in these minutes are listed in the order discussed at the January 29-30, 2009 meeting.

Agenda Item 1 Call to Order/ Roll Call

Dr. Fantozzi called the meeting of the Medical Board of California (Board) to order on January 29, 2009 at 4:37 p.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Jorge Carreon, M.D.
Hedy Chang
John Chin, M.D.
Shelton Duruisseau, Ph.D.
Gary Gitnick, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
Barbara Yaroslavsky
Frank V. Zerunyan, J.D.

Staff Present:

Fayne Boyd, Licensing Manager
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist

Randy Freitas, Business Services Office
Abbie French, Telemedicine and Special Projects Manager
Kurt Heppler, Department of Consumer Affairs Staff Counsel
Kimberly Kirchmeyer, Deputy Director
Ross Locke, Business Services Office
Armando Melendez, Business Services Office
Kelly Nelson, Legislative Analyst
Cindi Oseto, Licensing Analyst
Pat Park, Licensing Analyst
Debbie Pellegrini, Chief of Licensing
Paulette Romero, Associate Analyst
Teresa Schaeffer, Program Analyst
Kevin Schunke, Regulation Coordinator
Anita Scuri, Department of Consumer Affairs Supervising Legal Counsel
Kathryn Taylor, Licensing Manager
Renee Threadgill, Chief of Enforcement
Linda Whitney, Chief of Legislation

Members of the Audience:

Steve Adler, Supervising Deputy Attorney General
Yvonne Choong, California Medical Association
Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Dr. Furmanski
Tara Leigh Kittle, Blue Diamond Foundation
Francesca Lucero, Blue Diamond Foundation
Brett Michelin, CMA
Carlos Ramirez, Senior Assistant Attorney General
Spencer Walker
Pam Wortman

Agenda Item 2 Introduction and Swearing In New Board Member

Dr. Fantozzi introduced and swore in Dr. Jorge Carreon as a new member of the Board.

Agenda Item 3 Update on Federation of State Medical Boards (FSMB)

Ms. Chang introduced Dr. Barbara Schneidman, Interim President and Chief Executive Officer of the Federation of State Medical Boards (FSMB), and Dr. Regina Benjamin, Chair of the Board of the Federation of State Medical Boards. Dr. Schneidman and Dr. Benjamin provided an update on the Federation's mission, composition, function, and goals.

The meeting was adjourned at 5:42 p.m.

Agenda Item 4 Call to Order/ Roll Call

Dr. Fantozzi called the meeting of the Medical Board of California (Board) to order on January 30, 2009 at 9:05 a.m. A quorum was present and notice had been sent to interested parties.

Members Present:

Richard Fantozzi, M.D., President
Jorge Carreon, M.D.
Hedy Chang
John Chin, M.D.
Shelton Duruisseau, Ph.D.
Gary Gitnick, M.D.
Reginald Low, M.D.
Mary Lynn Moran, M.D.
Janet Salomonson, M.D.
Gerrie Schipske, R.N.P., J.D.
Barbara Yaroslavsky
Frank V. Zerunyan, J.D.

Staff Present:

Fayne Boyd, Licensing Manager
Candis Cohen, Public Information Officer
Janie Cordray, Research Specialist
Randy Freitas, Business Services Office
Abbie French, Telemedicine and Special Projects Manager
Kurt Heppler, Department of Consumer Affairs Staff Counsel
Howard Kaminsky, M.D., Medical Consultant
Kimberly Kirchmeyer, Deputy Director
Ross Locke, Business Services Office
Armando Melendez, Business Services Office
Kelly Nelson, Legislative Analyst
Cindi Oseto, Licensing Analyst
Pat Park, Licensing Analyst
Debbie Pellegrini, Chief of Licensing
Paulette Romero, Associate Analyst
Kevin Schunke, Regulation Coordinator
Anita Scuri, Department of Consumer Affairs Supervising Legal Counsel
Teresa Schaeffer, Program Analyst
Kathryn Taylor, Licensing Manager
Renee Threadgill, Chief of Enforcement
Linda Whitney, Chief of Legislation

Members of the Audience:

Steve Adler, Supervising Attorney General
Yvonne Choong, California Medical Association

Zennie Coughlin, Kaiser Permanente
Julie D'Angelo Fellmeth, Center for Public Interest Law
Amy Edelen, DCA Legislative & Policy Review
Joseph P. Furman, Furman Healthcare Law
Dr. S. Furmanski
Faith Gibson, L.M., Midwifery Advisory Council
Tara Leigh Kittle, Blue Diamond Foundation
Francesca Lucero, Blue Diamond Foundation
Russell Iungerich, California Academy of Attorneys for Health Care Professionals
Brett Michelin, CMA
William Norcross, UCSD Physician Assessment & Clinical Education Program (PACE)
Carlos Ramirez, Senior Assistant Attorney General
Spencer Walker

Agenda Item 5 Approval of Minutes from the November 6-7, 2008 Meeting

Ms. Yaroslavsky made a motion to approve the minutes from the November 6-7, 2008 meeting. Dr. Low asked that the minutes accurately reflect the dates he was present at the November 6-7, 2008 meeting. The motion to approve the minutes as corrected was seconded and carried.

Agenda Item 6 Public Comment on Items Not on the Agenda

Russell Iungerich, California Academy of Attorneys for Health Care Professionals (CAAHCP), brought several issues before the Board reflecting defense counsel concerns he would like the Board to address. He expressed his opinion that, given current budgetary constraints, the Board should make the investigation of doctors caught possessing less than one ounce of marijuana or shoplifting a low priority. Mr. Iungerich concluded by questioning the value of filing cases against attending and resident physicians for things that happen in residency programs, since these individuals seldom receive the support of the hospital in defending against the Board's charges.

Tara Leigh Kittle, Blue Diamond Foundation, asked the Board to consider altering standards of care, or what is considered a medical error, to accommodate the needs of health care consumers. Ms. Kittle encouraged the Board to develop a plan to guide lawmakers toward change, such as limiting the number of hours residents can work in a day, putting a cap on medical malpractice insurance rates, and eliminating health insurance companies' ability to deny patient's access to care. She relayed her own experience with the health care industry and her difficulty in receiving treatment and concluded by expressing her desire for patients to be able to have more of a voice in directing their own care.

Dr. S. Furmanski, representing himself as a taxpayer, spoke about the Board's Contingency Fund, which is limited by statute to two months of reserve. The State Auditor's report showed the Board was overfunded and out of conformity. He stated the Board was required to refund the

excess funds under two statutes and to report the amount in the reserve on a monthly basis. He asked the Board to respond to and grant his petition and begin the refund process. Dr. Furmanski also referred to his administrative petitions to appoint a person to expedite the process of issuing refunds, as well as a voluntary receiver to distribute the refunds.

Agenda Item 7 President's Report

Dr. Fantozzi reported on December 3, 2008, he and Barb Johnston met with Secretary Rosario Marin, State Consumer Services Agency, and Carrie Lopez, Director of the Department of Consumer Affairs, to discuss Board matters. On December 8, 2008, the Executive Committee met and finalized the Executive Officer evaluation from the November 6-7, 2008 meeting. Barb Johnston, Linda Whitney, and Dr. Fantozzi met with Bill Gage from the Senate Business and Professions Committee to discuss Board related issues for the upcoming year. A subsequent meeting with the Board's executive staff and the president and CEO of the California Medical Association (CMA) to discuss Board matters was very positive with consensus and agreement found on several issues.

Agenda Item 8 Executive Director's Report

Ms. Kimberly Kirchmeyer, Deputy Director, delivered the Executive Director's report in the absence of Barb Johnston.

A. Budget Overview and Staffing Update

Ms. Kirchmeyer directed the members to tab 8 of their packets, indicating the Board's budget and spending were exactly where staff projected they would be at this time. No problems are anticipated.

Ms. Kirchmeyer was pleased to announce the Enforcement IT System Feasibility Study Report was recently approved by the Office of the Chief Information Officer. She indicated the Budget Change Proposal (BCP) funding this program was considered premature at this time by the State and Consumer Services Agency. Nevertheless, staff will continue to go forward with existing resources to obtain a position to work on this project in the next fiscal year, and will submit a BCP in Fiscal Year (FY) 10/11 to fund the project.

Two BCPs are currently in the budget process. The Probation Monitoring Program BCP includes a request for five positions. The Board has been asked to absorb the funding for these positions using existing resources. The Operation Safe Medicine BCP requests six positions for a temporary program for the next two years. The Board has been asked to absorb the funding for this program as well. Staff will be gathering data to justify these positions and will submit a new BCP for FY 11/12.

The Board's vacancy rate remains at 7%, with continuous efforts to fill open positions. Beginning February 6, 2009, under the Governor's Executive Order, state offices, including the

Medical Board's office, are required to close on the first and third Friday of each month. This will result in a 10% reduction in pay of staff and will also affect the time frames for licensing and enforcement.

B. Update on Board Mandated Reports

Ms. Kirchmeyer announced that all mandated reports are completed, with the exception of the Vertical Enforcement (VE) Study. The Public Disclosure and Malpractice Study Reports will be reported on later in the meeting. Ms. Threadgill will speak on the VE Study later in the meeting.

Ms. Kirchmeyer reported Dr. Fantozzi and Barb Johnston met with CMA to discuss working together this year on the Board's Wellness activities. In January 2009, Ms. Johnston, Ms. Threadgill, and Ms. Kirchmeyer visited Dr. Norcross and his staff at the Physician Assessment and Clinical Education (PACE) program offices in San Diego to receive an update on the program and tour the facility. Ms. Johnston and Ms. Kirchmeyer also attended a DCA meeting on January 8, 2009 regarding SB 1441 to discuss the Board's participation in developing standards and guidelines for boards and bureaus regarding substance abusing licensees. Ms. Johnston has been meeting monthly with Director Lopez at her request to provide updates on Board issues. Ms. Johnston also attended a lunch meeting on January 12, 2009 with Frank Zerunyan, Director Lopez, and Agency Secretary Marin.

On November 12, 2008, Ms. Johnston and Ms. Kirchmeyer attended the California Health Care Foundation sponsored meeting on e-prescribing at the invitation of Secretary Belshe' of the California Department of Health and Human Services Agency. After the meeting, the Foundation visited the Board's offices in Sacramento to meet with executive staff and the Executive Officer of the Pharmacy Board. The Foundation has requested the Medical Board and Pharmacy Board work together with them and other stakeholders to develop educational programs for physicians and pharmacists regarding e-prescribing. Ms. Kirchmeyer asked for the Board's approval to move forward with these programs. Ms. Chang made a motion for staff to work with the Pharmacy Board on e-prescribing issues; Ms. Yaroslavsky seconded and the motion carried.

Agenda Item 9 Presentation on Physician Assessment and Clinical Education (PACE)

Dr. William Norcross delivered a presentation on PACE's history, mission, and physician assessment and monitoring guidelines. The PACE program assesses the competence of physicians, determines if they are safe to practice, and provides remediation of deficiencies, with the ultimate goal of protecting the public. PACE has assessed over 800 physicians and provided educational services to over 2000 physicians, with 75% of their business generated from actions taken by the Board. PACE is part of the University of California, San Diego School of Medicine and operates independently of the Board, with all fees being paid directly to PACE by participants.

A question and answer session followed with a question posed by Dr. Furmanski about the PACE program using written competency tests; he stated the Business and Professions Code required competency tests to be administered orally and asked for clarification on this matter.

Agenda Item 16 Consideration of Refund or Credit of Licensing Fees Paid in FY 08/09

Ms. Linda Whitney, Chief of Legislation, and Mr. Kevin Schunke, Regulation Coordinator, along with Pam Wortman, Fiscal Officer for the Department of Consumer Affairs, reported on the refund or credit of licensing fees. Mr. Schunke stated current law states the Board must reduce license and renewal fee, if the diversion program is eliminated. During 2008, the Board voted to adopt regulations to implement this reduction in fees due to the elimination of Diversion. The effective date is proposed to be July 1, 2009. This rulemaking was submitted to the Department of Consumer Affairs in November 2008 for review and approval; if approved, the fees will be reduced by $22 per licensee.

During the public comment period for these regulations, the CMA submitted comments, contending the Board did not move quickly enough to reduce the licensing and renewal fees in a timeframe to match the elimination date of the Diversion Program. CMA's position is that the elimination of the Diversion Program took effect on July 1, 2008 and any money collected thereafter violates the law and equals an unfair revenue gain for the Board. The law requiring the reduction in fees did not include any timeframe during which the fees must be reduced. The law, therefore, must have contemplated the need for a formal rulemaking process which traditionally takes many months. This is particularly true in light of the fact the Board could not have known whether the Diversion Program would actually sunset or another program be created in its place to be funded in whole or part by the Board's fees. Lastly, the statute did not provide for a penalty for failure to promptly reduce the fees. At the November 2008 Board meeting, the Board voted to adopt the proposed regulations and move forward with the fee reduction effective July 1, 2009. However, at that same meeting, staff was directed by the Board to prepare a comprehensive evaluation and look into the feasibility of issuing a credit or refund to those 57,500 physicians who paid a license fee in FY 08/09.

In response to the argument the Board should have acted sooner, the Board could seek to refund or credit $22 to each of these 57,500 physicians. The refunded credit would total approximately $1.27 million dollars; this would cover those persons whose fees were paid after the date the Diversion Program was eliminated and before the effective date of the proposed regulations. DCA has worked closely with the Board and with the State Controller's Office to identify the most cost efficient and least labor intensive credit process.

Mr. Schunke referred members to the staff memo which described various options. He directed members to Option #5 of the memo which would conceptually issue refunds by actually lowering the license renewal fees in FY 10/11. Internal computer programming changes to renewal notices can be made by staff and changes to the on-line renewal process can be made by DCA staff. These modifications to the computer codes would ensure the renewal fees paid in FY 10/11 are reduced by $22 for those impacted licensees and the renewal notices would be printed

with the amount due. This is the only option which ensures the licensee only pay that which is due and which relieves the Board, DCA, and the State Controller's Office from having to issue refund checks. This option, however, would not be completed until the summer of 2011 when those impacted licensees actually pay their renewal fees. However, since the credit is an entirely internal process, staff believes it would cause less confusion and generate relatively few questions and phone calls from licensees, thus, requiring limited additional staff resources. This is also the only option with negligible implementation costs.

Dr. Fantozzi asked for clarification as to whether the $22 was a credit or a refund. Ms. Scuri stated the $22 is considered a credit. Ms. Yaroslavsky made a motion to approve the staff recommendation as outlined under Option #5 in the staff report; Dr. Salomonson seconded the motion.

Dr. Low stated the only minor glitch with this option would be those who do not renew would not receive the credit. Mr. Schunke directed members to page 4 of the staff memo which addresses this issue; it is believed the limited number of licensees who fall into this category could be identified by running reports and those identified then would be issued a check, with the number being small enough to handle manually.

The motion to approve the staff recommendation as outlined under Option #5 carried.

Agenda Item 10 Ethical Decision Making for Regulators

This agenda item was postponed to the May 2009 meeting.

Agenda Item 11 Board Member Disclosure of Communications Discussion

Dr. Fantozzi referred members to page 74 of their packets regarding interested party communications with individual Board Members. A motion was made to adopt the staff's recommendation of Option #3 which was for members to disclose at Board meetings all discussions and communications with interested parties regarding any item pending before the Board. This information would then be included in the meeting minutes. Ms. Yaroslavsky seconded the motion.

Dr. Fantozzi reviewed the discussion from the November 2008 Board meeting on this issue. Ms. Yaroslavsky asked for clarification on the type of communications which would need to be disclosed, as well as a definition of what was included under the heading of "advocacy groups". Dr. Fantozzi provided clarification on these issues. He stated an agenda item would be added to future Board meetings with members queried and asked to disclose any relevant communications. Ms. Schipske indicated there is a state report that discusses ex parte communication for state agencies and boards, including clear scenarios of the types of communications that would be disclosed. Ms. Scuri has researched how other agencies handle this issue and shared examples.

Ms. Schipske asked staff to provide a copy of the aforementioned report to Board members. Dr. Fantozzi suggested that staff make a presentation to the Board so these disclosure issues are fully understood.

The motion to adopt Interested Party Communications Option #3 carried.

Agenda Item 12 PACT Agreement

Dr. Fantozzi stated the Professionals Achieving Consumer Trust (PACT) Agreement was presented at the November 2008 DCA Summit. At the November 2008 Board meeting, which preceded the PACT Summit, the Board had voiced concerns with the document and voted to give the Board President authority to sign the PACT Agreement if these concerns were addressed. Ms. Chang made a motion to endorse the current form of the agreement and authorize the Board President to sign the PACT Agreement; the motion was seconded.

Discussion among members followed on the intent, scope, and potential interpretation of the Agreement. Mr. Spencer Walker, DCA Senior Advisor to the Director, clarified this was a ceremonial document with no legal effect whatsoever. He stated the Board was the only board that had not signed the document and encouraged the Board to join with the other DCA boards and sign.

Public comment was made by Tara Leigh Kittle, who opposed the Board signing the agreement. A vote was taken to endorse and approve the signing of the PACT Agreement and the motion carried (7-4).

Agenda Item 13 Discussion of Report on Malpractice Insurance for Physicians Offering Voluntary Unpaid Services

Abbie French, Telemedicine and Special Projects Manager, discussed the report on Malpractice Insurance for Physicians Offering Voluntary Unpaid Services. Ms. French directed members to page 78 of their packets. As required by AB 2342, the Board was directed to study the issue of providing medical malpractice insurance for physicians who provide voluntary unpaid services to the medically underserved and to report the findings to Legislature. The study was to include the cost and process of administering such a program, options for providing medical malpractice insurance, how the coverage could be funded, and whether the voluntary licensure surcharge fee is sufficient to provide the provision of medical malpractice insurance for the physicians. The report did not thoroughly address the use of the voluntary licensure surcharge fee since this fee is mandated to be used solely for the Loan Repayment Program. Legislation would be required to allow a portion of the fee to be used for the malpractice insurance funding.

UC Davis performed the study which was received on December 31, 2008. As identified in the handout, there were three models for liability protection. They are:

1. Enactment of immunity statutes in which the provider is not liable for common negligence, but only for gross negligence or willful misconduct.

2. Enactment of immunity statutes in which, under circumstances proscribed by the state, a physician volunteer would be considered a state employee when providing uncompensated care.

3. A State-established malpractice insurance program in which the state either purchases insurance for the physician volunteers or establishes a self-insured pool.

In addition to the liability protection models, the study found that *if* California desires to promote physician volunteerism, then legislation must determine the settings where liability protection would apply (free clinics, non-profits, hospitals, private physician offices, etc.), as well as whether there would be any limitation to the type of care that may be rendered (surgical, anesthesia, minor procedures, primary care, etc.). The legislation must also identify what patients would be covered under the program and must establish a clinic and physician registration process.

Ms. French indicated there were additional findings included in their packets and the full report could be found on the Board's website under the publications area. As required by law, the report was submitted to the Legislature and any implementation of a program would require legislation. At this point, staff recommends the Board wait to see what the legislative interest is in this subject.

The report was also sent to the Health Professions Education Foundation (HPEF), but there has not yet been an opportunity to discuss the report with HPEF. The Access to Care Committee heard and discussed the report on Thursday, January 29, 2009 and determined the Board should convene a meeting with all interested parties to discuss the study and determine the best implementation of this report. This information could then be provided to any legislative member who wishes to propose legislation based on this study. Staff requested a member be appointed to assist Ms. French with this project.

Ms. Schipske made a motion to approve the committee's recommendation that the Board serve as a convener of stakeholders to make a joint recommendation to the legislature regarding AB 2342; the motion was seconded. During public comment, Tara Leigh Kittle voiced her support for this motion. The motion carried.

Dr. Fantozzi asked members who are interested in assisting in this project to speak with him or Ms. French.

Agenda Item 14 California Research Bureau Report on Public Disclosure

Ms. Kirchmeyer directed members to page 80 of their packets. B&P Code Section 2026 required a study be performed on the role of public disclosure in the public protection mandate of the

Board. The California Research Bureau completed this study and has presented its report tothe Legislature. The four main observations include:

1. National data suggests the volume of quality of care complaints received by the Board are significantly lower than the number of serious injuries people receive in hospitals due to negligence.

2. Consumers would benefit from expanded public disclosure and internet displays.

3. Other state's medical boards provide more accessible information about physicians on their website.
4. The Board has not emphasized research strategies to support enforcement strategies.

The report also listed several policy options included in Ms. Kirchmeyer's memo. Options 1, 2, 4, 5, 7 and 10 would require legislation. Options 3, 6, and 9 the Board is currently working to implement. This includes the development of a physician profile on the Board's website which will include specialized information and should be available on March 1, 2009.

Option 8 would direct the Board to provide on its website links to evidence-based physician level performance information provided specifically by organizations such as the California Physician Performance Initiative. Creating a link to another website might not require legislation, depending on the data available at the linked website. The Education Committee could review this option once the new profiles are on-line.

Julie D'Angelo Fellmeth, Center for Public Interest Law, expressed her support for the report in that it reinforces the importance of the public disclosure function that the Board carries out to its public protection mandate. She highlighted policy Options 2, 3, 6 and 7 on page 85 of the packet. She stated there was a great deal of variation in the information provided by the Board depending on how a person asks for it (e.g., going to the internet, filing a written request, placing a call, or filing a public records act request) without reason; disclosure should be standardized across the board. The Board should be complying with Option 3 as this is current law, and, as Ms. Kirchmeyer indicated, this is under way. Option 6, which would require physicians to notify patients about the existence of the Board, is being addressed by the Education Committee. Option 7, which calls for expanding the kind of information provided on the internet under physician profiles to include biographical data such as age, gender, and training, has been identified as being potentially controversial in the staff report. Nevertheless, Ms. Fellmeth pointed out the Board just heard from Dr. Norcross in his report on the PACE program that age and gender may be predictive factors of future disciplinary problems. Additionally, there are many consumers who would like to know the age and gender of physicians they may choose.

Dr. Salomonson expressed her discomfort with the inclusion of information on age or gender in the physician profile.

Agenda Item 15 Legislation

A. Status of Regulatory Action

Ms. Linda Whitney, Chief of Legislation, directed the Board Members to page 86 of their packets to view the status of pending regulations. Ms. Whitney indicated the Continuing Medical Education regulations are complete and being implemented by the Board. The fee reduction to offset elimination of Diversion Program regulations has gone to the Department and needs to be forwarded to the Office of Administrative Law for adoption by March 29, 2009.

Ms. Yaroslavsky asked Spencer Walker, DCA, to provide information as to when the regulation could be expected to move forward. Mr. Walker stated he would look into it.

B. Legislation and Proposals

Ms. Whitney directed Board Members to the legislative packet that was mailed to Board Members. The packet includes a Tentative Legislative Calendar with critical dates for the Board.

Ms. Whitney referred Members to the 2009 Board Legislative Proposals in their packets.

1. Wellness Committee codified in statute. This proposal was placed in AB 2443 which was vetoed. The Board elected to pursue this codification again due to the importance of the issue.

   Dr. Duruisseau reported on the Wellness Committee's discussion of this bill. In preparing suggested language for the legislative findings regarding this bill, the Committee was asked to consider a suggestion by the CMA to make the program on Wellness permissive, rather than mandatory. The recommendation, which Committee members felt would help gain support from the administration, was approved. Dr. Duruisseau asked the Board to approve an amendment to the proposal to change the wording from "shall establish" to "may establish a program to promote physician wellness" and to move forward pursuing Physician Wellness legislation. Ms. Yaroslavsky made a motion to approve the wording and pursue Physician Wellness legislation; the motion was seconded, and carried.

2. Set a "cap" or "ceiling" on the initial / renewal fee, allowing the Board to set the fee in regulation, and allow the Board to have two to six months funding in its reserve. Although this bill failed last year, Ms. Whitney has had discussions with Assembly Member Yamata who has agreed to carry the legislation with the reserve funding set at four months. Ms. Yaroslavsky made a motion to allow the Board to have up to four months of funding in reserve; the motion was seconded and carried.

3. Develop an Initial Limited License. This would allow applicants who cannot practice medicine in a full and unrestricted manner to voluntarily limit their license at time of

application. Dr. Emmerson, Vice Chair of the Assembly Business and Professions Committee has agreed to carry this bill.

4. Use of "M.D." by residents. This would allow those who have graduated from medical school and are in residence training to use the initials M.D. The Board is working with the UC system and various medical associations to finalize the language. Dr. Emmerson has agreed to include this proposal in his limited license bill if agreement can be found on the language.

5. Sunset Review – Extension of the Board. The Board has been told by the Senate Business and Professions Committee it would only like to extend the sunset dates for one year to allow time to re-examine the entire sunset review process. In doing so, numerous enhancements cannot be placed in the sunset legislation. As such, Ms. Whitney has sought other authors to carry the following enforcement enhancements, possibly as a separate bill:

    a. Certified Medical Records. This proposal would require that when records are requested by the Complaint Unit, those records must be certified records. Staff is looking at the workload this would cause physicians, hospitals, and their offices, and if a simplified form could be developed. Once this information is gathered, the Board will be able to move ahead with the proposal.

    b. Vertical Enforcement (VE)/ Prosecution - Sunset of Pilot. This proposal may or may not be included in the Sunset Review legislation, depending on whether the VE report suggests the VE program should be extended, terminated, enhanced, or amended. The report will be done in July 2009 and this information will be placed into a bill.

    c. Require reporting, at time of renewal, of any criminal, civil or disciplinary action. This has already been implemented to some degree on the renewal form for physicians and other health care licensees, but the Board felt it should be codified and is requiring this information be provided under penalty of perjury.

    d. Require all physicians who have an active license and have not submitted fingerprints to the Board to do so by January 1, 2012. The staff is in the process of determining the number of licensees impacted and then will bring the regulatory language to the full Board at the May 2009 meeting in order to set this for hearing in July 2009. Hence, this is no longer a legislative proposal.

    e. Business and Professions 801.1 Reporting Revisions. The Board continues to work on language for revisions to this section of law.

f. Obtain Medical Records Without Subpoena. The Board would like to expedite obtaining medical records from physicians without patient authorization; there is a concern the Board might overstep its authority and obtain records that it should not receive. The language being developed must be reviewed to ensure the Board has provided public protection and to satisfy the legislature that the Board cannot overstep its authority.

g. Cap the Amount the Board can Assess for Licensee's Failure to Provide Medical Records. While there is a cap on the amount the Board can assess hospitals for failure to provide requested medical records within 15 days, no such cap exists for the amount that may be assessed a licensee for the same violation. This proposal would place a cap on the amount that could be assessed licensees.

With regard to Sunset Review, Ms. Yaroslavsky asked staff to provide an informational report on the impact the reduction in the size of the Board has had in its effectiveness in doing its work. Ms. Whitney believed this issue would be addressed in the sunset review questions about the functions of the Board, but staff could also report how the Board transitioned to the reduction and how that is progressing with the establishment of panels and committee assignments.

6. Omnibus (usually carried by the Senate Business and Professions Committee). These are technical "clean up" provisions. There will be two bills this year: the first duplicating last year's bill that was vetoed, and the second which will encompass newly identified issues requiring clean up.

Ms. Whitney directed members to the last page of the Legislative packet where she spoke about the proposal for Licensing/Accreditation of Outpatient Surgery Settings that may come from the Administration. The Board may wish to co-sponsor.

Ms. Yaroslavsky voiced her concern that the law prohibits the Board President from serving on a panel, even when there is not a full complement of Board Members, such as the current situation. Currently, at least one Board Member is forced to serve on both Board panels. She felt this was not an effective use of members' time, especially when the Board is not at its full membership of 15. Ms. Yaroslavsky proposed a legislative change to section 2008 of the Business and Professions Code to allow the Board President to serve on a panel when there is not a full complement of members and made a motion. Dr. Salomonson seconded the motion. As Board President, Dr. Fantozzi highlighted the significant time demands required of the President's position. A vote was taken and the motion carried.

Ms. Whitney reported there are currently only two pieces of legislation that have been introduced that directly impact the Board. More related legislation may be introduced at the end of February. Ms. Whitney referred to SB 58 (Aanestad) that is a placeholder for peer review; this legislation emerged from the Lumetra report on peer review which was presented to the Legislature. A meeting has been scheduled and there is a hearing on March 9, 2009 at the Senate

Business and Professions Committee, with Dr. Low serving as the Board's representative. The Board should not yet take a position on this legislation, as many changes and amendments are anticipated.

Ms. Whitney referred Members to the handout with information on AB 120 (Hayashi) which deals with disclosure of information by health care providers and makes it unprofessional conduct if a physician fails to disclose specified information that has been added to the Health and Safety Code. Since a full analysis of this bill has not yet been completed by staff, the Board should not take a position.

Ms. Whitney concluded by requesting authority to schedule an Executive Committee meeting for mid to late March, allowing the Board to take positions on bills for policy hearings that will take place in late March and early April. Dr. Fantozzi directed staff to schedule the requested Executive Committee meeting.

Agenda Item 17 Standard of Care Training

Mr. Steve Adler, Supervising Deputy Attorney General for the Health Quality Enforcement Section of the Office of the Attorney General in San Diego, delivered a lunchtime training presentation on the Standard of Care. Mr. Adler provided definitions of the standard of care for health care professionals and medical specialists and stressed that all standard of care conclusions or determinations can only be based on expert testimony.

In evaluating expert witnesses, Mr. Adler shared it was not unusual for respondents' experts to be professional forensic expert witnesses with impressive credentials and skill in providing testimony. The experts the Attorney General's Office uses are typically not professional witnesses, but, rather, are often practitioners who are doing a public service. Board Members do not have to accept an expert's opinion. As with any other witness, it is up to the Member to decide whether he or she believes the expert's testimony and chooses to use it as a basis for their decision. In deciding whether to believe an expert's testimony, some of the factors that should be considered are: the expert's training and experiences; the facts the expert relied on; and the reasons for the expert's opinion.

In instances of conflicting expert testimony, Mr. Adler directed Members to weigh each opinion against the others, examining the reasons given for each opinion and the facts or other matters that each witness relied on. The expert's qualifications may also be compared.

Dr. Fantozzi stated the standard of care is community driven, with the standards varying across countries and cultures. Nevertheless, the standard would, for the most part, be the same throughout the state of California. While there is a difference between the *levels* of care offered at different facilities, the standard of care in terms of the knowledge, skill, and care provided by the health care professional or medical specialist would be the same.

Mr. Adler concluded by speaking on the test for clear and convincing evidence, namely that the party must persuade the member that it is *highly probable* that the fact is true.

Dr. Fantozzi asked Mr. Adler what percentage of cases go to trial versus a stipulated agreement. Mr. Adler indicated 20% go to trial.

Dr. Fantozzi requested staff to schedule a presentation by the Attorney General's Office on the general expectations and guidance of the law with respect to the expectations of the Board.

Agenda Item 18 Enforcement Chief's Report

A. Approval of Orders Restoring License Following Satisfactory Completion of Probation, Orders Issuing Public Letters of Reprimand, and Orders for License Surrender During Probation

Ms. Yaroslavsky made a motion to approve the orders; s/Gitnick; motion carried.

B. Enforcement Program Update

Ms. Threadgill reported the vacancy rate for investigators continues to fluctuate between 6% and 9%. Training is a current priority for staff, in order to facilitate improvement in the efficiency in which investigators are working. At the July 2008 Board meeting, Ms. Threadgill reported on recommendations to reduce the timelines. She provided an update on the implementation of those recommendations that had been approved. Executive staff met with Ron Diedrich, Director of the Office of Administrative Hearings, and came to agreement on several recommendations such as setting the cases for hearing within 120 days, mandatory early settlement conferences, and trial setting conferences for most cases. Carlos Ramirez, Senior Assistant Attorney General, Health Quality Enforcement Section, and Ms. Threadgill continue to meet and review ways to improve the accuracy of records and reduce timeframes. The changing of a policy on subpoenas has been implemented, allowing the Attorney General's Office to prepare the subpoenas when requested and to streamline the way in which the declarations are prepared.

Ms. Threadgill's staff is in the process of finalizing the report on the Investigator Pay Equivalency Study, with the final report expected from the vendor in a couple of weeks.

C. Expert Reviewer Survey and Expert Utilization Report Updates

Ms. Threadgill directed members to the handout on the Results of the Expert Survey Questionnaires.

D. Expert Reviewer Guidelines and Instructions

Ms. Threadgill thanked Dr. Salomonson and Ms. Schipske for their input on the Expert Reviewer Guidelines. She referenced the draft of the Guidelines on page 89 in the packets and invited members to add their thoughts and comments before it was finalized.

E. Disciplinary Guidelines

The disciplinary guidelines are still in the process of being updated and are expected to be delivered to the workgroup from the Board staff by the end of February.

Agenda Item 19 Vertical Enforcement Update

Mr. Carlos Ramirez stated one of the recommendations previously announced by Ms. Threadgill at the July 2008 meeting was that the AG's Office complete accusations within 60 days. While the assessment of this new policy has not been finished, it appears that the 60 day limit is being met; he will provide statistics at the May 2009 Board meeting. With regard to the 120 days to hearing recommendation, Mr. Ramirez is unsure if implementation will require additional staff, but, for now, the AG's Office is moving ahead with trying to meet this deadline.

Ms. Yaroslavsky asked how the Governor's Executive Order furloughing state employees would affect the implementation of the recommendations. Mr. Ramirez explained the furlough would affect Board staff, but not the Attorney General's Office staff. With the furloughs, he anticipates there will be delays on the investigation side. Ms. Threadgill indicated it would mean approximately 1600 hours of work time lost by investigators each month. In their meeting with Ron Diedrich, Ms. Kirchmeyer said he stated the Office of Administrative Hearings has an exemption from the furloughs for the months of February and April, though they will be required to furlough employees in March, then May and ongoing. Thus, Board hearings will also be affected during these months.

Dr. Gitnick asked from the time a complaint is filed until it is finally resolved by the court, what percentage of that time is it under the auspices of the AG's office and what percentage of the time is it outside of the AG's office and under the Board. Ms. Threadgill stated, under the statute of Vertical Enforcement (VE), the time is combined and is not measured separately. Dr. Gitnick asked if state budget issues, such as the inability to pay court reporters and medical consultants, had adversely affected timelines. Ms. Threadgill stated that, indeed, both the investigation and prosecution side were negatively impacted. Given these impediments, Dr. Gitnick asked if he should expect to see worsening rather than improving timelines. Ms. Threadgill stated that was correct, though efforts were still being made to move forward, even in light of the impending furloughs.

With or without the challenges, Mr. Zerunyan felt the bottom line was the timelines are not acceptable. He felt the best course of action at this time was to identify where the breakdown

exists. Mr. Zerunyan asked Mr. Ramirez and Ms. Threadgill to prepare a timeline for the next meeting, indicating the number of days for each aspect of a case from the day it first arrives in the Board's offices. He felt this would identify where the bottlenecks are so they may be dealt with, whether through legislation or regulation or staffing. Dr. Gitnick asked that information be provided on how the lack of court reporters and furloughs figure into the timeline; he stated beyond these kinds of factors, the rest is a failure on our part (jointly). Dr. Fantozzi stated the Board already did a thorough examination of timelines in the summer of 2008. He added that some of the enforcement recommendations are being addressed through legislation, as reported by Ms. Whitney.

Ms. Threadgill reminded the members that some of the delays in the past were the result of an insufficient number of investigators, with a former vacancy rate as high as 31%, largely due to investigator pay differentials. Staff has been working hard to recruit and retain investigators in order to improve timelines. Further, Dr. Fantozzi reminded members of due process, where individuals are entitled to representation and where legal proceedings are commonly postponed.

Ms. Threadgill reminded Members that a report on the effectiveness of Vertical Enforcement is due to the Legislature on July 1, 2009. This report is to be done by an outside vendor to assure objectivity. Ms. Threadgill suggested the VE Report, which should be in draft form by May 2009, would provide the Board with enough information to determine what the real issues are with the timelines. Ms. Kirchmeyer suggested it may be more useful for the Board to await the VE report which will provide a more comprehensive picture of the individual phases, identify which group or individual is responsible for each phase, and determine how long it takes from the time an investigation begins until the closure of the case. Dr. Gitnick agreed to wait for the VE report rather than asking staff to prepare an additional report. Dr. Fantozzi asked Mr. Spencer Walker, DCA, to expedite the authorization of the contract so the Board may continue to move forward. Ms. Yaroslavsky echoed the need for an objective report by an outside entity, rather than creating or updating a report on timelines internally

Julie D'Angelo Fellmeth, Center for Public Interest Law, indicated, in 1990, Senate Bill 2375 enacted Business and Professions Code Section 2319 which said the Board shall set as a goal the improvement of its disciplinary system by January 1, 1992, so that an average of no more than 6 months will elapse between receipt of the complaint to completion of the investigation. Hence, the reduction of enforcement timelines has been a goal for the Board for quite some time. She also expressed her support of the Board securing an unbiased outside vendor to conduct data gathering and a review of the delay that occurs at each step of the enforcement process, as well as looking at the functioning of the Board's investigators and the HQE prosecutors to determine if they are complying with the VE Manual and guidelines which were adopted.

Agenda Item 20 Licensing Chief's Report

A. Licensing Program Update

Ms. Pellegrini directed Members to the Licensing Program workload counts for all operations on page 145 of their packets. She noted there was a correction to the report, with the number of

physicians and surgeons licensed in the first quarter being 1,191, not 1,429 as indicated. Ms. Pellegrini explained the lower number of licenses being issued in the second quarter was typical for the past four years, with a rebound usually occurring during the third quarter. Applications initially reviewed outside the regulatory requirements of 60 working days increased during the second quarter, but remained the same between December and January, with approximately 300 applications outside the regulatory requirements as of this week.

Several processing improvement initiatives have been undertaken in the past three months which should assist in improving the timeliness of applications. These improvements include the development of a policy and procedure manual, drafting electronic deficiency letters from the Application Tracking System (ATS), and a better data tracking system which allows for a more even distribution of application workload among staff. The Licensing Section has also added 8 new part-time employees and has removed some clerical responsibilities from licensing analysts, allowing them to focus solely on processing applications. Ms. Pellegrini also reported a new web based automated call center has been implemented, which is a great improvement over the Board's previous call system.

Agenda Item 21 Midwifery Advisory Council Report

Faith Gibson, Chair of the Midwifery Advisory Council, reported the Council met on January 15, 2009 where it concluded dealing with the 2007 licensed midwifery statistics and questionnaire; the questionnaire will be reworded for the December 2009 mailing to correct some problems. The questionnaire is available on the Board's website, with the data being reported back to the Office of Statewide Health Planning and Development (OSHPD).

A. Remedial Training as a Term of Probation

At the October 2008 Council meeting, Ms. Pellegrini reported the Council Members discussed remedial retraining of licensed midwives and approved a motion to seek Board approval to move forward with determining what type of education should be included in the term and condition of probation for quality of care cases and to also assess whether that type of education exists. Ms. Yaroslavsky made a motion to authorize the Midwifery Advisory Council to evaluate remedial training as a term of probation; the motion was seconded and carried.

Agenda Item 22 Written Examination Passing Score

Ms. Scuri reported Business and Professions Code Section 2177 requires the Board to establish the passing score for the licensing examination. The Board has historically accepted the passing score set by the Federation of State Medical Boards (FSMB). Out of an abundance of caution, the Board is asked to reaffirm its past practice of accepting the passing score set by the FSMB as its own passing score. A motion was made to reaffirm the Board's past practice of accepting the passing score set by the FSMB as its own passing score an all steps of the USMLE; the motion was seconded by Ms. Chang and carried.

Agenda Item 23 Consideration of Proposal to Amend Continuing Medical Education Audit Regulations

Ms. Pellegrini referred Members to page 149 of their packets. Staff recommends the Board amend the current CME regulatory language in Section 1338 by (1) striking the word "once" and (2) adding language to state that a physician's failure to respond to the Board's audit inquiry and providing documentation of his or her compliance with the continuing education requirements within 45 days of receipt of the inquiry will constitute unprofessional conduct. Staff is asking to bring this issue back for a public hearing at the May 2009 Board meeting. Ms. Yaroslavsky made a motion to approve staff's recommendations; Dr. Chin seconded the motion.

During public comment, Yvonne Choong, CMA, expressed concerns with the proposal regarding the failure to provide documentation within 45 days constituting unprofessional conduct. She encouraged the Board to consider an intermediary solution due to issues such as address changes, extended leave or travel, or retirement. The CMA felt putting failure to provide this information on the same level as a DUI or providing false testimony was excessive. Further, Ms. Choong stated it was her understanding that the Board already required the submission of proof of CMEs for renewal, giving the Board the opportunity to hold up a physician's license renewal for non-compliance rather than adding another item to unprofessional conduct.

Ms. Kirchmeyer indicated it has been determined the Board does not have the statutory or regulatory authority to issue a citation and fine if the physician does not send in the documentation in response to the audit inquiry; in fact, no enforcement mechanism currently exists. The Board is seeking the capability to label this failure to submit documentation of CME as unprofessional conduct which could be added to Board regulations and would allow the Board to cite and fine for non-compliance. A cite and fine would not be issued the first time the Board sent out a letter requesting documentation; due diligence would be followed in order to gain compliance. The citation and fine would be used for physicians who continue to ignore requests from the Board for CME documentation.

Dr. Low suggested a possible solution might be linking each licensee's on-line profile to a form for CME activity that would be filled out on an on-going basis; failure to complete the required CME documentation would result in an inability to renew their license. Ms. Schipske noted the Board of Registered Nursing automatically fines nurses who are late in returning their CME documentation; further, if an audit is conducted, the nurse may be subject to additional fines. Mr. Heppler noted the Board seems interested in further discussion on this issue and suggested it might be appropriate to separate the two requested actions and consider them individually.

Dr. Gitnick urged caution on this issue, stating many published studies showed CME, as currently constituted, does not effect practice change. He felt until there was a change in the way CME was delivered, the Board should proceed cautiously and avoid appearing punitive. Ms. Yaroslavsky felt the issue was if the Board had a rule, there needed to be a way to enforce it.

Ms. Yaroslavsky amended her earlier motion to approve staff's first recommendation to amend the current CME regulatory language by striking the word "once" from section 1338(a). Ms. Scuri clarified the audit requirement is included in regulations, but, by removing the word

"once", it simply allows staff to spread out the audit, reducing workload on staff. The motion was seconded and carried.

Dr. Fantozzi asked staff to return with additional options for gaining compliance on providing CME documentation that would be less onerous and punitive for licensees.

Agenda Item 24 Action on Recommendations of Application Review Committee

Dr. Gitnick reported the Application Review Committee met and requests that it be authorized to proceed with developing proposed regulatory language to implement section 2113(e) of the California B&P Code by defining the appropriate minimum level of clinical activities the Board may accept as qualifying time to meet the postgraduate training requirement for licensure. Ms. Yaroslavsky made a motion to approve the Application Review Committee's request; the motion was seconded by Ms. Schipske and carried.

Agenda Item 25 California Physician's Corp Program Update

Ms. Yaroslavsky provided an update on the California Physician's Corp Program, reporting $2.5 million dollars from physician licenses and penalties imposed by managed health care will be used to assist in loan repayment for physicians serving in underserved communities throughout California.

Agenda Item 26 Education Committee Update

Ms. Yaroslavsky reported the Education Committee met on January 29, 2009 and discussed a regulatory proposal to require posting a sign regarding physician regulation by the Board. Staff will return with additional language and will meet with impacted stakeholders to discuss the reasoning behind and implementation of the signage requirement.

Agenda Item 27 Wellness Committee Update

Dr. Duruisseau reported the Wellness Committee met on January 29, 2009. At the November 2008 meeting, the Committee decided to take steps to gain a better understanding of Wellness resources currently available to California physicians. Dr. Duruisseau reported the Committee has been working with staff on a survey to be sent out to all hospitals in California. The Committee will be setting up a meeting with the administration in February 2009 to discuss this language of the Wellness legislative proposal and the materials developed on Wellness.

Last year the Committee, with the Board's support, created its own website which includes updated articles on Wellness; Dr. Duruisseau encouraged the Members to visit the site. Dr. Duruisseau will report on the activities of the various Wellness subcommittees at a later date.

Agenda Item 28 Physician Assistant Committee Update

Dr. Low reported the Physician Assistant Committee (PAC) met in November 2008 as part of the DCA Summit in Los Angeles. Important issues raised at the meeting included: (1) Legislation in 2008 authorized the PAC to require a licensee to complete 50 hours of CME every two years.

Interested parties are working together to finalize the regulatory language. (2) An on-line assessment has been developed by the PAC to disseminate knowledge about jurisprudence as it relates to physician assistants; it is in the process of being posted to the PAC website. (3) The PAC is in the midst of a strategic planning process which should be completed by the first half of 2009.

Dr. Low also reported staff has prepared an informational page about the Delegation of Services Agreement which is now posted on the PAC website. Citations are also now posted on the website and staff is moving toward scanning everything for electronic retention. As part of the application process, the PAC will query through the National Practitioner Database for new applicants. Finally, the website is being updated to improve the efficiency for renewals. As of January 2009, there are 7,000 licensed physician assistants.

Agenda Item 29 Access to Care Committee Update

Dr. Gitnick reported the Access to Care Committee met on January 29, 2009 where two significant issues were discussed: (1) The report on Malpractice Insurance for Voluntary Physicians, which was presented to the full Board as Agenda Item 13; (2) A proposed pilot program that would meet the requirements of AB 329 which authorized the Medical Board to establish a pilot program to expand the practice of telemedicine and authorized the Board to implement the program using the telemedicine model of delivering health care to those with chronic diseases and delivering other health information. The law requires the Board to make recommendations regarding its findings to the Legislature within one calendar year of the commencement date of the pilot program. Staff has proposed a program in collaboration with the Chronic Disease Management Program at the University of California Davis Health System. This program is designed to resolve health disparities for diabetics, primarily focused on Hispanic and African Americans, building on disease management resources and utilizing telemedicine technologies to connect patients, providers, and community resources in an effective manner that offers enormous potential for improvement.

Dr. Gitnick made a motion to implement the proposed program recommended by staff; Ms.Yaroslavsky seconded, motion carried.

Agenda Item 30 Agenda Items for May 7-8, 2009 Meeting

Dr. Fantozzi asked staff to revise the Board Member Procedure Manual to be consistent with the earlier vote on interested party communications.

Ms. Chang asked that an agenda item be added to discuss a potential pilot project between the Cultural and Linguistic Competency Work Group and UC Davis regarding the language issues surrounding health care in underserved communities.

Agenda Item 31 Election of New Board President

In light of the pending expiration of his term on June 1, 2009, Dr. Fantozzi called for the election of a new president who would serve upon his retirement. He felt it was in the Board's best interest to elect a new president who he would be able to meet with and who would also have the opportunity to meet with staff, advocacy groups and the Legislature, in order to provide a smooth transition in leadership. Dr. Fantozzi called for nominations for the office of President. Dr. Salomonson nominated Ms. Yaroslavsky; Dr. Duruisseau seconded the nomination. There being no other nominations, Dr. Fantozzi called for a vote. Ms. Yaroslavsky was unanimously elected as President of the Board effective June 1, 2009 or earlier upon Dr. Fantozzi's retirement.

Dr. Gitnick congratulated Ms. Yaroslavsky and thanked Dr. Fantozzi for his leadership as President of the Board.

Action Item 32 Adjournment

There being no further business, the meeting was adjourned at 2:10 p.m.

_____
Richard Fantozzi, M.D., President

_____
Hedy Chang, Secretary

_____
Barb Johnston, Executive Director

MEDICAL BOARD OF CALIFORNIA
SPECIFIC LANGUAGE OF PROPOSED REGULATIONS

Modification to Continuing Medical Education Audit

Amend Section 1338, Title 16, California Code of Regulations to read as follows:

§ 1338. Audit and Sanctions for Noncompliance.

(a) The Board ~~division~~ shall audit ~~once~~ during each year a random sample of physicians who have reported compliance with the continuing education requirement. No physician shall be subject to audit more than once every four (4) years. Those physicians selected for audit shall be required to document their compliance with the continuing education requirements of this article on a form provided by the Board ~~division~~.

(b) Any physician who is found not to have completed the required number of hours of approved continuing education will be required to make up any deficiency during the next biennial renewal period. Such physician shall document to the Board ~~division~~ the completion of any deficient hours identified by audit. Any physician who fails to make up the deficient hours during the following renewal period shall be ineligible for renewal of his or her license to practice medicine until such time as the deficient hours of continuing education are documented to the Board ~~division~~.

(c) It shall constitute unprofessional conduct for any physician to misrepresent his or her compliance with the provisions of this article.

(d) Any physician selected for audit who has been certified as complying with the continuing education requirements of this article by those organizations listed in Section 1337, subsections (a)(1) and (a)(2), will not be required to submit documentation or records of continuing education coursework received, but the Board ~~division~~ may obtain such records directly from the certifying organizations.

(e) The Board ~~division~~ requires that each physician retain records for a minimum of four years of all continuing education programs attended which indicate the title of the course or program attended, dates of attendance, the length of the course or program, the sponsoring organization and the accrediting organization, if any, which may be needed in the event of an audit by the Board ~~division~~.

Note
Authority cited: Section 2018, Business and Professions Code.
Reference: Sections 2005 and 2190, Business and Professions Code.

TITLE 16. Medical Board of California

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at **Embassy Suites San Francisco Airport, 150 Anza Boulevard, Burlingame, California 94010 at 9:00 a.m., on May 8, 2009**. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office **not later than 5:00 p.m. on April 27, 2009** or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific Sections 2190 of said Code, the Board is considering changes to Article 11 of Chapter 1 of Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1338: Modification to Continuing Medical Education Audit

Business and Professions Code Section 2190 authorizes the Board to adopt and administer standards for the continuing education of its licensees. Existing regulations provide direction to the Board to audit once each year a random sample of physicians who have reported compliance with the continuing education requirement.

This proposal would allow the Board to perform the audit in twelve equal batches throughout the year to make the workload manageable, predictable and consistent.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minor Savings. The Medical Board will save some funding as the workload can be accomplished with existing resources and no overtime will be used.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposed change will only affect the Board's internal procedures related to how it performs the CME audit. It will not change how licensees renew their licenses or verify the completion of continuing education requirements.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. Copies of the initial statement of reasons and all of the information upon which the proposal is based may

be obtained from the person designated in the Notice under Contact Person or by accessing the Board's website:
http://www.medbd.ca.gov/laws/regulations_proposed.html.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website:
http://www.medbd.ca.gov/laws/regulations_proposed.html.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Ian K. McGlone
Address:	2005 Evergreen Street, Suite 1200 Sacramento, CA 95816
Telephone No.:	(916) 263.0920
Fax No.:	(916) 274.6181
E-Mail Address:	imcglone@mbc.ca.gov

The backup contact person is:

Name:	Kevin A. Schunke
Address:	2005 Evergreen Street, Suite 1200 Sacramento, CA 95816
Telephone No.:	(916) 263.2368
Fax No.:	(916) 263.2387
E-Mail Address:	kschunke@mbc.ca.gov

Website Access : Materials regarding this proposal can be found at
http://www.medbd.ca.gov/laws/regulations_proposed.html.

0758 - Medical Board
Analysis of Fund Condition
(Dollars in Thousands)

Galley 2	Actual 2007-08	2008-09	2009-10	2010-11	2011-12
BEGINNING BALANCE	$ 18,467	$ 23,866	$ 19,752	$ 18,530	$ 15,451
Prior Year Adjustment	$ 153	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 18,620	$ 23,866	$ 19,752	$ 18,530	$ 15,451
REVENUES AND TRANSFERS					
Revenues:					
125600 Other regulatory fees	$ 354	$ 383	$ 387	$ 387	$ 387
125700 Other regulatory licenses and permits	$ 5,596	$ 5,745	$ 5,655	$ 5,655	$ 5,655
125800 Renewal fees	$ 44,917	$ 44,861	$ 43,645	$ 44,037	$ 44,429
$22 refund to licensees who renewed in 08/09				$ (1,210)	
125900 Delinquent fees	$ 102	$ 101	$ 98	$ 98	$ 98
141200 Sales of documents	$ -	$ -	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ 20	$ 20	$ 20	$ 20	$ 20
150300 Income from surplus money investments	$ 1,079	$ 1,183	$ 840	$ 693	$ 565
160400 Sale of fixed assets	$ -	$ -	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ 22	$ -	$ -	$ -	$ -
161400 Miscellaneous revenues	$ 1	$ 5	$ 5	$ 5	$ 5
164300 Penalty assessments - Probation Monitoring	$ -	$ 900	$ 900	$ 900	$ 900
Totals, Revenues	$ 52,091	$ 53,198	$ 51,550	$ 50,585	$ 52,060
Transfers:					
GENERAL FUND LOAN		$ (6,000)			
Totals, Revenues and Transfers	$ 52,091	$ 47,198	$ 51,550	$ 50,585	$ 52,060
Totals, Resources	$ 70,711	$ 71,064	$ 71,302	$ 69,116	$ 67,511
EXPENDITURES					
Disbursements:					
0840 State Controller (State Operations)	$ 39	$ 36	$ -	$ -	$ -
Budget Act of 2007					
1110 Program Expenditures (State Operations) - Galley 3	$ 46,806	$ 51,276	$ 52,612	$ 53,664	$ 54,738
Rural Health Care Assessment	$ -	$ -	$ -	$ -	$ -
9670 Equity Claims / Board of Control (State Operations)	$ -	$ -	$ -	$ -	$ -
2009-10 BCPs: Program					
OHR Various Positions 1111-01			$ 22	$ -	$ -
OIS 1111-02			$ 29	$ -	$ -
Public Affairs Webcasting 1111-05			$ 101	$ -	
Internal Audits 1111-06			$ 8	$ -	
Probation Monitoring 1110-19			$ -	$ -	$ -
Operation Safe Medicine 1110-17			$ -	$ -	
Total Disbursements	$ 46,845	$ 51,312	$ 52,772	$ 53,664	$ 54,738
FUND BALANCE					
Reserve for economic uncertainties	$ 23,866	$ 19,752	$ 18,530	$ 15,451	$ 12,774
Months in Reserve	5.6	4.5	4.1	3.4	2.7

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2008-09 AND BEYOND

B. INTEREST ON FUND ESTIMATED AT 5%

Medical Board of California

FY 08/09
Budget Expenditure Report
(As of February 28, 2009)
(66.7% of fiscal year completed)

OBJECT DESCRIPTION	BUDGET ALLOTMENT	EXPENSES/ ENCUMB	PERCENT OF BUDGET EXP/ENCUMB	UNENCUMB BALANCE
PERSONAL SERVICES				
Salary & Wages				
(Staff & Exec Director)	14,692,753	9,167,949	62.4	5,524,804
Board Members	31,500	13,700	43.5	17,800
Phy Fitness Incentive Pay	29,623	9,425	31.8	20,198
Temp Help	1,144,410	622,354	54.4	522,056
Overtime	12,143	79,972	658.6	(67,829)
Staff Benefits	6,247,865	3,984,470	63.8	2,263,395
Salary Savings	(807,251)			(807,251)
TOTALS, PERS SERVICES	21,351,043	13,877,870	65.0	7,473,173
OPERATING EXP & EQUIP				
General Expense	876,732	181,328	20.7	695,404
Fingerprint Reports	373,448	187,359	50.2	186,089
Printing	873,205	498,145	57.0	375,060
Communications	577,350	242,311	42.0	335,039
Postage	464,499	139,358	30.0	325,141
Insurance	38,414	14,508	37.8	23,906
Travel In-State	369,590	210,005	56.8	159,585
Travel Out-of-State	2,031	355	17.5	1,676
Training	62,072	53,984	87.0	8,088
Facilities Operation (Rent)	2,528,431	2,161,519	85.5	366,912
Consult/Prof Services	925,994	751,835	81.2	174,159
Departmental Prorata	4,119,029	2,742,824	66.6	1,376,205
Consolidated Data Center	605,228	145,734	24.1	459,494
Data Processing	111,810	190,371	170.3	(78,561)
Central Admin Svcs (Statewide Prorata)	2,323,465	1,742,599	75.0	580,866
Attorney General Services	12,419,270	7,738,363	62.3	4,680,907
Office of Administrative Hearings	1,731,603	668,552	38.6	1,063,051
Court Reporter Services	175,000	44,490	25.4	130,510
Evidence/Witness	1,771,718	818,747	46.2	952,971
Major Equipment	185,000	0	0.0	185,000
Minor Equipment	207,000	253,125	122.3	(46,125)
Vehicle Operation/Other Items	245,163	196,167	80.0	48,996
Memorandum of Costs	0	10,171		(10,171)
TOTALS, OE&E	30,986,052	18,991,850	61.3	11,994,202
TOTALS, EXPENDITURES	52,337,095	32,869,720	62.8	19,467,375
Scheduled Reimbursements	(384,000)	(222,657)	58.0	(161,343)
Distributed Costs	(677,000)	(556,451)	82.2	(120,549)
NET TOTAL, EXPENDITURES	51,276,095	32,090,612	62.6	19,185,483
Unscheduled Reimbursements		(922,159)		
		31,168,453		

Budget Expenditure Report.xls
Date: March 26, 2009

MEDICAL BOARD OF CALIFORNIA
LICENSING PROGRAM
BUDGET REPORT
JULY 1, 2008 - FEBRUARY 28, 2009

	FY 08/09 BUDGET	EXPENDITURES/ ENCUMBRANCES YR-TO-DATE	LAG TIME (MONTHS)
PERSONAL SERVICES			
Salaries & Wages	1,958,322	1,382,451	current
Staff Benefits	863,392	574,037	current
TOTAL PERSONAL SERVICES	2,821,714	1,956,488	
OPERATING EXPENSES & EQUIPMENT			
General Expense	44,460	6,196	1-2
Fingerprint Reports*	369,248	186,360	1
Printing	120,000	23,812	1-2
Communications	78,193	25,794	1-2
Postage	137,447	66,412	1-2
Travel In-State	35,000	10,137	1-2
Training	4,000	1,760	1-2
Facilities Operation	205,000	200,698	current
Consult/Professional Services	474,994	488,102	1-2
Departmental Services	377,715	274,280	current
Data Processing	500	0	1-2
Central Administrative Services	213,062	159,797	current
Other Items of Expense	0	617	1-2
Attorney General	190,000	67,635	current
Evidence/Witness Fees	5,000	2,888	1-2
Minor Equipment	0	821	1-2
TOTAL OPERATING EXPENSES & EQUIPMENT	2,254,619	1,515,309	
SCHEDULED REIMBURSEMENTS	(384,000)	(222,657)	
DISTRIBUTED COSTS	(25,087)	(12,544)	
TOTAL BUDGET/EXPENDITURES	**4,667,246**	**3,236,596**	
Unscheduled Reimbursements		(97,699)	
		3,138,897	

*Department of Justice invoices for fingerprint reports, name checks, and subsequent arrest reports

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3/20/2009

MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
BUDGET REPORT
JULY 1, 2008 - FEBRUARY 28, 2009

	FY 08/09 BUDGET	EXPENDITURES/ ENCUMBRANCES YR-TO-DATE	LAG TIME (MONTHS)
PERSONAL SERVICES			
Salaries & Wages	9,617,799	6,177,707	current
Staff Benefits	3,859,181	2,488,388	current
TOTAL PERSONAL SERVICES	13,476,980	8,666,095	
OPERATING EXPENSE & EQUIPMENT			
General Expense/Fingerprint Reports	156,804	64,108	1-2
Printing	360,705	336,291	1-2
Communications	329,433	171,882	1-2
Postage	101,805	36,160	1-2
Insurance	31,713	9,243	current
Travel In-State	149,669	130,272	1-2
Travel Out-of-State	883	0	current
Training	22,886	42,605	1-2
Facililties Operations	1,853,431	1,587,482	current
Consultant/Professional Services	300,000	261,245	1-2
Departmental Services	2,978,882	1,974,832	current
Data Processing	12,000	8,348	1-2
Central Administrative Services	1,680,330	1,260,248	current
Attorney General 1/	12,229,270	7,670,728	current
OAH	1,731,603	668,552	current
Evidence/Witness Fees	1,702,150	803,600	1-2
Court Reporter Services	175,000	44,490	1-2
Major Equipment	140,000	0	1-2
Other Items of Expense (Law Enf. Materials/Lab, etc.)	76	13,754	1-2
Vehicle Operations	197,587	136,376	1-2
Minor Equipment	0	73,481	1-2
Memorandum of Costs (Judgments)	0	10,171	current
TOTAL OPERATING I EQUIPMENT	24,154,227	15,303,868	
DISTRIBUTED COSTS	(633,666)	(534,785)	
TOTAL BUDGET/EXPENDITURES	**36,997,541**	**23,435,178**	
Unscheduled Reimbursements		(56,805)	
		23,378,373	

1/See next page for monthly billing detail

3/23/09
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MEDICAL BOARD OF CALIFORNIA
ATTORNEY GENERAL EXPENDITURES - FY 08/09
DOJ AGENCY CODE 003573 - ENFORCEMENT (6303)

		Number of Hours	Rate	Amount
July	Attorney Services	6,321.75	158.00	998,836.50
	Paralegal Services	320.25	101.00	32,345.25
	Auditor/Analyst Services	108.75	63.00	6,851.25
	Special Agent Services	14.00	120.00	1,680.00
	Cost of Suit			
				1,039,713.00
August	Attorney Services	5,689.25	158.00	898,901.50
	Paralegal Services	216.50	101.00	21,866.50
	Auditor/Analyst Services	77.50	63.00	4,882.50
	Cost of Suit			
				925,650.50
September	Attorney Services	5,936.00	158.00	937,888.00
	Paralegal Services	248.75	101.00	25,123.75
	Auditor/Analyst Services	89.50	63.00	5,638.50
	Cost of Suit			1,384.69
				970,034.94
October	Attorney Services	6,487.75	158.00	1,025,064.50
	Paralegal Services	219.75	101.00	22,194.75
	Auditor/Analyst Services	87.00	63.00	5,481.00
	Special Agent Services		110.00	899.89
	Cost of Suit			322.64
				1,053,962.78
November	Attorney Services	5,134.25	158.00	811,211.50
	Paralegal Services	179.25	101.00	18,104.25
	Auditor/Analyst	69.25	63.00	4,362.75
	Special Agent Services		110.00	0.00
	Cost of Suit			7,428.71
				841,107.21
December	Attorney Services	5,816.00	158.00	918,928.00
	Paralegal Services	248.25	101.00	25,073.25
	Auditor/Analyst	78.75	63.00	4,961.25
	Cost of Suit			4,017.82
				952,980.32
			July - Dec Total =	**5,783,448.75**
			08/09 FY Budget =	**12,229,270.00**

Revised 3/17/09

MEDICAL BOARD OF CALIFORNIA
ATTORNEY GENERAL EXPENDITURES - FY 08/09
DOJ AGENCY CODE 003573 - ENFORCEMENT (6303)

January	Attorney Services	6,177.50	158.00	976,045.00
	Paralegal Services	311.25	101.00	31,436.25
	Auditor/Analyst	82.00	63.00	5,166.00
	Special Agent Services		120.00	0.00
	Cost of Suit			1,396.34
				1,014,043.59
February	Attorney Services	5,287.50	158.00	835,425.00
	Paralegal Services	244.75	101.00	24,719.75
	Auditor/Analyst	76.25	63.00	4,803.75
	Cost of Suit			8,287.61
				873,236.11
March	Attorney Services		158.00	0.00
	Paralegal Services		101.00	0.00
	Auditor/Analyst Services		63.00	0.00
	Cost of Suit			
				0.00
April	Attorney Services		158.00	0.00
	Paralegal Services		101.00	0.00
	Auditor/Analyst Services		63.00	0.00
	Cost of Suit			
				0.00
May	Attorney Services		158.00	0.00
	Paralegal Services		101.00	0.00
	Auditor/Analyst Services		63.00	0.00
	Cost of Suit			
				0.00
June	Attorney Services		158.00	0.00
	Paralegal Services		101.00	0.00
	Auditor/Analyst Services		63.00	0.00
	Cost of Suit			
				0.00
			08/09 FYTD Total =	**7,670,728.45**
			08/09 FY Budget =	**12,229,270.00**

Revised 3/17/09
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ENFORCEMENT/PROBATION RECEIPTS
MONTHLY PROFILE: JULY 2006 - FEBRUARY 2009

	Jul-06	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07	FYTD Total
Invest Cost Recovery	21,173	30,787	19,692	22,508	22,790	10,741	26,503	6,342	13,891	18,577	11,064	6,789	210,857
Criminal Cost Recovery	450	704	57,971	1,100	840	373	1,213	750	100	10,200	18,704	2,689	95,094
Probation Monitoring	28,503	30,868	8,857	14,327	123,405	112,580	332,202	155,028	33,356	42,898	27,181	22,842	932,047
Exam	4,456	5,843	3,093	1,065	2,440	1,561	7,215	1,505	3,858	3,105	515	6,256	40,912
Cite/Fine	4,675	3,600	3,750	7,420	8,150	4,350	5,000	4,700	2,950	10,960	5,700	650	61,905
MONTHLY TOTAL	59,257	71,802	93,363	46,420	157,625	129,605	372,133	168,325	54,155	85,740	63,164	39,226	1,340,815
FYTD TOTAL	59,257	131,059	224,422	270,842	428,467	558,072	930,205	1,098,530	1,152,685	1,238,425	1,301,589	1,340,815	

	Jul-07	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	FYTD Total
Invest Cost Recovery	15,074	12,725	13,851	10,837	7,104	6,432	14,100	15,947	3,307	15,221	6,086	13,493	134,177
Criminal Cost Recovery	0	0	0	0	0	2,975	0	0	50,000	0	0	12	52,987
Probation Monitoring	31,949	49,534	24,134	32,231	119,692	140,590	247,147	220,081	27,151	62,498	39,786	46,564	1,041,357
Exam	3,545	4,227	1,248	1,820	1,209	300	905	2,055	2,265	6,530	1,080	325	25,509
Cite/Fine	1,200	9,100	6,250	4,800	13,440	1,850	1,700	3,500	14,900	5,731	6,200	3,150	71,821
MONTHLY TOTAL	51,768	75,586	45,483	49,688	141,445	152,147	263,852	241,583	97,623	89,980	53,152	63,544	1,325,851
FYTD TOTAL	51,768	127,354	172,837	222,525	363,970	516,117	779,969	1,021,552	1,119,175	1,209,155	1,262,307	1,325,851	

	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	FYTD Total
Invest Cost Recovery	18,069	1,850	2,935	6,569	3,616	4,564	8,445	14,535					60,583
Criminal Cost Recovery	0	5,694	0	0	0	0	3,500	0					9,194
Probation Monitoring	56,999	17,107	28,739	109,603	53,626	75,517	218,781	232,169					792,541
Exam	825	75	50	3,495	50	2,150	125	5,740					12,510
Cite/Fine	3,050	3,200	9,050	2,400	1,500	5,650	4,300	10,400					39,550
MONTHLY TOTAL	78,943	27,926	40,774	122,067	58,792	87,881	235,151	262,844	0	0	0	0	914,378
FYTD TOTAL	78,943	106,869	147,643	269,710	328,502	416,383	651,534	914,378	914,378	914,378	914,378	914,378	

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Medical Board of California
Board Members' Expense Report
July 1, 2008 - February 29, 2009

	*Per Diem**				*Travel Expenses**	*Total Dec-Feb*	***Total FYTD***
	DEC	JAN	FEB	TOTAL			
Mr. Alexander	0	0	0	0	0.00	0.00	1,640.80
Dr. Carreon	0	400	0	400	0.00	400.00	400.00
Ms. Chang	0	400	0	400	700.36	1,100.36	1,400.36
Dr. Chin	0	0	0	0	0.00	0.00	1,135.25
Dr. Duruisseau	200	500	100	800	758.66	1,558.66	3,413.09
Dr. Fantozzi	600	800	300	1,700	1,765.01	3,465.01	10,798.93
Dr. Gitnick	0	0	0	0	0.00	0.00	0.00
Dr. Low	0	0	0	0	0.00	0.00	0.00
Dr. Moran	0	0	0	0	0.00	0.00	0.00
Dr. Salomonson	0	200	300	500	0.00	500.00	1,951.84
Ms. Schipske	0	0	0	0	0.00	0.00	900.00
Ms. Yaroslavsky	0	200	500	700	0.00	700.00	1,200.00
Mr. Zerunyan	700	500	200	1,400	411.82	1,811.82	6,501.04
BOARD TOTAL	1,500	3,000	1,400	5,900	3,635.85	9,535.85	**29,341.31**

*includes claims paid/submitted through March 20, 2009

Board Members Expense Report.xls
Date: March 26, 2009

MEDICAL BOARD OF CALIFORNIA BUDGET OVERVIEW BY BOARD COMPONENT

	EXEC	ENFORCE	LICENSING	ADMIN SERVICES	DIVERSION	INFO SYSTEMS	PROBATION MONITORING	BOARD TOTAL
FY 05/06								
$ Budgeted	1,531,000	29,371,000	3,567,000	1,814,000	1,189,000	2,711,000	2,399,000	42,582,000
$ Spent *	1,412,000	26,380,000	3,170,000	1,756,000	1,148,000	2,438,000	1,406,000	37,710,000 *
Positions Authorized	8.0	137.6	37.2	20.0	12.0	15.0	23.0	252.8
FY 06/07								
$ Budgeted	1,534,000	34,693,000	3,949,000	3,089,000	1,747,000	2,857,000	2,591,000	50,460,000
$ Spent *	1,555,000	30,572,000	3,517,000	2,756,000	1,683,000	2,393,000	1,495,000	43,971,000 *
Positions Authorized	8.8	141.6	40.5	19.4	14.0	16.0	25.0	265.3
FY 07/08								
$ Budgeted	1,896,000	35,696,000	4,334,000	2,855,000	1,397,000	3,078,000	2,750,000	52,006,000
$ Spent	1,796,000	33,478,000	4,077,000	2,113,000	1,037,000	2,696,000	1,647,000	46,844,000 *
Positions Authorized	8.8	147.6	44.5	15.0	14.0	16.0	19.0	264.9
FY 08/09								
$ Budgeted	2,185,000	36,997,000	4,667,000	2,074,000		3,407,000	1,946,000	51,276,000
$ Spent thru 2/28*	1,155,000	23,378,000	3,139,000	1,197,000		1,877,000	422,000	31,168,000 *
Positions Authorized	8.8	146.6	45.5	15.0		16.0	20.0	251.9

* net expenditures (includes unscheduled reimbursements)

3/26/2009
Budget Overview by Program.xls

State of California

State and Consumer Services Agency

MEDICAL BOARD OF CALIFORNIA

Board Member Administrative Procedure Manual

2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
(916) 263-2389
www.mbc.ca.gov

Table of Contents

	Page
Chapter 1. Introduction	
Overview	1
Definitions	1
General Rules of Conduct	2
Chapter 2. Board Meeting Procedures	
Frequency of Meetings	3
Board Member Attendance at Board Meetings	3
Public Attendance at Board Meetings/Open Meetings Act	3
Quorum	3
Agenda Items	4
Notice of Meetings	4
Notice of Meetings to be Posted on Internet	4
Record of Meetings	4
Tape Recording	4
Meeting Rules	4
Public Comment	4
Chapter 3. Travel & Salary Policies & Procedures	
Travel Approval	6
Travel Arrangements	6
Out-of-State Travel	6
Travel Claims	6
Salary Per Diem	6
Chapter 4. Selection of Officers & Committees	
Officers of the Board	8
Election of Officers	8
Panel Members	8
Election of Panel Members	8
Officer Vacancies	8
Committee Appointments	8
Attendance at Committee Meetings	8

Chapter 5. Board Administration & Staff

Board Administration 9

Strategic Planning 9

Executive Director Evaluation 9

Board Staff 9

Business Cards 9

Chapter 6. Other Policies & Procedures

Board Member Disciplinary Actions 10

Removal of Board Members 10

Resignation of Board Members 10

Conflict of Interest 10

Gifts from Candidates 10

Request for Records Access 11

Communications with Interested Parties ***11***

Ex Parte Communications 11

Board Member Training Requirements 12

Revised 4/09

Chapter 1. Introduction

Overview

The Medical Board of California (MBC) was created by the California Legislature in 1876. Today the MBC is one of the boards, bureaus, commissions, and committees within the Department of Consumer Affairs (DCA), part of the State and Consumer Services Agency under the aegis of the Governor. The Department is responsible for consumer protection and representation through the regulation of certain licensed professions and the provision of consumer services. While the DCA provides oversight in various areas including, but not limited to, budget change proposals, regulations, and contracts, and also provides support services, MBC has policy autonomy and sets its own policies procedures, and initiates its own regulations. (See Business and Professions Code sections 108, 109(a), and 2018.)

The MBC is presently comprised of 15 Members. By law, seven are public Members, and eight are physicians. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. Board Members may serve two full four-year terms. Board Members fill non-salaried positions, and are paid $100 per day for each meeting day and are reimbursed travel expenses.

This procedure manual is provided to Board Members as a ready reference of important laws, regulations, and Board policies, to guide the actions of Board Members and ensure Board effectiveness and efficiency.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by law.

Definitions

B&P	Business and Professions Code
SAM	State Administrative Manual
President	Where the term "President" is used in this manual, it includes "his or her designee"

General Rules of Conduct

Board Members shall not speak to interested parties (such as vendors, lobbyists, legislators, or other governmental entities) on behalf of the Board or act for the Board without proper authorization.

Board Members shall maintain the confidentiality of confidential documents and information.

Board Members shall commit time, actively participate in Board activities, and prepare for Board meetings, which includes reading Board packets and all required legal documents.

Board Members shall respect and recognize the equal role and responsibilities of all Board Members, whether public or licensee.

Board Members shall act fairly and in a nonpartisan, impartial, and unbiased manner.

Board Members shall treat all applicants and licensees in a fair and impartial manner.

Board Members' actions shall uphold the Board's primary mission – protection of the public.

Board Members shall not use their positions on the Board for political, personal, familial, or financial gain.

Chapter 2. Board Meeting Procedures

Frequency of Meetings
(B&P Code sections 2013, 2014)

The Board shall meet at least once each calendar quarter in various parts of the state for the purpose of transacting such business as may properly come before it.

Special meetings of the Board may be held at such times as the Board deems necessary.

Four Members of a panel of the Board shall constitute a quorum for the transaction of business at any meeting of the panel.

Eight Members shall constitute a quorum for the transaction of business at any Board meeting.

Due notice of each meeting and the time and place thereof shall be given each member in the manner provided by the law.

Board Member Attendance at Board Meetings
(B&P Code sections 106, 2011)

Board Members shall attend each meeting of the Board. If a member is unable to attend, he or she must contact the Board President and ask to be excused from the meeting for a specific reason. The Governor has the power to remove from office any member appointed by him for continued neglect of duties, which may include unexcused absences from meetings.

Board Members shall attend the entire meeting and allow sufficient time to conduct all Board business at each meeting.

Public Attendance at Board Meetings
(Government Code section 11120 et. seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meetings Act. This act governs meetings of state regulatory boards and meetings of committees of those boards where the committee consists of more than two Members. It specifies meeting notice and agenda requirements and prohibits discussing or taking action on matters not included on the agenda.

If the agenda contains matters which are appropriate for closed session, the agenda must cite the particular statutory section and subdivision authorizing the closed session.

Quorum
(B&P Code section 2013)

Eight of the Members of the Board constitute a quorum of the Board for the transaction of business. The concurrence of a majority of those Members of the Board present and voting at a duly noticed meeting at which a quorum is present shall be necessary to constitute an act or decision of the Board.

Agenda Items
(Board Policy)

Any Board Member may submit items for a meeting agenda to the Executive Director not fewer than 30 days prior to the meeting with the approval of the Board President or Chair of the Committee.

Notice of Meetings
(Government Code section 11120 et seq.)

In accordance with the Open Meetings Act, meeting notices (including agendas for Board, Committee, or Panel meetings) shall be sent to persons on the Board's mailing list at least 10 calendar days in advance. The notice shall include the name, work address, and work telephone number of a staff person who can provide further information prior to the meeting.

Notice of Meetings to be Posted on the Internet
(Government Code section 11125 et seq.)

Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

Record of Meetings
(B&P Code section 2017)

The Board and each Committee or Panel shall keep an official record of all their proceedings. The minutes are a summary, not a transcript, of each Board or Committee meeting. They shall be prepared by staff and submitted to Members for review before the next meeting. Minutes shall be approved at the next scheduled meeting of the Board, Committee, or Panel. When approved, the minutes shall serve as the official record of the meeting.

Tape Recording
(Board Policy)

The meeting may be tape-recorded if determined necessary for staff purposes. Tape recordings will be disposed of upon approval of the minutes in accordance with record retention schedules.

Meeting Rules
(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g. Bagley-Keene Open Meeting Act), as a guide when conducting its meetings.

Public Comment
(Board Policy)

Due to the need for the Board to maintain fairness and neutrality when performing their adjudicative function, the Board shall not receive any substantive information from a member of the public regarding any matter that is currently under or subject to investigation or involves a pending criminal or administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information, and the person shall be instructed to refrain from making such comments.

2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct, involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:

   a. Where the allegation involves errors of procedure or protocol, the Board may designate either its Executive Director or a Board employee to review whether the proper procedure or protocol was followed and to report back to the Board.
   b. Where the allegation involves significant staff misconduct, the Board may designate one of its Members to review the allegation and to report back to the Board.

3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting.

(Government Code section 11120 et seq.)

4. Persons wishing to address the Board or a Committee of the Board shall complete a speaker request slip. At the discretion of the Board President or Chair of the Committee, speakers may be limited in the amount of time to present to give adequate time to everyone who wants to speak. In the event the number of people wishing to address the Board exceeds the allotted time, the Board President or Chair of the Committee may limit each speaker to a statement of his/her name, organization, and whether they support or do not support the proposed action

Chapter 3. Travel & Salary Policies & Procedures

Travel Approval
(DCA Memorandum 96-01)

The Board President's approval is required for all Board Members for travel, except for travel to regularly scheduled Board and Committee meetings to which the Board Member is assigned.

Travel Arrangements
(Board Policy)

Board Members should make their own travel arrangements through Giselle's Travel but are encouraged to coordinate with the Executive Director's Executive Assistant on lodging accommodations.

Out-of-State Travel
(SAM section 700 et seq.)

For out-of-state travel, Board Members will be reimbursed for actual lodging expenses, supported by vouchers, and will be reimbursed for meal and supplemental expenses. Out-of-state travel for all persons representing the State of California is controlled by and must be approved by the Governor's Office.

Travel Claims
(SAM section 700 et seq. and DCA Memorandum 96-01)

Rules governing reimbursement of travel expenses for Board Members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Executive Director's Executive Assistant maintains these forms and completes them as needed. Board Members should submit their travel expense forms immediately after returning from a trip and no later than two weeks following the trip.

For the expenses to be reimbursed, Board Members shall follow the procedures contained in DCA Departmental Memoranda, which are periodically disseminated by the Executive Director and are provided to Board Members.

Salary Per Diem
(B&P Code section 103)

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board Members is regulated by B&P Code Section 103.

In relevant part, this section provides for the payment of salary per diem for Board Members "for each day actually spent in the discharge of official duties," and provides that the Board Member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board Members, except for attendance at an official Board, Committee, or Panel meeting, unless a substantial official service is performed by the Board Member. Attendance at gatherings, events, hearings, conferences, or meetings other than official Board, Committee, or Panel meetings, in which a substantial official service is performed, shall be approved in advance by the Board President. The Executive Director shall be notified of the event and approval shall be obtained from the Board President prior to Board Member's attendance.
2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board, Committee, or Panel meeting to the conclusion of that meeting. Where it is necessary for a Board Member to leave a meeting early, the Board President shall determine if the member has provided a substantial service during the meeting and, if so, shall authorize payment of salary per diem and reimbursement for travel-related expenses.

For Board-specified work, Board Members will be compensated for actual time spent performing work authorized by the Board President. That work includes, but is not limited to, authorized attendance at other gatherings, events, meetings, hearings, or conferences. It includes preparation time for Board, Committee, or Panel meetings.

Chapter 4. Selection of Officers & Committees

Officers of the Board
(B&P Code Section 2012)

The Board shall select a President, Vice President, and Secretary from its Members.

Election of Officers
(Board Policy)

The Board shall elect the officers at the last meeting of the calendar year. Officers shall serve a term of one year beginning the next calendar year. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board Member is running per office. An officer may be re-elected and serve for more than one term.

Panel Members
(B&P Code section 2008)

A Panel of the Board shall at no time be composed of less than four Members and the number of public Members assigned shall not exceed the number of licensed physician and surgeon Members assigned to the Panel. The Board President shall not be a member of any Panel. The Board usually is comprised of two panels, however, if there is an insufficient number of Members, there may only be one Panel.

Election of Panel Members
(B&P Code section 2008)

Each Panel shall annually, at the first meeting of the calendar year, elect a Chair and a Vice Chair.

Officer Vacancies
(Board Policy)

If an office becomes vacant during the year, an election shall be held at the next meeting. If the office of the President becomes vacant, the Vice President shall assume the office of the President. Elected officers then shall serve the remainder of the term.

Committee Appointments
(Board Policy)

The Board President shall establish Committees, whether standing or special, as he or she deems necessary. The composition of the Committees and the appointment of the Members shall be determined by the Board President in consultation with the Vice President, Secretary, and the Executive Director. Committees may include the appointment of non-Board Members.

Attendance at Committee Meetings
(Government Code section 11120 et seq.)

If a Board Member wishes to attend a meeting of a Committee of which he or she is not a member, that Board Member should notify the Committee chair and staff. Board Members who are not Members of the Committee that is meeting cannot vote during the Committee meeting and may participate only as observers if a majority of the Board is present at a Committee meeting.

Chapter 5. Board Administration & Staff

Board Administration
(DCA Reference Manual)

Board Members should be concerned primarily with formulating decisions on Board policies rather than decisions concerning the means for carrying out a specific course of action. It is inappropriate for Board Members to become involved in the details of program delivery. Strategies for the day-to-day management of programs and staff shall be the responsibility of the Executive Director. Board Members should not interfere with day-to-day operations, which are under the authority of the Executive Director.

Strategic Planning

The Board will conduct periodic strategic planning sessions.

Executive Director Evaluation
(Board Policy)

Board Members shall evaluate the performance of the Executive Director on an annual basis.

Board Staff
(DCA Reference Manual)

Employees of the Board, with the exception of the Executive Director, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Because of this complexity, it is most appropriate that the Board delegate all authority and responsibility for management of the civil service staff to the Executive Director. Board Members shall not intervene or become involved in specific day-to-day personnel transactions.

Business Cards

Business cards will be provided to each Board Member with the Board's name, address, telephone and fax number, and Web site address.

Chapter 6. Other Policies & Procedures

Board Member Disciplinary Actions
(Board Policy)

A member may be censured by the Board if, after a hearing before the Board, the Board determines that the member has acted in an inappropriate manner.

The President of the Board shall sit as chair of the hearing unless the censure involves the President's own actions, in which case the Vice President of the Board shall sit as President. In accordance with the Open Meeting Act, the censure hearing shall be conducted in open session.

Removal of Board Members
(B&P Code sections 106 & 2011)

The Governor has the power to remove from office, at any time, any member of any Board appointed by him or her for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct.

Resignation of Board Members
(Government Code section 1750)

In the event that it becomes necessary for a Board Member to resign, a letter shall be sent to the appropriate appointing authority (Governor, Senate Rules Committee, or Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter also shall be sent to the director of the Department, the Board President, and the Executive Director.

Conflict of Interest
(Government Code section 87100)

No Board Member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. Any Board Member who has a financial interest shall disqualify himself or herself from making or attempting to use his or her official position to influence the decision. Any Board Member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Director or the Board's legal counsel.

Board Members should refrain from attempting to influence staff regarding applications for licensure or potential disciplinary matters.

Gifts from Candidates
(Board Policy)

Gifts of any kind to Board Members from candidates for licensure with the Board shall not be permitted.

Request for Records Access
(Board Policy)

No Board Member may access the file of a licensee or candidate without the Executive Director's knowledge and approval of the conditions of access. Records or copies of records shall not be removed from the MBC's office.

Communication with Interested Parties
(Board Policy)

Board Members are required to disclose at Board Meetings all discussions and communications with interested parties regarding any item pending or likely to be pending before the Board . The Board minutes shall reflect the items disclosed by the Board Members. All agendas will include, as a regular item, a disclosure agenda item where each Member relays any relevant conversations with interested parties.

Ex Parte Communications
(Government Code section 11430.10 et seq.)

The Government Code contains provisions prohibiting *ex parte* communications. An "*ex parte*" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

> *"While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative or if an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."*

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom a disciplinary action is being taken, will attempt to directly contact Board Members.

If the communication is written, the member should read only enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, he or she should reseal the documents and send them to the Executive Director.

If a Board Member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to him or her about the matter. If the person insists on discussing the case, he or she should be told that the Board Member will be required to recuse himself or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board Member believes that he or she has received an unlawful *ex parte* communication, he or she should contact the Board's assigned attorney or Executive Director.

Board Member Training Requirements

Upon initial appointment, Board Members will be given an overview of Board operations, policies, and procedures by Board Executive Staff.

(B&P Code section 453)

Every newly appointed Board Member shall, within one year of assuming office, complete a training and orientation program offered by the Department of Consumer Affairs. This is in addition to the Board orientation given by Board staff. This is a one-time training requirement.

(Government Code section 11146)

All Board Members are required to file an annual Form 700 statement of economic interest. Members must also complete an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. The Government Code requires completion of this ethics orientation within the first six months of appointment and completion of a refresher every two years thereafter.

(Government Code section 12950.1)

AB 1825 (Chapter 933, Statutes of 2004, Reyes) requires supervisors, including Board Members, to complete two hours of sexual harassment prevention training by January 1, 2006, and every two years thereafter.

State of California
Medical Board of California
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Sacramento, Ca 95815
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Memorandum

Date: April 8, 2009

To: Members,
Medical Board of California

From: Janie Cordray,
Research Program Manager

Subject: Communications of Board Members

At the November 6, 2008 Board meeting, the members had a discussion surrounding the Board's procedure manual, including the section relating to communications of Board members with interested parties (i.e. advocates, vendors, legislators, or other governmental entities). As a result of that discussion, the members directed staff to schedule a more comprehensive discussion at the January meeting.

In January, the members held a discussion and approved an amendment to the Board's procedure manual. As a result of the approved amendment, Board members are now obligated to disclose all relevant meetings, conversations, outreach and correspondence with interested parties at their quarterly meetings. In addition, the members asked that staff compile a report of how other state agencies deal with such communications.

It is important to define the type of communications that the Board's new policy is intended to address. It is not directed at traditional 'ex parte' (one-sided) communications regarding administrative proceedings such as licensing or disciplinary cases where Board members perform a quasi-judicial function. Existing law already sets the boundaries of those types of communications, as explained below.

Background:

The law relating to ex parte communications is contained in the Government Codes (11430.10 et. seq). Subdivision (a) of section 11430.10 of the Government Code states:

> *" While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative or if any agency that is a party from an interested person outside the agency, without notice and an opportunity to participate in the communication*".

The law leaves no question that a Board member must not engage in ex parte communications while a proceeding is pending unless the communication involves procedural matters or the communication is otherwise specifically authorized by statute. Subdivision (c) of section 114310.10 defines a proceeding as pending from the issuance of the agency's pleading or from the application for an agency decision. This section of law is located within the codes governing administrative adjudication, and therefore is specific to administrative actions, not the broader issue of advocating for regulatory or policy actions.

It is these policy and regulatory actions at which the Board's new action is aimed --- those conversations, statements and communications regarding action items that come before the board. For the purpose of this memo, these communications will be referred to as "interested party communications."

These interested party communications have piqued the interest of the Legislature. Last year, Senator Ridley-Thomas introduced language into SB 963 (Chap. 385; Stats. of 2008) which sought to broaden the definition of ex parte communications. The language, which was **not** included in the final version of the legislation, sought to add Section 38 to the Business & Professions Code, as follows:

> *A member of a board within the department and a member of a state board, as defined in Section 9148.2 of the Government Code, shall disclose all of his or her ex parte communications at the board's next public meeting, and the ex parte communications shall be recorded in the board's minutes. "Ex parte communication" means any oral or written communication concerning matters, other than purely procedural matters, under the board's jurisdiction that are subject to a vote by the board that occurred between the member and a person, other than another board member or an employee of the board or the department of which the board is a part, who intends to influence the decision of the member.*

If the above language had been contained in the final version of the bill, it would have required Medical Board members to disclose all communications on any subject under the jurisdiction of the Board at the next public board meeting, and include that information in the meeting minutes.

It would appear that the language introduced was attempting to supplement what is already covered in the Bagley-Keene Open Meeting Act (Act). The purpose of that Act is to provide a public arena for decisions affecting public policy, and to prevent secretive, behind doors governing. Most public boards and governing bodies are covered either by the Bagley-Keene Open Meeting Act or the Brown Act.

Other State Agencies:

In January 2008, the California Research Bureau (CRB) published a report at the request of Assembly member Loni Hancock, *Ex Parte Communications: The Law and Practices at Six California Boards and Commissions.* (California Air Resources Board, California Integrated Waste Management Board, State Water Resources Control Board, California Energy Resources Conservation and Development Commission, Public Utilities Commission and California Coastal Commission) It reviews the laws and manners in which these Boards or Commissions deal with ex parte communication.

Of the six agencies examined, the term "ex parte communications" was broadened to include not only those off-record communications about adjudicative proceedings, but other matters before the boards. These communications are generally defined as those made in private between an interested party in a decision-making process and an official in a decision making process.

As an example, the California Public Utility Commission (PUC) is required, under Public Utility Code Section 1701.3(c), to disclose all conversations or written contact relating to rate setting. It states:

> *Ex parte communications are prohibited in rate setting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period, which shall not in any circumstance exceed 14 days. If the commission holds the decision, it*

may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendared for final decision. The commission may meet in closed session for the second half of that interval.

As you can see, ex parte communications are permitted, but three days notice must be given so that all interested parties may participate. At every meeting of the PUC, a log of every conversation or communication with any party is published along with every action.

It is reasonable that the laws and regulations governing the studied agencies have a broader definition of ex parte communications and greater prohibitions, as their actions have greater economic and environmental impact on the entire state, communities and local governments.

Staff surveyed eight DCA professional licensing boards (Nursing, Psychology, Dental, Cemetery, Veterinary Medicine, Behavioral Science, Contractors and Podiatry). All Boards surveyed do not include in their public meeting agendas a dedicated item for disclosure of communications of members with interested parties. Most Board presidents or executive officers report at their public meetings any significant communications on subjects before the board, or subjects likely to come before the board in the future.

Discussion:

The stricter rules of the PUC and agencies studied by the California Research, are burdensome and reduce the accessibility of the Board to the public. As an example, the CRB summarized an event at a meeting of the Water Resources Board where public comment on an issue was cut off as it violated the ex parte communications rules. Just as the Board must cut off comments at its meeting when individuals begin to speak about individual enforcement cases, the Board, under a broader definition of ex parte communications, would have to cut off any comment on issues that might come before the board.

By comparison, licensing boards have more limited power and jurisdiction. Most actions involve individuals. Regulatory actions, while sometimes important to those regulated, are not often controversial, and have little, if any, significant economic or fiscal impact. On rare occasions when regulatory actions are controversial or have significant economic impact, the rulemaking process includes public notice and a comment period, and is fully utilized by the interested parties in public. Any new regulations must be justified, and comments made during the comment period must be addressed. Ex parte communication would likely be counterproductive for those wishing to influence the process.

From the discussions at the November and January Board meetings, it would appear that the members are most concerned about fairness to all stakeholders and preventing the appearance of any favoritism or bias toward any group or

individual. The discussions also indicate that the matter of concern is not the legal prohibition of ex parte communications on pending actions, but relates to compliance with spirit of the Act.

At the November meeting, members voiced two major concerns: 1) that only some members were contacted by certain groups, which could result in a disparity of information among the members, and; 2) things said by members speaking with representatives of certain groups could be misconstrued as representing the opinion of the entire Board.

While the Open Meetings Act does not prohibit a member from speaking or listening to anyone about policy issues, it does require discussions that may lead to collective concurrence to be conducted in a public meeting where proper notice has been given. One-on-one conversations are not prohibited, but they may pose a problem in some instances where there is lobbying of multiple members and those members discuss the issue amongst themselves. For that reason, on matters of policy discussion, it is wise for members to encourage groups to formulate their ideas and opinions in writing, so that they may be simultaneously shared with the entire membership. Without all mernbers hearing the same version at the same time, there is a disparity of knowledge on the subject.

While there is no harm in members speaking individually to colleagues or even representatives of interest groups on policy matters that may come before the Board, there is a danger in creating the appearance of favoritism and creating bias based on information not shared with the entire membership. Those contacts may also create the perception that members have engaged in an illegal meeting.

At the January meeting, two public comments were offered relating to the Board's discussion on the subject. Julie D'Angelo Fellmeth, representing the Center for Public Interest Law, in summary, cautioned the members that compliance with the Act assures Board business is discussed in public so all interested parties can hear what others have to say and respond appropriately. Brett Michelin, representing the CMA, voiced his concerns that conversations with Board members on very complex issues was necessary, and that at times there was not enough time to discuss such issues during the public comment period. It is his organization's opinion that it has the right to approach members of a publicly accountable board. (This comment is consistent with existing law.) CMA would, however, have no objection to members disclosing their conversations publicly.

Board members agreed that while members of the Board may not insulate themselves from conversations with constituents, they also must not conduct Board business in secret. For those reasons, the members adopted the least burdensome and most practical solution to promote openness, deciding that all

consequential and significant communications with all parties be disclosed at their quarterly meetings.

In keeping with the spirit of the Act, members should be aware that their communications, if relevant to Board business and matters that may come before the members, should not have the effect of conducting business in secret. Also, if members are approached in a manner that is inappropriate, they should share that information with the Executive Director or legal counsel so that appropriate action may be taken.

Attachments:

Excerpt from Board Member Administrative Procedure Manual:

Ex Parte Communications
(Government Code Section 11430.10 et. seq.)

The Govenment Code contains provisions prohibiting *ex parte* communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

> *" While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative or if any agency that is a party from an interested person outside the agency, without notice and an opportunity to participate in the communication".*

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom a disciplinary action is being taken, will attempt to directly contact Board Members.

If the communication is written the member should read only enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, he or she should reseal the documents and send them to the Executive Director.

If 'a Board Member receives a telephone call from an applicant or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to him or her about the matter. If the person insists on discussing the case, he or she should be told that the Board Member will be required to recuse himself or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board Member believes that he or she has received an unlawful ex parte communication, he or she should contact the Board's assigned attorney or Executive Director.

Government Code Section 11430.10 through 11430.80 Ex Parte Communications:

11430.10. (a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.

(b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.

(c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

11430.20. A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

(a) The communication is required for disposition of an ex parte matter specifically authorized by statute.

(b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

11430.30. A communication otherwise prohibited by Section 11430.10 from an employee or representative of an agency that is a party to the presiding officer is permissible in any of the following circumstances:

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

(b) The communication is for the purpose of advising the presiding officer concerning a settlement proposal advocated by the advisor.

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(2) The advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency, Delta Protection Commission, Water Resources Control Board, or a regional water quality control board.

11430.40. If, while the proceeding is pending but before serving as presiding officer, a person receives a communication of a type that would be in violation of this article if received while serving as presiding officer, the person, promptly after starting to serve,

shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

11430.50. (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:

(1) If the communication is written, the writing and any written response of the presiding officer to the communication.

(2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(1) The party shall be allowed to comment on the communication.

(2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

11430.60. Receipt by the presiding officer of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

11430.70. (a) Subject to subdivision (b), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

11430.80. (a) There shall be no communication, direct or indirect, while a proceeding is pending regarding the merits of any issue in the proceeding, between the presiding officer and the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) This section does not apply where the agency head or other person or body to which the power to hear or decide in the proceeding is delegated serves as both presiding officer and agency head, or where the presiding officer does not issue a decision in the proceeding.

Public Utility Code Section 1701.3 (c); Law governing Public Utility Commission ex-parte communications:

> (c) Ex parte communications are prohibited in ratesetting cases. However, oral ex parte communications may be permitted at any time by any commissioner if all interested parties are invited and given not less than three days' notice. Written ex parte communications may be permitted by any party provided that copies of the communication are transmitted to all parties on the same day. If an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days. The commission may establish a period during which no oral or written ex parte communications shall be permitted and may meet in closed session during that period, which shall not in any circumstance exceed 14 days. If the commission holds the decision, it may permit ex parte communications during the first half of the interval between the hold date and the date that the decision is calendared for final decision. The commission may meet in closed session for the second half of that interval.

California Research Bureau *Ex Parte Communications: The Law and Practices at Six California Boards and Commissions.*

Copy of report is available at: http://www.library.ca.gov/crb/08/08-001.pdf

CONSUMER INFORMATION UNIT				
	Q1	Q2	Q3	Q4
October 1- December 18, 2008 (Prior to Verizon Implementation)				
Calls Answered:	19,428	16,028	n/a	
December 19, 2008 (Verifzon fully operational)				
Total Calls Answered:	n/a	4,497	28,066	
Calls Requesting Call Back:	n/a	345	4,011	
Calls Abandoned:	n/a	473	4,628	
Address Changes Completed:	3,936	2,573	2,159	

PHYSICIAN & SURGEON (P&S)				
	Q1	Q2	Q3	Q4
P&S Applications Received:	1,854	1,620	1,773	
P&S Licenses Issued:	1,429	912	849	
P&S Applications Reviewed & Incomplete:	-	1,057	1,368	
P&S Licenses Renewed	17,731	11,522	13,792	

INTERNATIONAL MEDICAL SCHOOL APPLICATIONS				
	Q1	Q2	Q3	Q4
New Applications Received:	-	2	1	
Applications In Consultant Review Process:	-	1	3	

SPECIAL PROGRAMS*																				
	Applications Received				Applications Reviewed				Permits Issued				Permits Renewed				Site Visits			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
2111	16	3	11		-	3	11		-	11	10		17	1	9		0	0	0	
2112	2	0	1		-	0	0		-	0	0		0	0	0		0	0	0	
2113	12	10	9		-	10	9		-	12	10		13	6	13		0	0	0	
2168	0	0	1		-	0	1		-	3	0		1	1	0		0	0	0	
2072	0	0	0		-	0	0		-	0	0		-	0	0		0	0	0	
1327	0	0	0		-	0	0		-	0	0		-	1	0		0	0	0	

*2111 - Visiting Fellow (doesn't satisfy postgraduate training required for licensure)
2112 - Hospital Fellowship Program Non-Citizen (does not satisfy postgraduate training required for licensure)
2113 - Medical School Faculty Member (may satisfy postgraduate training required for licensure)
2168 - Special Faculty Permit (academically eminent; unrestricted practice within sponsoring medical school - not eligible for licensure)
2072 - Special Faculty Permit - Correctional Facility
1327 - Special Faculty Permit - Hospital

FICTICTIOUS NAME PERMITS (FNP)				
	Q1	Q2	Q3	Q4
P&S - FNP Issued:	363	331	310	
Podiatric FNP Issued:	11	5	8	

LICENSED MIDWIVES				
	Q1	Q2	Q3	Q4
Applications Received:	13	7	6	
Licenses Issued:	10	7	5	
Licenses Renewed:	22	20	17	

OPTICAL REGISTRATIONS				
	Q1	Q2	Q3	Q4
Business Registrations (D) Issued:	12	14	3	
Out-of-State Business Registrations (OS) Issued:	2	1	0	
Spectacle Lens Registrations (SL) Issued:	60	43	45	
Contact Lens Registrations (CL) Issued:	38	19	36	
Spectacle Lens Registrations (SL) Renewed:	-	206	180	
Contact Lens Registrations (CL) Renewed:	-	91	83	

RESEARCH PSYCHOANALYST (RP)				
	Q1	Q2	Q3	Q4
RP Applications Received:	2	2	1	
RP Licenses Issued:	2	2	0	

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 17, 2009
ATTENTION: Medical Board of California
DEPARTMENT: Licensing Operations
SUBJECT: Midwifery Advisory Council (MAC) Vacancies
STAFF CONTACT: Deborah Pellegrini, Chief

REQUESTED ACTION: Appoint Board member, Jorge Carreon, M.D., to the MAC's vacant obstetrician/gynecologist position.

STAFF RECOMMENDATION: Staff recommend that the Board accept this request to appoint Dr. Jorge Carreon to a three-year term as a member of the MAC.

EXECUTIVE SUMMARY: Business and Professions Code section 2509 states that the board shall create and appoint a Midwifery Advisory Council consisting of licensees of the board in good standing, who need not be members of the board, and members of the public who have an interest in midwifery practice, including, but not limited to, home births. At least one-half of the council members shall be California licensed midwives.

A memorandum dated January 17, 2007, was submitted to the Board regarding establishment of the MAC and staff recommendations. The Board approved the make-up of six members including three licensed midwives and three public members, of which two are obstetrician/ gynecologists and one is a member of the Board. This is a vacant obstetrician/gynecologist position on the MAC.

Dr. Carreon is an obstetrician/gynecologist in private practice. He has served as president of International Health Consultants in Los Angeles since 2002, and has rendered similar services for other developing countries as well, helping to establish vital programs to meet the health care needs of expanding populations. He is a member of several professional associations, including the American Medical Association, the California Medical Association, the Los Angeles County Medical Association, the Peruvian Medical Association and the American College of Physician Executives. Dr. Carreon's background and areas of interest make him a superior choice for participation in the MAC.

FISCAL CONSIDERATIONS:
None.

PREVIOUS MBC AND/OR COUNCIL ACTION:
Not applicable.

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	April 17, 2009
ATTENTION:	Medical Board of California
DEPARTMENT:	Licensing Operations
SUBJECT:	Midwifery Advisory Council (MAC) Vacancies
STAFF CONTACT:	Deborah Pellegrini, Chief

REQUESTED ACTION: Re-appoint Licensed Midwife, Karen Ehrlich, to the MAC's vacant Licensed Midwife position.

STAFF RECOMMENDATION: Staff recommend that the Board accept this request to re-appoint Licensed Midwife Karen Ehrlich to a three-year term with the MAC.

EXECUTIVE SUMMARY: Business and Professions Code section 2509 states that the board shall create and appoint a Midwifery Advisory Council consisting of licensees of the board in good standing, who need not be members of the board, and members of the public who have an interest in midwifery practice, including, but not limited to, home births. At least one-half of the council members shall be California licensed midwives.

A memorandum dated January 17, 2007, was submitted to the Board regarding establishment of the MAC and staff recommendations. The Board approved the make-up of six members including three licensed midwives and three public members, of which two are obstetrician/ gynecologists and one is a member of the Board.

Karen Ehrlich has been a Licensed Midwife since November 1996. Ms. Ehrlich has been a home birth midwife for 34 years and has been involved in statewide and national politics for midwifery for the majority of these years. Ms. Ehrlich is one of the original members of the MAC. Her term expired January 2009 and she would like to continue to serve on the MAC.

FISCAL CONSIDERATIONS:
None.

PREVIOUS MBC AND/OR COUNCIL ACTION:
Not applicable.

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	May 8, 2009
ATTENTION:	Medical Board of California
SUBJECT:	International Medical School Regulations
STAFF CONTACT:	Deborah Pellegrini, Chief

REQUESTED ACTION:
Direct staff to schedule a public hearing at the July 23-24, 2009 Board meeting to review proposed amendments to Section 1314.1 of Title 16, California Code of Regulations.

STAFF RECOMMENDATION:
Staff recommends that the Board set for regulatory hearing the amendments indicated on the attached copy of Section 1314.1, along with any edits or additional provisions that the Board may suggest for inclusion in the regulation.

BACKGROUND:
At the Board's meeting on July 25, 2008, Ms. Anita Scuri, Senior Legal Counsel, proposed that staff research whether the Liaison Committee on Medical Education (LCME) had changed its standards for accrediting U.S. and Canadian medical schools in any area that would be relevant to the Board's standards and process for reviewing international medical schools in Section 1314.1. The Board approved this proposal. Subsequently, staff reviewed changes that the LCME made to its accreditation standards as well as amendments proposed by staff and Board medical consultants. The resulting proposed amendments were incorporated into a working draft.

On March 25, 2009, staff hosted a meeting for interested parties at the Board's headquarters to allow parties, who will be affected by the amendments, an opportunity to provide feedback on the suggested amendments. Please refer to the attached list of attendees. Representatives of several international medical schools attended and provided helpful feedback, which was considered and incorporated in part into the attached proposed regulatory language.

ANALYSIS:
The attached proposed amendments to Section 1314.1 will satisfy the Board's intent to update its international medical school regulations to conform with relevant changes and improvements that the LCME has made in its standards since Section 1314.1 took effect in December 2003.

FISCAL CONSIDERATIONS:
No fiscal impact.

MEDICAL BOARD OF CALIFORNIA
Licensing Program

Interested Parties Meeting
International Medical Schools Regulation

Medical Board of California Headquarters
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

March 25, 2009

MINUTES

The meeting opened on March 25, 2009 at 1:30 p.m.

Participants Present:

Leonard Sclafari, Vice President and General Counsel, American University of Antigua
Tom Monahan, Consultant, Government of Grenada
John Wilbur, Office of Regulations, Data and Information, St. George's University
Frank Cali, Associate General Counsel, St. George's University
Ted Wait, Legislative Consultant, Golden State Advocacy
Cynthia Holden, Counsel, American University of the Caribbean
David Gonzalez, Counsel, American University of the Caribbean

Staff Present:

Deborah Pellegrini, Chief of Licensing
Kathryn Taylor, Licensing Manager
Anita Scuri, Senior Legal Counsel, DCA Legal Office
Harold Simon, M.D., Ph.D., Medical Consultant
James Nuovo, M.D., Medical Consultant
Patricia Park, Associate Governmental Program Analyst
Therese Kelly, Associate Governmental Program Analyst
Caroline Barrozo, Staff Services Analyst
Jean Arendt, Staff Services Analyst
Kevin Schunke, Regulations Coordinator
K. Demos, Regulations Coordinator

Deborah Pellegrini, Chief of Licensing, the medical consultants, and legal counsel reviewed proposed amendments to the Board's international medical schools regulation in Section 1314.1 of Title 16, California Code of Regulations. Based on feedback received from medical school representatives, the proposed regulations will be amended and presented to the Board members for review at their next meeting on May 8, 2009.

The meeting ended at 2:29 p.m.

MEDICAL BOARD OF CALIFORNIA
International Medical Schools
Specific Language of Proposed Changes
Draft—4/9/09

Amend section 1314.1 in Article 4 of Chapter 1, Division 13, Title 16 Cal. Code Regs. to read as follows:

§ 1314.1. International Medical Schools.

(a) For purposes of Article 5 of Chapter 5 of Division 2 of the code (commencing with Section 2100), a medical school's resident course of instruction that leads to an M.D. degree shall be deemed equivalent to that required by Sections 2089 and 2089.5 of the code if the medical school offers the curriculum and clinical instruction described in those sections and meets one of the following:

(1) The medical school is owned and operated by the government of the country in which it is located, ~~the country is a member of the Organization for Economic Cooperation and Development,~~ the medical school is a component of a university offering other graduate and professional degree programs that contribute to the academic environment of the medical school, and the medical school's primary purpose is educating its own citizens to practice medicine in that country; or

(2) the medical school is chartered by the jurisdiction in which it is domiciled and meets the standards set forth in subsection (b) below.

(b)(1) Mission and Objectives.

The institution shall have a clearly stated written purpose or mission statement and objectives that include:

(A) The institution's broad expectations concerning the education students will receive;

(B) The role of research as an integral component of its mission, including the importance, nature, objectives, processes and evaluation of research in medical education including its application to patient care ~~and practice~~; and

(C) Teaching, patient care, and service to the community.

The institution shall have institutional objectives that are consistent with preparing graduates to provide competent medical care.

(2) Organization.

The institution shall be organized as a definable academic unit responsible for a resident educational program that leads to the M.D. degree. The manner in which the institution is organized shall be set forth in writing.

(3) Curriculum.

The structure and content of the educational program shall provide an adequate foundation in the basic and clinical sciences and shall enable students to learn the fundamental principles of medicine, to acquire critical judgment skills, and to use those principles and skills to provide competent medical care. The objectives of the educational program shall state, in outcome-based terms, what students are expected to learn. When an institution provides clinical clerkships at multiple teaching sites, the institution shall demonstrate comparability of educational experiences for all students across instructional sites.

(4) Clinical Oversight

The institution shall have a system with central oversight to assure that the faculty define the types of patients and clinical conditions that students must encounter, the appropriate clinical setting for the educational experiences, and the expected level of student responsibility. The system shall ensure that the faculty monitor and verify student experience and modify it as necessary to ensure that the objectives of the clinical education program will be met.

(5) Professionalism

The learning environment shall promote the development of appropriate professional attributes in medical students. The institution shall define the professional attributes it expects students to develop, in the context of the institution's mission and of promoting the safe practice of medicine.

~~(4)~~ (6) Governance.

The administrative and governance system shall allow the institution to accomplish its objectives (i.e. its statements of the items of knowledge, skills, behavior and

attitude that students are expected to learn). An institution's governance shall give faculty a formal role in the institution's decision-making process. A student enrolled in the program shall not serve as an instructor, administrator, officer or director of the school.

~~(5)~~ (7) Faculty.

The faculty shall be qualified and sufficient in number to achieve the objectives of the institution. A "qualified" faculty member is a person who possesses either a credential generally recognized in the field of instruction or a degree, professional license, or credential at least equivalent to the level of instruction being taught or evaluated. The institution shall have a formal ongoing faculty development process that will enable it to fulfill its mission and objectives.

~~(6)~~ (8) Admission and promotion standards.

The institution shall have and adhere to standards governing admission requirements and student selection and promotion that are consistent with the institution's mission and objectives. The institution shall document that its admitted students generally meets entrance requirements equivalent to those utilized by U.S. and Canadian medical schools, including an appropriate background check of all applicants admitted to the institution.

~~(7)~~ (9) Financial Resources.

The institution shall possess sufficient financial resources to accomplish its mission and objectives. Pressure for institutional self-financing must not compromise the educational mission of the institution nor cause it to enroll more students than its total resources can accommodate.

~~(8)~~ (10) Facilities.

The institution shall have, or have access to, facilities, laboratories, equipment and library resources that are sufficient to support the educational programs offered by the institution and to enable it to fulfill its mission and objectives. If an institution utilizes affiliated institutions to provide clinical instruction, the institution shall be fully responsible for the conduct and quality of the educational program at those affiliated institutions.

~~(9)~~ (11) Quality Assurance System.

If the institution provides patient care, it shall have a formal system of quality assurance for its patient care program.

~~(10)~~ (12) Records.

The institution shall maintain and make available for inspection any records that relate to the institution's compliance with this section for at least five years, except, however, that student transcripts shall be retained indefinitely.

~~(11)~~ (13) Branch Campuses.

(A) An institution with more than one campus shall have written policies and procedures governing the division and sharing of administrative and teaching responsibilities between the central administration and faculty, and the administration and faculty at the other locations. These policies shall be consistent with the institution's mission and objectives. The institution shall be fully responsible for the conduct and quality of the educational program at these sites. If an institution operates a branch campus located within the United States or Canada, instruction received at that branch campus shall be deemed to be instruction received and evaluated at that institution. For purposes of this section, the term "branch campus" means a site other than the main location of the institution but does not include any hospital at which only clinical instruction is provided.

(B) For purposes of this section, an institution shall disclose any affiliation or other relationship that it has with another institution in which either institution agrees to grant a doctor of medicine degree or its equivalent to students of the other institution who complete coursework at the affiliated institution.

(14) Evaluation of Program Effectiveness

An institution shall collect and use a variety of outcome data to demonstrate the extent to which it is meeting its educational program objectives. For purposes of this subsection, "outcome data" means specific and measurable outcome-based

performance measures of knowledge, skills, attitudes, and values (for example, measures of academic progress, program completion rates, performance of graduates in residency training and on licensing and certification examinations). .

(c) The ~~division~~ board may, on its own or at the request of an institution, determine whether that institution meets the requirements of subsections (a) and (b). The ~~division~~ board shall have the sole discretion to determine whether a site visit is necessary in order to verify the accuracy and completeness of the data provided and to conduct an in-depth review of the program to determine whether the institution is in compliance with this regulation.

(d) An institution's failure to provide requested data regarding its educational program or to cooperate with a site team shall be grounds for disapproval of its educational program.

(e) If the ~~division~~ board determines that a site visit is necessary, it shall appoint a site inspection team to conduct a comprehensive, qualitative onsite inspection and review of all aspects of the institution's operations to determine whether the institution complies with the requirements of subsections (a) and (b).

The fee for a site visit is all reasonable costs incurred by the board staff and the site team, payable in estimated form in advance of the site visit. If the cost of the site visit exceeds the amount previously paid, the board shall bill the institution for the remaining amount and shall not take action to determine the institution's equivalency until such time as the full amount has been paid. If the amount paid exceeds the actual costs incurred, the board shall remit the difference to the institution within 60 days.

The site team shall prepare and submit to the ~~division~~ board a report that includes

(1) Its findings regarding the institution's compliance with the requirements of the law and this regulation;

(2) Its assessment of the quality of the institution as a whole and the quality of the institution's educational program, including any deficiencies; and

(3) Its recommendation whether or not the institution's resident course of instruction leading to an M.D. degree should be deemed equivalent to that required by Sections 2089 and 2089.5 of the code, including a recommendation regarding the correction of any deficiencies identified in the report. A copy of the report shall be provided to the institution, which shall have 60 days following the date of the report in which to respond to board staff as to any errors of fact or erroneous findings.

(f) If an institution wishes to retain the ~~division's~~ board's determination that its resident course of instruction leading to an M.D. degree is equivalent to that required by Sections 2089 and 2089.5 of the code, or if it is currently being evaluated for such equivalency, it shall do the following:

(1) It shall notify the ~~division~~ board in writing no later than 30 days after making any change in the following:

(A) Location including addition or termination of any branch campus;

(B) Mission, purposes or objectives;

(C) Change of name;

(D) Any major change in curriculum, including but not limited to, a change that would affect its focus, design, requirements for completion, or mode of delivery, or other circumstance that would affect the institution's compliance with subsections (a) and (b).

(E) Shift or change in control. A "shift or change in control" means any change in the power or authority to manage, direct or influence the conduct, policies, and affairs of the institution from one person or group of people to another person or group of people, but does not include the replacement of an individual administrator with another natural person if the owner does not transfer any interest in, or relinquish any control of, the institution to that person.

(F) An increase in its entering enrollment above 10% of the current enrollment or 15 students in one year, whichever is less, or 20% in three years.

(2) Every seven years, it shall submit documentation sufficient to establish that it remains in compliance with the requirements of this section and of Sections 2089 and 2089.5 of the code.

(g) The documentation submitted pursuant to subsection (f)(2) shall be reviewed by the ~~division~~ board or its designee to determine whether the institution remains in compliance with the requirements of these regulations and of Sections 2089 and 2089.5 of the code. The board may require a site visit as part of this review. It may also require a site visit at any other time during the seven-year period if it becomes aware of circumstances that warrant a site visit, including any change described in subsection (f).

(h) The ~~division~~ board may at any time withdraw its determination of equivalence when any of the following occur:

(1) ~~an~~ An institution is no longer in compliance with this section;

(2) The institution submits false or misleading information or documentation regarding its compliance with this section;

(3) Institution officials submit fraudulent documentation concerning a former student's medical curriculum; or

(4) The institution permits students to engage in clinical training in California facilities that do not satisfy the requirements of section 2089.5(c) and (d) and, where applicable, section 1327.

Prior to withdrawing its determination of equivalence, the ~~division~~ board shall send the institution a written notice of its intent to withdraw its determination of equivalence, identifying those deficiencies upon which it is proposing to base the withdrawal and giving the institution 120 days from the date of the notice within which to respond to the notice. The ~~division~~ board shall have the sole discretion to determine whether a site visit is necessary in order to ascertain the institution's compliance with this section. The ~~division~~ board shall notify the institution in writing of its decision and the basis for that decision.

(i) The ~~division~~ board may evaluate any institution described in subsection (a)(1) to determine its continued compliance with Sections 2089 and 2089.5 of the code if, in its sole discretion, the ~~division~~ board has reason to believe that the institution may no longer be in compliance.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2018, 2089, 2089.5, 2102 and 2103, Business and Professions Code.

AGENDA ITEM 14

ADDENDUM

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED:	May 8, 2009
ATTENTION:	Medical Board of California
SUBJECT:	International Medical School Regulations
STAFF CONTACT:	Deborah Pellegrini, Chief

Attached is a revised copy of Section 1314.1 of Title 16 of the California Code of Regulations for your review on May 8, 2009. The attached proposed version dated April 23, 2009 contains new proposed modifications that further refines the language that differentiates subsection (a)(1) medical schools from subsection (a)(2) medical schools.

When Section 1314.1 was drafted, staff intended subsection (a)(1) to encompass the vast majority of the world's medical schools whose purpose is to educate the citizens of their own country to practice medicine in those countries. As Section 1314.1 (a)(1) was drafted in 2003, language was included for "government owned and operated" medical schools only, given the difficulty in trying to differentiate between the various types of medical schools. However, the world's traditional medical schools educating their own citizens are not all government owned and operated. For example, India's and Pakistan's medical schools may be government owned or private, run by societies or trusts. Philippine medical schools are either government-owned or owned and operated by religious orders with government approval. This change would clarify staffs' intent.

Please use the attached version of Section 1314.1 in place of the April 9, 2009 version that was bound into your meeting packet. Thank you.

MEDICAL BOARD OF CALIFORNIA
International Medical Schools
Specific Language of Proposed Changes
Draft—4/23/09

Amend section 1314.1 in Article 4 of Chapter 1, Division 13, Title 16 Cal. Code Regs. to read as follows:

§ 1314.1. International Medical Schools.

(a) For purposes of Article 5 of Chapter 5 of Division 2 of the code (commencing with Section 2100), a medical school's resident course of instruction that leads to an M.D. degree shall be deemed equivalent to that required by Sections 2089 and 2089.5 of the code if the medical school offers the curriculum and clinical instruction described in those sections and meets one of the following:

(1) The medical school is owned and operated by the government of the country in which it is located *or by a bona fide nonprofit institution registered with or otherwise approved by the country in which it is domiciled*, ~~the country is a member of the Organization for Economic Cooperation and Development,~~ the medical school is a component of a university offering other graduate and professional degree programs that contribute to the academic environment of the medical school, and the medical school's primary purpose is educating its own citizens to practice medicine in that country; or

(2) the medical school is chartered by the jurisdiction in which it is domiciled, *the primary purpose of the medical school program is to educate non-citizens to practice medicine in other countries,* and *the medical school* meets the standards set forth in subsection (b) below.

(b)(1) Mission and Objectives.

The institution shall have a clearly stated written purpose or mission statement and objectives that include:

(A) The institution's broad expectations concerning the education students will receive;

(B) The role of research as an integral component of its mission, including the importance, nature, objectives, processes and evaluation of research in medical education including its application to patient care ~~and practice~~; and

(C) Teaching, patient care, and service to the community.

The institution shall have institutional objectives that are consistent with preparing graduates to provide competent medical care.

(2) Organization.

The institution shall be organized as a definable academic unit responsible for a resident educational program that leads to the M.D. degree. The manner in which the institution is organized shall be set forth in writing.

(3) Curriculum.

The structure and content of the educational program shall provide an adequate foundation in the basic and clinical sciences and shall enable students to learn the fundamental principles of medicine, to acquire critical judgment skills, and to use those principles and skills to provide competent medical care. The objectives of the educational program shall state, in outcome-based terms, what students are expected to learn. When an institution provides clinical clerkships at multiple teaching sites, the institution shall demonstrate comparability of educational experiences for all students across instructional sites.

(4) Clinical Oversight

The institution shall have a system with central oversight to assure that the faculty define the types of patients and clinical conditions that students must encounter, the appropriate clinical setting for the educational experiences, and the expected level of student responsibility. The system shall ensure that the faculty monitor and verify student experience and modify it as necessary to ensure that the objectives of the clinical education program will be met.

(5) Professionalism

The learning environment shall promote the development of appropriate professional attributes in medical students. The institution shall define the professional attributes it expects students to develop, in the context of the institution's mission and of promoting the safe practice of medicine.

~~(4)~~ (6) Governance.

The administrative and governance system shall allow the institution to accomplish its objectives (i.e. its statements of the items of knowledge, skills, behavior and attitude that students are expected to learn). An institution's governance shall give faculty a formal role in the institution's decision-making process. A student enrolled in the program shall not serve as an instructor, administrator, officer or director of the school.

~~(5)~~ (7) Faculty.

The faculty shall be qualified and sufficient in number to achieve the objectives of the institution. A "qualified" faculty member is a person who possesses either a credential generally recognized in the field of instruction or a degree, professional license, or credential at least equivalent to the level of instruction being taught or evaluated. The institution shall have a formal ongoing faculty development process that will enable it to fulfill its mission and objectives.

~~(6)~~ (8) Admission and promotion standards.

The institution shall have and adhere to standards governing admission requirements and student selection and promotion that are consistent with the institution's mission and objectives. The institution shall document that its admitted students generally meets entrance requirements equivalent to those utilized by U.S. and Canadian medical schools, including an appropriate background check of all applicants admitted to the institution.

~~(7)~~ (9) Financial Resources.

The institution shall possess sufficient financial resources to accomplish its mission and objectives. Pressure for institutional self-financing must not compromise the educational mission of the institution nor cause it to enroll more students than its total resources can accommodate.

~~(8)~~ (10) Facilities.

The institution shall have, or have access to, facilities, laboratories, equipment and library resources that are sufficient to support the educational programs offered by the institution and to enable it to fulfill its mission and objectives. If an institution utilizes affiliated institutions to provide clinical instruction, the institution shall be fully

responsible for the conduct and quality of the educational program at those affiliated institutions.

~~(9)~~ (11) Quality Assurance System.

If the institution provides patient care, it shall have a formal system of quality assurance for its patient care program.

~~(10)~~ (12) Records.

The institution shall maintain and make available for inspection any records that relate to the institution's compliance with this section for at least five years, except, however, that student transcripts shall be retained indefinitely.

~~(11)~~ (13) Branch Campuses.

(A) An institution with more than one campus shall have written policies and procedures governing the division and sharing of administrative and teaching responsibilities between the central administration and faculty, and the administration and faculty at the other locations. These policies shall be consistent with the institution's mission and objectives. The institution shall be fully responsible for the conduct and quality of the educational program at these sites. If an institution operates a branch campus located within the United States or Canada, instruction received at that branch campus shall be deemed to be instruction received and evaluated at that institution. For purposes of this section, the term "branch campus" means a site other than the main location of the institution but does not include any hospital at which only clinical instruction is provided.

(B) For purposes of this section, an institution shall disclose any affiliation or other relationship that it has with another institution in which either institution agrees to grant a doctor of medicine degree or its equivalent to students of the other institution who complete coursework at the affiliated institution.

(14) Evaluation of Program Effectiveness

An institution shall collect and use a variety of outcome data to demonstrate the

extent to which it is meeting its educational program objectives. For purposes of this subsection, "outcome data" means specific and measurable outcome-based performance measures of knowledge, skills, attitudes, and values (for example, measures of academic progress, program completion rates, performance of graduates in residency training and on licensing and certification examinations). .

(c) The ~~division~~ board may, on its own or at the request of an institution, determine whether that institution meets the requirements of subsections (a) and (b). The ~~division~~ board shall have the sole discretion to determine whether a site visit is necessary in order to verify the accuracy and completeness of the data provided and to conduct an in-depth review of the program to determine whether the institution is in compliance with this regulation.

(d) An institution's failure to provide requested data regarding its educational program or to cooperate with a site team shall be grounds for disapproval of its educational program.

(e) If the ~~division~~ board determines that a site visit is necessary, it shall appoint a site inspection team to conduct a comprehensive, qualitative onsite inspection and review of all aspects of the institution's operations to determine whether the institution complies with the requirements of subsections (a) and (b).

The fee for a site visit is all reasonable costs incurred by the board staff and the site team, payable in estimated form in advance of the site visit. If the cost of the site visit exceeds the amount previously paid, the board shall bill the institution for the remaining amount and shall not take action to determine the institution's equivalency until such time as the full amount has been paid. If the amount paid exceeds the actual costs incurred, the board shall remit the difference to the institution within 60 days.

The site team shall prepare and submit to the ~~division~~ board a report that includes

(1) Its findings regarding the institution's compliance with the requirements of the law and this regulation;

(2) Its assessment of the quality of the institution as a whole and the quality of the institution's educational program, including any deficiencies; and

(3) Its recommendation whether or not the institution's resident course of instruction leading to an M.D. degree should be deemed equivalent to that required by Sections 2089 and 2089.5 of the code, including a recommendation regarding the correction of any deficiencies identified in the report. A copy of the report shall be provided to the institution, which shall have 60 days following the date of the report in which to respond to board staff as to any errors of fact or erroneous findings.

(f) If an institution wishes to retain the ~~division's~~ board's determination that its resident course of instruction leading to an M.D. degree is equivalent to that required by Sections 2089 and 2089.5 of the code, or if it is currently being evaluated for such equivalency, it shall do the following:

(1) It shall notify the ~~division~~ board in writing no later than 30 days after making any change in the following:

(A) Location including addition or termination of any branch campus;

(B) Mission, purposes or objectives;

(C) Change of name;

(D) Any major change in curriculum, including but not limited to, a change that would affect its focus, design, requirements for completion, or mode of delivery, or other circumstance that would affect the institution's compliance with subsections (a) and (b).

(E) Shift or change in control. A "shift or change in control" means any change in the power or authority to manage, direct or influence the conduct, policies, and affairs of the institution from one person or group of people to another person or group of people, but does not include the replacement of an individual administrator with another natural person if the owner does not transfer any interest in, or relinquish any control of, the institution to that person.

(F) An increase in its entering enrollment above 10% of the current enrollment or 15 students in one year, whichever is less, or 20% in three years.

(2) Every seven years, it shall submit documentation sufficient to establish that it remains in compliance with the requirements of this section and of Sections 2089 and 2089.5 of the code.

(g) The documentation submitted pursuant to subsection (f)(2) shall be reviewed by the ~~division~~ board or its designee to determine whether the institution remains in compliance with the requirements of these regulations and of Sections 2089 and 2089.5 of the code. The board may require a site visit as part of this review. It may also require

a site visit at any other time during the seven-year period if it becomes aware of circumstances that warrant a site visit, including any change described in subsection (f).
(h) The ~~division~~ board may at any time withdraw its determination of equivalence when any of the following occur:

(1) ~~an~~ An institution is no longer in compliance with this section;

(2) The institution submits false or misleading information or documentation regarding its compliance with this section;

(3) Institution officials submit fraudulent documentation concerning a former student's medical curriculum; or

(4) The institution permits students to engage in clinical training in California facilities that do not satisfy the requirements of section 2089.5(c) and (d) and, where applicable, section 1327.

Prior to withdrawing its determination of equivalence, the ~~division~~ board shall send the institution a written notice of its intent to withdraw its determination of equivalence, identifying those deficiencies upon which it is proposing to base the withdrawal and giving the institution 120 days from the date of the notice within which to respond to the notice. The ~~division~~ board shall have the sole discretion to determine whether a site visit is necessary in order to ascertain the institution's compliance with this section. The ~~division~~ board shall notify the institution in writing of its decision and the basis for that decision.

(i) The ~~division~~ board may evaluate any institution described in subsection (a)(1) to determine its continued compliance with Sections 2089 and 2089.5 of the code if, in its sole discretion, the ~~division~~ board has reason to believe that the institution may no longer be in compliance.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Sections 2018, 2089, 2089.5, 2102 and 2103, Business and Professions Code.

MEDICAL BOARD OF CALIFORNIA
Status of Pending Regulations

Subject	Current Status	Date Approved by Board	Date Notice Published by OAL	Date of Public Hearing	Date of Final Adoption	Date to DCA for Review *	Date to OAL for Review **	Date to Sec. of State***
Fee Reduction to Offset Elimination of Diversion Prog.	Staff has completed file and forwarded to DCA for review	2/1/08	2/29/08	4/25/08	11/7/08	11/17/08	2/9/09	3/4/09
CME Audits	Set for hearing on 5/8/09	1/30/09	3/13/09	5/8/09				
Non-substantive changes from all units (Section 100 changes)	Next review of MBC regulations pending Summer 2009							

* - DCA is allowed 30 calendar days for review
** - OAL is allowed 30 working days for review
***** - Regs take effect 30 days after filing with Sec. of State**

Prepared by Kevin A. Schunke
Updated April 15, 2009
For questions, call (916) 263-2368

LEGISLATIVE PACKET

MEDICAL BOARD MEETING

May 8, 2009
San Francisco, CA

Medical Board of California
Tracker - Legislative Bill File
4/30/2009

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 120	Hayashi	Peer Review: 809 sections	Asm. B&P (5/5)	Staff Rec: Watch	4/13/2009
AB 175	Galgiani	Telemedicine: Optometrists	Asm Approps.	Staff Rec: Support	4/21/2009
AB 245	Ma	Disclosure Verification	Asm. Approps.	Ex Com: Watch Staff Rec: Oppose	4/27/2009
AB 252	Carter	Cosmetic surgery: employment of physicians	Asm. Floor	Ex Com: Watch Staff Rec: Support	
AB 356	Fletcher	Radiological Technology: physician assistants	Asm. Approps.	Staff Rec: Support	4/23/2009
AB 501	Emmerson	Licensing: Limited, Use of M.D., Fee/Fund	Asm. Approps.	Sponsor/Support	4/13/2009
AB 526	Fuentes	Public Protection and Physician Health Program Act of 2009	Asm. Approps.	Ex Com: Watch Staff Rec: Neutral	4/16/2009
AB 583	Hayashi	Disclosure of Education and Office Hours	Sen. Rules	Ex Com: Support if amended Staff Rec: Support if amended	
AB 602	Price	Dispensing Opticians	Asm. Floor	Ex Com: Watch Staff Rec: Watch	3/25/2009
AB 646	Swanson	Physician employment: district hospital pilot project	Asm. Approps.	Ex Com: Oppose unless amended Staff Rec:	4/13/2009
AB 648	Chesbro	Rural Hospitals: physician employment	Asm. Approps.	Ex Com: Oppose Staff Rec:	4/15/2009

Medical Board of California
Tracker - Legislative Bill File
4/30/2009

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 718	Emmerson	Electronic Prescribing Pilot Program	Asm. Floor	Ex Com: Support Staff Rec: Support	4/22/2009
AB 832	Jones	Clinic Licensing: Workgroup	Asm. Approps.	Ex Com: Watch Staff Rec: Support if amended	4/22/2009
AB 834	Solorio	Health Care Practitioners: peer review	Asm. B&P	Ex Com: Watch Staff Rec:	4/14/2009
AB 933	Fong	Workers' Compensation: utilization review	Asm. Insur. (5/6)	Staff Rec: Support	
AB 977	Skinner	Pharmacists: Protocols with Physicians	Asm. B&P (5/5)	Staff Rec: Watch	4/23/2009
AB 1070	Hill	Enforcement Enhancements: reporting, public reprimand	Asm. Approps.	Sponsor/Support	4/22/2009
AB 1116	Carter	Cosmetic Surgery: physical examination prior to surgery	Asm. Health (5/5)	Ex Com: Oppose Staff Rec: Support	
AB 1310	Hernandez	Healing Arts: database	Asm. Approps. (4/29)	Staff Rec: Support if amended	4/2/2009
AB 1458	Davis	Drugs: adverse events: reporting	Asm. Approps.	Staff Rec: Support	4/15/2009

Medical Board of California
Tracker - Legislative Bill File
4/30/2009

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
SB 58	Aanestad	Physicians and Surgeons: peer review	Sen. Approps.	Ex Com: Watch Staff Rec:	4/22/2009
SB 92	Aanestad	Health care reform	Sen. Health (4/29)	Ex Com: Watch Staff Rec: Watch	3/11/2009
SB 132	Denham	Polysomnographic Technologists (urgent)	Sen. Floor	Ex Com: Support Staff Rec: Support	4/27/2009
SB 389	Negrete McLeod	Fingerprinting	Sen. Approps.	Ex Com: Support Staff Rec: Support	
SB 470	Corbett	Prescriptions: labeling	Sen. Approps. (5/4)	Ex Com: Support Staff Rec: Support	4/27/2009
SB 638	Negrete McLeod	Regulatory Boards: joint committee on operations	Sen. Approps.	Ex Com: Support Staff Rec: Support	
SB 674	Negrete McLeod	Outpatient settings/Advertising	Sen. Approps. (5/4)	Ex Com: Support if amended Staff Rec: Support	4/28/2009
SB 700	Negrete McLeod	Healing Arts: peer review	Sen. Approps. (5/4)	Ex Com: Support Staff Rec: Support	4/22/2009
SB 726	Ashburn	Hospitals: employment of physician; pilot project revision	Sen. B&P	Ex Com: Support if amended Staff Rec:	4/23/2009
SB 819	B&P Comm.	Omnibus: provisions from 2008	Sen. Approps.	Ex Com: Support MBC provisions Staff Rec: support MBC provisions	4/20/2009
SB 821	B&P Comm.	Omnibus: MBC provisions	Sen. Approps.	Ex Com: Support MBC provisions Staff Rec: support MBC provisions	4/16/2009

AB 120

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 120
Author: Hayashi
Bill Date: April 13, 2009, amended
Subject: Peer Review: 809 sections
Sponsor: California Medical Association

STATUS OF BILL:

This bill is currently in the Assembly Business and Professions Committee and is set for hearing on May 5, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill declares the importance of external per review in California. This bill addresses only Business and Professions Code section 809. The bill does not include the areas of peer review that are directly related to the Medical Board (Board).

ANALYSIS:

This bill addresses the 809 sections of the Business and Professions Code. This bill would revise the hearing process pertaining to peer review cases. The provisions in this bill attempt to change and revise portions of the peer review process but they do not directly affect the Board.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Watch

March 18, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 120

Introduced by Assembly Member Hayashi

January 15, 2009

An act to amend Sections 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body of a health care facility to obtain external peer review, as defined, for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff of the facility in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records requested concerning a licentiate under review. The bill would specify that the records produced pursuant to this provision are not subject to discovery, ~~a subpoena, or a subpoena duces tecum, and are not admissible as evidence in a civil action~~ *as specified.*

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in

specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licensees with whom the facility has a contract and would prohibit the governing body from unreasonably withholding approval of those recommendations, as specified.

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

This bill would give the licensee the choice of having the hearing before a mutually acceptable arbitrator or a panel of unbiased individuals. The bill would require the hearing officer presiding at a hearing before a panel to meet certain requirements and to disclose all actual and potential conflicts. The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence.

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review body to adopt written provisions governing whether a licensee may be represented by an attorney.

This bill would give both parties the right to be represented by an attorney, except as specified.

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 809 of the Business and Professions Code
2 is amended to read:
3 809. (a) The Legislature hereby finds and declares the
4 following:
5 (1) In 1986, Congress enacted the Health Care Quality
6 Improvement Act of 1986 (Chapter 117 (commencing with Section
7 11101) Title 42, United States Code), to encourage physicians to
8 engage in effective professional peer review, but giving each state
9 the opportunity to "opt-out" of some of the provisions of the federal
10 act.
11 (2) Because of deficiencies in the federal act and the possible
12 adverse interpretations by the courts of the federal act, it is
13 preferable for California to "opt-out" of the federal act and design
14 its own peer review system.
15 (3) Peer review, fairly conducted, is essential to preserving the
16 highest standards of medical practice.
17 (4) It is essential that California's peer review system generate
18 a culture of trust and safety so that health care practitioners will
19 participate robustly in the process by engaging in critically
20 important patient safety activities, such as reporting incidents they
21 believe to reflect substandard care or unprofessional conduct and
22 serving on peer review, quality assurance, and other committees
23 necessary to protect patients.
24 (5) It is the policy of the state that evaluation, corrective action,
25 or other forms of peer review only be conducted for patient safety
26 and the improvement of quality patient care.
27 (6) Peer review that is not conducted fairly results in harm both
28 to patients and healing arts practitioners by wrongfully depriving
29 patients of their ability to obtain care from their chosen practitioner
30 and by depriving practitioners of their ability to care for their
31 patients, thereby limiting much needed access to care.
32 (7) Peer review, fairly conducted, will aid the appropriate state
33 licensing boards in their responsibility to regulate and discipline
34 errant healing arts practitioners.
35 (8) To protect the health and welfare of the people of California,
36 it is the policy of the State of California to exclude, through the
37 peer review mechanism as provided for by California law, those
38 healing arts practitioners who provide substandard care or who

1 engage in professional misconduct, regardless of the effect of that
2 exclusion on competition.
3 (9) It is the intent of the Legislature that peer review of
4 professional health care services be done efficiently, on an ongoing
5 basis, and with an emphasis on early detection of potential quality
6 problems and resolutions through informal educational
7 interventions. It is further the intent of the Legislature that peer
8 review bodies be actively involved in the measurement, assessment,
9 and improvement of quality and that there be appropriate oversight
10 by the peer review bodies to ensure the timely resolution of issues.
11 (10) Sections 809 to 809.8, inclusive, shall not affect the
12 respective responsibilities of the organized medical staff or the
13 governing body of an acute care hospital with respect to peer
14 review in the acute care hospital setting. It is the intent of the
15 Legislature that written provisions implementing Sections 809 to
16 809.8, inclusive, in the acute care hospital setting shall be included
17 in medical staff bylaws that shall be adopted by a vote of the
18 members of the organized medical staff and shall be subject to
19 governing body approval, which approval shall not be withheld
20 unreasonably.
21 (11) (A) The Legislature thus finds and declares that the laws
22 of this state pertaining to the peer review of healing arts
23 practitioners shall apply in lieu of Chapter 117 (commencing with
24 Section 11101) of Title 42 of the United States Code, because the
25 laws of this state provide a more careful articulation of the
26 protections for both those undertaking peer review activity and
27 those subject to review, and better integrate public and private
28 systems of peer review. Therefore, California exercises its right
29 to opt out of specified provisions of the Health Care Quality
30 Improvement Act relating to professional review actions, pursuant
31 to Section 11111(c)(2)(B) of Title 42 of the United States Code.
32 This election shall not affect the availability of any immunity under
33 California law.
34 (B) The Legislature further declares that it is not the intent or
35 purposes of Sections 809 to 809.8, inclusive, to opt out of any
36 mandatory national data bank established pursuant to Subchapter
37 II (commencing with Section 11131) of Chapter 117 of Title 42
38 of the United States Code.
39 (b) For the purpose of this section and Sections 809.1 to 809.8,
40 inclusive, "healing arts practitioner" or "licentiate" means a

physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist; and "peer review body" means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.

SEC. 2. Section 809.04 is added to the Business and Professions Code, to read:

809.04. (a) It is the public policy of the state that licentiates who may be providing substandard care be subject to the peer review hearing and reporting process set forth in this article.

(b) To ensure that the peer review process is not circumvented, a member of a medical or professional staff, by contract or otherwise, shall not be required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility.

(c) The peer review body of a health care facility shall be entitled to review and make recommendations to the governing body of the facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licentiates with whom the health care facility has a contract. The governing body shall not unreasonably withhold approval of those recommendations.

(d) This section shall not impair a governing body's ability to take action against a licentiate pursuant to Section 809.05.

SEC. 3. Section 809.07 is added to the Business and Professions Code, to read:

809.07. (a) It is the policy of the state that in certain circumstances, external peer review may be necessary to promote and protect patient care in order to eliminate perceived bias, obtain needed medical expertise, or respond to other particular circumstances.

(b) A peer review body is encouraged to obtain external peer review for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff in the following circumstances:

(1) Committee or department reviews that could affect ~~an individual's~~ *a licentiate's* membership or privileges do not provide a sufficiently clear basis for action or inaction.

(2) No current medical staff member can provide the necessary expertise in the clinical procedure or area under review.

(3) To promote impartial peer review.

(4) Upon the reasonable request of the licentiate.

(c) Under no circumstances may any organization external to the peer review body that provides quality improvement activities perform any activities at the health care facility without the concurrence of and input from the peer review body.

(d) For purposes of this section, the following definitions apply:

(1) "Peer review body" has the meaning provided in paragraph (1) of subdivision (a) of Section 805.

(2) "External peer review" means peer review provided by an external objective organization engaged in quality improvement activities that has the ability to perform review by licentiates who are not members of the peer review body.

SEC. 4. Section 809.08 is added to the Business and Professions Code, to read:

809.08. (a) The Legislature hereby finds and declares that the sharing of information between peer review bodies is essential to protect the public health.

(b) A peer review body shall respond to the request of another peer review body and produce the records requested concerning a licentiate under review to the extent not otherwise prohibited by state or federal law. The records produced pursuant to this section shall not be subject to discovery~~, a subpoena, or a subpoena duces tecum, and shall not be admissible as evidence in a civil action.~~ *to the extent provided in Section 1157 of the Evidence Code.* The peer review body responding to the request shall be entitled to all other confidentiality protections and privileges otherwise provided by law as to the information and records disclosed pursuant to this section.

SEC. 5. Section 809.2 of the Business and Professions Code is amended to read:

809.2. If a licentiate timely requests a hearing concerning a final proposed action for which a report is required to be filed under Section 805, the following shall apply:

(a) The hearing shall be held before a trier of fact, and the licentiate shall have the choice of hearing by either of the following:

(1) An arbitrator or arbitrators selected by a process mutually acceptable to the licentiate and the peer review body.

(2) A panel of unbiased individuals who shall gain no direct financial benefit from the outcome, who have not acted as an accuser, investigator, factfinder, or initial decisionmaker in the same matter, and which shall include, where feasible, an individual practicing the same specialty as the licentiate.

(b) (1) If a hearing officer is selected to preside at a hearing held before a panel, the hearing officer shall gain no direct financial benefit from the outcome, shall disclose all actual and potential conflicts of interest, shall not act as a prosecuting officer or advocate, and shall not be entitled to vote. The hearing officer shall also meet both of the following requirements:

(A) Be mutually acceptable to the licentiate and the peer review body. If the licentiate and peer review body are unable to agree, they shall utilize the services of the American Arbitration Association or other mutually agreed upon dispute resolution organization.

(B) Be an attorney licensed to practice law in the State of California and qualified to preside over a quasi-judicial hearing. Attorneys from a firm utilized by the hospital, the medical staff, or the involved licentiate within the preceding two years shall not be eligible.

(2) The hearing officer shall endeavor to ensure that all parties maintain proper decorum and have a reasonable opportunity to be heard and present all relevant oral and documentary evidence. The hearing officer shall be entitled to determine the order of, or procedure for, presenting evidence and argument during the hearing and shall have the authority and discretion to make all rulings on questions pertaining to matters of law, procedure, or the admissibility of evidence. The hearing officer shall also take all appropriate steps to ensure a timely resolution of the hearing, but may not terminate the hearing process.

(c) The licentiate shall have the right to a reasonable opportunity to voir dire the panel members and any hearing officer, and the right to challenge the impartiality of any member or hearing officer. Challenges to the impartiality of any member or hearing officer shall be ruled on by the presiding officer, who shall be the hearing officer if one has been selected.

(d) The licentiate shall have the right to inspect and copy at the licentiate's expense any documentary information relevant to the charges which the peer review body has in its possession or under

its control, as soon as practicable after the receipt of the licentiate's request for a hearing. The peer review body shall have the right to inspect and copy at the peer review body's expense any documentary information relevant to the charges which the licentiate has in his or her possession or control as soon as practicable after receipt of the peer review body's request. The failure by either party to provide access to this information at least 30 days before the hearing shall constitute good cause for a continuance. The right to inspect and copy by either party does not extend to confidential information referring solely to individually identifiable licentiates, other than the licentiate under review. The arbitrator or presiding officer shall consider and rule upon any request for access to information, and may impose any safeguards the protection of the peer review process and justice requires.

(e) When ruling upon requests for access to information and determining the relevancy thereof, the arbitrator or presiding officer shall, among other factors, consider the following:

(1) Whether the information sought may be introduced to support or defend the charges.

(2) The exculpatory or inculpatory nature of the information sought, if any.

(3) The burden imposed on the party in possession of the information sought, if access is granted.

(4) Any previous requests for access to information submitted or resisted by the parties to the same proceeding.

(f) At the request of either side, the parties shall exchange lists of witnesses expected to testify and copies of all documents expected to be introduced at the hearing. Failure to disclose the identity of a witness or produce copies of all documents expected to be produced at least 10 days before the commencement of the hearing shall constitute good cause for a continuance.

(g) Continuances shall be granted upon agreement of the parties or by the arbitrator or presiding officer on a showing of good cause.

(h) A hearing under this section shall be commenced within 60 days after receipt of the request for hearing, and the peer review process shall be completed within a reasonable time, after a licentiate receives notice of a final proposed action or an immediate suspension or restriction of clinical privileges, unless the arbitrator or presiding officer issues a written decision finding that the

licentiate failed to comply with subdivisions (d) and (e) in a timely manner, or consented to the delay.

SEC. 6. Section 809.3 of the Business and Professions Code is amended to read:

809.3. (a) During a hearing concerning a final proposed action for which reporting is required to be filed under Section 805, both parties shall have all of the following rights:

(1) To be provided with all of the information made available to the trier of fact.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the preparation thereof.

(3) To call, examine, and cross-examine witnesses.

(4) To present and rebut evidence determined by the arbitrator or presiding officer to be relevant.

(5) To submit a written statement at the close of the hearing.

(6) To be represented by an attorney of the party's choice at the party's expense, subject to subdivision (c).

(b) The burden of presenting evidence and proof during the hearing shall be as follows:

(1) The peer review body shall have the initial duty to present evidence which supports the charge or recommended action.

(2) Initial applicants shall bear the burden of persuading the trier of fact by a preponderance of the evidence of their qualifications by producing information which allows for adequate evaluation and resolution of reasonable doubts concerning their current qualifications for staff privileges, membership, or employment. Initial applicants shall not be permitted to introduce information not produced upon request of the peer review body during the application process, unless the initial applicant establishes that the information could not have been produced previously in the exercise of reasonable diligence.

(3) Except as provided above for initial applicants, the peer review body shall bear the burden of persuading the trier of fact by a preponderance of the evidence that the action or recommendation is reasonable and warranted.

(c) No peer review body shall be represented by an attorney if the licentiate is not so represented, except dental professional

1 society peer review bodies may be represented by an attorney,
2 even if the licentiate declines to be represented by an attorney.

O

AB 175

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 175
Author: Galgiani
Bill Date: April 21, 2009, amended
Subject: Telemedicine: optometrists
Sponsor: Author

STATUS OF BILL:

This bill passed out of the Assembly Business and Professions Committee on consent and was referred to the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill further defines "telephthalmology and teledermatology by store and forward."

ANALYSIS:

Under current law, "teleophthalmology and teledermatology by store and forward" under the Medi-Cal program is defined as asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology. This information is reviewed by a physician without the patient present.

This bill would allow optometrists to perform telemedicine within their scope of practice.

This bill would specify that in the case that a reviewing optometrist identifies a disease or condition requiring consultation or referral, that consultation or referral must be with an appropriate physician or ophthalmologist.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Support

April 25, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 175

Introduced by Assembly Member Galgiani
(Principal coauthor: Senator Florez)
(Coauthors: Assembly Members ~~Tom Berryhill and Fuller~~ *Tom Berryhill, Block, Fuller, and Monning*)
(Coauthor: Senator Maldonado)

January 29, 2009

An act to amend Section 14132.725 of the Welfare and Institutions Code, relating to telemedicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 175, as amended, Galgiani. Medical telemedicine: optometrists.

Existing law, the Medical Practice Act, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications.

Existing law, until January 1, 2013, authorizes "teleophthalmology and teledermatology by store and forward" under the Medi-Cal program, to the extent that federal financial participation is available. Existing law defines "teleophthalmology and teledermatology by store and forward" as an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology, where the physician at the distant site reviews the medical information without the patient being present in real time.

This bill would expand the definition of "teleophthalmology and teledermatology by store and forward" to include an asynchronous

transmission of medical information to be reviewed at a later time, *for teleophthalmology,* by ~~an~~ *a licensed* optometrist ~~trained to diagnose and treat eye diseases~~.

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 14132.725 of the Welfare and Institutions
2 Code is amended to read:
3 14132.725. (a) Commencing July 1, 2006, to the extent that
4 federal financial participation is available, face-to-face contact
5 between a health care provider and a patient shall not be required
6 under the Medi-Cal program for teleophthalmology and
7 teledermatology by store and forward. Services appropriately
8 provided through the store and forward process are subject to
9 billing and reimbursement policies developed by the department.
10 (b) For purposes of this section, "teleophthalmology and
11 teledermatology by store and forward" means an asynchronous
12 transmission of medical information to be reviewed at a later time
13 by a physician at a distant site who is trained in ophthalmology or
14 dermatology ~~or~~ *or, for teleophthalmology, by* an optometrist ~~trained~~
15 ~~to diagnose and treat eye diseases~~ *who is licensed pursuant to*
16 *Chapter 7 (commencing with Section 3000) of Division 2 of the*
17 *Business and Professions Code*, where the physician or optometrist
18 at the distant site reviews the medical information without the
19 patient being present in real time. A patient receiving
20 teleophthalmology or teledermatology by store and forward shall
21 be notified of the right to receive interactive communication with
22 the distant specialist physician or optometrist, and shall receive
23 an interactive communication with the distant specialist physician
24 or optometrist, upon request. If requested, communication with
25 the distant specialist physician or optometrist may occur either at
26 the time of the consultation, or within 30 days of the patient's
27 notification of the results of the consultation. *If the reviewing*
28 *optometrist identifies a disease or condition requiring consultation*
29 *or referral pursuant to Section 3041 of the Business and*
30 *Professions Code, that consultation or referral shall be with an*
31 *appropriate physician and surgeon or ophthalmologist, as*
32 *required.*

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all county letters, provider bulletins, and similar instructions.

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

(e) The health care provider shall comply with the informed consent provisions of subdivisions (c) to (g), inclusive, of, and subdivisions (i) and (j) of, Section 2290.5 of the Business and Professions Code when a patient receives teleophthalmology or teledermatology by store and forward.

(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

O

AB 245

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 245
Author: Ma
Bill Date: April 27, 2009, amended
Subject: Disclosure Verification
Sponsor: Union of American Physicians and Dentists

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Medical Board (Board) to verify the accuracy of the information posted on its Website regarding enforcement actions or other items required to be posted. This bill would require the Board to remove any expunged convictions within 30 days.

ANALYSIS:

Currently the Board is required to post on its Web site specified information regarding license status, enforcement actions, and specified information reported to the Board. This bill would require the Board to verify all of the information prior to posting it on the website and would require the Board to remove information that is incorrect, inaccurate, or unsubstantiated.

The Board would be required to verify that all of the biographical information on its licensees is accurate. This bill would require the Board to establish a process for addressing complaints received from licensees regarding inappropriate information posted by the Board.

The sponsor states the reason for the bill is due to 31 physicians members who had false reports of medical discipline transmitted to the Board which caused damage to their careers. This is 805 reporting, and to force the Board to verify those reports prior to posting is against the public policy established in the peer review reporting laws. This issue should be dealt with in the peer review bills.

FISCAL: Considerable, estimated at $1.3 million ongoing costs

POSITION: **Executive Committee Recommendation:** Watch
Staff Recommendation: Oppose

April 25, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

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 amended, 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, including, but not limited to, felony convictions, certain misdemeanor convictions, and whether or not the licensees are in good standing. Existing law requires that certain information remain posted for 10 years and prohibits the removal of certain other information.

This bill would require the board to verify the information posted pursuant to those provisions, as specified, and would require the board to immediately remove information discovered to be false and to remove expunged misdemeanor or felony convictions within a specified period of time. The bill would also require the board to ensure that the biographical information posted on its Internet Web site regarding licensees is accurate. The bill would *also* require the board to establish a process for addressing complaints from licensees regarding the posting of inappropriate information ~~and would make the board liable for~~

~~damages incurred by a licensee as a result of the board's failure to comply with these requirements~~.

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 2027 of the Business and Professions
2 Code is amended to read:
3 2027. (a) The board shall post on the Internet the following
4 information in its possession, custody, or control regarding licensed
5 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.
10 (2) With regard to prior discipline, whether or not the licensee
11 has been subject to discipline by the board or by the board of
12 another state or jurisdiction, as described in Section 803.1.
13 (3) Any felony convictions reported to the board after January
14 3, 1991.
15 (4) All current accusations filed by the Attorney General,
16 including those accusations that are on appeal. For purposes of
17 this paragraph, "current accusation" shall mean an accusation that
18 has not been dismissed, withdrawn, or settled, and has not been
19 finally decided upon by an administrative law judge and the board
20 unless an appeal of that decision is pending.
21 (5) Any malpractice judgment or arbitration award reported to
22 the board after January 1, 1993.
23 (6) Any hospital disciplinary actions that resulted in the
24 termination or revocation of a licensee's hospital staff privileges
25 for a medical disciplinary cause or reason.
26 (7) Any misdemeanor conviction that results in a disciplinary
27 action or an accusation that is not subsequently withdrawn or
28 dismissed.
29 (8) Appropriate disclaimers and explanatory statements to
30 accompany the above information, including an explanation of
31 what types of information are not disclosed. These disclaimers and
32 statements shall be developed by the board and shall be adopted
33 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) Notwithstanding subdivision (b), the board shall remove an expunged misdemeanor or felony conviction posted pursuant to this section within 30 days of receiving notice of the expungement.

(d) (1) Notwithstanding subdivision (b), the board shall verify the accuracy of information posted pursuant to this section as of January 1, 2010, and shall, by April 1, 2010, remove any information that the board is unable to verify.

(2) On and after January 1, 2010, *notwithstanding subdivision (a),* the board shall not post information pursuant to this section unless it first verifies the accuracy of that information. The verification required by this paragraph shall include, but not be limited to, an attempt to verify the information with the licensed physician and surgeon who is the subject of the information and his or her attorney.

(3) Notwithstanding subdivision (b), and except as provided in paragraph (1), any information posted pursuant to this section that

the board subsequently discovers to be false shall be immediately removed.

(e) The board shall ensure that the biographical information posted on its Internet Web site with respect to licensed physicians and surgeons is accurate.

(f) The board shall establish a process to completely address complaints from licensed physicians and surgeons regarding inappropriate information posted by the board pursuant to this section.

~~(g) The board shall be liable for damages incurred by a licensed physician and surgeon as a result of the board's failure to meet the requirements of subdivision (c), (d), or (e).~~

~~(h)~~

(g) 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

AB 252

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

STATUS OF BILL:

This bill is currently on the Assembly Floor.

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 (B&P) 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 related to cosmetic medical procedures or treatments.
   - 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 by entities 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 cosmetic surgery or treatment 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 (non-medically owned) entities, and grounds for license revocation for physicians who knowingly work or contract with these entities.

FISCAL: Unknown, but some increase in enforcement costs

POSITION: **Executive Committee Recommendation:** Watch
Staff Recommendation: Support

April 25, 2009

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

AB 356

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 356
Author: Fletcher
Bill Date: April 23, 2009, amended
Subject: Radiological Technology: physician assistants
Sponsor: California Association of Physician Assistants (CAPA)

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow physician assistants to take the appropriate licensing exams for fluoroscopy licentiate permits issued by the Radiologic Health Branch of the California Department of Public Health (DPH).

ANALYSIS:

Current law allows physician assistants to perform a variety of delegated medical services including ordering and performing various diagnostic tests under physician supervision, taking patient histories, performing physical examinations, ordering X-rays and diagnostic studies, instituting treatment procedures, initiating hospital admissions, ordering medications, and performing surgical procedures which do not require general anesthesia.

The Radiologic Health Branch of the DPH regulates the performance of medical imaging by various health professions, including specific certification of a Radiological Technologist (RT). Certain "licentiates of the healing arts" are exempt from needing an RT certification in order to perform various forms of medical imaging. These "licentiates of the healing arts" include physicians, podiatrists, and chiropractors.

This bill would allow physician assistants to take the appropriate licensing exams for fluoroscopy. This would include physician assistants as "licentiates of the healing arts" who are not required to obtain an RT certification.

Amendments to this bill added 40 hours of course work before a physician assistant would be allowed to perform procedures. Amendments also included an additional 10 hours of biennial continuing education.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Support

April 23, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 356

Introduced by Assembly Member Fletcher

February 19, 2009

An act to amend Section 114850 of the Health and Safety Code, relating to radiologic technology.

LEGISLATIVE COUNSEL'S DIGEST

AB 356, as amended, Fletcher. Radiologic technology: licentiates of the healing arts.

Existing law sets forth the duties of various agencies relating to the protection of the public health and safety from the harmful effects of radiation, including, among others, the duties of the State Department of Public Health regarding the licensing and regulation of radiologic technology.

Existing law requires the department to provide for the certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, to prescribe minimum standards of training and experience for these licentiates of the healing arts, and to prescribe procedures for examining applicants for certification. Under existing law, licentiates of the healing arts is defined to include any person licensed under the Medical Practice Act, the Osteopathic Act, or a specified initiative act that created the State Board of Chiropractic Examiners, as provided.

Existing law, the Physician Assistant Practice Act, separately establishes the Physician Assistant Committee of the Medical Board of California, and provides for the licensure of physician assistants meeting specified criteria and for the regulation of their practice. Under that act, a physician assistant is authorized to perform certain medical services under the supervision of a physician and surgeon, subject to certain exceptions.

This bill would revise the definition of licentiates of the healing arts to also include a physician assistant who is licensed pursuant to the Physician Assistant Practice Act and who practices under the supervision of a qualified physician and surgeon, as provided. The bill would require a physician assistant who is issued a licentiate *fluoroscopy* permit to meet specified continuing education requirements. The bill would also require the supervising physician and surgeon to have, or be exempt from having, a ~~certificate or~~ *licentiate fluoroscopy* permit to perform the functions that he or she is supervising, as provided.

This bill would also allow a physician and surgeon to delegate to a licensed physician assistant procedures using ~~ionizing radiation, including, but not limited to,~~ fluoroscopy. The bill would ~~commencing January 1, 2011,~~ specify training requirements that must be met in order for a physician assistant to be delegated this task ~~as of January 1, 2011~~.

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 114850 of the Health and Safety Code
2 is amended to read:
3 114850. As used in this chapter:
4 (a) "Department" means the State Department of Public Health.
5 (b) "Committee" means the Radiologic Technology
6 Certification Committee.
7 (c) "Radiologic technology" means the application of X-rays
8 on human beings for diagnostic or therapeutic purposes.
9 (d) "Radiologic technologist" means any person, other than a
10 licentiate of the healing arts, making application of X-rays to
11 human beings for diagnostic or therapeutic purposes pursuant to
12 subdivision (b) of Section 114870.
13 (e) "Limited permit" means a permit issued pursuant to
14 subdivision (c) of Section 114870 to persons to conduct radiologic

technology limited to the performance of certain procedures or the application of X-ray to specific areas of the human body, except for a mammogram.

(f) "Approved school for radiologic technologists" means a school that the department has determined provides a course of instruction in radiologic technology that is adequate to meet the purposes of this chapter.

(g) "Supervision" means responsibility for, and control of, quality, radiation safety, and technical aspects of all X-ray examinations and procedures.

(h) (1) "Licentiate of the healing arts" means a person licensed under the provisions of the Medical Practice Act, the provisions of the initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation thereof, and repealing all acts and parts of acts inconsistent herewith," approved by electors November 7, 1922, as amended, the "Osteopathic Act," or a person licensed under the Physician Assistant Practice Act (Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code) who practices under the supervision of a qualified physician and surgeon pursuant to the act and pursuant to Division 13.8 of Title 16 of the California Code of Regulations.

(2) In order to supervise a physician assistant in performing the functions authorized by this chapter, a physician and surgeon shall either hold, or be exempt from holding, ~~a certificate or~~ *licentiate fluoroscopy* permit required to perform the functions being supervised.

(3) A physician and surgeon may delegate to a licensed physician assistant procedures using ~~ionizing radiation, including, but not limited to, fluoroscopy. As of January 1, 2011, a physician assistant delegated the use of ionizing radiation shall~~ *fluoroscopy. A physician assistant to whom a physician and surgeon has delegated the use of fluoroscopy shall* demonstrate successful completion of 40 hours of total coursework, including radiation safety and protection, recognized by the department. Documentation of completed coursework shall be kept on file at the practice site and available to the department upon request. Notwithstanding any other provision of law, the department shall

accept applications for a ~~licentiate~~ *fluoroscopy* permit from a licensed physician assistant who meets the requirements of this section.

(4) A licensed physician assistant who is issued a ~~licentiate~~ *fluoroscopy* permit pursuant to the requirements of this section shall, in the two years preceding the expiration date of the permit, earn 10 approved continuing education credits.

(i) "Certified supervisor or operator" means a licentiate of the healing arts who has been certified under subdivision (e) of Section 114870 or 107115 to supervise the operation of X-ray machines or to operate X-ray machines, or both.

(j) "Student of radiologic technology" means a person who has started and is in good standing in a course of instruction that, if completed, would permit the person to be certified a radiologic technologist or granted a limited permit upon satisfactory completion of any examination required by the department. "Student of radiologic technology" does not include any person who is a student in a school of medicine, chiropractic, podiatry, dentistry, dental radiography, or dental hygiene.

(k) "Mammogram" means an X-ray image of the human breast.

(*l*) "Mammography" means the procedure for creating a mammogram.

O

AB 501

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 501
Author: Emmerson
Bill Date: April 13, 2009, amended
Subject: Licensing: Limited, Use of M.D., Fee/Fund
Sponsor: Medical Board of California

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow a graduate of an approved medical school, who is enrolled in post graduate training in California, to use the initials M.D. only while that post graduate trainee is under the supervision of a licensed physician from that program. It will allow others who hold an unrestricted license to use these initials as long as they are not representing themselves as physicians who are allowed to practice in California.

This bill would allow the Medical Board (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.

This bill would establish a cap on the licensing fee imposed by the Medical Board. The cap would be fixed by the Board at a fee equal to or less than seven hundred ninety dollars ($790). This bill would increase the amount of reserve allowed in the Contingent Fund of the Board.

ANALYSIS:

Amends Business and Professions Code section 2054:

This bill would allow a graduate of an approved medical school, who is enrolled in post graduate training in California, to use the initials M.D. only while that post graduate trainee is under the supervision of a licensed physician from that program. The post graduate trainee would be permitted to use the initials only while he or she is under the supervision of a licensed physician from that program.

This bill would allow physicians licensed in other states or countries to participate in events in California using the initials M.D. as long as they are not practicing medicine as physicians.

Amends Business and Professions Code section 2088:

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.

Amends Business and Professions Code section 2435:

This bill would establish a cap on the licensing fee imposed by the Medical Board. The cap would be fixed by the Board at a fee equal to or less than seven hundred ninety dollars ($790). Currently the law requires the fee to be exactly seven hundred ninety dollars ($790), leaving the Medical Board without the option to lower the fee when needed in order to comply with the limits on the reserve allowed in the Contingent Fund of the Medical Board. The fee cap would allow the Board to adjust the fee as needed.

This bill would increase the amount of reserve allowed in the Contingent Fund of the Medical Board to not less than two months and not more than four months' operating expenditures. The current two month limit on the reserve is rigid in that it limits the Board's ability to implement programs. A reserve fund of two to four months would allow more room to effectively maintain compatibility with the state audit while also allowing the Board to implement programs as necessary.

This bill would require an audit of the Board's financial status to be commenced no later than January 1, 2012 by the Bureau of State Audits. The audit would include the impact of the 2008 loan to the general fund as well as projections related to expenses, revenues, and reserves. The audit will be funded within existing resources of the 2011-2012 fiscal year and would be required to be completed by June 1, 2012. The audit conducted in 2007 cost $75,000.

FISCAL: None to the Board until 2011/2012, approximate cost $100,000

POSITION: Sponsor/ Support

April 25, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 501

Introduced by Assembly Member Emmerson

February 24, 2009

An act *to amend Sections 2054 and 2435 of, and* to add Section 2088 to, the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Emmerson. Physicians and ~~surgeons: limited license.~~ *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 makes it a misdemeanor for a person who is not licensed as a physician and surgeon to use certain words, letters, and phrases or any other terms that imply that he or she is authorized to practice medicine as a physician and surgeon.*

This bill would authorize a graduate of an approved medical school who is enrolled in a postgraduate training program approved by the board to use certain words, letters, or phrases while under instruction and under the supervision of a licensed physician and surgeon at the training program. The bill would also authorize a graduate of an approved medical school who does not have a valid certificate as a physician and surgeon issued by the board and who is not otherwise authorized to practice medicine in this state to use the initials "M.D." subject to specified conditions.

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 *to* 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.

Under existing law, licensees of the board are required to pay licensure fees, including an initial licensing fee of $790 and a biennial renewal fee of $790. Existing law authorizes the board to increase those fees in certain circumstances and states the intent of the Legislature that, in setting these fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board equal to 2 months' operating expenditures.

This bill would require those fees to be fixed by the board at a maximum of $790, while retaining the authority of the board to raise those fees in certain circumstances. The bill would state the intent of the Legislature that, in setting those fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board in an amount not less than 2 nor more than 4 months' operating expenditures. The bill would also require the Bureau of State Audits to commence a review of the board's financial status by January 1, 2012, and to report its findings and recommendations to the Joint Legislative Audit Committee by June 1, 2012, as specified.

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 2054 of the Business and Professions*
2 *Code is amended to read:*
3 2054. (a) Any person who uses in any sign, business card, or
4 letterhead, or, in an advertisement, the words "doctor" or
5 "physician," the letters or prefix "Dr.," the initials "M.D.," or any
6 other terms or letters indicating or implying that he or she is a
7 physician and surgeon, physician, surgeon, or practitioner under
8 the terms of this or any other law, or that he or she is entitled to
9 practice hereunder, or who represents or holds himself or herself
10 out as a physician and surgeon, physician, surgeon, or practitioner
11 under the terms of this or any other law, without having at the time
12 of so doing a valid, unrevoked, and unsuspended certificate as a
13 physician and surgeon under this chapter, is guilty of a
14 misdemeanor.
15 (b) A holder of a valid, unrevoked, and unsuspended certificate
16 to practice podiatric medicine may use the phrases "doctor of
17 podiatric medicine," "doctor of podiatry," and "podiatric doctor,"
18 or the initials "D.P.M.," and shall not be in violation of subdivision
19 (a).
20 *(c) A graduate of an approved medical school who is enrolled*
21 *in a postgraduate training program approved by the board may*
22 *use the words "doctor" or "physician," the letters or prefix "Dr.,"*
23 *or the initials "M.D." while under instruction and under the*
24 *supervision of a licensed physician and surgeon at that*
25 *postgraduate training program, and shall not be in violation of*
26 *subdivision (a).*
27 *(d) Except as provided in subdivision (c), a graduate of an*
28 *approved medical school who does not have a valid, unrevoked,*
29 *and unsuspended certificate as a physician and surgeon issued*
30 *under this chapter and who is not otherwise authorized to practice*
31 *medicine under this chapter may use the initials "M.D." without*
32 *violating subdivision (a), provided he or she does not do either of*
33 *the following:*

(1) Imply that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this chapter, or that he or she is entitled to practice medicine in this state.

(2) Represent or hold himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this chapter.

~~SECTION 1.~~

SEC. 2. Section 2088 is added to the Business and Professions Code, to read:

2088. (a) An applicant for a physician's and surgeon's license who is otherwise eligible for that license but is unable to practice some aspects of medicine safely due to a disability may receive a limited license if he or she does both of the following:

(1) Pays the initial license fee.

(2) Signs an agreement on a form prescribed by the board, signed under penalty of perjury, in which the applicant agrees to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board.

(b) The board may require the applicant described in subdivision (a) to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving a limited license under this section.

SEC. 3. Section 2435 of the Business and Professions Code is amended to read:

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

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

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

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein,

shall pay an initial license fee, if any, *in an amount fixed by the board consistent with this section*. The initial license fee shall ~~be~~ *not exceed* seven hundred ninety dollars ($790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be *fixed by the board consistent with this section and shall not exceed* seven hundred ninety dollars ($790).

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

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

(2) Any increase in the amount of investigation and enforcement costs incurred by the board after January 1, 2006, that exceeds the average costs expended for investigation and enforcement costs during the three fiscal years immediately preceding July 1, 2006. When calculating the amount of costs for services for which the board paid an hourly rate, the board shall use the average number of hours for which the board paid for those costs over these prior three fiscal years, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. Beginning January 1, 2009, the board shall instead use the average number of hours for which it paid for those costs over the three-year period of fiscal years 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include probation monitoring costs and disciplinary costs, including those associated with the citation and fine process and those required to implement subdivision (b) of Section 12529 of the Government Code.

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

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

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Medical Board of California ~~equal to approximately two~~ *in an amount not less than two nor more than four* months' operating expenditures.

(i) Not later than ~~July 1, 2007,~~ *January 1, 2012,* the Bureau of State Audits (BSA) shall ~~conduct~~ *commence* a review of the board's financial status, ~~its financial projections and historical projections,~~ including, but not limited to, its projections related to expenses, revenues, and reserves, *and the impact of the loan from the Contingent Fund of the Medical Board of California to the General Fund made pursuant to the Budget Act of 2008.* The BSA shall, on the basis of the review, report *its findings and recommendations* to the Joint Legislative Audit Committee ~~before January 1, 2008, on any adjustment to the amount of the licensure fee that is required to maintain the reserve amount in the Contingent Fund of the Medical Board of California pursuant to subdivision (h) of Section 2435, and whether a refund of any excess revenue should be made to licentiates~~ *by June 1, 2012. This review shall be funded from the existing resources of the board during the 2011–12 fiscal year.*

~~SEC. 2.~~

SEC. 4. 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.

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AB 526

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 526
Author: Fuentes
Bill Date: April 16, 2009, amended
Subject: Public Protection and Physician Health Program Act of 2009
Sponsor: California Medical Association

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the Public Protection and Physician Health Committee (Committee) within the State and Consumer Services Agency (SCSA) with the intent of creating 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.

ANALYSIS:

This bill would establish the Public Protection and Physician Health Committee. The Committee would be comprised of 14 members and would be under the SCSA. This bill would require that the committee must be appointed and hold its first meeting no later than March 1, 2010. The Committee would be required to prepare regulations that provide clear guidance and measurable outcomes to ensure patient safety and the health and wellness of physicians by June 30, 2010. These rules and regulations shall include:

- Minimum standards, criteria, and guidelines for the acceptance, denial, referral to treatment, and monitoring of physicians and surgeons in the physician health program;

- Standards for requiring that a physician and surgeon agree to cease practice to obtain appropriate treatment services;

- Criteria that must be met prior to a physician and surgeon returning to practice;

- Standards, requirements, and procedures for random testing for the use of banned substances and protocols to follow if that use has occurred;

- Worksite monitoring requirements and standards;
- The manner, protocols, and timeliness of reports required;
- Appropriate requirements for clinical diagnostic evaluations of program participants;
- Requirements for a physician and surgeon's termination from, and reinstatement to, the program;
- Requirements that govern the ability of the program to communicate with a participant's employer or organized medical staff about the participant's status and condition;
- Group meeting and other self-help requirements, standards, protocols, and qualifications;

The Committee would be required to recommend one or more non-profit physician health programs to the SCSA. The physician health programs would be required to report annually to the committee on the number of participants served, the number of compliant participants, the number of participants who have successfully completed their agreement period, and the number of participants reported to the board for suspected noncompliance. The physician health programs would also have to agree to submit to periodic audits and inspections of all operations, records, and management related to the physician health program to ensure compliance.

This bill would require the SCSA, in conjunction with the committee, to monitor compliance of the physician health programs, including making periodic inspections and onsite visits.

This bill would permit a physician to enter into a voluntary agreement with a physician health program that must include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the treatment program. The physicians' voluntary participation in a physician health program would be confidential unless waived by the physician.

This bill would prohibit any voluntary agreement from being considered a disciplinary action or order by the Board and would prohibit the agreement from being disclosed to the Board nor to the public. Each participant, prior to entering into a voluntary agreement, would be required to disclose to the Committee whether he or she is under investigation by the Board. If a participant fails to disclose such an investigation, upon enrollment or at any time while a participant, the participant shall be terminated from the program.

Physician health programs would be permitted to report to the committee the name of and results of any contact or information received regarding a physician who is suspected of being, or is, impaired and, as a result, whose competence or professional conduct is reasonably likely to be detrimental to patient safety or to the delivery of patient care. The programs would be required to report to the committee if the physician and fails to cooperate with any of the requirements of the physician health program, fails to cease practice when required, fails to submit to evaluation, treatment, or biological fluid testing when required, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the physician health program, is unable to practice medicine with reasonable skill and safety, or who withdraws or is terminated from the physician health program prior to completion.

The participating physician in a voluntary agreement would be responsible for all expenses relating to chemical or biological fluid testing, treatment, and recovery as provided in the written agreement between the physician and the physician health program.

This bill would permit, not require, the Board to increase licensing fees to no less than $22 and not to exceed 2.5% of the license fee. This fee would be expended solely for the purposes of the physician health programs. If the board included this surcharge, it would be collected and transferred to a trust established by this bill. The Board would be required to separately identify, on the licensing fee statement, the amount being collected for the program. If the Board were to opt to increase the licensing fees to fund this program, the bill states that the Board would be allowed to include a statement indicating to licensees that the Public Protection and Physician Health Program is not a program of the Board and that, by collecting this fee, the Board does not necessarily support, endorse, or have any control of or affiliation with the program. The SCSA would be required to contract for a biennial audit to assess the effectiveness, efficiency, and overall performance of the program and make recommendations.

FISCAL: Unknown, some cost should the fee be implemented

POSITION: **Executive Committee Recommendation**: Watch
Staff Recommendation: Neutral

April 27, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 526

Introduced by Assembly Member Fuentes

February 25, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as amended, 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, which would, until January 1, 2021, establish within the State and Consumer Services Agency the Public Protection and Physician Health Committee, consisting of 14 members appointed by specified entities, and would require *the committee to be appointed*

and to hold its first meeting by March 1, 2010, and would require agency adoption of related rules and regulations by June 30, 2010. The bill would require the committee to recommend to the agency one or more physician health programs, and would authorize the agency to contract, *including on an interim basis, as specified,* with any qualified physician health program for purposes of care and rehabilitation of physicians and surgeons with alcohol or drug abuse or dependency problems or mental disorders as specified. The bill would impose requirements on the physician health program relating to, among other things, monitoring the status and compliance of physicians and surgeons who enter treatment for a qualifying illness, as defined, pursuant to written, voluntary agreements, and would require the agency and committee to monitor compliance with these requirements. The bill would provide that a voluntary agreement to receive treatment would not be subject to public disclosure or disclosure to the Medical Board of California, except as specified. The bill would ~~require~~ *authorize* the board to increase physician and surgeon licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.

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:
2 (a) California has long valued high quality medical care for its
3 citizens and, through its regulatory and enforcement system,
4 protects health care consumers through the proper licensing and
5 regulation of physicians and surgeons to promote access to quality
6 medical care. The protection of the public from harm by physicians
7 and surgeons who may be impaired by alcohol or substance abuse
8 or dependence or by a mental disorder is paramount.
9 (b) Nevertheless, physicians and surgeons experience
10 health-related problems at the same frequency as the general
11 population, and many competent physicians and surgeons with
12 illnesses may or may not immediately experience impairment in
13 their ability to serve the public. It has been estimated that at least
14 10 percent of the population struggles with alcohol or substance

abuse or dependence during their lifetime, which may, at some point, impact approximately 12,500 of the state's 125,000 licensed physicians and surgeons.

(c) It is in the best interests of the public and the medical ~~profession to provide a pathway for any currently licensed~~ *profession to provide a pathway to recovery for any licensed* physician and surgeon that is *currently* suffering from alcohol or substance abuse or dependence or a mental disorder. The American Medical Association has recognized that it is an expression of the highest meaning of professionalism for organized medicine to take an active role in helping physicians and surgeons to lead healthy lives in order to help their patients, and therefore, it is appropriate for physicians and surgeons to assist in funding such a program.

(d) While nearly every other state has a physician health program, since 2007 California has been without any state program that monitors physicians and surgeons who have independently obtained, or should be encouraged to obtain, treatment for alcohol or substance abuse or dependence or for a mental disorder, so that they do not treat patients while impaired.

(e) It is essential for the public interest and the public health, safety, and welfare to focus on early intervention, assessment, referral to treatment, and monitoring of physicians and surgeons with significant health impairments that may impact their ability to practice safely. Such a program need not, and should not necessarily, divert physicians and surgeons from the disciplinary system, but instead focus on providing assistance before any harm to a patient has occurred.

(f) Therefore, it is necessary to create a program in California that will permit physicians and surgeons to obtain *referral to* treatment and monitoring of alcohol or substance abuse or dependence or a mental disorder, so that they do not treat patients while impaired.

SEC. 2. Article 14 (commencing with Section 2340) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 14. Public Protection and Physician Health Program

2340. This article shall be known and may be cited as the Public Protection and Physician Health Program Act of 2009.

2341. For purposes of this article, the following terms have the following meanings:

(a) "Agency" means the State and Consumer Services Agency.

(b) "Board" means the Medical Board of California.

(c) "Committee" means the Public Protection and Physician Health Committee established pursuant to Section 2342.

(d) "Impaired" or "impairment" means the inability to practice medicine with reasonable skill and safety to patients by reason of alcohol abuse, substance abuse, alcohol dependency, any other substance dependency, or a mental disorder.

(e) "Participant" means a physician and surgeon enrolled in the program pursuant to an agreement entered into as provided in Section 2345.

(f) "Physician health program" or "program" means the program for the prevention, detection, intervention, monitoring, and referral to treatment of impaired physicians and surgeons, and includes vendors, providers, or entities contracted with by the agency pursuant to this article.

(g) "Physician and surgeon" means a holder of a physician's and surgeon's certificate.

(h) "Qualifying illness" means "alcohol or substance abuse," "alcohol or chemical dependency," or a "mental disorder" as those terms are used in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) or subsequent editions.

(i) "Secretary" means the Secretary of State and Consumer Services.

(j) "Treatment program" or "treatment" means the delivery of care and rehabilitation services provided by an organization or persons authorized by law to provide those services.

2342. (a) (1) There is hereby established within the State and Consumer Services Agency the Public Protection and Physician Health Committee. *The committee shall be appointed and hold its first meeting no later than March 1, 2010.* The committee shall be comprised of 14 members who shall be appointed as follows:

(A) Eight members appointed by the secretary, including the following:

(i) Two members who are licensed mental health professionals with knowledge and expertise in the identification and treatment of substance abuse and mental disorders.

(ii) Six members who are physicians and surgeons with knowledge and expertise in the identification and treatment of alcohol dependence and substance abuse. One member shall be a designated representative from a panel recommended by a nonprofit professional association representing physicians and surgeons licensed in this state with at least 25,000 members in all modes of practice and specialties. The secretary shall fill one each of the remaining appointments from among those individuals as may be recommended by the California Society of Addiction Medicine, the California Psychiatrist Association, and the California Hospital Association.

(B) Four members of the public appointed by the Governor, at least one of whom shall have experience in advocating on behalf of consumers of medical care in this state.

(C) One member of the public appointed by the Speaker of the Assembly.

(D) One member of the public appointed by the Senate Committee on Rules.

(2) (A) For the purpose of this subdivision, a public member may not be any of the following:

(i) A current or former physician and surgeon or an immediate family member of a physician and surgeon.

(ii) Currently or formerly employed by a physician and surgeon or business providing or arranging for physician and surgeon services, or have any financial interest in the business of a licensee.

(iii) An employee or agent or representative of any organization representing physicians and surgeons.

(B) Each public member shall meet all of the requirements for public membership on the board as set forth in Chapter 6 (commencing with Section 450) of Division 1.

(b) Members of the committee shall serve without compensation, but shall be reimbursed for any travel expenses necessary to conduct committee business.

(c) Committee members shall serve terms of four years, and may be reappointed. By lot, the committee shall stagger the terms of the initial members appointed.

(d) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), and shall prepare *any additional* recommended rules and

regulations necessary or advisable for the purpose of implementing this article, subject to the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The rules and regulations shall include appropriate minimum standards and requirements for referral to treatment, and monitoring of participants in the physician health program, and shall be written in a manner that provides clear guidance and measurable outcomes to ensure patient safety and the health and wellness of physicians and surgeons. The agency shall adopt regulations for the implementation of this article, taking into consideration the regulations recommended by the committee.

(e) The rules and regulations required by this section shall be adopted not later than June 30, 2010, and shall, at a minimum, be consistent with the uniform standards adopted pursuant to Section 315, and shall include all of the following:

(1) Minimum standards, criteria, and guidelines for the acceptance, denial, referral to treatment, and monitoring of physicians and surgeons in the physician health program.

(2) Standards for requiring that a physician and surgeon agree to cease practice to obtain appropriate treatment services.

(3) Criteria that must be met prior to a physician and surgeon returning to practice.

(4) Standards, requirements, and procedures for random testing for the use of banned substances and protocols to follow if that use has occurred.

(5) Worksite monitoring requirements and standards.

(6) The manner, protocols, and timeliness of reports required to be made pursuant to Section 2345.

(7) Appropriate requirements for clinical diagnostic evaluations of program participants.

(8) Requirements for a physician and surgeon's termination from, and reinstatement to, the program.

(9) Requirements that govern the ability of the program to communicate with a participant's employer or organized medical staff about the participant's status and condition.

(10) Group meeting and other self-help requirements, standards, protocols, and qualifications.

(11) Minimum standards and qualifications of any vendor, monitor, provider, or entity contracted with by the agency pursuant to Section 2343.

(12) A requirement that all physician health program services shall be available to all licensed physicians and surgeons with a qualifying illness.

(13) A requirement that any physician health program shall do all of the following:

(A) Promote, facilitate, or provide information that can be used for the education of physicians and surgeons with respect to the recognition and treatment of alcohol dependency, chemical dependency, or mental disorders, and the availability of the physician health program for qualifying illnesses.

(B) Offer assistance to any person in referring a physician and surgeon for purposes of assessment or treatment, or both, for a qualifying illness.

(C) Monitor the status during treatment of a physician and surgeon who enters treatment for a qualifying illness pursuant to a written, voluntary agreement.

(D) Monitor the compliance of a physician and surgeon who enters into a written, voluntary agreement for a qualifying illness with the physician health program setting forth a course of recovery.

(E) Agree to accept referrals from the board to provide monitoring services pursuant to a board order.

(F) Provide a clinical diagnostic evaluation of physicians and surgeons entering the program.

(14) Rules and procedures to comply with auditing requirements pursuant to Section 2348.

(15) A definition of the standard of "reasonably likely to be detrimental to patient safety or the delivery of patient care," relying, to the extent practicable, on standards used by hospitals, medical groups, and other employers of physicians and surgeons.

(16) Any other provision necessary for the implementation of this article.

2343. (a) On and after July 1, 2010, upon adoption of the rules and regulations required by Section 2342, the committee shall recommend one or more physician health programs to the agency, and the agency may contract with any qualified physician health program. The physician health program shall be a nonprofit corporation organized under Section 501(c)(3) of Title 26 of the United States Code. The chief executive officer shall have expertise in the areas of alcohol abuse, substance abuse, alcohol dependency,

other chemical dependencies, and mental disorders. *In order to expedite the delivery of physician health program services established by this article, the agency may contract with an entity meeting the minimum standards and requirements set forth in subdivision (e) of Section 2342 on an interim basis prior to the adoption of any additional rules and regulations required to be adopted pursuant to subdivision (d) of Section 2342. The agency may extend the contract when the rules and regulations are adopted, provided that the physician health program meets the requirements in those rules and regulations.*

(b) Any contract entered into pursuant to this article shall comply with all rules and regulations required to be adopted pursuant to this article. No entity shall be eligible to provide the services of the physician health program that does not meet the minimum standards, criteria, and guidelines contained in those rules and regulations.

(c) The contract entered into pursuant to this article shall also require the contracting entity to do both of the following:

(1) Report annually to the committee statistics, including the number of participants served, the number of compliant participants, the number of participants who have successfully completed their agreement period, and the number of participants reported to the board for suspected noncompliance; provided, however, that in making that report, the physician health program shall not disclose any personally identifiable information relating to any physician and surgeon participating in a voluntary agreement as provided in this article.

(2) Agree to submit to periodic audits and inspections of all operations, records, and management related to the physician health program to ensure compliance with the requirements of this article and its implementing rules and regulations.

(d) In addition to the requirements of Section 2348, the agency, in conjunction with the committee, shall monitor compliance of the physician health program with the requirements of this article and its implementing regulations, including making periodic inspections and onsite visits with any entity contracted to provide physician health program services.

2344. The agency has the sole discretion to contract with a physician health program for licensees of the board and no provision of this article may be construed to entitle any physician

and surgeon to the creation or designation of a physician health program for any individual qualifying illness or group of qualifying illnesses.

2345. (a) In order to encourage voluntary participation in monitored alcohol or chemical dependency or mental disorder treatment programs, and in recognition of the fact that mental disorders, alcohol dependency, and chemical dependency are illnesses, a physician and surgeon, certified or otherwise lawfully practicing in this state, may enter into a voluntary agreement with a physician health program. The agreement between the physician and surgeon and the physician health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the treatment program, including, but not limited to, an agreement to cease practice, as defined by the rules and regulations adopted pursuant to Section 2342. Except as provided in subdivisions (b), (c), (d), and (e), a physician and surgeon's participation in the physician health program pursuant to a voluntary agreement shall be confidential unless waived by the physician and surgeon.

(b) (1) Any voluntary agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board, and shall not be public information if all of the following are true:

(A) The voluntary agreement is the result of the physician and surgeon self-enrolling or voluntarily participating in the physician health program.

(B) The board has not referred a complaint against the physician and surgeon to a district office of the board for ~~simultaneous investigation jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section pursuant to Section 12529.6 of the Government Code for conduct~~ *investigation for conduct* involving or alleging an impairment adversely affecting the care and treatment of patients.

(C) The physician and surgeon is in compliance with the treatment program and the conditions and procedures to monitor compliance.

(2) (A) Each participant, prior to entering into the voluntary agreement described in paragraph (1), shall disclose to the committee whether he or she is under investigation by the board. If a participant fails to disclose such an investigation, upon

enrollment or at any time while a participant, the participant shall be terminated from the program. For those purposes, the committee ~~shall periodically request from the board copies of recent~~ *shall regularly monitor recent* accusations filed against physicians and surgeons and shall compare the names of physicians and surgeons subject to accusation with the names of program participants.

(B) Notwithstanding subparagraph (A), a participant who is under investigation by the board and who makes the disclosure required in subparagraph (A) may participate in, and enter into a voluntary agreement with, the physician health program.

(c) (1) If a physician and surgeon enters into a voluntary agreement with the physician health program pursuant to this article, the physician health program shall do both of the following:

(A) In addition to complying with any other duty imposed by law, report to the committee the name of and results of any contact or information received regarding a physician and surgeon who is suspected of being, or is, impaired and, as a result, whose competence or professional conduct is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(B) Report to the committee if the physician and surgeon fails to cooperate with any of the requirements of the physician health program, fails to cease practice when required, fails to submit to evaluation, treatment, or biological fluid testing when required, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the physician health program, is unable to practice medicine with reasonable skill and safety*, or who withdraws or is terminated from the physician health program prior to completion.*

(2) Within 48 hours of receiving a report pursuant to paragraph (1), the committee shall make a determination as to whether the competence or professional conduct of the physician and surgeon is reasonably likely to be detrimental to patient safety or to the delivery of patient care, and, if so, refer the matter to the board consistent with rules and regulations adopted by the agency. Upon receiving a referral pursuant to this paragraph, the board shall take immediate action and may initiate proceedings to seek a temporary restraining order or interim suspension order as provided in this division.

(d) Except as provided in subdivisions (b), (c), and (e), and this subdivision, any oral or written information reported to the board

pursuant to this section, including, but not limited to, any physician and surgeon's participation in the physician health program and any voluntary agreement entered into pursuant to this article, shall remain confidential as provided in subdivision (c) of Section 800, and shall not constitute a waiver of any existing evidentiary privileges under any other provision or rule of law. However, this subdivision shall not apply if the board has referred a complaint against the physician and surgeon to a district office of the board ~~for simultaneous investigation jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section pursuant to Section 12529.6 of the Government Code for conduct involving or alleging an impairment~~ *for investigation for conduct involving or alleging an impairment* adversely affecting the care and treatment of patients.

(e) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action against a physician and surgeon based on acts or omissions within the course and scope of his or her practice.

(f) Any information received, developed, or maintained by the agency regarding a physician and surgeon in the program shall not be used for any other purpose.

2346. The committee shall report to the agency statistics received from the physician health program pursuant to Section 2343, and the agency shall, thereafter, report to the Legislature the number of individuals served, the number of compliant individuals, the number of individuals who have successfully completed their agreement period, and the number of individuals reported to the board for suspected noncompliance; provided, however, that in making that report the agency shall not disclose any personally identifiable information relating to any physician and surgeon participating in a voluntary agreement as provided herein.

2347. (a) A physician and surgeon participating in a voluntary agreement shall be responsible for all expenses relating to chemical or biological fluid testing, treatment, and recovery as provided in the written agreement between the physician and surgeon and the physician health program.

(b) In addition to the fees charged for the initial issuance or biennial renewal of a physician and surgeon's certificate pursuant to Section 2435, and at the time those fees are charged, the board ~~shall~~ *may* include a surcharge of not less than twenty-two dollars

($22) and not to exceed an amount equal to 2.5 percent of the fee set pursuant to Section 2435, which shall be expended solely for the purposes of this article. ~~The~~ *If the board includes a surcharge, the* board shall collect this surcharge and cause it to be transferred monthly to the trust fund established pursuant to subdivision (c). This amount shall be separately identified on the fee statement provided to physicians and surgeons as being imposed pursuant to this article. The board may include a conspicuous statement indicating that the Public Protection and Physician Health Program is not a program of the board and the collection of this fee does not, nor shall it be construed to, constitute the board's endorsement of, support for, control of, or affiliation with, the program.

(c) There is hereby established in the State Treasury the Public Protection and Physician Health Program Trust Fund into which all funds collected pursuant to this section shall be deposited. These funds shall be used, upon appropriation in the annual Budget Act, only for the purposes of this article.

(d) Nothing in this section is intended to limit the amount of funding that may be provided for the purposes of this article. In addition to funds appropriated in the annual Budget Act, additional funding from private or other sources may be used to ensure that no person is denied access to the services established by this program due to a lack of available funding.

(e) All costs of the committee and program established pursuant to this article shall be paid out of the funds collected pursuant to this section.

2348. (a) The agency shall biennially contract to perform a thorough audit of the effectiveness, efficiency, and overall performance of the program and its vendors. The agency may contract with a third party to conduct the performance audit, except the third party may not be a person or entity that regularly testifies before the board. This section is not intended to reduce the number of audits the agency or board may otherwise conduct.

(b) The audit shall make recommendations regarding the continuation of this program and this article and shall suggest any changes or reforms required to ensure that individuals participating in the program are appropriately monitored and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or dependency or mental disorder. Any person conducting the audit required by this section shall maintain

1 the confidentiality of all records reviewed and information obtained
2 in the course of conducting the audit and shall not disclose any
3 information that is identifiable to any program participant.
4 (c) If, during the course of an audit, the auditor discovers that
5 a participant has harmed a patient, or a patient has died while being
6 treated by a participant, the auditor shall include that information
7 in his or her audit, and shall investigate and report on how that
8 participant was dealt with by the program.
9 (d) A copy of the audit shall be made available to the public by
10 posting a link to the audit on the agency's Internet Web site
11 homepage no less than 10 business days after publication of the
12 audit. Copies of the audit shall also be provided to the Assembly
13 and Senate Committees on Business and Professions and the
14 Assembly and Senate Committees on Health within 10 business
15 days of its publication.
16 2349. This article shall remain in effect only until January 1,
17 2021, and as of that date is repealed, unless a later enacted statute,
18 that is enacted before January 1, 2021, deletes or extends that date.

O

AB 583

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 Senate Rules 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 name tag 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: Minor and absorbable enforcement costs

POSITION: **Executive Committee Recommendation:** Support if amended to add information about the Board to the posting such as the name of the Board and the Board's Website and to specify more clearly what "prominent display" means.
Staff Recommendation: Support if amended (same suggested amends)

April 26, 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

AB 602

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 602
Author: Price
Bill Date: March 25, 2009, amended
Subject: Dispensing Opticians
Sponsor: Lenscrafters

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize registered dispensing opticians (RDO) to receive license renewal materials provided by the Medical Board of California (MBC) at an address other than the place of business.

ANALYSIS:

Currently, renewal materials are mailed to hundreds of locations statewide, including large businesses such as Kaiser, WalMart, and LensCrafters. This bill would authorize the aggregation of renewal materials to a corporate mailing address. This bill would increase the efficiency of licensure renewal.

This bill is a placeholder. Should this issue be resolved between staff and the sponsor, then the bill will be used for another purpose. Staff is working with the sponsor and hopes to have this issue resolved by June 1, 2009.

FISCAL: None

POSITION: **Executive Committee Recommendation:** Watch
Staff Recommendation: Watch

April 25, 2009

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 602

Introduced by Assembly Member Price

February 25, 2009

An act to amend Sections 2550 and 2551 of the Business and Professions Code, relating to dispensing opticians.

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as amended, Price. Dispensing opticians.

Existing law provides that the right to dispense, sell, or furnish prescription lenses at retail to the person named in a prescription is limited to physicians and surgeons, optometrists, and registered dispensing opticians. Existing law provides for the regulation of dispensing opticians by the Medical Board of California, and requires a person engaging in the business of a dispensing optician to be registered with the board.

This bill would *require* a person engaging in the business of a dispensing optician to be registered biennially with the Medical Board of California. The bill would also authorize a dispensing optician, upon registration, to provide a mailing address to the board ~~for purposes of communication~~ *that is different from the address of the optician's place of business, and, if provided, would require the board to send all further application and renewal materials to that address.*

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 2550 of the Business and Professions
2 Code is amended to read:
3 2550. Individuals, corporations, and firms engaged in the
4 business of filling prescriptions of physicians and surgeons licensed
5 by the Medical Board of California or optometrists licensed by the
6 State Board of Optometry for prescription lenses and kindred
7 products, and, as incidental to the filling of those prescriptions,
8 doing any or all of the following acts, either singly or in
9 combination with others, taking facial measurements, fitting and
10 adjusting those lenses and fitting and adjusting spectacle frames,
11 shall be known as dispensing opticians and shall not engage in that
12 business unless biennially registered with the Medical Board of
13 California.
14 SEC. 2. Section 2551 of the Business and Professions Code is
15 amended to read:
16 2551. Individuals, corporations, and firms shall make
17 application for registration and shall not engage in that business
18 prior to being issued a certificate of registration. Application for
19 that registration shall be on forms prescribed by the board, shall
20 bear the signature of the individual, or general partners if a
21 partnership, or the president or secretary if a corporation, and shall
22 contain the name under which he or she, they, or it proposes to do
23 business and the business address. Separate applications shall be
24 made for each place of business and each application must be
25 accompanied by the application fee prescribed by Section 2565.
26 ~~A mailing address may be provided to the board for the purposes~~
27 ~~of communication.~~ *An individual, corporation, or firm may provide*
28 *an address to the board at which to receive application and*
29 *renewal materials that is different from the address provided for*
30 *the place of business. If provided, the board shall send all further*
31 *application and renewal materials to that address.*

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AB 646

AB 646

Physician Employment: District Hospital Pilot Project

Amended in committee on April 28, 2009.

To be presented at the Board Meeting

AB 648

AB 648

Rural Hospitals: Physician Employment

To be presented at the Board Meeting

AB 718

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 718
Author: Emmerson
Bill Date: April 22, 2009, amended
Subject: Electronic Prescribing Pilot Program
Sponsor: Reed Elsevier Inc.

STATUS OF BILL:

This bill is on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would create the Inland Empire Health Plan E-Prescribing Pilot Program to promote the exchange of health care information.

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 to those on Medi-Cal as a physician will be immediately notified if the medication is not on the formulary.

Originally this was a statewide mandatory program that has now been reduced to a pilot project to test the implementation of a program.

As amended, this bill would create the Inland Empire Health Plan E-Prescribing Pilot Program in order to promote health care quality and the exchange of health care information. This program would be administered by an entity with at least five years experience electronically prescribing under the Medi-Cal program. This program would include various components such as integrated clinical decisions support alerts for allergies, drug-drug interactions, duplications in therapy and elderly alerts. The pilot program would work to create cost-effective prescribing at the point of care and include approved drug compendia.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support (when this was a statewide mandatory program)
Staff Recommendation: Support

April 24, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

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 amended, Emmerson. ~~Prescription drugs: electronic transmissions.~~ *Inland Empire Health Plan E-Prescribing Pilot Program.*

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, to the extent consistent with federal law, every licensed prescriber, or prescriber's authorized agent, or pharmacy operating in California to have the ability, on or before January 1, 2016, 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.~~

This bill would state the intent of the Legislature to enact legislation that would create the Inland Empire Health Plan E-Prescribing Pilot Program, which would promote health care quality and the exchange of health care information, include specified components, and be administered by an entity with specified certification and at least 5 years of e-prescribing experience under the Medi-Cal program.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *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 that would create the Inland Empire Health Plan*
3 *E-Prescribing Pilot Program, which would meet all of the following*
4 *requirements:*
5 *(a) Be administered by an entity with certification from the*
6 *Certification Commission for Health Information Technology and*
7 *a minimum of five years of e-prescribing experience under the*
8 *Medi-Cal program.*
9 *(b) Promote health care quality and the exchange of health care*
10 *information.*
11 *(c) Include all of the following components:*
12 *(1) Integrated clinical decision support alerts for allergies,*
13 *drug-drug interactions, duplications in therapy, and elderly alerts.*
14 *(2) Current payer formulary information.*
15 *(3) Appropriate alternatives, when needed, to support*
16 *cost-effective prescribing at the point of care.*
17 *(4) Drug compendia approved by the Center for Medicare and*
18 *Medicaid Services.*
19 *(5) Electronic transmission of prescriptions.*
20 ~~SECTION 1. Section 4071.2 is added to the Business and~~
21 ~~Professions Code, to read:~~
22 ~~4071.2. To the extent consistent with federal law, on or before~~
23 ~~January 1, 2016, every licensed prescriber, prescriber's authorized~~
24 ~~agent, or pharmacy operating in California shall have the ability~~
25 ~~to transmit and receive prescriptions by electronic data~~
26 ~~transmission.~~

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

O

AB 832

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 832
Author: Jones
Bill Date: April 22, 2009, amended
Subject: Clinic Licensing: Workgroup
Sponsor: California Department of Public Health (CDPH)

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill, that was amended in the Assembly Health Committee, will now require the Department of Public Health (DPH) to convene a workgroup to consider and develop recommendations for state oversight and monitoring of ambulatory surgical centers to ensure public safety.

ANALYSIS:

This bill would require DPH to convene a workgroup, no later than February 1, 2010, to consider and develop recommendations for state oversight and monitoring of ambulatory surgical centers. These recommendations would be focused on increasing public health and safety.

The workgroup would be tasked with, among other topics, considering the implications of the 2007 Third District Court of Appeals ruling, *Capen v. Shewry*. The workgroup would also be required to address existing quality and accreditation standards, including federal conditions of participation for ambulatory surgical centers who participate in the Medicare program, and the state of the art of ambulatory surgery centers within the state. The workgroup would need to submit its conclusions and recommendations to the appropriate policy committees of the Legislature no later than July 1, 2010. The members of the workgroup would serve without compensation.

The workgroup would include representatives from all of those listed on the attached proposed language.

FISCAL: None to MBC.

POSITION: **Staff Recommendation:** Support if amended to address the Capen v. Shewry decision for a minimum of a one year period while the workgroup develops its recommendations and legislation can be enacted.

April 24, 2009

Amendments to AB 832 (Jones)
As amended April 22, 2009
(As proposed to be amended)

Delete and replace the existing provisions of the bill with the following:

a) The Department of Public Health shall convene a workgroup, no later than February 1, 2010, to consider and develop recommendations for state oversight and monitoring of ambulatory surgical centers, as defined in Section 1204 of the Health and Safety Code, to ensure public health and safety. The workgroup shall consider the implications of the 2007 Third District Court of Appeals ruling, *Capen v. Shewry*, (155 Cal. App. 4th 378), existing quality and accreditation standards, including federal conditions of participation for ambulatory surgical centers participating in the Medicare program, and the state of the art of ambulatory surgery centers within this state. The workgroup shall submit its conclusions and recommendations to the appropriate policy committees of the Legislature no later than July 1, 2010.

b) The workgroup shall include representatives from all of the following:

1) American Nurses Association of California;
2) California Academy of Eye Physicians and Surgeons;
3) California Ambulatory Surgical Association;
4) California Dental Association;
5) California Society of Dermatology and Dermatologic Surgery;
6) California Medical Association;
7) California Nurses Association;
8) California Orthopedic Association;
9) California Podiatric Medical Association;
10) California Society of Anesthesiologists;
11) California Society of Plastic Surgeons;
12) Medical Board of California;
13) Office of Statewide Health Planning and Development;
14) Service Employees International Union;
15) At least one advocacy organization that represents consumers; and,
16) Other organizations with expertise in the licensing and operation of ASCs.

c) The members of the workgroup shall serve without compensation.

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

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, *1204.65,* 1212.5, 1212.6, and 1212.7 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 832, as amended, 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~~ *revise* 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 *also* require surgical clinics to be licensed regardless of physician ownership, but would exclude a doctor's office

or other place that ~~provides only prescribed~~ *does not provide ambulatory surgical care* services *and dental offices that provide only conscious sedation and not general sedation*, 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~~ *meet specified standards*.

This bill would require a surgical clinic that was in operation prior to January 1, 2010, and that is required to become licensed as a result of the passage of the bill to submit a completed application and the required application fee no later than June 30, 2010, but would allow the surgical clinic to remain in operation until the department grants or denies a provisional license.

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 that provides direct medical, surgical,
8 dental, optometric, or podiatric advice, services, or treatment to
9 patients who remain less than 24 hours, and which may also
10 provide diagnostic or therapeutic services to patients in the home
11 as an incident to care provided at the clinic facility. Nothing in
12 this section shall be construed to prohibit the provision of nursing
13 services in a clinic licensed pursuant to this chapter. In no case

shall a clinic be deemed to be a health facility subject to the provisions of Chapter 2 (commencing with Section 1250) of this division. A place, establishment, or institution that solely provides advice, counseling, information, or referrals on the maintenance of health or on the means and measures to prevent or avoid sickness, disease, or injury, where ~~such~~ *the* advice, counseling, information, or referrals ~~does~~ *do* 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. 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~~ *does not provide ambulatory surgical care, as defined in subdivision (a),* other than ~~those~~ *the exceptions* described in paragraphs (1), (2), and (3) of subdivision (a), shall not be required to obtain licensure as a surgical clinic.

(e) A dental office or other place, establishment, or institution that does not use general anesthesia but does use conscious sedation, with a permit issued pursuant to Article 2.8 (commencing with Section 1647) of Chapter 4 of Division 2 of the Business and Professions Code, shall not be required to obtain licensure as a surgical clinic.

SEC. 5. Section 1204.65 is added to the Health and Safety Code, to read:

1204.65. A surgical clinic that was in operation prior to January 1, 2010, and is required to become licensed due to the enactment of Section 1204.6 and the amendments to Section 1206, as contained in the act adding this section, shall submit a completed application for licensure as a surgical clinic, accompanied by the required application fee, not later than June 30, 2010, but may continue to operate as a surgical clinic until the department conducts a licensing visit and grants or denies a provisional license pursuant to Sections 1219 or 1219.1. A surgical clinic that is denied a license shall cease operating immediately upon receipt of the denial.

~~SEC. 5.~~

SEC. 6. Section 1206 of the Health and Safety Code is amended to read:

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

(a) 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 his or her profession, within the scope of 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~~ *unless the clinic or office is providing ambulatory surgical services, as defined in subdivision (a) of Section 1204.6, other than the exceptions described in paragraphs (1), (2), and (3) of subdivision (a) of Section 1204.6, 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.~~

SEC. 7. 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)~~

1212.5. (a) 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)~~

(1) 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)~~

(2) 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)~~

(3) 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)~~

(4) 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.

(b) A clinic licensed pursuant to this section shall be subject to the requirements of Section 1280.15.

~~SEC. 7.~~

SEC. 8. 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.~~

SEC. 9. 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. *The department shall implement the provisions of this chapter relating to the licensure of surgical clinics to the extent resources are provided.*

~~SEC. 9.~~

SEC. 10. 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~~ *A* 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~~ *A* clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies.

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

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

(f) ~~Any~~ *An* 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.~~

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

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

O

AB 834

AB 834

Health Care Practitioners: Peer Review

To be presented at the Board Meeting

AB 933

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 933
Author: Fong
Bill Date: February 26, 2009, introduced
Subject: Workers' Compensation: utilization review
Sponsor: California Society of Industrial Medicine and Surgery
California Society of Physical Medicine and Rehabilitation
Union of American Physicians and Dentists (AFSCME)

STATUS OF BILL:

This bill is in the Assembly Insurance Committee and is set for hearing on May 6, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill clarifies current law to provide that physicians performing utilization review for injured workers must be licensed in California.

ANALYSIS:

Current law does not require physicians who perform utilization reviews of workers' compensation claims to be license in California as long as the physicians are licensed in another state. However, current law does state that performing an evaluation that leads to the modification, delay, or denial of medical treatment is an act of diagnosing for the purpose of providing a different mode of treatment for the patient. Only a licensed physician is allowed to override treatment decisions.

The author and proponents of this bill believe that out-of-state physicians are making inappropriate decisions regarding these utilization reviews in part because there is no regulatory agency holding them accountable.

This bill would ensure that any physician performing a utilization review in California would be regulated by the Medical Board (Board) by requiring all physicians performing these reviews to be licensed in this state.

This bill is similar to last year's AB 2969 (Lieber) which was vetoed. The Board has supported that legislation in the past.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Support

April 24, 2009

ASSEMBLY BILL No. 933

Introduced by Assembly Member Fong

February 26, 2009

An act to amend Sections 3209.3 and 4610 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 933, as introduced, Fong. Workers' compensation: utilization review.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law, for purposes of workers' compensation, defines "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology, as specified, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

This bill would require the psychologist to be licensed by California state law.

Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services,

and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

This bill would require the physician to be licensed by California state law.

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 3209.3 of the Labor Code is amended to
2 read:
3 3209.3. (a) "Physician" ~~includes~~ *means* physicians and
4 surgeons holding an M.D. or D.O. degree, psychologists,
5 acupuncturists, optometrists, dentists, podiatrists, and chiropractic
6 practitioners licensed by California state law and within the scope
7 of their practice as defined by California state law.
8 (b) "Psychologist" means a ~~licensed~~ psychologist *licensed by*
9 *California state law* with a doctoral degree in psychology, or a
10 doctoral degree deemed equivalent for licensure by the Board of
11 Psychology pursuant to Section 2914 of the Business and
12 Professions Code, and who either has at least two years of clinical
13 experience in a recognized health setting or has met the standards
14 of the National Register of the Health Service Providers in
15 Psychology.
16 (c) When treatment or evaluation for an injury is provided by
17 a psychologist, provision shall be made for appropriate medical
18 collaboration when requested by the employer or the insurer.
19 (d) "Acupuncturist" means a person who holds an
20 acupuncturist's certificate issued pursuant to Chapter 12
21 (commencing with Section 4925) of Division 2 of the Business
22 and Professions Code.
23 (e) Nothing in this section shall be construed to authorize
24 acupuncturists to determine disability for the purposes of Article
25 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under
26 Section 2708 of the Unemployment Insurance Code.
27 SEC. 2. Section 4610 of the Labor Code is amended to read:
28 4610. (a) For purposes of this section, "utilization review"
29 means utilization review or utilization management functions that

prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

(b) Every employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.

(c) Each utilization review process shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines. These policies and procedures, and a description of the utilization process, shall be filed with the administrative director and shall be disclosed by the employer to employees, physicians, and the public upon request.

(d) If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, delay, or deny requests for authorization, the employer shall request only the information reasonably necessary to make the determination. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or Section 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, delays, or denies requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services, complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

(e) No person other than a ~~licensed~~ physician *licensed by California state law* who is competent to evaluate the specific

clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

(f) The criteria or guidelines used in the utilization review process to determine whether to approve, modify, delay, or deny medical treatment services shall be all of the following:

(1) Developed with involvement from actively practicing physicians.

(2) Consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines.

(3) Evaluated at least annually, and updated if necessary.

(4) Disclosed to the physician and the employee, if used as the basis of a decision to modify, delay, or deny services in a specified case under review.

(5) Available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public reasonable copying and postage expenses related to disclosing criteria or guidelines pursuant to this paragraph. Criteria or guidelines may also be made available through electronic means. No charge shall be required for an employee whose physician's request for medical treatment services is under review.

(g) In determining whether to approve, modify, delay, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees all of the following requirements must be met:

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the

individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

(2) When the employee's condition is such that the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, delay, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(3) (A) Decisions to approve, modify, delay, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours of the decision. Decisions resulting in modification, delay, or denial of all or part of the requested health care service shall be communicated to physicians initially by telephone or facsimile, and to the physician and employee in writing within 24 hours for concurrent review, or within two business days of the decision for prospective review, as prescribed by the administrative director. If the request is not approved in full, disputes shall be resolved in accordance with Section 4062. If a request to perform spinal surgery is denied, disputes shall be resolved in accordance with subdivision (b) of Section 4062.

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be

resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees shall be levied upon insurers or self-insured employers making reports required by this section.

(4) Communications regarding decisions to approve requests by physicians shall specify the specific medical treatment service approved. Responses regarding decisions to modify, delay, or deny medical treatment services requested by physicians shall include a clear and concise explanation of the reasons for the employer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity.

(5) If the employer, insurer, or other entity cannot make a decision within the timeframes specified in paragraph (1) or (2) because the employer or other entity is not in receipt of all of the information reasonably necessary and requested, because the employer requires consultation by an expert reviewer, or because the employer has asked that an additional examination or test be performed upon the employee that is reasonable and consistent with good medical practice, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information requested but not received, the expert reviewer to be consulted, or the additional examinations or tests required. The employer shall also notify the physician and employee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).

(h) Every employer, insurer, or other entity subject to this section shall maintain telephone access for physicians to request authorization for health care services.

(i) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed to be an exclusive remedy for the administrative director. These penalties shall be deposited in the Workers' Compensation Administration Revolving Fund.

O

AB 977

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 977
Author: Skinner
Bill Date: April 23, 2009, amended
Subject: Pharmacists: protocols with physicians
Sponsor: Pharmacy Board

STATUS OF BILL:

This bill is in the Assembly Business and Professions Committee and is set for hearing on May 5, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would request the California Pharmacists Association to provide information to specified legislative committees on the status of immunization protocols between independent pharmacists and physicians.

ANALYSIS:

This bill, in its prior form, permitted pharmacists to administer flu and pneumonia vaccines to people over the age of seven years and administer epinephrine by injection for severe allergic reactions. There was considerable opposition but the sponsor reiterated the difficulties in the establishment of protocols between physicians and pharmacists. In order to substantiate these concerns, this bill had been amended to require submission of documentation on this issue. The original concept may be reconsidered if the documentation demonstates the need.

This bill would request that the California Pharmacists Association provide information to the chairpersons of the Assembly Business and Professions Committee and the Assembly Health Committee, and the Senate Business, Professions and Economic Development Committee and the Senate Health Committee on the status of immunization protocols between independent pharmacists and physicians.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Watch

April 26, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 977

Introduced by Assembly Member Skinner

February 26, 2009

An act ~~to amend Section 4052 of, and to add Section 4052.8 to, the Business and Professions Code,~~ relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 977, as amended, Skinner. Pharmacists: immunization ~~administration.~~ *protocols with physicians.*

Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists by the California State Board of Pharmacy.

This bill would request the California Pharmacists Association to provide information to specified legislative committees on the status of immunization protocols between independent pharmacists and physicians.

~~Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists by the Board of Pharmacy in the Department of Consumer Affairs. A violation of the Pharmacy Law is a crime. Existing law, among other things, authorizes a pharmacist to administer immunizations pursuant to a protocol with a prescriber.~~

~~This bill would additionally authorize a pharmacist to initiate and administer influenza and pneumococcal immunizations to any person 7 years of age or older. The bill would require a pharmacist, prior to initiating and administering those immunizations, to complete a specified pharmacy-based immunization delivery training program. The bill~~

~~would also require a pharmacist initiating and administering immunizations to complete 3 hours of immunization-related continuing education coursework annually and to be certified in basic life support. The bill would require a pharmacist, at the time of administration of an immunization, to provide the patient with a Vaccine Information Statement and to provide the patient's physician with documentation of administration of the immunization. The bill would also require a pharmacist administering an immunization to maintain a specified immunization administration record, provide documentation of administration to the California Immunization Registry, report any adverse event and assure proper storage and handling of vaccines. The bill would authorize a pharmacist initiating and administering vaccines to initiate and administer epinephrine for severe allergic reactions. The bill would also require a pharmacist to obtain the consent of a parent or guardian before administering any immunization to a patient under 18 years of age.~~

~~Because this bill would create new requirements under the Pharmacy Law, the violation of which would be a crime, it would impose a state-mandated local program.~~

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

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

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

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

1 *SECTION 1. The California Pharmacists Association is hereby*
2 *requested to provide information to the respective chairpersons*
3 *of the Committees on Business and Professions and Health of the*
4 *Assembly and of the Committees on Business, Professions and*
5 *Economic Development and Health of the Senate on the status of*
6 *immunization protocols between independent pharmacists and*
7 *physicians.*
8 ~~SECTION 1. The Legislature finds and declares all of the~~
9 ~~following:~~

~~(a) Vaccines are a safe, effective, and efficient means to prevent sickness and death from infectious diseases as reported by the United States Department of Health and Human Services (HHS).~~

~~(b) The National Vital Statistics Report published by HHS reports that influenza and pneumonia combined are the eighth leading cause of death in people of all ages, and the sixth leading cause of death in people over 65 years of age.~~

~~(c) The federal Centers for Disease Control and Prevention report that 220,000,000 persons should get the influenza vaccination annually, however, fewer than 100,000,000 do.~~

~~(d) According to the California Health Care Foundation, 6,600,000 Californians are uninsured and may not have access to immunizations.~~

~~(e) Pharmacists represent the third largest health professional group in the United States and are on the front line of preventative care.~~

~~(f) Pharmacists are trained to screen, administer, and properly deal with any adverse events that may arise from vaccines.~~

~~(g) Therefore, in order to achieve greater access to immunization and to protect Californians, it is the intent of the Legislature to provide greater access to lifesaving vaccinations and to ensure that pharmacists may independently administer influenza and pneumonia vaccinations.~~

~~SEC. 2. Section 4052 of the Business and Professions Code is amended to read:~~

~~4052. (a) Notwithstanding any other provision of law, a pharmacist may:~~

~~(1) Furnish a reasonable quantity of compounded drug product to a prescriber for office use by the prescriber.~~

~~(2) Transmit a valid prescription to another pharmacist.~~

~~(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.~~

~~(4) Perform procedures or functions in a licensed health care facility as authorized by Section 4052.1.~~

~~(5) Perform procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, as authorized by Section 4052.2.~~

~~(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.~~

~~(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.~~

~~(8) Furnish emergency contraception drug therapy as authorized by Section 4052.3.~~

~~(9) Administer or initiate and administer immunizations pursuant to Section 4052.8.~~

~~(b) A pharmacist who is authorized to issue an order to initiate or adjust a controlled substance therapy pursuant to this section shall personally register with the federal Drug Enforcement Administration.~~

~~(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.~~

~~(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.~~

~~SEC. 3. Section 4052.8 is added to the Business and Professions Code, to read:~~

~~4052.8. (a) A pharmacist may do either of the following:~~

~~(1) Administer any immunization pursuant to a protocol with a prescriber.~~

~~(2) Initiate and administer influenza or pneumococcal immunizations to any person seven years of age or older.~~

~~(b) Prior to initiating and administering immunizations, a pharmacist shall complete the American Pharmacists Association's Pharmacy-Based Immunization Delivery Certificate Training Program or another pharmacy-based immunization training certificate program endorsed by the federal Centers for Disease Control and Prevention or the Accreditation Council for Pharmaceutical Education.~~

~~(c) (1) A pharmacist initiating and administering any immunization pursuant to this section shall also complete three hours of immunization-related continuing education coursework annually.~~

~~(2) If a pharmacist fails to satisfy this requirement, he or she shall, in addition to any other applicable disciplinary action, retake the training identified in subdivision (b) and also complete the~~

~~three hours of immunization-related continuing education coursework described in paragraph (1) prior to initiating and administering any further immunizations.~~

~~(3) The three hours of immunization-related continuing education may be applied toward the continuing education requirement described in Section 4231.~~

~~(d) A pharmacist initiating and administering any immunization pursuant to this section shall at all times be certified in basic life support.~~

~~(e) A pharmacist shall obtain the consent of a parent or guardian before administering an immunization to a patient under 18 years of age.~~

~~(f) At the time of administration of an immunization, the pharmacist shall do all of the following:~~

~~(1) Provide the patient or the patient's agent with the appropriate Vaccine Information Statement, produced by the Centers for Disease Control and Prevention, for each immunization administered.~~

~~(2) Provide documentation of administration of the immunization to the patient and the patient's physician or primary care provider, if one can be identified.~~

~~(3) Provide documentation of administration of the immunization to the California Immunization Registry (CAIR).~~

~~(g) The pharmacist shall maintain an immunization administration record, which shall include, but not be limited to, the name of the vaccine, the expiration date, the date of administration, the manufacturer and lot number, the administration site and route, the Vaccine Information Statement date, and the name and title of the person administering, for the longer of the following periods:~~

~~(1) Ten years from the date of administration.~~

~~(2) If the patient is younger than 18 years of age at the time of administration, three years beyond the patient's 18th birthday.~~

~~(h) Any pharmacist initiating and administering vaccines may initiate and administer epinephrine by injection for severe allergic reactions.~~

~~(i) Any adverse event shall be reported to the Vaccine Adverse Event Reporting System within the U.S. Department of Health and Human Services.~~

~~(j) Upon receipt of a vaccine as authorized by this section, a pharmacist is responsible for assuring that proper vaccine temperatures are maintained during subsequent storage and handling to preserve the potency of the vaccine.~~

~~SEC. 4. 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.~~

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AB 1070

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1070
Author: Hill
Bill Date: April 22, 2009, amended
Subject: Enforcement Enhancements: reporting, public reprimand
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle carrying enforcement enhancements for the Medical Board (Board). This bill finds and declares the importance of the required reporting under Business and Professions Code section 801.01 and makes various technical changes to this section to enhance the Board's ability to effectively protect consumers.

This bill would allow the Board President to sit on a disciplinary panel when the Board does not have a full complement of members. This bill would require all medical records requested by the Board to be certified.

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.

This bill would require all licensees to report to the Board information regarding any specialty board certifications held and his or her practice status. Licensees would be allowed to report his or her cultural background and foreign language proficiencies. Reporting would occur both at the time of renewal or upon initial licensure.

ANALYSIS:

Amends Business and Professions Code section 801.01:

1. Finds and declares the importance of the required reporting under this section for public protection and clarifies the interpretation of the reporting requirements. This is necessary because there are entities that are not reporting, either due to finding ways around it or misinterpreting the law. The Board cannot effectively protect consumers if reporting is not consistent and enforced.

2. Specifies that the University of California is included in the definition of "state governmental agency." This is a technical amendment to make clear that all state and local hospitals are considered state agencies and are bound by the same reporting requirements.

3. Removes section (e) due to the changes made in (f) rendering (e) duplicative.

4. Requires not only physicians, but the entities with which the physicians are affiliated to send a copy of any report filed to the claimant or his or her counsel. Current law states that the physician is required to send a copy of the report to the claimant. The word 'entity' is being added to cover a broader spectrum of individuals who may be reporting. This allows for the burden to be shared by all involved, rather than just the physician.

5. Puts the responsibility for any failure to comply with the reporting requirements on all parties, not just the physician. If an entity, rather than an individual physician, is responsible for making the decision in a case, that entity is responsible for the reporting. However, if the physician is not affiliated with a larger entity, the burden of reporting would be on the physician. Additionally, the fines for failing to comply are increased to not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000).

6. Adds that a copy of a judgment must be submitted to the Board to be consistent with the requirement for a copy of an arbitration award.

7. Requires that any entity providing a report to a licensing Board must also notify the licensee that such report is being filed with that Board.

Adds Business and Professions Code section 804.5:

1. Recognizes that various entities are implementing risk management programs in the interest of early intervention to address known complications and other unanticipated events. Prohibits these programs from including provisions that prohibit patients from contacting or cooperating with the Board or from filing or withdrawing a complaint.

Amends Business and Professions Code section 2008:

1. Allows the Board President to sit on a disciplinary panel when the Board does not have a full complement of members. Currently, the Board President is not permitted to sit on a panel. When the Board does not have enough members to fill both panels, usually due to term expirations, it is often the case that Board members must serve on two disciplinary panels at the same time in order to

have a quorum with which to take action. Allowing the Board President to sit on a panel would expedite the process of decision making and reduce the workload for the members who are sitting on more than one panel.

Amends Business and Professions Code section 2225.5:

1. Requires all medical records requested by the Board to be certified. When the Board requests medical records upon initial complaint, certified records are requested but not always provided. The initial review can be performed without certified records, however, if the complaint goes to investigation, the Board will need certified medical records. Currently, the Board often has to request medical records more than once, which prolongs the process of investigation. Requiring the requested medical records to be certified would expedite the process of review and investigation of complaints. The board has a form that can be filled out to certify the records and the provider of the records can ask the board to send its copy service thus reducing the cost to the physician or entity. (form attached)

2. Puts a cap of ten thousand dollars ($10,000) on the penalty that can be assessed a physician for not complying with the Board's request for medical records. Currently the penalty is one thousand dollars ($1,000) a day for not complying with the request for medical records. This cap is the same as what is in current law for hospitals.

3. Defines certified medical records as a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

Amends Business and Professions Code section 2227:

1. Allows an administrative law judge to recommend the issuance of a public reprimand that includes additional education and training in a proposed decision. Currently, when the Board feels the appropriate level of discipline for a physician is a public letter of reprimand with required training or education, prior to the filing of an Accusation, the Board may issue the physician a public letter of reprimand that includes the additional education or training requirements. However, if the Board has filed an accusation against a physician and the accusation is heard by an administrative law judge, the law does not allow the administrative law judge to recommend a public reprimand to be issued to the physician with a training or education requirement.

Amends Business and Professions Code section 2425.3:

1. Specifies that licensees must report to the Board information regarding any specialty board certifications he or she holds that is issued by a member of the American Board of Medical Specialties or approved by the Board, his or her practice status, and may report his or her cultural background and foreign language proficiency both at the time of renewal and at upon initial licensure. Current law states that a physician must report the required information to the Board at renewal, but does not specify that the physician report the required information to the Board at the time of initial licensure.

FISCAL: None to the Board

POSITION: Sponsor/ Support

April 24, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1070

Introduced by Assembly Member Hill

February 27, 2009

An act to amend Sections 801.01, 2008, 2225.5, 2227, and 2425.3 of, *and to add Section 804.5 to,* the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as amended, Hill. Healing arts.

(1) Existing law provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California, ~~of~~ physicians and surgeons by the Medical Board of California, and ~~of~~ podiatrists by the California Board of Podiatric Medicine. Existing law requires those licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report specified settlements, arbitration awards, or civil judgments to the licensee's board if based on the licensee's alleged negligence, error, or omission in practice or his or her rendering of unauthorized professional services.

This bill would specify that ~~those reports must be sent whether or not the licensee was a named party in the underlying claim or action and would limit reports regarding claims or actions to those based on the licensee's alleged negligence, error, or omission in practice in California. The bill would also specify that~~ the reporting requirements apply to the University of California, as specified.

Existing law requires licensees ~~obligated~~ *and insurers required* to make these reports to send a copy of the report to the claimant or his or her counsel and requires a claimant or his or her counsel who does not receive a copy of the report within a specified time period to make the report to the appropriate board. Existing law makes a failure of a licensee, claimant, or counsel to comply with these requirements a public offense punishable by a specified fine.

This bill would require any entity or person ~~obligated~~ *required* to make a report to send a copy of the report to the claimant or his or her counsel. *The bill would also require an entity that makes a report to notify the licensee within 15 days of the filing of the report.*

The bill would also make a failure to comply with any of the reporting requirements an infraction punishable by a specified fine. By expanding the scope of a crime, the bill would impose a state-mandated local program.

~~Existing law requires these reports to include certain information, including the name and address of every physician and surgeon or podiatrist who was alleged to have acted improperly.~~

~~This bill would require the reports to include that information with respect to every physician and surgeon or podiatrist who participated in the care or professional services provided to the patient.~~

Existing law ~~also~~ requires ~~the~~ *these* reports to include *certain information, including* a brief description of the facts of each claim, charge, or allegation, *and the amount of the judgment or award and the date of its entry or service.*

This bill would eliminate the requirement that this description be brief and would require the description to also include the role of each physician and surgeon or podiatrist in the care or professional services provided to the patient, as specified~~, and a list of the dates of treatment rendered by those persons~~. *The bill would also require the report to include a copy of the judgment or award.*

(2) The Medical Practice Act provides for the regulation of physicians and surgeons by the Medical Board of California, and provides that the protection of the public is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions.

This bill would prohibit any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, from requiring that a patient waive his or her rights to contact or cooperate with the board, or to file a complaint with the board.

~~(2)~~

(3) Existing law authorizes the Medical Board of California to appoint panels from its members for the purposes of fulfilling specified obligations and prohibits the president of the board from serving as a member of a panel.

This bill would allow the president of the board to serve as a member of a panel if there is a vacancy in the membership of the board.

~~(3)~~

(4) Under existing law, a physician and surgeon or podiatrist who fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, is required to pay a civil penalty of $1,000 per day, as specified.

This bill would place a limit of $10,000 on those civil penalties and would make other related changes*, including providing a definition of "certified medical records," as specified.*

~~(4)~~

(5) 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 approved by the board.

~~(5)~~

(6) Existing law requires the board to request a licensed physician and surgeon to report, at the time of license renewal, any specialty board certification he or she holds, as specified. Existing law also authorizes a licensed physician and surgeon to report to the board, at the time of license renewal, information regarding his or her cultural background and foreign language proficiency.

This bill would instead require licensees to provide that information at the time of license renewal and immediately upon issuance of an initial license.

Existing law requires a licensed physician and surgeon to also report, at the time of license renewal, his or her practice status, as specified.

This bill would also require that this information be provided immediately upon issuance of an initial license.

~~The bill would also require a licensed physician and surgeon to report to the board, at the time of license renewal, if any civil action has been~~

~~filed or criminal conviction has occurred, as specified, since his or her last renewal or initial licensure, as specified.~~

~~(6)~~

(7) 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 801.01 of the Business and Professions
2 Code is amended to read:
3 801.01. The Legislature finds and declares that the filing of
4 reports with the applicable state agencies required under this
5 section is essential for the protection of the public. It is the intent
6 of the Legislature that the reporting requirements set forth in this
7 section be interpreted broadly in order to expand reporting
8 obligations.
9 (a) A complete report shall be sent to the Medical Board of
10 California, the Osteopathic Medical Board *of California*, or the
11 California Board of Podiatric Medicine, with respect to a licensee
12 of the board as to the following:
13 (1) A settlement over thirty thousand dollars ($30,000) or
14 arbitration award of any amount or a civil judgment of any amount,
15 whether or not vacated by a settlement after entry of the judgment,
16 that was not reversed on appeal, of a claim or action for damages
17 for death or personal injury caused by the licensee's alleged
18 negligence, error, or omission in practice~~ in California~~, or by his
19 or her rendering of unauthorized professional services~~, whether or~~
20 ~~not the licensee was a named party in the claim or action.~~.
21 (2) A settlement over thirty thousand dollars ($30,000)~~ of a~~
22 ~~claim or action, whether or not the licensee was a named party in~~
23 ~~the claim or action~~, if the settlement is based on the licensee's
24 alleged negligence, error, or omission in practice~~ in California~~, or
25 on the licensee's rendering of unauthorized professional services,
26 and a party to the settlement is a corporation, medical group,

partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee.

(b) The report shall be sent by the following:

(1) The insurer providing professional liability insurance to the licensee.

(2) The licensee, or his or her counsel, if the licensee does not possess professional liability insurance.

(3) A state or local governmental agency that self-insures the licensee. For purposes of this section "state governmental agency" includes, but is not limited to, the University of California.

(c) The entity, person, or licensee obligated to report pursuant to subdivision (b) shall send the complete report if the judgment, settlement agreement, or arbitration award is entered against or paid by the employer of the licensee and not entered against or paid by the licensee. "Employer," as used in this paragraph, means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this paragraph shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

(d) The report shall be sent to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine, as appropriate, within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

~~(e) If an insurer is required under subdivision (b) to send the report, the insurer shall notify the claimant, or if the claimant is represented by counsel, the claimant's counsel, that the insurer has sent the report to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. If the claimant, or his or her counsel, has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties or the arbitration award was served on the parties or the date of entry of the civil~~

~~judgment, the claimant or the claimant's counsel shall make the report to the appropriate board.~~

~~(f)~~

(e) The entity, person, or licensee ~~obligated~~ *required* to report under subdivision (b) shall send a copy of the report to the claimant or to his or her counsel if he or she is represented by counsel. If the claimant or his or her counsel has not received a copy of the report within 45 days after the settlement was reduced to writing and signed by all of the parties or the arbitration award was served on the parties or the date of entry of the civil judgment, the claimant or the claimant's counsel shall make the report to the appropriate board.

~~(g)~~

(f) Failure to comply with this section is a public offense punishable by a fine of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000).

~~(h)~~

(g) (1) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may develop a prescribed form for the report.

(2) The report shall be deemed complete only if it includes the following information:

(A) The name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not the person received an award under the settlement, arbitration, or judgment.

(B) The name and last known business and residential address of every licensee who ~~participated in the care or professional services provided to the patient~~ *was alleged to have acted improperly*, whether or not that person was a named defendant in the action and whether or not that person was required to pay any damages pursuant to the settlement, arbitration award, or judgment.

(C) The name, address, and principal place of business of every insurer providing professional liability insurance to any person described in subparagraph (B), and the insured's policy number.

(D) The name of the court in which the action or any part of the action was filed, and the date of filing and case number of each action.

(E) A description or summary of the facts of each claim, charge, or allegation, including the date of occurrence~~, each~~ *and the*

licensee's role in the care or professional services provided to the patient with respect to those services at issue in the claim~~, charge, or allegation, and a list of the dates of treatment rendered by each licensee~~ *or action*.

(F) The name and last known business address of each attorney who represented a party in the settlement, arbitration, or civil action, including the name of the client he or she represented.

(G) The amount of the judgment ~~and~~, the date of its entry, *and a copy of the judgment*; the amount of the arbitration award, the date of its service on the parties, and a copy of the award document; or the amount of the settlement and the date it was reduced to writing and signed by all parties. If an otherwise reportable settlement is entered into after a reportable judgment or arbitration award is issued, the report shall include both the settlement and *a copy of* the judgment or award.

(H) The specialty or subspecialty of the licensee who ~~participated in the care or professional services provided to the patient.~~ *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)~~

(h) 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)~~

(i) 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.

(j) Any entity that makes a report pursuant to this section shall, within 15 days after filing the report, notify the licensee that the report was filed with the appropriate licensing board.

(k) For purposes of this section, "licensee" means a licensee of the Medical Board of California, the Osteopathic Medical Board *of California*, or the California Board of Podiatric Medicine.

SEC. 2. Section 804.5 is added to the Business and Professions Code, to read:

804.5. The Legislature recognizes that various types of entities are creating, implementing, and maintaining patient safety and risk management programs that encourage early intervention in order to address known complications and other unanticipated events requiring medical care. The Legislature recognizes that some entities even provide financial assistance to individual patients to help them address these unforeseen health care concerns. It is the intent of the Legislature, however, that such financial assistance not limit a patient's interaction with, or his or her rights before, the Medical Board of California.

Any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, shall not include, as part of any of those programs or contracts, any of the following:

(a) A provision that prohibits a patient or patients from contacting or cooperating with the board.

(b) A provision that prohibits a patient or patients from filing a complaint with the board.

(c) A provision that requires a patient or patients to withdraw a complaint that has been filed with the board.

~~SEC. 2.~~

SEC. 3. Section 2008 of the Business and Professions Code is amended to read:

2008. The board may appoint panels from its members for the purpose of fulfilling the obligations established in subdivision (c) of Section 2004. Any panel appointed under this section shall at no time be comprised of less than four members and the number of public members assigned to the panel shall not exceed the number of licensed physician and surgeon members assigned to the panel. The president of the board shall not be a member of any panel unless there is a vacancy in the membership of the board. Each panel shall annually elect a chair and a vice chair.

~~SEC. 3.~~

SEC. 4. Section 2225.5 of the Business and Professions Code is amended to read:

2225.5. (a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day,

1 up to ten thousand dollars ($10,000), unless the health care facility
2 is unable to provide the documents within this time period for good
3 cause. This paragraph shall not require health care facilities to
4 assist the board in obtaining the patient's authorization. The board
5 shall pay the reasonable costs of copying the certified medical
6 records.
7 (b) (1) A licensee who fails or refuses to comply with a court
8 order, issued in the enforcement of a subpoena, mandating the
9 release of records to the board shall pay to the board a civil penalty
10 of one thousand dollars ($1,000) per day for each day that the
11 documents have not been produced after the date by which the
12 court order requires the documents to be produced, up to ten
13 thousand dollars ($10,000), unless it is determined that the order
14 is unlawful or invalid. Any statute of limitations applicable to the
15 filing of an accusation by the board shall be tolled during the period
16 the licensee is out of compliance with the court order and during
17 any related appeals.
18 (2) Any licensee who fails or refuses to comply with a court
19 order, issued in the enforcement of a subpoena, mandating the
20 release of records to the board is guilty of a misdemeanor
21 punishable by a fine payable to the board not to exceed five
22 thousand dollars ($5,000). The fine shall be added to the licensee's
23 renewal fee if it is not paid by the next succeeding renewal date.
24 Any statute of limitations applicable to the filing of an accusation
25 by the board shall be tolled during the period the licensee is out
26 of compliance with the court order and during any related appeals.
27 (3) A health care facility that fails or refuses to comply with a
28 court order, issued in the enforcement of a subpoena, mandating
29 the release of patient records to the board, that is accompanied by
30 a notice citing this section and describing the penalties for failure
31 to comply with this section, shall pay to the board a civil penalty
32 of up to one thousand dollars ($1,000) per day for each day that
33 the documents have not been produced, up to ten thousand dollars
34 ($10,000), after the date by which the court order requires the
35 documents to be produced, unless it is determined that the order
36 is unlawful or invalid. Any statute of limitations applicable to the
37 filing of an accusation by the board against a licensee shall be
38 tolled during the period the health care facility is out of compliance
39 with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of ~~Health Services~~ *Public Health* and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

~~(f)~~

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

~~SEC. 4.~~

SEC. 5. Section 2227 of the Business and Professions Code is amended to read:

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as

designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

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

(5) Have any other action taken in relation to discipline as part of an order of probation, as the 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 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.

~~SEC. 5.~~

SEC. 6. Section 2425.3 of the Business and Professions Code is amended to read:

2425.3. (a) A licensed physician and surgeon shall report to the board, immediately upon issuance of an initial license and at the time of license renewal, any specialty board certification he or she holds that is issued by a member board of the American Board of Medical Specialties or approved by the Medical Board of California.

(b) A licensed physician and surgeon shall also report to the board, immediately upon issuance of an initial license and at the time of license renewal, his or her practice status, designated as one of the following:

(1) Full-time practice in California.

(2) Full-time practice outside of California.

(3) Part-time practice in California.

(4) Medical administrative employment that does not include direct patient care.

(5) Retired.

(6) Other practice status, as may be further defined by the ~~Division of Licensing~~ *board.*

(c) (1) A licensed physician and surgeon shall report to the board, immediately upon issuance of an initial license and at the time of license renewal, and the board shall collect, information regarding his or her cultural background and foreign language proficiency.

(2) Information collected pursuant to this subdivision shall be aggregated on an annual basis based on categories utilized by the board in the collection of the data, and shall be aggregated into both statewide totals and ZIP ~~Code~~ *code* of primary practice location totals.

(3) Aggregated information under this subdivision shall be compiled annually and reported on the board's Internet Web site on or before October 1 of each year.

~~(d) A licensed physician and surgeon shall report to the board, at the time of license renewal, if either of the following have occurred since his or her last renewal, or if this is the licensee's first renewal, since his or her initial license was issued:~~

~~(1) He or she has been convicted of a felony or misdemeanor.~~

~~(2) The filing of a civil action alleging unlawful conduct by the licensee, whether or not the licensee was a named party in the action.~~

~~(e)~~

(d) The information collected pursuant to subdivisions (a) and (b) may also be placed on the board's Internet Web site.

~~SEC. 6.~~

SEC. 7. 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

AB 1116

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 Health Committee and is set for hearing on May 5, 2009.

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: **Executive Committee Recommendation:** Oppose
Staff Recommendation: Support

April 24, 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

AB 1310

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1310
Author: Hernandez
Bill Date: April 2, 2009, amended
Subject: Healing Arts: database
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and is set for hearing on April 29, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Office of Statewide Health Planning (OSHPD) to obtain additional information from all healing arts boards.

ANALYSIS:

Under current law, a healthcare workforce clearinghouse, created by SB 139 (Scott), is charged with collecting data from the various health boards. The intent is to establish an ongoing data stream of changes in California's health workforce and provide the necessary information needed to make complex policy changes to meet California's health workforce needs. Currently, healing arts boards are not mandated to provide any information to the clearinghouse which makes it difficult for the Office of Statewide Health Planning and Development (OSHPD) to produce the necessary results.

This bill would require all of the health licensing boards to collect and submit specific data on age, race, gender, practice location, type of practice to the clearinghouse, etc. This will enhance the state's ability to address health workforce shortages and also identify communities that have the highest need for health professionals.

The Medical Board (Board) already requests much of the data collection required in this bill. According to the author, it was this good work being done by the Board that prompted the drafting of this bill to require the same efforts from all other healing arts boards.

New requirements that are not maintained on our computer system include location of high school, description of primary practice setting, and additional practice locations.

FISCAL: Unknown.

POSITION: **Staff Recommendation:** Support if amended to only require the location of the high school when a college degree or graduate education is not required; to make information on additional practice locations permissive; or to provide more time before these requirements are mandatory.

April 23, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1310

Introduced by Assembly Member Hernandez

February 27, 2009

An act to add Section 857 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require ~~the department~~ *specified healing arts boards* to add and label as "mandatory" specified fields on an application for initial licensure or a renewal form for applicants applying to ~~specified healing arts~~ *those* boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse

annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

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 857 is added to the Business and
2 Professions Code, to read:
3 857. (a) ~~The department~~ *Every healing arts board specified*
4 *in subdivision (c)* shall add and label as "mandatory" the following
5 fields on an application for initial licensure or renewal for a person
6 applying to ~~a board described in subdivision (c)~~ *that board*:
7 (1) First name, middle name, and last name.
8 (2) Last four digits of social security number.
9 (3) Complete mailing address.
10 (4) Educational background and training, including, but not
11 limited to, degree, related school name and location, and year of
12 graduation, and, as applicable, the highest professional degree
13 obtained, related professional school name and location, and year
14 of graduation.
15 (5) Birth date and place of birth.
16 (6) Sex.
17 (7) Race and ethnicity.
18 (8) Location of high school.
19 (9) Mailing address of primary practice, if applicable.
20 (10) Number of hours per week spent at primary practice
21 location, if applicable.
22 (11) Description of primary practice setting, if applicable.
23 (12) Primary practice information, including, but not limited
24 to, primary specialty practice, practice location ZIP Code, and
25 county.
26 (13) Information regarding any additional practice, including,
27 but not limited to, a description of practice setting, practice location
28 ZIP Code, and county.
29 (b) The department, in consultation with the Healthcare
30 Workforce Development Division and the Health Care Workforce
31 Clearinghouse, shall select a database and shall add the data

specified in paragraphs (5) to (13)~~ of subdivision (a), inclusive,~~, *inclusive, of subdivision (a)* to that database.

(c) The following boards are subject to subdivision (a):

(1) The Acupuncture Board.

(2) The Dental Hygiene Committee of California.

(3) The Dental Board of California.

(4) The Medical Board of California.

(5) The Bureau of Naturopathic Medicine.

(6) The California Board of Occupational Therapy.

(7) The State Board of Optometry.

(8) The Osteopathic Medical Board of California.

(9) The California State Board of Pharmacy.

(10) The Physical Therapy Board of California.

(11) The Physician Assistant Committee, Medical Board of California.

(12) The California Board of Podiatric Medicine.

(13) The Board of Psychology.

(14) The Board of Registered Nursing.

(15) The Respiratory Care Board of California.

(16) The Speech-Language Pathology and Audiology Board.

(17) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(d) (1) The department shall collect the specified data in the database pursuant to subdivision (b) and shall submit that data to Health Care Workforce Clearinghouse annually on or before January 1.

(2) The Health Care Workforce Clearinghouse shall prepare a written report containing the findings of this data and shall submit the written report annually to the Legislature no later than March 1, commencing March 1, 2012.

O

AB 1458

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1458
Author: Davis
Bill Date: April 15, 2009, amended
Subject: Drugs: adverse events: reporting
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require licensed health professionals to report serious adverse drug events to the Federal Food and Drug Administration and would exempt violations from related criminal provisions

ANALYSIS:

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the California Department of Public Health, including, but not limited to, a program for the licensing and regulation of health facilities to report adverse events relating to patient care. The Department is required to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act.

The Federal Food and Drug Administration (FDA) operates a voluntary reporting system for adverse drug reactions know as the MedWatch system. The FDA estimates that only 10 percent of the adverse drug reactions or events that occur each year are reported to the FDA.

Given the prevalence of pharmaceuticals and their use for treatment of hundreds of chronic diseases and conditions, and given recent highly publicized instances of commonly used prescription drugs being taken off the market because of safety concerns that were discovered after the drugs were approved for use, the author believes the systematic underreporting of adverse drug events represents a serious public health problem.

Requiring licensed health professionals to report adverse drug events to the MedWatch system would increase the amount of data available to the FDA. This would then enable the FDA to safeguard the public health in a more effectual manner.

This does increase the responsibility of the health care provider in reporting these occurrences but there are no penalties under the Health and Safety Code.

FISCAL: None.

POSITION: **Staff Recommendation:** Support

April 23, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1458

Introduced by Assembly Member Davis

February 27, 2009

An act to add Article 7 (commencing with Section 111657.10) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1458, as amended, Davis. Drugs: adverse effects: reporting.

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the State Department of Public ~~Health, including, but not limited to, a program~~ *Health. Existing law also contains provisions* for the licensing and regulation of health ~~facilities and clinics~~ *professionals*. ~~Existing law requires certain health facilities to report adverse events, as defined, relating to patient care.~~ Existing law requires the department to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime.

This bill would require ~~clinics, health facilities, and~~ health professionals to report serious adverse drug events to the federal Food and Drug Administration and would exempt violations from related criminal provisions.

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) The federal Food and Drug Administration (FDA) operates
4 a voluntary reporting system for adverse drug reactions known as
5 the MedWatch system.
6 (b) The FDA currently estimates that only 10 percent of the
7 adverse drug reactions or events that occur each year are reported
8 to the FDA.
9 (c) Given the prevalence of pharmaceuticals and their use for
10 treatment of hundreds of chronic diseases and conditions, and
11 given recent highly publicized instances of commonly used
12 prescription drugs being taken off the market due to safety concerns
13 that were discovered after the drugs were approved for use, the
14 systematic underreporting of adverse drug events represents a
15 serious public health problem.
16 (d) Requiring licensed health professionals ~~and health facilities~~
17 to report adverse drug events to the FDA would increase the
18 amount of data available to the FDA about adverse drug reactions,
19 thereby enabling the FDA to discern problems with drugs that arise
20 after they are approved and to take action to protect the public
21 health in a more timely manner.
22 SEC. 2. Article 7 (commencing with Section 111657.10) is
23 added to Chapter 6 of Part 5 of Division 104 of the Health and
24 Safety Code, to read:
25
26 Article 7. Adverse Event Reporting
27
28 111657.10. (a) A licensed health professional, including, but
29 not limited to, a physician and surgeon, dentist, or pharmacist, ~~a~~
30 ~~health facility as defined in Section 1250, or a clinic as defined~~
31 ~~under Chapter 1 (commencing with Section 1200),~~ shall report all
32 suspected serious adverse drug events that are spontaneously
33 discovered or observed in medical practice to MedWatch, the drug
34 safety information and adverse event reporting program operated
35 by the federal Food and Drug Administration (FDA).

(b) For purposes of this section, serious adverse drug events shall include adverse health outcomes involving patients that result in death, life-threatening conditions, hospitalization, disability, congenital anomaly, or that require intervention to prevent permanent impairment or damage.

(c) Any health ~~professional, health facility, or clinic~~ *professional* that is required to report an adverse drug event pursuant to this section shall use the FDA 3500 Voluntary form developed by the FDA for MedWatch.

111657.15. A licensed health ~~professional, health facility, or clinic~~ *professional* that violates any provision of this article shall not be subject to the penalties and remedies outlined in Chapter 8 (commencing with Section 111825). Nothing in this section affects otherwise existing duties, rights, or remedies under the law.

O

SB 58

SB 58

Physicians and Surgeons: Peer Review

To be presented at the Board Meeting

SB 92

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 92
Author: Aanestad
Bill Date: March 11, 2009, amended
Subject: Health Care Reform
Sponsor: Author

STATUS OF BILL:

This bill has been referred to the Senate Health Committee and is set for hearing April 29, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This is a major Health Care Reform bill. There are several sections that pertain to the Medical Board (Board).

ANALYSIS:

The provisions of this bill that would affect the Board are:

1. This bill would specify that only a California licensed health care professional, while performing medical reviews to authorize health care services, may deny, delay, or modify requests for approved care.
2. This bill would require the licensee who is performing medical reviews to have at least the same scope of practice as the provider who is submitting the request for authorization.
3. This bill would make a medical professional reviewer's failure to conduct a good faith prior examination of the insured patient under review unprofessional conduct and grounds for disciplinary action. This bill specifies that the primary obligation of the reviewer is the enrolled or insured patient.
4. Allows medical assistants to administer medication in any setting under the specific authorization and supervision of a physician, nurse practitioner, nurse-midwife, or physician assistant.

FISCAL: Unknown at this time.

POSITION: **Staff Recommendation:** Watch. Due to the extensive reforms contained in this bill it may not be appropriate to take a position at this time.

April 29, 2009

AMENDED IN SENATE MARCH 11, 2009

AMENDED IN SENATE FEBRUARY 25, 2009

SENATE BILL **No. 92**

Introduced by Senator Aanestad

January 21, 2009

An act to amend Section 2069 of, *and to add Section 734 to,* the Business and Professions Code, to add Section 1815.5 to the Financial Code, to add Sections 22830.5, 22830.6, 22869.5, and 22917 to the Government Code, to amend Sections 1345, 1357, 1357.03, 1357.06, 1357.14, 1367.01, *1367.63, 1367.635,* 1374.32, 1374.33, ~~and 1374.58~~ *1374.58, and 1395* of, to add Sections 1346.2, 1349.3, and 1367.38 to, and to add Article 12 (commencing with Section 1399.830) to Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 10121.7, 10123.135, 10169.2, 10169.3, 10700, 10705, 10706, and 10708 of, to add Sections 699.6, 10123.56, *10123.86, 10123.88,* 10123.136, and 12938.1 ~~to, to add Chapter 9.7 (commencing with Section 10920) to Part 2 of Division 2 of, and~~ *to,* to add Article 7 (commencing with Section 11885) to Chapter 4 of Part 3 of Division 2 of, *and to add Chapter 9.7 (commencing with Section 10920) to Part 2 of Division 2 of,* the Insurance Code, to amend Sections 511 and 515 of, and to add Section 96.8 to, the Labor Code, to amend Sections 17072, 17215, and 19184 of, to add Sections 17053.91, 17053.102, 17053.103, 17138.5, 17138.6, and 17216 to, and to add and repeal Sections 17053.58, 17053.77, 17204, 23658, and 23677 of, the Revenue and Taxation Code, and to amend Sections 14043.26 and 14133 of, to add Sections 14026.7, 14029.7, 14079.7, 14132.104, 14132.105, and 14164.5 to, to add Article 2.94 (commencing with Section 14091.50) to Chapter 7 of Part 3 of Division 9 of, and to add Division 23 (commencing with Section 23000) to, the Welfare and Institutions Code, relating to health care, and making an appropriation therefor.

see pages 4, 5, 12-14

LEGISLATIVE COUNSEL'S DIGEST

SB 92, as amended, Aanestad. Health care reform.

(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (the Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the Knox-Keene Act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

The Knox-Keene Act requires, subject to specified exceptions, that a health care service plan be licensed by the department and provide basic health care services, as defined, among other benefits, unless exempted from that requirement by the director of the department. Existing law also requires, subject to specified exceptions, that an insurer obtain a certificate of authority from the Insurance Commissioner in order to transact business in this state and that the insurer operate in accordance with specified requirements.

This bill would allow a carrier domiciled in another state to offer, sell, or renew a health care service plan contract or a health insurance policy in this state without holding a license issued by the department or a certificate of authority issued by the commissioner. The bill would exempt the carrier's plan contract or policy from requirements otherwise applicable to plans and insurers providing health care coverage in this state if the plan contract or policy complies with the domiciliary state's requirements, and the carrier is lawfully authorized to issue the plan contract or policy in that state and to transact business there.

The bill would also authorize health care service plans and health insurers to offer, market, and sell individual health care service plan contracts and individual health insurance policies that do not include all of the benefits mandated under state law to individuals with income below 350% of the federal poverty level if the individual waives those benefits, as specified, and the plan contract or insurance policy is approved by the Director of the Department of Managed Health Care or the Insurance Commissioner.

(2) Under existing law, health care service plans and health insurers are required to include certain benefits in their contracts and policies. Existing federal law authorizes an individual who has a high deductible health plan to make tax deductible contributions to a Health Savings Account that may be used to pay medical expenses.

This bill would require the Director of the Department of Managed Health Care and the Insurance Commissioner to encourage the design of health care service plan contracts and health insurance policies that conform to current federal requirements for high deductible health plans used in conjunction with Health Savings Accounts and to standardize the process used to review and approve new health care service plan contracts and health insurance policies. The bill would require the director and the commissioner to report specified information to the Legislature regarding those requirements.

The bill would also authorize group health care service plan contracts and group health insurance policies to offer to include a Healthy Action Incentives and Rewards Program, as specified.

(3) Existing law imposes certain requirements on health care service plans and health insurers to enable small employers to access health care coverage. Existing law requires health care service plans and health insurers to sell to any small employer any of the benefit plan designs it offers to small employers and prohibits plans and insurers, among others, from encouraging or directing small employers to refrain from filing an application for coverage with the plan or insurer, and from encouraging or directing small employers to seek coverage from another carrier, because of the health status, claims experience, industry, occupation, or geographic location within the carrier's approved service area of the small employer or the small employer's employees.

This bill would also prohibit a plan or insurer from taking either of those actions because of the employer's implementation of, or intent to implement, any form of claim support for covered employees, as specified.

Existing law defines "small employer" for these purposes to include a guaranteed association that purchases health care coverage for its members. Existing law defines "guaranteed association" to mean a nonprofit organization of individuals or employers that meets certain requirements, including having been in active existence and having included health coverage as a membership benefit for at least 5 years prior to January 1, 1992, and covering at least 1,000 persons in that regard.

This bill would delete the requirements for a guaranteed association to have been in active existence and to have included health care coverage as a membership benefit for at least 5 years prior to January 1, 1992. The bill would reduce the required number of persons covered by health coverage provided through the guaranteed association from

1,000 to 100. The bill would also define "small employer" to include an eligible association that purchases health care coverage for its members and would define an eligible association as a community or civic group or a charitable or religious organization.

Because a willful violation of these requirements with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(4) Existing law requires health care service plans and specified disability insurers to have written policies and procedures establishing the process by which the plans or insurers prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity, requests by providers of health care services for enrollees or insureds. Existing law imposes specified requirements on that process and specifies that only a licensed physician or licensed health care professional with specified competency may deny or modify requests for authorization of health care services.

This bill would ~~authorize a~~ *specify that only a California* licensed health care professional~~, other than a person licensed to practice medicine, to~~ *may,* deny, *delay,* or modify requests ~~only with respect to~~ *for authorization of health care services. The bill would limit that licensee's review to* services that fall within his or her scope of practice and *would make that review* subject to standardized protocol limitations or supervision requirements applicable under his or her license. *The bill would also require the licensee to have at least the same scope of practice as the provider submitting the request for authorization.* The bill would ~~also~~ prohibit a ~~physician or other health care professional~~ *licensee* from denying, *delaying,* or modifying a request without first conducting a good faith examination of the enrollee *or insured*, except as specified, *and would make a violation of that requirement unprofessional conduct and grounds for disciplinary action. The bill would specify that the primary obligation of that licensee is to the enrollee or insured.* The bill would *also* provide that a service is medically necessary or a medical necessity when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.

Existing law establishes an independent medical review system in which an independent medical review organization reviews grievances involving a disputed health care service under a health care service plan contract or disability insurance policy. Existing law requires ~~that~~ *the* medical professionals selected by that organization to conduct reviews

to be either physicians holding a specified certification or other appropriate providers holding a nonrestricted license in any state.

This bill would require those physicians and other providers to be licensed in California and would limit the reviews conducted by those ~~other providers~~ *persons*, as specified.

Existing law requires the medical reviewers selected to conduct a review to review specified information, including, but not limited to, provider reports and all pertinent medical records of the enrollee or insured.

This bill would also require that at least one of those medical professional reviewers conduct a good faith examination of the enrollee, except as specified, *and would make a failure to conduct that examination unprofessional conduct and grounds for disciplinary action. The bill would specify that the primary obligation of these reviewers is to the enrollee or insured.*

Because a willful violation of these requirements with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(5) Existing law provides for insurers to be admitted to transact business in specified types of insurance, including workers' compensation insurance.

This bill would allow any insurer admitted to transact health insurance or workers' compensation insurance, or a health care service plan licensed pursuant to the Knox-Keene Act, to make written application to the commissioner for a license to offer a single policy that provides health care coverage and workers' compensation benefits.

(6) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive various health care services and benefits. Existing law prescribes various requirements governing reimbursement rates for these services.

This bill would require, on January 1, 2010, the reimbursement levels for fee-for-service physician services under Medi-Cal to be increased to 80% of the amount that the federal Medicare Program reimburses for these same services in Area 9 (Santa Clara County), and would thereafter require the rates to be increased annually in accordance with the California Consumer Price Index.

The bill would require the department, before making any adjustment to Medi-Cal reimbursement rates, to consider the ability of Medi-Cal beneficiaries to access physician services by geography and specialty

and to request data from the Office of Statewide Health Planning and Development to allow the department to determine the extent of Medi-Cal physician shortages, if any, by geography and specialty.

The bill would require the department to ensure the existence and operation of a single searchable Internet Web site, accessible by the public at no cost, that specifies Medi-Cal expenditures, including a line item breakdown of administrative overhead and provider and health care expenses.

The bill would require the department to prepare and submit a proposal for a demonstration project by July 31, 2010, for participation in the federal Medicaid Demonstration Project for Health Opportunity Accounts and would specify the details of that demonstration project.

The bill would also require the department, on or before January 1, 2011, to provide or arrange for the provision of an electronic personal health record and an electronic personal benefits record for beneficiaries of the Medi-Cal program. The bill would additionally authorize the department to establish a Healthy Action Incentives and Rewards Program as a covered benefit under the Medi-Cal program, subject to federal financial participation and approval.

The bill would state the intent of the Legislature to enact legislation that would realign Medi-Cal benefits to more closely resemble benefits offered through private health care coverage.

The bill would also state the intent of the Legislature to enact legislation that would establish a pilot project that utilizes a self-directed "cash and counseling" model for providing Medi-Cal services to disabled Medi-Cal enrollees. Under a "cash and counseling" model, disabled Medi-Cal enrollees, with assistance from family members and Medi-Cal case managers, would be given an individual budget to manage and direct payment for their personal care services and enable them to determine which supportive services they want and from whom they wish to have these services delivered.

Under existing law, the Director of Health Care Services may contract with any qualified individual, organization, or entity to provide services to, arrange for, or case manage the care of Medi-Cal beneficiaries subject to specified requirements.

This bill would state the intent of the Legislature to enact legislation that would establish a pilot project in which Medi-Cal managed care is used as a platform to transition from a defined-benefit system, where the state pays for services used based on a defined set of benefits, to a

defined-contribution system, where Medi-Cal enrollees would be assigned a risk-adjusted amount to purchase private health care coverage.

Existing law requires an applicant that is not currently enrolled as a provider in the Medi-Cal program, a provider required to apply for continued enrollment, or a provider not currently enrolled at a location where the provider intends to provide Medi-Cal goods or services to submit a complete application package for enrollment, continuing enrollment, or enrollment at a new location, except as specified. Existing law requires the department to provide, within 30 days of receipt, written notice that the application package has been received, except as specified. Applicants or providers that meet certain criteria may be granted preferred provisional provider status for up to 18 months.

This bill would, notwithstanding any other provision of law, additionally provide that, on and after January 1, 2010, certain licensed health care providers submitting an application to the department pursuant to the above provisions shall be granted preferred provisional provider status, effective from the date the department received their application, if the applicant is in good standing as a provider under the federal Medicare Program and with his or her state licensing board.

This bill would require the department to provide written notice to the applicant that the application package has been received within 15 days after receiving the application. The bill would require the department to provide successful applicants with written notice of their preferred provisional provider status within 30 days after receiving the application.

Existing law establishes, within the office of the Attorney General, the Bureau of Medi-Cal Fraud for the investigation and prosecution of violations of applicable laws pertaining to the Medi-Cal program, and to review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the Medi-Cal program.

This bill would require the State Department of Health Care Services to establish a computer modeling program to be used to prevent and identify Medi-Cal fraud. The bill would require the computer modeling program to alert the department when providers engage in specified billing behavior. The bill would require the department, upon receiving the alert, to conduct a Medi-Cal fraud investigation if the department determines an investigation is appropriate under the circumstances.

Existing law, administered by the State Department of Public Health, provides for the licensure and regulation of various clinics, including primary care clinics, as defined.

Existing law establishes the Medi-Cal Hospital/Uninsured Care Demonstration Project Act that revises hospital reimbursement methodologies in order to maximize the use of federal funds consistent with federal Medicaid law and stabilize the distribution of funding for hospitals.

This bill would require the Director of Health Care Services to provide to the Legislature, no later than July 1, 2010, a plan to permit these funds to be used for the purpose of creating new, and expanding existing, primary care clinics.

Under existing law, one of the utilization controls to which services are subject under the Medi-Cal program is the treatment authorization request process, which is approval by a department consultant of a specified service in advance of the rendering of that service based upon a determination of medical necessity. Other utilization controls include postservice prepayment audits and postservice postpayment audits, that involve reviews for medical necessity and program coverage.

This bill would, instead, provide that treatment authorization requests shall be approved based upon a determination that the service is covered under Medi-Cal. The bill would also provide that postservice prepayment audits and postservice postpayment audits shall only involve reviews for program coverage.

(7) Existing law allows the Controller, in his or her discretion, to offset any amount due to a state agency by a person or entity against any amount owed to that person or entity by a state agency.

Existing law requires the Controller, to the extent feasible, to offset any amount overdue and unpaid for a fine, penalty, assessment, bail, vehicle parking penalty, or court-ordered reimbursement for court-related services, from a person or entity, against any amount owed to the person or entity by a state agency on a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Tax Law or from winnings in the California State Lottery.

This bill would permit a hospital or health care provider, as defined, that provides health care services to an uninsured individual who does not qualify for government health care benefits to file a claim with the State Department of Health Care Services to be reimbursed for those services if the recipient of the services does not pay for those services. The bill would require the Director of Health Care Services to certify the debt owed to the hospital or health care provider to the Franchise Tax Board and the California Lottery Commission in order to the have

the debt satisfied with any tax refund or lottery winnings owed to the debtor, as specified.

(8) Under the Public Employees' Medical and Hospital Care Act, the Board of Administration of the Public Employees' Retirement System contracts for and administers health care benefit plans for public employees and annuitants. Existing state and federal income tax laws allow a deduction for contributions to a qualifying medical savings account by a taxpayer who is covered under a high deductible health plan, as defined. Money within this type of account may be used to pay for qualified medical expenses, as defined.

This bill would require the board to offer a high deductible health plan, as defined in the federal tax law, and a Health Savings Account option to public employees and annuitants, as specified. The bill would establish the Public Employees' Health Savings Fund, a continuously appropriated trust fund within the State Treasury, for payment of qualified medical expenses of eligible employees and annuitants who elect to enroll in the high deductible health plan and participate in the Health Savings Account option, and would require those employees and annuitants, and their employers, to make specified contributions to that fund, thereby making an appropriation.

The bill would also require the board, on or before January 1, 2011, to provide or arrange for the provision of an electronic personal health record and an electronic personal benefits record for enrollees receiving health care benefits. The bill would additionally authorize the board to provide a Healthy Action Incentives and Rewards Program to its enrollees, as specified.

(9) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2010, and before January 1, 2015, in an amount equal to the amount paid or incurred during the taxable year for qualified health expenses, as defined, that do not exceed specified amounts.

This bill would authorize a credit against personal income taxes for each taxable year beginning on or after January 1, 2009, in an amount equal to 25% of the tax imposed on a medical care professional who provides medical services in a rural area. The bill would also authorize a credit against personal income taxes, as specified, for a primary care provider, as defined, and for uncompensated medical care provided by a physician.

This bill would authorize a credit under the Personal Income Tax Law and the Corporation Tax Law for each taxable year beginning on or after January 1, 2009, and before January 1, 2015, in an amount equal to 15% of the amount paid or incurred by a qualified taxpayer, as defined, during the taxable year for qualified health insurance, as defined, for employees of the taxpayer. This bill would require the Legislative Analyst to report to the Legislature on or before March 1, 2014, on the effectiveness of the credit, as specified.

The Personal Income Tax Law authorizes various deductions in computing income subject to taxation.

This bill would allow a deduction in computing adjusted gross income for the costs of health insurance, as provided. This bill would also allow a deduction in connection with Health Savings Accounts in conformity with federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by, or on behalf of, an eligible individual, as defined, to a Health Savings Account of that individual, as provided. This bill would also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer Medical Savings Accounts to a Health Savings Account, and penalties in connection therewith.

(10) Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by ⅔ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would authorize an individual employee employed by an employer with 50 or fewer employees that offers health care coverage benefits to its employees to request a work schedule of up to 10 hours per day within a 40-hour workweek, and would authorize an employer to implement this schedule without any obligation to pay overtime compensation for hours worked as part of the schedule. The bill would enact related provisions and would make other conforming and technical changes.

The bill would also authorize an employer to provide health coverage that includes a Healthy Action Incentives and Rewards Program to his or her employees. In addition, the bill would state the intent of the Legislature to enact legislation providing incentives to employers who

offer health insurance, flex-time work schedules, and other benefits agreed upon by employers and employees.

(11) Existing law defines the term "medical assistant" and sets forth the scope of services a medical assistant is authorized to perform. Existing law provides that a medical assistant may administer medication upon the specific authorization and supervision of a licensed physician and surgeon or licensed podiatrist or, in specified clinic settings, upon the specific authorization and supervision of a nurse practitioner, nurse-midwife, or physician assistant.

This bill would remove the requirement that a medical assistant's administration of medication upon the specific authorization and supervision of a nurse practitioner, nurse-midwife, or physician assistant occur in specified clinic settings, and would make related changes.

(12) Existing law provides for the licensure and regulation by the Commissioner of Financial Institutions of money transmitters, who receive money in this state for transmission to foreign countries, and makes a violation of these provisions a crime.

This bill would require a licensee, or its agent, to collect a 3% fee on any money transmission received from a client who is unable to provide documentation of lawful presence in the United States. The bill would require the deposit of the fee in an unspecified fund to be used to pay for emergency medical care provided in this state to persons without documentation of legal residence in the United States.

Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program.

In addition, the bill would memorialize the Congress and President of the United States to enact legislation that would provide full reimbursement for the costs of providing federally mandated health care services to anyone, regardless of immigration status.

(13) Existing law regulates the establishment and operation of hospitals, including emergency rooms.

This bill would state the intent of the Legislature to enact legislation that would allow hospitals to offer preventative medical services delivered through the hospital's primary care or community-based clinic.

(14) The bill would enact other related provisions and make various technical, nonsubstantive changes.

(15) This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of ⅔ of the membership of each house of the Legislature.

(16) 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: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 734 is added to the Business and Professions Code, to read:

734. The failure of a person licensed under this division or under an initiative act referred to in this division to conduct a good faith examination as required under any of the following provisions constitutes unprofessional conduct and grounds for disciplinary action by the person's licensing board:

(a) Paragraph (3) of subdivision (e) of Section 1367.01 of the Health and Safety Code or paragraph (3) of subdivision (e) of Section 10123.135 of the Insurance Code.

(b) Subdivision (b) of Section 1367.63 of the Health and Safety Code or subdivision (b) of Section 10123.88 of the Insurance Code.

(c) Subdivision (c) of Section 1367.635 of the Health and Safety Code or subdivision (c) of Section 10123.86 of the Insurance Code.

(d) Subdivision (a) of Section 1374.33 of the Health and Safety Code or subdivision (a) of Section 10169.3 of the Insurance Code.

~~SECTION 1.~~

SEC. 2. Section 2069 of the Business and Professions Code is amended to read:

2069. (a) (1) Notwithstanding any other provision of law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon, nurse practitioner, nurse-midwife, physician assistant, or licensed podiatrist.

(2) The licensed physician and surgeon may, at his or her discretion, in consultation with the nurse practitioner,

nurse-midwife, or physician assistant, provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks or supportive services may be delegated to the nurse practitioner, nurse-midwife, or physician assistant within the standardized procedures or protocol, and that tasks may be performed when the licensed physician and surgeon is not onsite, so long as the following apply:

(A) The nurse practitioner or nurse-midwife is functioning pursuant to standardized procedures, as defined by Section 2725, or protocol. The standardized procedures or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner or nurse-midwife, and the facility administrator or his or her designee.

(B) The physician assistant is functioning pursuant to regulated services defined in Section 3502 and is approved to do so by the supervising physician or surgeon.

(b) As used in this section and Sections 2070 and 2071, the following definitions shall apply:

(1) "Medical assistant" means a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services in compliance with this section and Section 2070 for a licensed physician and surgeon or a licensed podiatrist, or group thereof, for a medical, nursing, or podiatry corporation, for a physician assistant, a nurse practitioner, or a nurse-midwife as provided in subdivision (a), or for a health care service plan, who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Division of Licensing. The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

(2) "Specific authorization" means a specific written order prepared by the licensed physician and surgeon, licensed podiatrist, physician assistant, nurse practitioner, or nurse-midwife authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record, or a standing order prepared by the licensed physician and surgeon, licensed podiatrist, physician

assistant, nurse practitioner, or nurse-midwife, authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

(3) "Supervision" means the supervision of procedures authorized by this section by the following practitioners, within the scope of their respective practices, who shall be physically present in the treatment facility during the performance of those procedures:

(A) A licensed physician and surgeon.

(B) A licensed podiatrist.

(C) A physician assistant, nurse practitioner, or nurse-midwife.

(4) "Technical supportive services" means simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a nurse-midwife.

(c) Nothing in this section shall be construed as authorizing the licensure of medical assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a medical assistant. Nothing in this section shall be construed as authorizing the division to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

(d) Notwithstanding any other provision of law, a medical assistant may not be employed for inpatient care in a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(e) Nothing in this section shall be construed as authorizing a medical assistant to perform any clinical laboratory test or examination for which he or she is not authorized by Chapter 3 (commencing with Section 1200). Nothing in this section shall be construed as authorizing a nurse practitioner, nurse-midwife, or physician assistant to be a laboratory director of a clinical laboratory, as those terms are defined in paragraph (7) of subdivision (a) of Section 1206 and subdivision (a) of Section 1209.

~~SEC. 2.~~

SEC. 3. Section 1815.5 is added to the Financial Code, to read:

SB 132

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 132
Author: Denham
Bill Date: April 27, 2009, amended
Subject: Polysomnographic Technologists (urgent)
Sponsor: California Sleep Society

STATUS OF BILL:

This bill is currently on the Senate Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require registration for individuals assisting 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.

Amendments to this bill change the $100 registration fee to a $50 application fee and a $50 registration fee. This amendment is to make this registration program similar to other licensure and registration programs that are operated on a neutral cost basis. This process will allow the Board to cover the cost of application review and then registration. Fees are split as some applications may be denied registration as a result of the fingerprint or background check thereby allowing the Board to be compensated for its work but not over collecting for work that may not be necessary.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support

Staff Recommendation: Support

April 24, 2009

AMENDED IN SENATE APRIL 27, 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 amended, 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~~ *one* 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~~ *one* 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 *apply to and* register with the Medical Board of California for ~~a fee~~ *fees* to be fixed by the board at no more than ~~$100~~ *$50 each*, 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

of physiologic data during sleep and wakefulness to assist in the 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~~ *who applies for registration 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).~~ *fifty dollars ($50).*

(b) 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 fifty dollars ($50).

~~(b)~~

(c) 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)~~

(d) 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 Health and Safety Code from employing a certified polysomnographic technologist.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health and safety of the general public by providing needed qualifications for, and oversight of, the practice of polysomnography at the earliest possible time, it is necessary that this act take effect immediately.

O

SB 389

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 Appropriations Committee.

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: **Executive Committee Recommendation:** Support
Staff Recommendation: Support

April 26, 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

SB 470

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 470
Author: Corbett
Bill Date: April 27, 2009, amended
Subject: Prescriptions: labeling
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require every prescription to include on the label, the purpose for which the drug is prescribed, if requested by the patient.

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.

If the condition or purpose of the drug is not included on the prescription, the patient may request of the pharmacist that it be included. Pharmacists may include the information once they have consulted with the physician or prescriber. The consultation may be conducted verbally or electronically.

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 for which it is prescribed and continues to have no penalty for the provider.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support
Staff Recommendation: Support

April 26, 2009

AMENDED IN SENATE APRIL 27, 2009

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 amended, Corbett. Prescriptions.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and *provides that* a knowing violation of the law is a crime. Existing law ~~authorizes~~ *requires* a prescription, as defined, to include *a legible, clear notice of* 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~~ *that is correctly labeled to include*, 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~~ *that every prescription include a legible, clear notice of the condition or* purpose for which the drug ~~was~~ *is* prescribed ~~if requested by the patient or if the purpose is indicated on the prescription. The bill would also make a conforming change~~, *and would delete the requirement that a patient request the inclusion of that information. The bill would also require that every prescription container be correctly labeled to include that information if so included on the prescription, and would provide a process for inclusion of that information on the*

label if it is not included on the prescription and is requested by the patient.

By revising ~~this requirement~~ *these requirements*, 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 or* 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,

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

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

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

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

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

SEC. 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) The *condition or* purpose for which the drug was prescribed ~~if requested by the patient or the purpose is indicated on the prescription.~~ *if the condition or purpose is indicated on the prescription. If the patient requests the condition or purpose on the container label but it is not included on the prescription, the*

pharmacist may include this information only after consulting with the prescriber. The consultation may be conducted orally or electronically.

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

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SB 638

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 638
Author: Negrete McLeod
Bill Date: February 27, 2009, amended
Subject: Regulatory Boards: joint committee on operations
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Rules Committee, after passing out of the Senate Business and Professions Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill will change the sunset date for the Board.

This bill would delete the requirement that a board become a bureau under the Department of Consumer Affairs (DCA) if it sunsets. This bill would require, instead, that the board's members be removed and a successor board would be appointed.

This bill revises how the sunset process will take place in the legislature.

ANALYSIS:

This bill does not yet set a sunset review date for the Board.

This bill revises the sunset review law to provide that when a board becomes inoperative the board's members are removed then a successor board is appointed with the same rights, duties, and membership parameters as the board it is succeeding.

This bill deletes the requirement that a board be designated as a bureau under DCA if it sunsets. This bill terminates the terms of office of each board member and bureau chief within DCA upon an unspecified date and authorizes successor board members and bureau chiefs to be appointed.

This bill would require all boards and bureaus, with the assistance of DCA, to prepare an analysis and submit a report to the appropriate policy committees of the

Legislature no later than 22 months before the board's membership or the bureau chief shall be terminated (sunset date).

FISCAL: Unknown

POSITION: **Executive Committee Recommendation:** Support
Staff Recommendation: Support

April 26, 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.

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SB 674

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 674
Author: Negrete McLeod
Bill Date: April 28, 2009, amended
Subject: Outpatient settings/Advertising
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

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 name tags 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" or "DMD"
- 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 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, Statutes 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. These forums did not address physician availability.

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."

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. This section, as amended, allows the Board to adopt standards for outpatient settings that offer in vitro fertilization or assisted reproduction technology. Facilities providing these services would be required to meet accreditation standards that the board deems necessary, different than existing standards for current outpatient 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 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 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.

This bill was amended to require the Department of Public Health, while conducting regular period state inspections of acute care hospitals, to inspect the peer review process in that hospital as well.

FISCAL: Unknown, but could be substantial if the Board does the inspections.

POSITION: **Executive Committee Recommendation:** Support if amended
Staff Recommendation: Support

April 26, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 2, 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, 1248.5, and 1279 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 674, as amended, Negrete McLeod. Healing arts.

(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)~~

(2) 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)~~

(3) 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)~~

(4) 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)~~

(5) 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)~~

(6) 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)~~

(7) 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)~~

(8) 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)~~

(9) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would require the department, when conducting an inspection of an acute care hospital, to inspect the peer review process utilized by the hospital.

~~(11)~~

(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
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely
8 to induce, directly or indirectly, the rendering of professional
9 services or furnishing of products in connection with the
10 professional practice or business for which he or she is licensed.
11 A "public communication" as used in this section includes, but is
12 not limited to, communication by means of mail, television, radio,
13 motion picture, newspaper, book, list or directory of healing arts
14 practitioners, Internet, or other electronic communication.
15 (b) A false, fraudulent, misleading, or deceptive statement,
16 claim, or image includes a statement or claim that does any of the
17 following:
18 (1) Contains a misrepresentation of fact.
19 (2) Is likely to mislead or deceive because of a failure to disclose
20 material facts.
21 (3) (A) Is intended or is likely to create false or unjustified
22 expectations of favorable results, including the use of any
23 photograph or other image that does not accurately depict the
24 results of the procedure being advertised or that has been altered
25 in any manner from the image of the actual subject depicted in the
26 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" *or "DMD"* 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.

(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.

(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.

(*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, as granted by this state, on a name tag in at least 18-point type. 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 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 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.~~

SEC. 2. 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.~~

SEC. 3. 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 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.~~

SEC. 4. 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 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) *(1)* "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~~

(2) "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~~

(3) "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.

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the board pursuant to Sections 1248.15 and 1248.4.

~~SEC. 6.~~

SEC. 5. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The 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.

(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.

(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, 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 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 board to protect the public health and safety.

(d) No accreditation standard adopted or approved by the board, and no standard included in any certification program of any

accreditation agency approved by the 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.

(e) The board may adopt standards for outpatient settings that offer in vitro fertilization or assisted reproduction technology that it deems necessary.

~~SEC. 7.~~

SEC. 6. 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 board under this chapter.

(b) The 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 board, and shall 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.

~~SEC. 8.~~

SEC. 7. 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 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.~~

SEC. 8. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. (a) Every outpatient setting which is accredited shall be periodically inspected by the Medical Board of California or the accreditation agency. The frequency of inspection shall depend upon the type and complexity of 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 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 board determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the board, the 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.~~

SEC. 9. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. The 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 the board.

~~SEC. 11.~~

SEC. 10. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner

in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.

(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.

(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

(g) Notwithstanding any other provision of law, the department shall inspect for compliance with provisions of state law and regulations during a state periodic inspection or at the same time as a federal periodic inspection, including, but not limited to, an inspection required under this section. If the department inspects for compliance with state law and regulations at the same time as a federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.

(h) During a state periodic inspection of an acute care hospital, including, but not limited to, an inspection required under this section, the department shall inspect the peer review process utilized by the hospital.

(i) The department shall emphasize consistency across the state and *in* its district offices when conducting licensing and certification surveys and complaint investigations, including the selection of state or federal enforcement remedies in accordance with Section 1423. The department may issue federal deficiencies and recommend federal enforcement actions in those circumstances where they provide more rigorous enforcement action.

~~SEC. 12.~~

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.

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SB 700

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 700
Author: Negrete McLeod
Bill Date: April 22, 2009, amended
Subject: Peer Review
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate Appropriations Committee and is set for hearing on May 5, 2009.

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 focuses on enhancements to the peer review system as it relates to the Medical Board (Board) and oversight by the California Department of Public Health (DPH).

Specifically, this bill does the following:

- 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 clarifies that the definition of a peer review body includes any clinic specified in the Health and Safety Code. This clarification is needed in order to makes clear all the entities and individuals who are required to conduct peer review.

- Rewrites for clarity the section that require an 805 report to be filed within 15 days from the date when;
    1. A peer review body denies or rejects a licensee's application for staff privileges or membership for a medical disciplinary cause or reason;
    2. A licensee's staff privileges, membership, or employment are

revoked for a medical disciplinary cause or reason;

3. Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a total of 30 days or more within any 12 month period for medical disciplinary reasons;
4. A licensee resigns or takes a leave of absence from staff privileges, membership or employment;
5. A licensee withdraws or abandons his or her application for staff privileges, membership, or employment;
6. A licensee withdraws or abandons his or her request for renewal of staff privileges, membership, or employment after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason after receiving notice that his or her application for staff privileges, membership, or employment is denied or will be denied for a medical disciplinary cause or reason.
7. A summary suspension of staff privileges, membership, or employment is imposed for a period in excess of 14 days.

This is to ensure that the Medical Board is informed as soon as possible when a physician has had restrictions imposed or is involved in an investigation regarding medical discipline.

- Requires an 805 report to be maintained electronically for dissemination for a period of three years after receipt.

- Adds that minutes or reports of a peer review are included in the documents that the Board may inspect. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.

- Prohibits the Board from disclosing to the public any peer review summaries completed by a hospital if a court finds that the peer review was not conducted in good faith. This makes reporting fair for licensees who have a bogus report filed against them.

- Entitles the Board to inspect and copy specified unredacted documents relating to any disciplinary proceeding resulting in an action that is required to be reported pursuant to Section 805 without subpoena. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.

- Requires the Board to remove from the Internet Website any information concerning a hospital disciplinary action that is posted if a court finds that the peer review was not done in good faith. The licensee must notify the Board of that finding. This makes reporting fair for licensees who have a bogus report filed against them.

- Requires the Board to post a factsheet on the internet that explains and provides information on 805 reporting. The will help consumers understand the process and what this reporting means.

FISCAL: Minor and absorbable

POSITION: **Executive Committee Recommendation:** Support and direct staff to continue to work with the author to enhance consumer protections in the bill.
Staff Recommendation: Support

April 26, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL No. 700

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 800, 803.1, 805, 805.1, 805.5, and 2027 of, and to add Section 805.01 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, 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 within 15 days after a specified action is taken against a person licensed by that board. Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licentiate to request a hearing concerning that action.

This bill would require the filing of the 805 report with the licensing board within 15 days of the imposition of a specified action on a licentiate regardless of whether a hearing has occurred.

This bill would also require specified persons to file a report with a licensing board if a ~~formal investigation of a person licensed by that board results in a specified finding of fact~~ *peer review body concludes, after formal investigation, that a person licensed by that board departed from the standard of care, as specified, suffered from mental illness or substance abuse, or engaged in sexual misconduct.* The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

Existing law requires the board to maintain an 805 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 specify that the boards have the authority to inspect those documents in unredacted form and without a subpoena and would authorize those boards to also inspect any peer review minutes or reports in the record of the disciplinary proceeding.

Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports.

Under this bill, if a court finds that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet.

This bill would prohibit those disclosures, and would require the Medical Board of California to remove certain information posted on the Internet, if a court finds that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require

the Medical Board of California to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

The bill would make related nonsubstantive 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 800 of the Business and Professions Code
2 is amended to read:
3 800. (a) The Medical Board of California, the Board of
4 Psychology, the Dental Board of California, the Osteopathic
5 Medical Board of California, the State Board of Chiropractic
6 Examiners, the Board of Registered Nursing, the Board of
7 Vocational Nursing and Psychiatric Technicians, the State Board
8 of Optometry, the Veterinary Medical Board, the Board of
9 Behavioral Sciences, the Physical Therapy Board of California,
10 the California State Board of Pharmacy, and the Speech-Language
11 Pathology and Audiology Board shall each separately create and
12 maintain a central file of the names of all persons who hold a
13 license, certificate, or similar authority from that board. Each
14 central file shall be created and maintained to provide an individual
15 historical record for each licensee with respect to the following
16 information:
17 (1) Any conviction of a crime in this or any other state that
18 constitutes unprofessional conduct pursuant to the reporting
19 requirements of Section 803.
20 (2) Any judgment or settlement requiring the licensee or his or
21 her insurer to pay any amount of damages in excess of three
22 thousand dollars ($3,000) for any claim that injury or death was
23 proximately caused by the licensee's negligence, error or omission
24 in practice, or by rendering unauthorized professional services,
25 pursuant to the reporting requirements of Section 801 or 802.
26 (3) Any public complaints for which provision is made pursuant
27 to subdivision (b).
28 (4) Disciplinary information reported pursuant to Section 805.
29 If a court finds that the peer review resulting in the 805 report was
30 conducted in bad faith and the licensee who is the subject of the
31 report notifies the board of that finding, the board shall include

that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01.

(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. 2. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public all of the following:

(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(2) (A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the

complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialty certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason, unless a court finds that the peer review resulting in the disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received regarding felony convictions of a physician and surgeon or doctor of podiatric medicine.

(d) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall include the following statement when disclosing information concerning a settlement:

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State

of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

(e) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized

pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

SEC. 3. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) (A) "Peer review" means a process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, and professional conduct of licentiates to determine whether the licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services and, if so, to determine the parameters of that practice.

(B) "Peer review body" includes:

(i) A medical or professional staff of any health care facility or clinic specified under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.

(ii) 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 contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(iii) Any medical, psychological, marriage and family therapy, social work, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(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 on which any of the following are imposed on a licentiate as a result of an action of a peer review body, regardless of whether a hearing has occurred pursuant to Section 809.2:

(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) If a licentiate undertakes any action listed in paragraph (1), (2), or (3) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership, staff privileges, or employment is denied or will be denied for a medical disciplinary cause or reason, 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 where the licentiate is employed or has staff privileges or membership or where the licentiate applied for staff privileges, membership, or employment, or sought the renewal thereof, shall file an 805 report with the relevant agency within 15 days after the licentiate undertakes the action.

(1) Resigns or takes a leave of absence from membership, staff privileges, or employment.

(2) Withdraws or abandons his or her application for membership, staff privileges, or employment.

(3) Withdraws or abandons his or her request for renewal of membership, staff privileges, or employment.

(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, regardless of whether a hearing has occurred pursuant to Section 809.2.

(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~~ *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.

SEC. 4. Section 805.01 is added to the Business and Professions Code, to read:

805.01. (a) As used in this section, the following terms have the following definitions:

(1) "Agency" has the same meaning as defined in Section 805.

(2) "Formal investigation" means an investigation performed by a peer review body based on ~~any of the allegations~~ *an allegation that the licentiate committed any of the acts* listed in subdivision (b).

(3) "Licentiate" has the same meaning as defined in Section 805.

(4) "Peer review body" has the same meaning as defined in Section 805.

(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 a report with the relevant agency within 15 days after ~~completion of a formal investigation of a licentiate if the investigation resulted in any of the following findings of fact:~~ *a peer review body concludes, following completion of a formal investigation of a licentiate, that any of the following occurred:*

(1) The licentiate departed from the standard of care *and there was patient harm, including, but not limited to, any of the adverse events described in paragraph (1) of subdivision (b) of Section 1279.1 of the Health and Safety Code.*

(2) The licentiate suffered from mental illness or substance abuse.

(3) The licentiate engaged in sexual misconduct.

(c) The relevant agency shall, without subpoena, be entitled to inspect and copy the following unredacted documents in the record of any formal investigation required to be reported pursuant to subdivision (b):

(1) Any statement of charges.

(2) Any document, medical chart, or exhibit.

(3) Any opinions, findings, or conclusions.

(4) Any peer review minutes or reports.

(d) The information disclosed pursuant to subdivision (c) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided in subdivision

(c) of Section 800 and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) The report required under this section shall be in addition to any report required under Section 805.

SEC. 5. Section 805.1 of the Business and Professions Code is amended to read:

805.1. (a) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall, without subpoena, be entitled to inspect and copy the following unredacted documents in the record of any disciplinary proceeding resulting in action that is required to be reported pursuant to Section 805:

(1) Any statement of charges.

(2) Any document, medical chart, or exhibits in evidence.

(3) Any opinion, findings, or conclusions.

(4) Any peer review minutes or reports.

(b) The information so disclosed shall be kept confidential and not subject to discovery, in accordance with Section 800, except that it may be reviewed, as provided in subdivision (c) of Section 800, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 6. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and

California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff, which is received on or after January 1, 1980, the board shall furnish a copy of any report made pursuant to Section 805. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds that the peer review, as defined in Section 805, resulting in the report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, or (4) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. If a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

If the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 7. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on the Internet the following information in its possession, custody, or control regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or 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 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.

(3) Notwithstanding paragraph (2) and except as provided in paragraph (4), 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.

(4) Notwithstanding paragraph (2), if a court finds that peer review resulting in a hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding, the information concerning that hospital disciplinary action posted pursuant to paragraph (6) of subdivision (a) shall be immediately removed from the board's Internet Web site. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) The board shall also post on the Internet a factsheet that explains and provides information on the reporting requirements under Section 805.

(d) 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.

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SB 726

SB 726

Hospitals: Physician Employment: Pilot Project

To be presented at the Board Meeting

SB 819

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 819
Author: Committee on Business, Professions, and Economic Development
Bill Date: April 20, 2009, amended
Subject: Omnibus
Sponsor: Committee

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

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 proposes 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. (This section will be deleted if AB 1070 passes out of the Assembly)
- 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, this eliminates this option and makes technical changes.
- 2107 – Technical changes.
- 2135 – Technical changes as follows:
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency among all licensing pathways.

- 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.

<u>FISCAL</u>: None to the Board

<u>POSITION</u>: **Executive Committee Recommendation:** Support MBC provisions.
Staff Recommendation: Support MBC provisions.

April 26, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 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, 3753.5, 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, *and declaring the urgency thereof, to take effect immediately*.

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, 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.

This bill would require the Cemetery and Funeral Bureau to disclose on the Internet information on specified licensees.

(2) Under existing law, if, upon investigation, a specified state regulatory agency has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with that agency, the agency is authorized to issue a specified citation.

This bill would add the Physical Therapy Board of California to those authorized agencies.

Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

Existing law requires specified healing arts licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report settlements over $30,000 to the licensee's board if the settlement is for damages for death or personal injury caused by or is based on the licensee's alleged negligence, error, or omission in practice, or his or her rendering unauthorized professional services.

This bill would instead require that report if the settlement is based on the licensee's alleged negligence, error, or omission in practice in California or rendering unauthorized professional services in California.

(3) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. The act requires each applicant for a physician and surgeon's license to meet specified training and examinations requirements, authorizes the appointment of examination commissioners, requires that examinations be conducted in English, except as specified, allows the examinations to be conducted in specified locations, requires notice

of examinations to contain certain information, and requires examination records to be kept on file for a period of 2 years or more. The act authorizes a person whose certificate has been surrendered, revoked, suspended, or placed on probation, as specified, to petition for reinstatement of the certificate or modification of the penalty if specified requirements are met. Under existing law, any person who meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit that authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions.

This bill would revise the training requirements for a physician and surgeon's license, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2070. The bill would revise the requirements for a petition for reinstatement or modification, as specified. The bill would require the holder of a special faculty permit to meet the same continuing medical education requirements as the holder of a physician's and surgeon's certificate and would also require a special faculty permitholder to show that he or she meets these requirements at the time of permit renewal.

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(4) Existing law, the Occupational Therapy Practice Act, provides for the licensure of occupational therapists and the certification of occupational therapy assistants by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record. Existing law authorizes a limited permit to practice occupational therapy to be granted if specified education and examination requirements are met, but provides that if the person fails to qualify for or pass the first announced licensure examination, all limited permit privileges automatically cease upon due notice. Existing law requires an applicant applying for a license or certification to file with the board a written application provided by and satisfactory to the board, showing that he or she meets certain requirements, including, but not limited to, successful completion of an educational program's academic requirements approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) and successful completion of a period of supervised fieldwork experience. Existing law also specifies the curriculum requirements for an education program for occupational therapists and occupational therapy assistants.

This bill would require an occupational therapy assistant to document in the patient record the services provided to the patient, and would require an occupational therapist or assistant to document and sign the patient record legibly. The bill would revise the provisions related to limited permit privileges to instead provide that a person's failure to pass the licensure examination during the initial eligibility period would cause the privileges to automatically cease upon due notice. The bill would require that the applicant successfully complete the educational program's academic requirements approved by the board and accredited by ACOTE, or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program. The bill would also revise those curriculum requirements for an educational program. The bill would authorize an applicant who is a graduate of an educational program and is unable to provide evidence of having met the curriculum requirements to demonstrate passage of a specified examination as evidence of having successfully satisfied the curriculum requirements. The bill would require an applicant who completed AOTA's Career Mobility Program to demonstrate participation in the program and passage of a specified examination as evidence of having successfully satisfied the educational

program and curriculum requirements. The bill would revise the supervised fieldwork experience requirement. The bill would require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(5) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurses by the Board of Registered Nursing. Existing law authorizes a registered nurse whose license is revoked or suspended, or who is placed on probation, to petition for reinstatement of his or her license or modification of the penalty after a specified time period.

This bill would require a petition by a registered nurse whose initial license application is subject to a disciplinary decision to be filed after a specified time period from the date upon which his or her initial license was issued.

(6) Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician's assistants by the Physician Assistant Committee of the Medical Board of California. Existing law authorizes the committee to grant interim approval to an applicant for licensure as a physician assistant.

This bill would delete that authority to grant interim approval and would make conforming changes.

(7) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Bureau of Naturopathic Medicine. Existing law authorizes the bureau to grant a license to a person meeting certain requirements who has graduated from training prior to 1986 if the application is received prior to 2008, and requires licensees to obtain continuing education through specified continuing education courses. Existing law requires a licensee on inactive status to meet certain requirements in order to restore his or her license to active status, including paying a reactivation fee.

This bill would require an application for licensure by a person who graduated from training prior to 1986 to be received by the bureau prior to 2011, and would revise the standards for continuing education courses. The bill would delete the requirement that a licensee on inactive status pay a reactivation fee in order to restore his or her license to active status, and would instead require him or her to be current with all licensing fees.

Existing law authorizes the Director of Consumer Affairs to establish an advisory council related to naturopathic doctors composed of

members who receive no compensation, travel allowances, or reimbursement of expenses.

This bill would delete the requirement that the members of the advisory council receive no compensation, travel allowances, or reimbursement of expenses.

(8) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Existing law authorizes the board to direct a practitioner or applicant who is found to have violated the law to pay the costs of investigation and prosecution.

This bill would also authorize the board to direct a practitioner or applicant who is found to have violated a term or condition of board probation to pay the costs for investigation and prosecution.

Existing law exempts certain healing arts practitioners from liability for specified services rendered during a state of war, state of emergency, or local emergency.

This bill would also exempt respiratory care practitioners from liability for the provision of specified services rendered during a state of war, state of emergency, or local emergency.

(9) Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy.

Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines.

This bill would provide that any violation of this provision by any person or entity would subject the person to the fine.

Existing law prohibits a person from acting as a wholesaler of any dangerous drug or device without a license from the board. Existing law requires a nonresident wholesaler, as defined, to be licensed prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.

This bill would modify that definition and would also require a nonresident wholesaler to be licensed prior to selling, brokering, or distributing dangerous drugs or devices within this state. By subjecting these nonresident wholesalers to these licensure requirements which include, among other things, payment of specified fees, the bill would increase that part of the revenue in the Pharmacy Board Contingent Fund that is continuously appropriated and would thereby make an appropriation.

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

Because this bill would impose new requirements and prohibitions under the Pharmacy Law, the knowing violation of which would be a crime, it would impose a state-mandated local program.

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(10) Existing law, the Veterinary Medicine Practice Act, provides for the licensure and regulation of veterinarians by the Veterinary Medical Board. Existing law prohibits the disclosure of information

about an animal receiving veterinary services, the client responsible for that animal, or the veterinary care provided to an animal, except under specified circumstances, including, but not limited to, as may be required to ensure compliance with any federal, state, county, or city law or regulation.

This bill would specify that such disclosure is prohibited except as may be required to ensure compliance with the California Public Records Act.

(11) Existing law provides for the licensure and regulation of educational psychologists, clinical social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of $1,500 or less for more than 5 years from the date of issuance of the citation.

(12) Existing law, the Professional Fiduciaries Act, provides for the licensure and regulation of professional fiduciaries by the Professional Fiduciaries Bureau until July 1, 2011. Existing law also requires applicants to provide certain boards and bureaus with a full set of fingerprints for the purpose of conducting criminal history record checks. Existing law requires licensees to file and the bureau to maintain certain information in each licensee's file, including whether the licensee has ever been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or demonstrated a pattern of negligent conduct, as specified.

This bill would require the bureau to disclose on the Internet information on its licensees and would require applicants to the bureau to comply with that fingerprint requirement. The bill would require licensees to file and the bureau to maintain information regarding whether the licensee has ever been removed for cause or resigned as a conservator, guardian, trustee, or personal representative, as well as various other details relating to that removal or resignation. The bill would also make a conforming change.

(13) Existing law, the Architects Practice Act, provides for the licensure and regulation of architects by the California Architects Board. Under existing law, the board is composed of 5 architect members and 5 public members. Existing law requires that each appointment to the

board expire on June 30 of the 4th year following the year in which the previous term expired.

This bill would modify the term length for certain members of the board.

(14) Existing law provides a comprehensive scheme for the certification and regulation of interior designers. Under existing law, a stamp from an interior design organization certifies that an interior designer has passed a specified examination and that he or she has met certain other education or experience requirements, such as a combination of interior design education and diversified interior design experience that together total at least 8 years.

This bill would revise that provision by specifying that an interior designer may meet these requirements by having at least 8 years of interior design education, or at least 8 years of diversified interior design experience, or a combination of interior design education and diversified interior design experience that together total at least 8 years.

(15) Existing law provides for the registration of professional engineers and the licensure of land surveyors by the Board for Professional Engineers and Land Surveyors. Under existing law, in determining the qualifications of an applicant for registration or licensure, a majority vote of the board is required.

This bill would delete that majority vote requirement.

(16) Existing law, the Funeral Directors and Embalmers Law, provides for the licensure and regulation of funeral establishments and directors by the Cemetery and Funeral Bureau. Under existing law, every funeral establishment holding a funeral director's license on December 31, 1996, shall, upon application and payment of fees for renewal, be issued a funeral establishment license.

This bill would delete that provision.

(17) The Electronic and Appliance Repair Dealer Registration Law provides for registration and regulation of service contractors by the Bureau of Electronic and Appliance Repair. Existing law makes it unlawful to act as a service contractor unless that person maintains a valid registration.

This bill would make it an infraction to violate that provision. The bill would also make conforming changes. By creating a new crime, the bill would impose a state-mandated local program.

(18) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, pursuant to which medical benefits are provided to public assistance recipients

and certain other low-income persons. Existing law provides that federally qualified health center services and rural health clinic services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. For those purposes, a "visit" is defined as a face-to-face encounter between a patient of a federally qualified health center or a rural health clinic and a "physician," which is defined to include a medical doctor, osteopath, podiatrist, dentist, optometrist, and chiropractor.

This bill would instead provide that the term "physician" includes a physician and surgeon, podiatrist, dentist, optometrist, and chiropractor.

(19) 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.

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

Vote: ~~majority~~ $^2/_3$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 27 of the Business and Professions Code
2 is amended to read:
3 27. (a) Every entity specified in subdivision (b) shall provide
4 on the Internet information regarding the status of every license
5 issued by that entity in accordance with the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of
7 Division 7 of Title 1 of the Government Code) and the Information
8 Practices Act of 1977 (Chapter 1 (commencing with Section 1798)
9 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public
10 information to be provided on the Internet shall include information
11 on suspensions and revocations of licenses issued by the entity
12 and other related enforcement action taken by the entity relative
13 to persons, businesses, or facilities subject to licensure or regulation
14 by the entity. In providing information on the Internet, each entity
15 shall comply with the Department of Consumer Affairs Guidelines
16 for Access to Public Records. The information may not include
17 personal information, including home telephone number, date of

birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(10) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code, as amended by Section 1 of Chapter 31 of the Statutes of 2008, is amended to read:

101. The department is comprised of:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary and Vocational Education.

(*l*) The Structural Pest Control Board.

(m) The Bureau of Home Furnishings and Thermal Insulation.

(n) The Board of Registered Nursing.

(o) The Board of Behavioral Sciences.

(p) The State Athletic Commission.

(q) The Cemetery and Funeral Bureau.

(r) The State Board of Guide Dogs for the Blind.
(s) The Bureau of Security and Investigative Services.
(t) The Court Reporters Board of California.
(u) The Board of Vocational Nursing and Psychiatric Technicians.
(v) The Landscape Architects Technical Committee.
(w) The Bureau of Electronic and Appliance Repair.
(x) The Division of Investigation.
(y) The Bureau of Automotive Repair.
(z) The State Board of Registration for Geologists and Geophysicists.
(aa) The Respiratory Care Board of California.
(ab) The Acupuncture Board.
(ac) The Board of Psychology.
(ad) The California Board of Podiatric Medicine.
(ae) The Physical Therapy Board of California.
(af) The Arbitration Review Program.
(ag) The Hearing Aid Dispensers Bureau.
(ah) The Physician Assistant Committee.
(ai) The Speech-Language Pathology and Audiology Board.
(aj) The California Board of Occupational Therapy.
(ak) The Osteopathic Medical Board of California.
(al) The Bureau of Naturopathic Medicine.
(am) The Dental Hygiene Committee of California.
(an) The Professional Fiduciaries Bureau.
(ao) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 128.5 of the Business and Professions Code is amended to read:

128.5. (a) Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Architects Board, the Board of Behavioral Sciences, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

SEC. 4. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Registered Veterinary Technician Committee.

(10) Board of Vocational Nursing and Psychiatric Technicians.

(11) Respiratory Care Board of California.

(12) Hearing Aid Dispensers Advisory Commission.

(13) Physical Therapy Board of California.

(14) Physician Assistant Committee of the Medical Board of California.

(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) The Professional Fiduciaries Bureau.

(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.

SEC. 5. Section 146 of the Business and Professions Code is amended to read:

146. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) or (d) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following applies:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivisions (c) and (d) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

(1) Sections 2052 and 2054.
(2) Section 2630.
(3) Section 2903.
(4) Section 3660.
(5) Sections 3760 and 3761.
(6) Section 4080.
(7) Section 4825.
(8) Section 4935.
(9) Section 4980.
(10) Section 4996.
(11) Section 5536.
(12) Section 6704.
(13) Section 6980.10.
(14) Section 7317.
(15) Section 7502 or 7592.
(16) Section 7520.
(17) Section 7617 or 7641.
(18) Subdivision (a) of Section 7872.
(19) Section 8016.
(20) Section 8505.
(21) Section 8725.
(22) Section 9681.
(23) Section 9840.
(24) Subdivision (c) of Section 9891.24.
(25) Section 19049.

(d) Institutions that are required to register with the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code.

(e) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c) or (d), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation the absence of which was the basis for his or her conviction.

SEC. 6. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The Bureau of Barbering and Cosmetology.

(2) The Funeral Directors and Embalmers Program.

(3) The Veterinary Medical Board.

(4) The Hearing Aid Dispensers Advisory Commission.

(5) The Landscape Architects Technical Committee.

(6) The California Board of Podiatric Medicine.

(7) The Respiratory Care Board of California.

(8) The Bureau of Home Furnishings and Thermal Insulation.

(9) The Bureau of Security and Investigative Services.

(10) The Bureau of Electronic and Appliance Repair.
(11) The Bureau of Automotive Repair.
(12) The Tax Preparers Program.
(13) The California Architects Board.
(14) The Speech-Language Pathology and Audiology Board.
(15) The Board for Professional Engineers and Land Surveyors.
(16) The Board of Behavioral Sciences.
(17) The State Board for Geologists and Geophysicists.
(18) The Structural Pest Control Board.
(19) The Acupuncture Board.
(20) The Board of Psychology.
(21) The California Board of Accountancy.
(22) The Bureau of Naturopathic Medicine.
(23) The Physical Therapy Board of California.

SEC. 7. Section 683 of the Business and Professions Code is amended to read:

683. (a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.

(b) "Board," as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, and the California Board of Occupational Therapy.

SEC. 8. Section 733 of the Business and Professions Code is amended to read:

733. (a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a)

of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough 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 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, 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.

1 These disclosures shall effect no change in the confidential status
2 of these records.
3 SEC. 10. Section 801 of the Business and Professions Code is
4 amended to read:
5 801. (a) Except as provided in Section 801.01 and subdivisions
6 (b), (c), and (d) of this section, every insurer providing professional
7 liability insurance to a person who holds a license, certificate, or
8 similar authority from or under any agency mentioned in
9 subdivision (a) of Section 800 shall send a complete report to that
10 agency as to any settlement or arbitration award over three
11 thousand dollars ($3,000) of a claim or action for damages for
12 death or personal injury caused by that person's negligence, error,
13 or omission in practice, or by his or her rendering of unauthorized
14 professional services. The report shall be sent within 30 days after
15 the written settlement agreement has been reduced to writing and
16 signed by all parties thereto or within 30 days after service of the
17 arbitration award on the parties.
18 (b) Every insurer providing professional liability insurance to
19 a person licensed pursuant to Chapter 13 (commencing with
20 Section 4980) or Chapter 14 (commencing with Section 4990)
21 shall send a complete report to the Board of Behavioral Sciences
22 as to any settlement or arbitration award over ten thousand dollars
23 ($10,000) of a claim or action for damages for death or personal
24 injury caused by that person's negligence, error, or omission in
25 practice, or by his or her rendering of unauthorized professional
26 services. The report shall be sent within 30 days after the written
27 settlement agreement has been reduced to writing and signed by
28 all parties thereto or within 30 days after service of the arbitration
29 award on the parties.
30 (c) Every insurer providing professional liability insurance to
31 a dentist licensed pursuant to Chapter 4 (commencing with Section
32 1600) shall send a complete report to the Dental Board of
33 California as to any settlement or arbitration award over ten
34 thousand dollars ($10,000) of a claim or action for damages for
35 death or personal injury caused by that person's negligence, error,
36 or omission in practice, or rendering of unauthorized professional
37 services. The report shall be sent within 30 days after the written
38 settlement agreement has been reduced to writing and signed by
39 all parties thereto or within 30 days after service of the arbitration
40 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 the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(f) 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. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 11. Section 801.01 of the Business and Professions Code is amended to read:

801.01. (a) A complete report shall be sent to the Medical Board of California, the Osteopathic Medical Board, or the California Board of Podiatric Medicine, with respect to a licensee of the board as to the following:

(1) A settlement over thirty thousand dollars ($30,000) or arbitration award of any amount or a civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal, of a claim or action for damages for death or personal injury caused by the licensee's alleged negligence, error, or omission in practice in California, or by his or her rendering of unauthorized professional services in California.

(2) A settlement over thirty thousand dollars ($30,000) if it is based on the licensee's alleged negligence, error, or omission in

practice in California, or by the licensee's rendering of unauthorized professional services in California, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee.

(b) The report shall be sent by the following:

(1) The insurer providing professional liability insurance to the licensee.

(2) The licensee, or his or her counsel, if the licensee does not possess professional liability insurance.

(3) A state or local governmental agency that self-insures the licensee.

(c) The entity, person, or licensee obligated to report pursuant to subdivision (b) shall send the complete report if the judgment, settlement agreement, or arbitration award is entered against or paid by the employer of the licensee and not entered against or paid by the licensee. "Employer," as used in this paragraph, means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this paragraph shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

(d) The report shall be sent to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine, as appropriate, within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(e) If an insurer is required under subdivision (b) to send the report, the insurer shall notify the claimant, or if the claimant is represented by counsel, the claimant's counsel, that the insurer has sent the report to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. If the claimant, or his or her counsel, has not received this notice within 45 days after the settlement was

reduced to writing and signed by all of the parties or the arbitration award was served on the parties or the date of entry of the civil judgment, the claimant or the claimant's counsel shall make the report to the appropriate board.

(f) If the licensee or his or her counsel is required under subdivision (b) to send the report, the licensee or his or her counsel shall send a copy of the report to the claimant or to his or her counsel if he or she is represented by counsel. If the claimant or his or her counsel has not received a copy of the report within 45 days after the settlement was reduced to writing and signed by all of the parties or the arbitration award was served on the parties or the date of entry of the civil judgment, the claimant or the claimant's counsel shall make the report to the appropriate board.

(g) Failure of the licensee or claimant, or counsel representing the licensee or claimant, to comply with subdivision (f) is a public offense punishable by a fine of not less than fifty dollars ($50) and not more than five hundred dollars ($500). A knowing and intentional failure to comply with subdivision (f) or a conspiracy or collusion not to comply with subdivision (f), or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars ($5,000) and not more than fifty thousand dollars ($50,000).

(h) (1) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may develop a prescribed form for the report.

(2) The report shall be deemed complete only if it includes the following information:

(A) The name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not the person received an award under the settlement, arbitration, or judgment.

(B) The name and last known business and residential address of every physician and surgeon or doctor of podiatric medicine who was alleged to have acted improperly, whether or not that person was a named defendant in the action and whether or not that person was required to pay any damages pursuant to the settlement, arbitration award, or judgment.

(C) The name, address, and principal place of business of every insurer providing professional liability insurance to any person described in subparagraph (B), and the insured's policy number.

(D) The name of the court in which the action or any part of the action was filed, and the date of filing and case number of each action.

(E) A brief description or summary of the facts of each claim, charge, or allegation, including the date of occurrence.

(F) The name and last known business address of each attorney who represented a party in the settlement, arbitration, or civil action, including the name of the client he or she represented.

(G) The amount of the judgment and the date of its entry; the amount of the arbitration award, the date of its service on the parties, and a copy of the award document; or the amount of the settlement and the date it was reduced to writing and signed by all parties. If an otherwise reportable settlement is entered into after a reportable judgment or arbitration award is issued, the report 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 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 a residency program, approved 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 board a description of the clinical program. The description shall be in sufficient detail to enable the board to determine whether or not

the program provides students an adequate medical education. The board shall approve the program if it determines that the program provides an adequate medical education. If the 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 board, in reviewing the application of a foreign medical graduate, may require the applicant to submit a description of the clinical program, if the 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 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 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 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 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 board that shows final and successful completion of the course. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the 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

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 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). 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 board from disapproving any foreign medical school or from denying an application if, in the opinion of the 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 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 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 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 postgraduate training required by Sections 2102 and 2103.

SEC. 17. Section 2135 of the Business and Professions Code is amended to read:

2135. The 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 board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to Article 4 (commencing with Section 2080).

(2) Taking and passing a written examination that is recognized by the 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 board shall not be included in the calculation of this four-year period.

(c) The 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 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 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 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).

(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.

(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.

SEC. 21. Section 2173 of the Business and Professions Code is repealed.

SEC. 22. Section 2174 of the Business and Professions Code is repealed.

SEC. 23. Section 2175 of the Business and Professions Code is amended to read:

2175. State examination records shall be kept on file by the 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) 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.

(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 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 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 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 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 board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed 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 board. 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 or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the 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 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 doctors of podiatric medicine licensed 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.

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 100-day period specified in paragraph (3) expires, but in no event shall that 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 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 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:

SB 821

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 821
Author: Committee on Business, Professions, and Economic Development
Bill Date: April 16, 2009, amended
Subject: Omnibus
Sponsor: Committee

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

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 proposes 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.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support MBC provisions.
Staff Recommendation: Support MBC provisions.

April 26, 2009

AMENDED IN SENATE APRIL 16, 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, *2532.2, 2532.7,* 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 *2532.25,* 2570.17, 2570.186, 4013, 4146, 4989.49, 4992.2, and 4996.24 to, *and to repeal Sections 821.5 and 821.6 of,* the Business and Professions Code, ~~and~~ to amend Section 123105 of the Health and Safety Code, *and to amend Section 3 of Chapter 294 of the Statutes of 2004,* relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, 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, *including circumstances related to an obsolete diversion program.*

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~~ *The* bill would *also* delete *the*

peer review provisions related to the 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 Pathology and Audiology Board. Existing law provides that an audiology aide is any person who meets the minimum requirements of the board and who works directly under the supervision of an audiologist.

This bill would prohibit an audiology aide from performing any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist, except if the board exempts certain functions performed by an industrial audiology aide and if the employer establishes a set of procedures or protocols.

Existing law requires an applicant for licensure as an audiologist to meet specified educational and curriculum standards, including possession of at least a master's degree in audiology.

This bill would revise the educational and curriculum standards for licensure as an audiologist, as specified, and instead require possession of a doctorate in audiology. The bill would apply those requirements to applicants who graduate from an approved educational institution on or after January 1, 2008. The bill would make conforming changes to provisions related to the issuance of a required professional experience (RPE) temporary license, as specified.

(3) The Occupational Therapy Practice Act provides for the licensure and regulation of occupational therapists and occupational therapist assistants. Existing law prohibits an occupational therapy assistant from supervising an aide engaged in client-related tasks. Existing law also defines "hand therapy" under the act to mean the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity. Existing law also provides for minimizing the risk of transmission of blood-borne infectious diseases.

This bill would authorize occupational therapy assistants to supervise aides engaged in client-related tasks, and make conforming changes. The bill would also redefine "hand therapy" by deleting the term "upper extremity" and replacing that term with "hand, wrist, and forearm." The bill would delete obsolete certification terms and replace them with licensure references. The bill would instead provide for minimizing the risk of transmission of infectious diseases.

Under the Occupational Therapy Practice Act, occupational therapists and occupational therapy assistants are subject to licensure and

regulation by the California Board of Occupational Therapy~~,~~ and specified licensure fees, which are deposited into the Occupational Therapy Fund.

This bill would require the board to issue retired licenses to certain occupational therapists or occupational therapy assistants, as specified, subject to a $25 fee.

Existing law requires occupational therapists to keep patient records for a minimum of 7 years. Under existing law, the board is authorized to investigate violations of the Occupational Therapy Practice Act.

This bill would authorize the board to inspect the books or records of, or require reports from, specified facilities providing occupational therapy treatment or services and its occupational therapy staff in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action. A licensee who fails to comply with this requirement would be subject to disciplinary action.

Existing law regulates telephone medical advice services, and requires all staff who provide medical advice services to be appropriately licensed, certified, or registered professionals, as specified.

This bill would add occupational therapists to the enumerated professionals authorized to provide telephone medical advice.

Existing law imposes specified recordkeeping and disclosure requirements on health care providers, as defined.

This bill would impose those requirements on occupational therapists.

(4) Existing law provides for the licensure and regulation of vocational nurses and psychiatric technicians by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law provides, upon application, for the issuance of an interim permit authorizing an applicant to practice vocational nursing or, in the case of a psychiatric technician, all skills in his or her basic course of study, pending the results of a licensing examination.

This bill would require the application for an interim permit to be submitted no later than 4 months after completion of a board-accredited program, and would limit the use of the permit to 9 months, as specified.

(5) Existing law provides for the licensure and regulation of hearing aid dispensers by the Hearing Aid Dispensers Bureau, and a person who violates that law is guilty of a misdemeanor. Existing law provides for the issuance of a temporary license to an applicant who has made application for licensure and who proves that he or she will be supervised and trained by a hearing aid dispenser, pending approval by

the board. A temporary license is effective and valid for 6 months, and may be renewed twice for an additional period of 6 months.

This bill would allow for the issuance of a new temporary license if more than 3 years have lapsed from the expiration or cancellation date of a previous temporary license.

Existing law requires a person engaging in the practice of fitting or selling hearing aids to notify the bureau in writing of his or her business address or addresses or changes in that address or addresses. Existing law requires a licensee to keep and maintain his or her business records for a 7-year period.

This bill would require the written notification to be given to the bureau within a 30-day period. The bill would also require a licensee to allow his or her business records, as specified, to be inspected by the bureau upon reasonable notice. Because a violation of those provisions would be a crime, the bill would impose a state-mandated local program.

Existing law allows the bureau to impose upon licensees specified licensure fees and penalties, including a fee for a continuing education course transcript and for a license confirmation letter.

This bill would delete those transcript and letter fee provisions.

(6) The Respiratory Care Practice Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. The act authorizes the board to deny, suspend, or revoke the license of any applicant or licensee who has committed a specified violation, including obtaining or possessing in violation of law or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, furnishing or administering to himself or herself or another a controlled substance, as defined.

This bill would clarify that the licensee is prohibited from obtaining, possessing, using, or administering to himself or herself in violation of law, or furnishing or administering to another, any controlled substance, as defined, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider. The bill would also subject to disciplinary action a licensee who uses alcoholic beverages to an extent that is injurious to self or others or if it impairs his or her ability to conduct with safety the practice of respiratory care. *For a violation thereof, the bill would specify that the board is authorized to place the license of an applicant or licensee on probation.* The bill would also require a renewing applicant for licensure to provide additional information requested by the board and, if the applicant fails

to provide that information within 30 days of the request, his or her license would be made inactive until the information is received.

(7) The Pharmacy Law provides for the licensure and regulation of pharmacists and pharmacy establishments by the California State Board of Pharmacy, and makes a knowing violation of the law a misdemeanor.

On and after July 1, 2010, this bill would require any facility licensed by the board to join the board's e-mail notification list and make specified e-mail address updates. The bill would also require ~~nonresdient~~ *nonresident* pharmacies to obtain licensure from the board, and would make certain changes with regard to pharmacists-in-charge of a pharmacy, representatives-in-charge of the wholesale of any dangerous drug or device, and representatives-in-charge of veterinary food-animal drug retailers, and respective notification requirements. The bill would also allow a pharmacy to accept the return of needles and syringes from the public if contained in a sharps container, as defined. Because a knowing violation of those provisions would be a crime, the bill would impose a state-mandated local program.

(8) Existing law provides for the licensure and regulation of acupuncturists by the Acupuncture Board. Existing law provides that 5 members of the board shall constitute a quorum.

This bill would provide that 4 members, including at least one acupuncturist, shall constitute a quorum.

(9) Existing law provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor.

This bill would delete references to the employment of unlicensed interns and instead refer to marriage and family therapy interns or associate clinical social workers, and would apply specified disciplinary and probationary provisions to registered marriage and family therapy interns and associate clinical social workers. The bill would require any person that advertises services performed by a trainee, as defined, to include the trainee's name and supervisor information. Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would additionally modify the disciplinary provisions that apply to marriage and family therapists, as specified, and the licensure provisions that apply to an applicant pending investigation of a complaint.

(10) Existing law provides for the regulation of educational psychologists by the Board of Behavioral Sciences, and makes a

violation of the law a misdemeanor. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to drug use, telemedicine consent, subversion of an examination, and fraudulent advertising. The bill would define the term "advertising" for purposes of those provisions.

(11) Existing law provides for the regulation of clinical social workers by the Board of Behavioral Sciences. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to the subversion of an examination and advertising. The bill would define the term "advertising" for purposes of those provisions. The bill would additionally modify the licensure provisions that apply to an applicant pending investigation of a complaint. The bill would modify provisions related to the supervision and employment of clinical social workers or associate clinical social workers.

(12) Existing law appropriates specified sums from the State Dental Auxiliary Fund to the Committee on Dental Auxiliaries for operating expenses necessary to manage the dental hygiene licensing examination. Existing law requires the Dental Hygiene Committee of California to administer the dental hygiene licensing examination. Existing law also provides that on and after July 1, 2009, specified moneys are to be transferred from the State Dental Auxiliary Fund to the State Dental Hygiene Fund for purposes of carrying out the certain provisions of the Dental Practice Act, including the payment of any encumbrances, related to dental hygienists, dental hygienists in alternative practice, and dental hygienists in extended functions.

This bill would specify that the moneys for operating the dental hygiene licensing examination are to be transferred to the Dental Hygiene Committee of California from the State Dental Hygiene Fund.

~~(12)~~

(13) 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
30 includes a person authorized to practice medicine pursuant to
31 Section 2113 or 2168.
32 (3) "Agency" means the relevant state licensing agency having
33 regulatory jurisdiction over the licentiates listed in paragraph (2).
34 (4) "Staff privileges" means any arrangement under which a
35 licentiate is allowed to practice in or provide care for patients in
36 a health facility. Those arrangements shall include, but are not
37 limited to, full staff privileges, active staff privileges, limited staff
38 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 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 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 board's executive director or designee, who is not in the enforcement program, shall also notify the executive director or designee when it has completed or closed an investigation.~~

~~(b) The 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 executive director or designee shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the executive director or designee determines that the progress of the investigation is not adequate to protect the public, the executive director or designee shall notify the chief of enforcement of the Medical Board of California, who shall promptly conduct an investigation of the matter. Concurrently with notifying the chief of enforcement, the 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 board pursuant to this section shall be deemed confidential. The records shall not be further disclosed by the 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 board shall purge and destroy all records in its possession pertaining to the investigation unless the 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).~~

~~(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, 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 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, 2010.~~

SEC. 2. Section 821.5 of the Business and Professions Code is repealed.

~~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 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 to the diversion program under this section shall also notify the diversion program when it has completed or closed an investigation.~~

~~(b) The diversion program administrator, 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 shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the diversion program administrator determines that the progress of the investigation is not adequate to protect the public, the diversion program administrator 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 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 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, 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 shall purge and destroy all records in its possession pertaining to the investigation unless the diversion program administrator 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, 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 repealed.

~~821.6. The board shall adopt regulations to implement the monitoring responsibility of the diversion program administrator 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.~~

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

Medical Board of California
2008 Tracker II - Legislative Bills
4/30/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Unbilical Cord Blood Collection Program	Asm. Approps.	04/01/09
AB 82	Evans	Dependent Children: psychotropic medications	Asm. Approps.	04/14/09
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Asm. Approps.	03/25/09
AB 259	Skinner	Health Care Coverage: certified nurse-midwives: direct access	Asm. Health	
AB 361	Lowenthal	Workers' Compensation: treatment authorization	Asm. Insur.	04/28/09
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Asm. Approps.	04/14/09
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Asm. Health	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Asm. Hum. S.	
AB 456	Emmerson	State Agencies: period review	Asm. B&P (4/28)	04/14/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Asm. Trans. (4/30)	
AB 520	Carter	Public Records: limiting requests	Asm. Jud.	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Asm. Approps.	04/22/09
AB 657	Hernandez	Health Professions Workforce: task force	Asm. Approps.	04/27/09
AB 681	Hernandez	Confidentiality of Medical Information: psychotherapy	Asm. Jud.	
AB 721	Nava	Physical Therapists: scope of practice	Asm. B&P	04/13/09
AB 830	Cook	Drugs and Devices	Asm. Approps.	04/23/09
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Asm. Approps.	04/14/09
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Asm. Approps.	04/14/09
AB 931	Fletcher	Emergency Supplies: increase amount	Asm. Health (5/05)	03/26/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Asm. Approps.	04/22/09
AB 1005	Block	CA Board of Accountancy: live broadcast of board meetings	Asm. Floor	04/20/09
AB 1094	Conway	Disposal of Personal Information	Asm. B&P (4/28)	04/21/09

Medical Board of California
2008 Tracker II - Legislative Bills
4/30/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1113	Lowenthal	Prisoners: professional mental health providers: MFTs	Asm. Approps. (4/29)	
AB 1140	Niello	Healing Arts (spot)	Asm. B&P (5/5)	04/14/09
AB 1152	Anderson	Professional Corporations: licensed physical therapists	Asm. B&P (5/12)	
AB 1162	Carter	Health Facilities: licensure	Introduced	
AB 1168	Carter	Professions and Vocations (spot)	Introduced	
AB 1194	Strickland	State Agency Internet Web Sites: information	Asm. B&P	
AB 1317	Block	Assisted Oocute Production: advertisment	Asm. Health	
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Asm. B&P	
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Asm. B&P (5/5)	
AB 1540	Health Comm.	Health	Asm. Approps.	04/16/09
AB 1542	Health Comm.	Medical Records: centralized location	Asm. Health (5/12)	
AB 1544	Health Comm.	Health Facilities: licensure	Asm. Approps.	
SB 26	Simitian	Home-generated Pharmaceutical Waste	Sen. Approps. (5/4)	04/15/09
SB 33	Correa	Marriage and Family Therapy: licensure and registration	Sen. Floor	02/10/09
SB 39	Benoit	Torts: personal liability immunity	Sen. Jud. (5/5)	04/27/09
SB 43	Alquist	Health Prof.: cultural and linguistic competency infofmation	Sen. Approps. (5/4)	04/20/09
SB 112	Oropeza	Hemodialysis Technicians	Sen. Approps.	04/01/09
SB 171	Pavley	Certified Employees: physician assistants: medical certificates	Sen. Floor	
SB 186	DeSaulnier	Workers' Compensation: treatment: predesignationof physician	Sen. Floor	
SB 238	Calderon	Medical Information: prescription refil requirements	Sen. Health	04/23/09

Medical Board of California
2008 Tracker II - Legislative Bills
4/30/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 268	Harman	Alcoholism or Drug Abuse Treatment Facilities: licensing	Sen. Approps.	
SB 294	Negete McLeod	Nurse Practitioners	Sen. Floor	03/31/09
SB 303	Alquist	Nursing Facility Residents: informed consent	Sen. Approps.	04/27/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Sen. Approps.	03/31/09
SB 368	Maldonado	Confidential Medical Information: unlawful disclsure	Sen. Health	04/01/09
SB 374	Calderon	Health Care Providers: resonable disclosure: reproductive choices	Sen. Floor	04/02/09
SB 395	Wyland	Medical Practice	Sen. Rules	
SB 442	Ducheny	Clinic Corporation: licensing	Sen. Approps.	04/28/09
SB 482	Padilla	Healing Arts: Medical Practice	Sen. Rules	04/14/09
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Sen. Approps.	
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Sen. G.O.	
SB 599	Negrete McLeod	Licensing Boards: disciplinary actions: posting	Sen. B&P	04/20/09
SB 606	Ducheny	Physicians and Surgeons: loan repayment	Sen. Approps.	03/31/09
SB 620	Wiggins	Healing Arts: osteopaths	Sen. Floor	
SB 630	Steinberg	Health care Coverage: reconstructive surgery: dental	Sen. Approps. (5/4)	
SB 719	Huff	State Agency Internet Web Sites: information searchability	Sen. Approps.	
SB 744	Strickland	Clinical Laboratories: public health labs	Sen. Approps.	04/22/09
SB 761	Aanestad	Health Manpower Pilot Projects	Sen. Approps.	04/22/09
SB 762	Aanestad	Professions and Vocations: healing arts	Sen. B&P	
SB 788	Wyland	Licensed Professional Clinical Counselors	Sen. B&P	04/29/09
SB 810	Leno	Single-Payer Health Care Coverage	Sen. Approps. (5/4)	04/23/09
SB 820	B&P Comm.	Consumer Affiars: professions and vocations	Sen. Approps.	04/21/09

State of California
State and Consumer Services Agency
MEDICAL BOARD OF CALIFORNIA
MANUAL OF MODEL DISCIPLINARY ORDERS
AND DISCIPLINARY GUIDELINES
11~~10~~th Edition
2008
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA

Richard Fantozzi, M.D.
President
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Barbara Yaroslavsky
Frank Zerunyan
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Secretary

The Board produced this Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11~~10~~th Edition for the intended use of those involved in the physician disciplinary process: Administrative Law Judges, defense attorneys, physicians-respondents, trial attorneys from the Office of the Attorney General, and the Board's disciplinary panel members who review proposed decisions and stipulations and make final decisions. These guidelines are not binding standards.

The Federation of State Medical Boards and other state medical boards have requested and received this manual. All are welcome to use and copy any part of this material for their own work.

For additional copies of this manual, please write to the address below or visit www.mbc.ca.gov:

Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Phone (916) 263-2466
Revisions to the Manual of Model Disciplinary Orders and Disciplinary Guidelines~~,~~ are made periodically. Listed below are the most recent changes included in the 11~~10~~th edition approved by the Board following open discussion at a public meeting.

Summary of Changes
Model Condition Number:

5. Controlled Substances – Total Restriction
Eliminated the term "good faith" prior examination to reflect amendments made to statute which now requires an "appropriate prior examination and a medical indication" and adds "furnish" to the list of prohibited activities.

~~**6. Controlled Substances - Surrender of DEA Permit**~~
~~References to the "Division" (Division of Medical Quality) changed to "Board."~~

7. Controlled Substances – Partial Restriction
Eliminated the term "good faith" prior examination to reflect amendments made to statute which now requires an "appropriate prior examination and a medical indication" and adds "furnish" to the list of prohibited activities.

8. Controlled Substances - Maintain Records and Access To Records and Inventories
~~References to the "Division" (Division of Medical Quality) changed to "Board."~~
Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

9. Controlled Substances - Abstain From Use
~~References to the "Division" (Division of Medical Quality) changed to "Board."~~
Added language that respondent shall be suspended based upon a positive biological fluid test.

10. Alcohol - Abstain From Use
Added language that respondent shall be suspended based upon a positive biological fluid test.

11. Biological Fluid Testing
Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation. Expands the parameters of biological fluid testing to include various testing mechanisms.
~~The following language was deleted:~~

~~*Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Division or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.*~~

~~The following language replaces the above:~~

~~*Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. Prior to practicing medicine, respondent shall, at respondent's expense, contract with a laboratory or service - approved in advance by the Board or its designee - that will conduct random, unannounced, observed, urine testing a minimum of four times each month. The contract shall require results of the urine tests to be transmitted by the laboratory or service directly to Board or its designee within four hours of the results becoming available. Failure to maintain this laboratory or service during the period of probation is a violation of probation. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation."*~~

~~**Former # 12 "Diversion Program" was eliminated:**~~
~~# 12 was formerly entitled "Diversion Program." As the Diversion Program is eliminated on June 30, 2008, the following language was deleted:~~

~~*Within 30 calendar days from the effective date of this Decision, respondent shall enroll and participate in the Board's Diversion Program until the Diversion Program determines that further treatment and rehabilitation are no longer necessary. Upon enrollment, respondent shall execute a release authorizing the Diversion Program to notify the Division of the following: 1) respondent requires further treatment and rehabilitation; 2) respondent no longer requires treatment and rehabilitation; and 3) respondent may resume the practice of medicine. Respondent shall execute a release authorizing the Diversion Program to provide confirmation to the Division whenever the Diversion Program has determined that respondent shall cease the practice of medicine.*~~

~~*Within 5 calendar days after being notified by the Diversion Program of a determination that further treatment and rehabilitation are necessary, respondent shall notify the Division in writing. The Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Diversion Program determines that further treatment and rehabilitation are no longer necessary. Within 24 hours after being notified by the Diversion Program of a determination that respondent shall cease the practice of medicine, respondent shall notify the Division and respondent shall not engage in the practice of medicine until notified in writing by the Division or its designee of the Diversion Program's determination that respondent may resume the practice of medicine. Failure to cooperate or comply with the Diversion Program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.*~~

12. Community Service - Free Services
Reworded the language regarding non-medical community service.
~~Formerly # 13, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

13. Education Course
Deleted language limiting the education program or course to classroom, conference or seminar settings.
~~Formerly # 14, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

14. Prescribing Practices Course
Added language to require the course be equivalent to the course offered at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. Also added language requiring the respondent to provide pertinent documents to the program and amended the language regarding completion of the course.
~~Formerly # 15, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

15. Medical Record Keeping Course
Added language to require the course be equivalent to the course offered at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. Also added language requiring the respondent to provide pertinent documents to the program and amended the language regarding completion of the course.
~~Formerly # 16, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

16. Professionalism Program (Ethics Course)
Amended the name and language to comport with subsequent regulations which setting requirements for a professionalism program (previously referred to as an ethics course). Also added language requiring the respondent to provide pertinent documents to the program and amended the language regarding completion of the course.
~~Formerly # 17, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

17. Professional Boundaries Program
Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation. Added language permitting discretionary acceptance of a course taken prior to the effective date of the decision.
~~Formerly # 18, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

18. Anger Management for Healthcare Professionals Program
Added new condition for an anger management course

19~~8~~. Clinical Training Program
Formerly #18, it is re-numbered to reflect the addition of a new condition. Also amended the language regarding completion of program and replaced the terms specialty and sub specialty with area of practice in which respondent was deficient.

Also eliminated the subsequent optional term and made it a requirement.
~~Formerly # 19, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

20~~19~~. Oral or Written Examination
Formerly #19, it is re-numbered to reflect the addition of a new condition. Also added that if the examination is an oral examination it shall be administered in accordance with Business and Professions Code section 2293(a) and (b). Also eliminated the subsequent optional term and made it a requirement.
~~Formerly # 20, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

21~~20~~. Psychiatric Evaluation
Formerly #20, it is re-numbered to reflect the addition of a new condition. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.

~~Formerly # 21, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

22~~21~~. Psychotherapy
Formerly #21, it is re-numbered to reflect the addition of a new condition. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.
~~Formerly # 22, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

23~~22~~. Medical Evaluation and Treatment
Formerly #22, it is re-numbered to reflect the addition of a new condition. Also added language requiring the respondent to provide pertinent documents/information to the evaluating physician. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.
~~Formerly # 23, it is re-numbered to reflect the deletion of former #12." Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

24~~23~~. Monitoring - Practice/Billing
Formerly #23, it is re-numbered to reflect the addition of a new condition. Also restructured the formatting to clarify the type of monitor required. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.
~~Formerly # 24, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

25~~24~~. Solo Practice Prohibition
Clarified the title to show it was a prohibition and clarified what constitutes solo practice.
~~Formerly # 25, it is re-numbered to reflect the deletion of former #12.~~

26~~25~~. Third Party Chaperone
Formerly #25, it is re-numbered to reflect the addition of a new condition. Also restructured the formatting to clarify the type of patient in which respondent is required to have a chaperone. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation. In addition, language was added prohibiting employment termination of a chaperone for reporting to the Board.
~~Formerly # 26, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

27~~26~~. Prohibited Practice
Formerly #26, it is re-numbered to reflect the addition of a new condition. Also restructured the formatting of the condition to clarify the type of practice prohibition. Deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.
~~Formerly # 27, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

28~~27~~. Notification
Formerly #27, it is re-numbered to reflect the addition of a new condition. Also required notification to be within seven days of the effective date of the decision rather than prior to practicing medicine.
~~Formerly # 28, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

29~~28~~. Supervision of Physician Assistants
Formerly #28, it is re-numbered to reflect the addition of a new condition.
~~Formerly # 29, it is re-numbered to reflect the deletion of former #12.~~

30~~29~~. Obey All Laws
Formerly #29, it is re-numbered to reflect the addition of a new condition.
~~Formerly # 30, it is re-numbered to reflect the deletion of former #12.~~

31~~30~~. Quarterly Declarations
Formerly #30, it is re-numbered to reflect the addition of a new condition.
~~Formerly # 31, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

32~~31~~. General Probation Requirements ~~Unit Compliance~~
Formerly #31, it is re-numbered to reflect the addition of a new condition. Also reformatted the conditions and added clarification regarding notification of residence or practice out of state and of email and telephone numbers.
~~Formerly # 32, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

33~~32~~. Interview with the Board or its designee
Formerly #32, it is re-numbered to reflect the addition of a new condition. Also, reworded condition for clarity.
~~Formerly # 33, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

***Formerly* 33. Residing or Practicing Out-of-State**
Deleted condition due to combining conditions 33 and 34 to clarify non-practice regardless of physician location.
~~Formerly # 34, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

***Formerly* 34. Failure to Practice Medicine- California Resident**
Deleted condition due to combining conditions 33 and 34 to clarify non-practice regardless of physician location.
~~Formerly # 35, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

34. Non-Practice While on Probation
Clarified non-practice regardless of physician location. Added clinical training for non-practice of more than 18 months, defined non-practice, and required physician to practice in two years.

~~**35. Completion of Probation**~~
~~Formerly # 36, it is re-numbered to reflect the deletion of former #12.~~

~~**36. Violation of Probation**~~
~~Formerly # 37, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

Formerly **37. Cost Recovery**
Deleted condition due to elimination of authority to order cost recovery. See Business and Professions Code section 125.3(k).
~~Formerly # 38, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

37~~38~~. License Surrender
Formerly 38, reworded condition for clarity.
~~Formerly # 39, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

38~~39~~. Probation Monitoring Costs
Formerly 39, deleted language that failure to comply is a violation of probation because the language is unnecessary as any failure to comply with the terms or conditions of probation is a violation of probation.
~~Formerly # 40, it is re-numbered to reflect the deletion of former #12. Also, all references to the "Division" (Division of Medical Quality) changed to "Board."~~

STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
MODEL DISCIPLINARY ORDERS AND
DISCIPLINARY GUIDELINES

Business and Professions Code section 2229 mandates protection of the public shall be the highest priority for the Medical Board and for the Administrative Law Judges of the Medical Quality Hearing Panel. Section 2229 further specifies that, to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of licensees. To implement the mandates of section 2229, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (guidelines), 11~~10~~th Edition. Consistent with the mandates of section 2229, these guidelines set forth the discipline the Board finds appropriate and necessary for the identified violations. In addition to protecting the public and, where not inconsistent, rehabilitating the licensee, the Board finds that imposition of the discipline set forth in the guidelines will promote uniformity, certainty and fairness, and deterrence, and, in turn, further public protection.

The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, ~~and~~ demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

The Model Disciplinary Orders contain three sections: three (3) Disciplinary Orders; twenty-four~~three~~ (24~~3~~) Optional Conditions whose use depends on the nature and circumstances of the particular case; and eleven ~~thirteen~~ (11~~3~~) Standard Conditions that generally appear in all probation cases. All orders should place the Order(s) first, optional condition(s) second, and standard conditions third.

~~The Model Disciplinary Guidelines list proposed terms and conditions for more than twenty-four (24) sections of the Business and Professions Code.~~

MODEL DISCIPLINARY ORDERS
INDEX

Model No.	Page No.
DISCIPLINARY ORDERS	
1. Revocation - Single Cause	11
2. Revocation - Multiple Causes	11
3. Standard Stay Order	11
OPTIONAL CONDITIONS	
4. Actual Suspension	11
5. Controlled Substances - Total Restriction	11
6. Controlled Substances - Surrender of DEA Permit	12
7. Controlled Substances - Partial Restriction	12
8. Controlled Substances - Maintain Records and Access To Records and Inventories	13
9. Controlled Substances - Abstain From Use	13
10. Alcohol - Abstain From Use	13
11. Biological Fluid Testing	14
12. Community Service - Free Services	14
13. Education Course	15
14. Prescribing Practices Course	15
15. Medical Record Keeping Course	16
16. Professionalism Program (Ethics Course)	16
17. Professional Boundaries Program	17
18. Anger Management for Healthcare Professionals Program	18
19~~18~~. Clinical Training Program	18
20~~19~~. Oral or Written Examination	20
21~~20~~. Psychiatric Evaluation	21
22~~21~~. Psychotherapy	21
23~~22~~. Medical Evaluation and Treatment	22
24~~23~~. Monitoring - Practice/Billing	23
25~~24~~. Solo Practice Prohibition	24
26~~25~~. Third Party Chaperone	24
27~~26~~. Prohibited Practice	25
STANDARD CONDITIONS	
28~~27~~. Notification	26
29~~28~~. Supervision of Physician Assistants	26
30~~29~~. Obey All Laws	26
31~~30~~. Quarterly Declarations	26

Model No.	Page No.
32~~31~~. General Probation Requirements ~~Unit Compliance~~	26
33~~32~~. Interview with the Board or its designee	27
~~33. Residing or Practicing Out-of-State~~	~~26~~
~~34. Failure to Practice Medicine- California Resident~~	~~27~~
34. Non-Practice While on Probation	28
35. Completion of Probation	29
36. Violation of Probation	29
~~37. Cost Recovery~~	~~23~~
37~~38~~. License Surrender	29
38~~39~~. Probation Monitoring Costs	30

MODEL DISCIPLINARY ORDERS

1. Revocation - Single Cause

Certificate No._____ issued to respondent _____ is revoked.

2. Revocation - Multiple Causes

Certificate No. _____ issued to respondent _____ is revoked pursuant to Determination of Issues (e.g. I, II, and III), separately and for all of them.

3. Standard Stay Order

However, revocation stayed and respondent is placed on probation for (e.g., ten) years upon the following terms and conditions.

OPTIONAL CONDITIONS

4. Actual Suspension

As part of probation, respondent is suspended from the practice of medicine for (e.g., 90 days) beginning the sixteenth (16th) day after the effective date of this decision.

5. Controlled Substances - Total Restriction

Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section11362.5.

If respondent forms the medical opinion, after an appropriate ~~good faith~~ prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior ~~good faith~~ examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient's primary caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

6. Controlled Substances - Surrender of DEA Permit

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board or its designee.

7. Controlled Substances - Partial Restriction

Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule(s)_____(e.g., IV and V) of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section11362.5. If respondent forms the medical opinion, after an appropriate ~~good-faith~~ prior examination and medical indication, that a patient's medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior ~~good-faith~~ examination and medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient's primary caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

Note: Also use Condition 8, which requires that separate records be maintained for all controlled substances prescribed.

(Option)
Respondent shall immediately surrender respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order. Within 15 calendar days after the effective date of this Decision, respondent shall submit proof that respondent has surrendered respondent's DEA permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15 calendar days after the effective date of issuance of a new DEA permit, ~~the~~ respondent shall submit a true copy of the permit to the Board or its designee.

8. Controlled Substances- Maintain Records and Access to Records and Inventories

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

~~Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.~~

9. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed ~~lawful prescription~~ medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, ~~and~~ strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a positive biological fluid test for any substance not legally prescribed and not reported to the Board or its designee, respondent shall be suspended and shall cease the practice of medicine within three (3) calendar days after being so notified by the Board or its designee. This suspension shall continue until final decision on an accusation and/or a petition to revoke probation. This period of suspension shall not apply to the reduction of the probationary time period.

10. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a positive biological fluid test for alcohol, respondent shall be suspended and shall cease the practice of medicine within three (3) calendar days after being so notified by the Board or its designee. This suspension shall continue until final decision on an accusation and/or a petition to revoke probation. This period of suspension shall not apply to the reduction of the probationary time period.

11. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but not limited to, biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board or its designee. Within 30 calendar days of this Decision, ~~Prior to practicing medicine,~~ respondent shall~~, at respondent's expense,~~ contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, ~~urine~~ biological fluid testing ~~a minimum of four times each month~~. The contract shall require results of the ~~urine~~ tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall ~~Failure to~~ maintain this laboratory or service contract during the period of probation ~~is a violation of probation~~.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. ~~Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation."~~

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall immediately cease practice upon notification by the Board or its designee and shall not resume practice until notified by the Board or its designees. After taking into account documented evidence of mitigation, if the Board files an accusation and/or a petition to revoke probation, the Board may suspend respondent pending the final decision on the accusation and/or petition to revoke probation. This period of suspension shall not apply to the reduction of the probationary time period.

12. Community Service - Free Services

[Medical community service shall only be authorized in cases not involving quality of care.]

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall within the first 2 years of probation, provide_____ hours of free services (e.g., medical or nonmedical) to a community or non-profit organization. If the term of probation is designated for 2 years or less, the community service hours must be completed not later than 6 months prior to the completion of probation.

Prior to engaging in any community service respondent shall provide a true copy of the Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also apply to any change(s) in community service.

Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition. ~~Note: In quality of care cases, only non-medical community service is allowed unless respondent passes a competency exam or otherwise demonstrates competency prior to providing community service.~~

13. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified~~, limited to classroom, conference, or seminar settings~~. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

14. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices~~, at respondent's expense,~~ equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. Respondent shall pay all expenses associated with the course. ~~Failure to successfully complete the course during the first 6 months of probation is a violation of probation.~~

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

15. Medical Record Keeping Course

Within 60 calendar days of the effective date of this ~~d~~Decision, respondent shall enroll in a course in medical record keeping~~, at respondent's expense,~~ equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. Respondent shall pay all expenses associated with the course. ~~Failure to successfully complete the course during the first 6 months of probation is a violation of probation.~~

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

16. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1 ~~course in ethics, at respondent's expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation~~. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. Respondent shall pay all expenses associated with the program.

~~An ethics course~~ professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the ~~course~~ program would have been approved by the Board or its designee had the program ~~course~~ been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program ~~course~~, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

17. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program~~,~~ offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire Program not later than six (6) months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

The Program has the authority to determine ~~'s determination~~ whether or not respondent successfully completed the Program~~ shall be binding~~.

A professional boundaries course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

~~Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.~~

(Option # 1: Condition Precedent)
Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing.

(Option # 2: Condition Subsequent)
If respondent fails to complete the Program within the designated time period, respondent shall cease the practice of medicine within ~~72 hours~~ three (3) calendar days after being notified by the Board or its designee that respondent failed to complete the Program.

18. Anger Management for Healthcare Professionals Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in an anger management program, at respondent's expense, equivalent to the Anger Management for Healthcare Professionals Program offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). At the program's discretion, respondent shall undergo and complete both the program's assessment of respondent's competency, mental health and/or neuropsychological performance, and a minimum of a 24-hour program of interactive education and training in the area of anger management, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant.

Respondent shall complete the program not later than six (6) months after initial enrollment. Based on respondent's performance in and evaluations from the assessment, education, and training, the program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with all program recommendations. At the completion of the program, respondent shall submit to a final evaluation.

Determination as to whether respondent successfully completed the program is solely within the program's jurisdiction.

An anger management course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

(Option # 1: Condition Precedent)
Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing.

(Option # 2: Condition Subsequent)
If respondent fails to complete the program within the designated time period, respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that respondent failed to complete the program.

19~~8~~. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall complete the Program not later than six (6) months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged to be deficient~~specialty or sub-specialty~~, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. ~~The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.~~ Determination as to whether respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

~~Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.~~

~~Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.~~

[**Note:** The following language shall be included in this condition unless Option #1 is included: If respondent fails to enroll, participate in, or successfully complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that respondent failed to complete the clinical training program.]

(Option #1: Condition Precedent)
Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

~~**(Option#2: Condition Subsequent)**~~
~~If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the clinical training program.~~

(Option#23)
Within 60 days aAfter respondent has successfully completed the clinical training program, respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

1920. Oral and/or Written Examination

[**NOTE:** This condition should **only** be used where a clinical training program is not appropriate.]

Within 60 calendar days of the effective date of this Decision, respondent shall take and pass an oral and/or written examination, administered by the Board or its designee Probation Unit. The Board or its designee shall designate a subject matter and administer the oral and/or written examination in a subject to be designated by the Board or its designee and.the oral examination shall be audio tape recorded.

If the examination is an oral examination, it shall be conducted in accordance with section 2293(a) and (b) of the Code.

If respondent is required to take and pass a written exam, that examination shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.

If respondent fails the first examination, respondent shall be allowed to take and pass a second examination, which may consist of an oral and/or written examination. The waiting period between the first and second examinations shall be at least 90 calendar days.

Failure to pass the required oral and/or written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations. For purposes of this condition, if respondent is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Board or its designee.
[**Note:** The following language shall be included in this condition unless Option #1 is included: If respondent fails to pass the first examination, respondent shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee that respondent failed the examination. Respondent shall remain suspended from the practice of medicine until respondent successfully passes the examination, as evidenced by written notice to respondent from the Board or its designee.]

(Continue with either one of these two options:)

(Option 1: Condition Precedent)

Respondent shall not practice medicine until respondent has passed the required examination and has been so notified by the Board or its designee in writing. This prohibition shall not bar respondent from practicing in a clinical training program approved by the Board or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

Note: The condition precedent option is particularly recommended in cases where respondent has been found to be incompetent, repeatedly negligent, or grossly negligent.

~~**(Option 2: Condition Subsequent)**~~
~~If respondent fails to pass the first examination, respondent shall be suspended from the practice of medicine. Respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent has failed the examination.~~

~~Respondent shall remain suspended from the practice of medicine until respondent successfully passes a repeat examination, as evidenced by written notice to respondent from the Board or its designee.~~

2~~0~~1. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on ~~a~~ whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

~~Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.~~

(Option: Condition Precedent)
Respondent shall not engage in the practice of medicine until notified by the Board or its designee that respondent is mentally fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

2~~1~~2. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of

emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations. ~~Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.~~

Note: This condition is for those cases where the evidence demonstrates that the respondent has had impairment (impairment by mental illness, alcohol abuse and/or drug self-abuse) related to the violations but is not at present a danger to respondent's patients.

22~~3~~. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If respondent is required by the Board or its designee to undergo medical treatment, respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of respondent's choice. Upon approval of the treating physician, respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit

quarterly reports to the Board or its designee indicating whether or not the respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to treatment~~, that~~ the Board or its designee deems necessary.

If, prior to the completion of probation, respondent is found to be physically incapable of resuming the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

~~Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.~~

(Option- Condition Precedent)
Respondent shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that respondent is medically fit to practice safely.

Note: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

2~~3~~4. Monitoring - Practice/Billing

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a _____~~(i.e.,~~ **[insert:** practice, billing, or practice and billing~~)~~] monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's _____ ~~(i.e.,~~ **[insert:** practice, billing, or practice and billing~~)~~] shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of [**insert:** medicine or billing, or both], and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and ~~prepared to~~ assumes immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Board or its designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

~~Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.~~

24~~5~~. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine or in a practice where: 1) physicians merely share office space or 2) respondent would be the sole physician practitioner.

25~~6~~. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, examining or treating _____ ~~(e.g.,~~ [**insert:** male, female, or minor~~)~~] patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Each third party chaperone shall ~~initial~~ sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. ~~Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.~~

Respondent is prohibited from terminating employment of a Board-approved third party chaperone solely because that person provided information as required to the Board or its designee.

(Option)

Respondent shall provide written notification to respondent's patients that a third party chaperone shall be present during all consultations, examination, or treatment with ~~(e.g.,~~ [**insert:** male, female or minor~~)~~] patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

~~Note: Sexual offenders should normally be placed in a monitored environment.~~

26~~6~~7. Prohibited Practice

During probation, respondent is prohibited from _____~~(e.g.,~~ [**insert:** practicing, performing, or treating~~)~~] _____ ~~(e.g.,~~ [**insert:** a specific medical procedure; surgery; on a specific patient population~~)~~]. After the effective date of this Decision, ~~the first~~ each time ~~that~~ a patient seeking the prohibited services makes an appointment, ~~orally~~ respondent shall verbally notify the patient that respondent does not _____~~(e.g.,~~ [**insert:** practice, perform or treat~~)~~] _____~~(e.g.,~~ [**insert** a specific medical procedure; surgery; on a specific patient population~~)~~]. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order~~,~~; shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee~~,~~; and shall retain the log for the entire term of probation. ~~Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.~~

In addition to the required ~~oral~~ verbal notification, after the effective date of this Decision, ~~the first~~ each time ~~that~~ a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not _____~~(e.g.,~~ [**insert:** practice, perform or treat~~)~~] _____~~(e.g.,~~ [**insert:** a specific medical procedure; surgery; on a specific patient population~~)~~]. Respondent shall maintain a copy of the written notification

in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation. ~~Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.~~

STANDARD CONDITIONS

2~~7~~8. Notification

~~Prior to engaging in the practice of medicine~~ Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this~~e~~ Decision~~(s)~~ and Accusation~~(s)~~ to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

2~~8~~9. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

~~29~~30. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

3~~0~~1. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

3~~1~~2. General Probation Requirements ~~Unit Compliance~~

Compliance with Probation Unit
Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes
Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address, and telephone numbers. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice
Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility.

License Renewal
Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California
Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

~~32~~3. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office~~, with the Board or its designee upon request at various intervals and either~~ with or without prior notice throughout the term of probation.

~~**33. Residing or Practicing Out-of-State**~~

~~In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.~~

~~All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.~~

~~Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.~~

~~**(Optional)**~~

~~Any respondent disciplined under B&P Code sections 141(a) or 2305 (another state discipline) may petition for modification or termination of penalty: 1) if the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year has elapsed from the effective date of the California discipline.~~

~~**34. Failure to Practice Medicine - California Resident**~~

~~In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.~~

~~All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.~~

~~Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.~~

34. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours per month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 19 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

35. Completion of Probation

Respondent shall comply with all financial obligations (e.g., ~~cost recovery,~~ restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

36. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

~~**37. Cost Recovery**~~

~~Within 90 calendar days from the effective date of the Decision or other period agreed to by the Board or its designee, respondent shall reimburse the Board the amount of $_____ for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent his/her obligation to reimburse the Board for its costs.~~

37~~8~~. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement~~,~~ or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to ~~the voluntary~~ surrender ~~of~~ his or her ~~respondent's~~ license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Nor shall ~~R~~respondent ~~will no longer~~ be subject to the terms and conditions of probation ~~and the surrender of respondent's license shall be deemed~~

~~disciplinary action~~. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

38~~9~~. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. ~~Failure to pay costs within 30 calendar days of the due date is a violation of probation.~~

DISCIPLINARY GUIDELINES
INDEX

B&P Sec.	Page No.
141(a) Discipline Action Taken By Others	32
651 Advertising: Fraudulent, Misleading, Deceptive	32
725 Excessive Prescribing	32
725 Excessive Treatments	32
726 Sexual Misconduct	33
729 Sexual Exploitation	33
820 Mental or Physical Illness	33
2232 Registration as a Sex Offender	33
2234 Unprofessional Conduct	34
2234(b) Gross Negligence	34
2234(c) Repeated Negligent Acts	34
2234(d) Incompetence	34
2234(e) Dishonesty Related to Patient Care, Treatment, Management, or Billing	34
2234(e) Dishonesty Not Related to Patient Care, Treatment, Management, or Billing	34
2235 Procuring License by Fraud	34
2236 Conviction of Crime Related to Patient Care, Treatment, Management or Billing	35
2236 Conviction of Crime - Felony Conviction Not Related to Patient Care, Treatment, Management or Billing	35
2236 Conviction of Crime - Misdemeanor Conviction Not Related to Patient Care, Treatment, Management or Billing	35
2237 Conviction of Drugs Violations	36
2238 Violation of Drug Statutes	36
2238 Illegal Sales of Controlled Substance	36
2239 Excessive Use of Controlled Substance	36
2239 Excessive Use of Alcohol	36
2241 Prescribing to Addicts	37
2242 Prescribing Without an Appropriate Prior Examination	32
2252 Illegal Cancer Treatment	37
2258 Illegal Cancer Treatment	37
2261 Making False Statements	37
2262 Alteration of Medical Records	37
2264 Aiding and Abetting Unlicensed Practice	37
2266 Failure to Maintain Adequate Records	34
2271 False or Misleading Advertising	32
2280 Practice Under the Influence of Narcotic	36
2280 Practice Under the Influence of Alcohol	36
2285 Fictitious Name Violation	38
2288 Impersonation of Applicant in Exam	38
2305 Discipline by Another State	32
2306 Practice During Suspension	38
2417 Business Organization in Violation of Chapter	38
----- Violation of Probation	38

DISCIPLINE BY ANOTHER STATE [B&P 141(a) & 2305]
Minimum penalty: Same for similar offense in California
Maximum penalty: Revocation
~~1. Oral or Written Examination as a condition precedent to practice in California~~

MISLEADING ADVERTISING (B&P 651 & 2271)
Minimum penalty: Stayed revocation, 1~~5~~ years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Education Course [13]
3. Professionalism Program (Ethics Course) [16]
4. Monitoring-Practice/Billing [23]
5. Prohibited Practice [26]

EXCESSIVE PRESCRIBING (B&P 725), or
PRESCRIBING WITHOUT AN APPROPRIATE PRIOR EXAMINATION (B&P 2242)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Controlled Substances-Total DEA restriction [5],
Surrender DEA permit [6] or,
Partial DEA restriction [7]
3. Maintain Records and Access to Records and Inventories [8]
4. Education Course [13]
5. Prescribing Practices Course [14]
6. Medical Record Keeping Course [15]
7. Professionalism Program (Ethics Course) [16]
8. Clinical Training Program [18] ~~or Oral or Written Examination [19]~~
9. Monitoring-Practice/Billing [23]

EXCESSIVE TREATMENTS (B&P 725)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Education Course [13]
3. Medical Record Keeping Course [15]
4. Professionalism Program (Ethics Course) [16]
5. Clinical Training Program [18] ~~or Oral or Written Examination [19]~~
6. Monitoring-Practice/Billing [23]
7. Prohibited Practice [26]

SEXUAL MISCONDUCT (B&P 726)
Minimum penalty: Stayed revocation, 7 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Education Course [13]
3. Professionalism Program (Ethics Course) [16]
4. Professional Boundaries Program [17]
5. Psychiatric Evaluation [20]
6. Psychotherapy [21]
7. Monitoring-Practice/Billing [23]
8. Third Party Chaperone [25]
9. Prohibited Practice [26]

SEXUAL EXPLOITATION (B&P 729)
Minimum penalty: Revocation
Effective January 1, 2003, Business and Professions Code 2246 was added to read, "Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge."

MENTAL OR PHYSICAL ILLNESS (B&P 820)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Oral or Written Examination [19]
2. Psychiatric Evaluation [20]
3. Psychotherapy [21]
4. Medical Evaluation and Treatment [22]
5. Monitoring-Practice/Billing [23]
6. Solo Practice Prohibition [24]
7. Prohibited Practice [26]

REGISTRATION AS A SEX OFFENDER (B&P 2232)
Minimum penalty: Revocation
Effective January 1, 2004 section 2232(a) was added to the Business and Professions Code read, "Except as provided in subdivisions (b), (c), and (d), the Board shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of section 290 of the Penal Code."

GENERAL UNPROFESSIONAL CONDUCT (B&P 2234), or
GROSS NEGLIGENCE [B&P 2234 (b)], or
REPEATED NEGLIGENT ACTS [B&P 2234(c)], or
INCOMPETENCE [B&P 2234(d)], or
FAILURE TO MAINTAIN ADEQUATE RECORDS (B&P 2266)
Minimum penalty: Stayed revocation, 5 years probation
NOTE: In cases charging repeated negligent acts with one patient, a public reprimand may, in appropriate circumstances, be ordered.
Maximum penalty: Revocation
1. Education course [13]
2. Prescribing Practices Course [14]
3. Medical Record Keeping Course [15]
4. Professionalism Program (Ethics Course) [16]
5. Clinical Training Program [18]
6. Oral or Written Examination [19] ~~(preferably Condition Precedent)~~
7. Monitoring-Practice/Billing [23]
8. Solo Practice Prohibition [24]
9. Prohibited Practice [26]

DISHONESTY - Substantially related to the qualifications, functions or duties of a physician and surgeon and *arising from* or occurring during patient care, treatment, management or billing [B&P 2234(e)]
Minimum penalty: Stayed revocation, one year suspension at least 7 years probation
Maximum penalty: Revocation
1. Professionalism Program (Ethics Course) [16]
~~2. Oral or Written Examination [19]~~
2~~3~~. Psychiatric Evaluation [20]
3~~4~~. Medical Evaluation [22]
4~~5~~. Monitoring-Practice/Billing [23]
5~~6~~. Solo Practice Prohibition [24]
6~~7~~. Prohibited Practice [26]
7. Victim Restitution

DISHONESTY - Substantially related to the qualifications, function or duties of a physician and surgeon but *not arising from* or occurring during patient care, treatment, management or billing [BP 2234 (e)]
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Professionalism Program (Ethics Course) [16]
3. Psychiatric Evaluation [20]
4. Medical Evaluation [22]
5. Monitoring-Practice/Billing (if financial dishonesty or conviction of financial crime) [23]
6. ~~Restitution to~~ Victim Restitution
7. Community Service [12]

PROCURING LICENSE BY FRAUD (B&P 2235)
1. Revocation [1] [2]

CONVICTION OF CRIME - Substantially related to the qualifications, functions or duties of a physician and surgeon and *arising from* or occurring during patient care, treatment, management or billing (B&P 2236)
Minimum penalty: Stayed revocation, one year suspension, at least 7 years probation
Maximum penalty: Revocation
1. Professionalism Program (Ethics Course) [16]
~~2. Oral or Written Examination [19]~~
2~~3~~. Psychiatric Evaluation [20]
3~~4~~. Medical Evaluation and Treatment [22]
4~~5~~. Monitoring-Practice/Billing [23]
5~~6~~. Solo Practice Prohibition [24]
6~~7~~. Prohibited Practice [26]
7. Victim Restitution
8. Anger Management Course [18]
9. Community Service [12]

CONVICTION OF CRIME - Felony conviction substantially related to the qualifications, functions or duties of a physician and surgeon but *not arising from* or occurring during patient care, treatment, management or billing (B&P 2236)
Minimum penalty: Stayed revocation, 7 years probation
Maximum penalty: Revocation
1. Suspension of 30 days or more [4]
2. Professionalism Program (Ethics Course) [16]
3. Psychiatric Evaluation [20]
4. Medical Evaluation and Treatment [22]
5. Monitoring-Practice/Billing (if dishonesty or conviction of a financial crime) [23]
6. Victim Restitution
7. Anger Management Course [18]
8. Community Service [12]

CONVICTION OF CRIME - Misdemeanor conviction substantially related to the qualifications, functions or duties of a physician and surgeon but *not arising from* or occurring during patient care, treatment, management or billing (B&P 2236)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Professionalism Program (Ethics Course) [16]
2. Psychiatric Evaluation [20]
3. Medical Evaluation and Treatment [22]
4. Victim Restitution
5. Anger Management Course [18]
6. Community Service [12]

CONVICTION OF DRUG VIOLATIONS (B&P 2237), or
VIOLATION OF DRUG STATUTES (B&P 2238), or
EXCESSIVE USE OF CONTROLLED SUBSTANCES (B&P 2239), or
PRACTICE UNDER THE INFLUENCE OF NARCOTIC (B&P 2280)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Controlled Substances - Total DEA restriction [5],
Surrender DEA permit [6], or
Partial DEA restriction [7]
3. Maintain Drug Records and Access to Records and Inventories [8]
4. Controlled Substances - Abstain From Use [9]
5. Alcohol-Abstain from Use [10]
6. Biological Fluid Testing [11]
7. Education Course [13]
8. Prescribing Practices Course [14]
9. Medical Record Keeping Course [15]
10. Professionalism Program (Ethics Course) [16]
~~11. Oral or Written Examination [19]~~
11~~2~~. Psychiatric Evaluation [20]
12~~3~~. Psychotherapy [21]
13~~4~~. Medical Evaluation and Treatment [22]
14~~5~~. Monitoring-Practice/Billing [23]
15~~6~~. Prohibited Practice [26]

ILLEGAL SALES OF CONTROLLED SUBSTANCES (B&P 2238)
Revocation [1] [2]

EXCESSIVE USE OF ALCOHOL (B&P 2239) or
PRACTICE UNDER THE INFLUENCE OF ALCOHOL (B&P 2280)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Controlled Substances-Abstain From Use [9]
3. Alcohol-Abstain from Use [10]
4. Biological Fluid Testing [11]
5. Professionalism Program (Ethics Course) [16]
~~6. Oral or Written Examination [19]~~
6~~7~~. Psychiatric Evaluation [20]
7~~8~~. Psychotherapy [21]
8~~9~~. Medical Evaluation and Treatment [22]
9~~10~~. Monitoring-Practice/Billing [23]

PRESCRIBING TO ADDICTS (B&P 2241)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Controlled Substances- Total DEA restriction [5],
Surrender DEA permit [6], or
Partial restriction [7]
3. Maintain Drug Records and Access to Records and Inventories [8]
4. Education Course [13]
5. Prescribing Practices Course [14]
6. Medical Record Keeping Course [15]
7. Professionalism Program (Ethics Course) [16]
8. Clinical Training Program [18]
~~9. Oral or Written Examination [19]~~
9~~10~~. Monitoring-Practice/Billing [23]
10~~1~~. Prohibited Practice [26]

ILLEGAL CANCER TREATMENT (B&P 2252 and 2258)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Education course [13]
3. Professionalism Program (Ethics Course) [16]
4. Clinical Training Program [18]
5. Prescribing Practices Course [14]
~~5. Oral or Written Examination [19]~~
6. Monitoring-Practice/Billing [23]
7. Prohibited Practice [26]

MAKING FALSE STATEMENTS (B&P 2261), or
ALTERATION OF MEDICAL RECORDS (B&P 2262)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Medical Record Keeping Course [15]
3. Professionalism Program (Ethics Course) [16]
4. If fraud involved, see "Dishonesty" guidelines

AIDING AND ABETTING UNLICENSED PRACTICE (B&P 2264)
Minimum penalty: Stayed revocation, 5 years probation
Maximum penalty: Revocation
1. Suspension of 60 days or more [4]
2. Education Course [13]
3. Professionalism Program (Ethics Course) [16]
~~4. Oral or Written Examination [19]~~
4~~5~~. Monitoring-Practice/Billing [23]
5~~6~~. Prohibited Practice [26]

FICTITIOUS NAME VIOLATION (B&P 2285)
Minimum penalty: Stayed revocation, one year probation
Maximum penalty: Revocation

IMPERSONATION OF APPLICANT IN EXAM (B&P 2288)
1. Revocation [1] [2]

PRACTICE DURING SUSPENSION (B&P 2306)
1. Revocation [1] [2]

BUSINESS ORGANIZATION IN VIOLATION OF CHAPTER (B&P 2417)
Minimum penalty: Revocation
Effective January 1, 2002, Business and Professions Code section 2417 was added to read, in part, "(b) A physician and surgeon who practices medicine with a business organization knowing that it is owned or operated in violation of Section 1871.4 of the Insurance Code, Section 14107 or 14107.2 of the Welfare and Institutions Code, or Section 549 or 550 of the Penal Code shall have his or her license to practice permanently revoked."

VIOLATION OF PROBATION
Minimum penalty: 30 day suspension
Maximum penalty: Revocation
The maximum penalty should be given for repeated similar offenses or for probation violations revealing a cavalier or recalcitrant attitude. A violation of any of the following conditions of probation should result in, at minimum, a 60 day suspension:
1. Controlled Substances -Maintain Records and Access to Records and Inventories [8]
2. Biological Fluid Testing [11]
3. Professional Boundaries Program [17]
4. Clinical Training Program [18]
5. Psychiatric Evaluation [20]
6. Psychotherapy [21]
7. Medical Evaluation and Treatment [22]
8. Third Party Chaperone [25]

CASES BY SPECIALTY SENT FOR REVIEW
USE OF EXPERTS BY SPECIALTY
ACTIVE LIST EXPERTS BY SPECIALTY

April 1, 2009

SPECIALTY	Number of cases reviewed/sent to Experts Jan-Mar 2009	Number of Experts used Jan-Mar 2009	Active List Experts Y-T-D (TOTAL= 1,140 ↓)
ADDICTION	1	1	11
ALLERGY & IMMUNOLOGY			10
ANESTHESIOLOGY	3	3	87 ↓
COLON & RECTAL SURGERY	2	2	5
COMPLEMENTARY/ALTERNATIVE MEDICINE	1	1	14
CORRECTIONAL MEDICINE	2	2	14 ↑
DERMATOLOGY	3	2	13 ↑
EMERGENCY			60 ↑
ETHICS			3 ↑
FAMILY	10	10	94 ↓
HAND SURGERY			6
HOSPICE & PALLIATIVE CARE			7
INTERNAL General Internal Med & sub-specialties not listed below	11	10	223 ↓
CARDIOLOGY Interventional Cardiology Non-Interventional Cardiology	4 (3) (1)	4	33 ↓ [18] ↓ [22]
ENDOCRINOLOGY & METABOLISM	2	2	8
GASTROENTEROLOGY	1	1	18
HEMATOLOGY			6
INFECTIOUS DISEASES	1	1	10 ↑
NEPHROLOGY			8
ONCOLOGY	1	1	14
PULMONARY DISEASE	1	1	25
RHEUMATOLOGY	1	1	10
MIDWIFE			11 ↓
NEUROLOGICAL SURGERY	4	2	16 ↑
NEUROLOGY			19 ↑
NEUROLOGY (CHILD)			5
OBSTETRICS & GYNECOLOGY	6	5	86

REPRODUCTIVE ENDOCRINOLOGY & INFERTILITY			5 ↓ (Board Certified)
OCCUPATIONAL MEDICINE	1	1	7
OPHTHALMOLOGY	7	7	41 ↓
ORAL & MAXILLOFACIAL SURGERY			1
ORTHOPAEDIC SURGERY	3	3	47
OTOLARYNGOLOGY	2	1	32
PAIN MEDICINE	6	4	25 ↓
PATHOLOGY			12 ↓
PEDIATRICS	2	2	61 ↓
PEDIATRIC CARDIOLOGY			5
PEDIATRIC CARDIOTHORACIC SURGERY			2
PEDIATRIC HEMATOLOGY/ONCOLOGY			5
PEDIATRIC INFECTIOUS DISEASES (BOARD CERTIFIED)			3
PEDIATRIC SURGERY			4
PHYSICAL MEDICINE & REHABILITATION			10 ↑
PLASTIC SURGERY	1	1	53 ↑ [9 Facial Plastic]
PSYCHIATRY	25	15	110 ↑
ADDICTION PSYCHIATRY	1	1	8 (Board Certified)
PUBLIC HEALTH & GENERAL PREVENTIVE MEDICINE			7 ↑
RADIOLOGY	3	2	36 ↑
VASCULAR/INTERVENTIONAL RADIOLOGY			2 (Board Certified)
RADIATION ONCOLOGY / THERAPEUTIC RADIOLOGY			4
SLEEP MEDICINE			8 ↑
SURGERY	4	4	57
VASCULAR SURGERY			7 (Board Certified)
THORACIC SURGERY			20
TOXICOLOGY			4
UROLOGY			13 ↓
WORKERS' COMP/QME/IME			15 ↑

APRIL 2009

MEDICAL BOARD OF CALIFORNIA

INVESTIGATOR CLASSIFICATION REVIEW

Submitted by:
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TABLE OF CONTENTS

SECTION		PAGE
I.	Problem Identification and Project Scope	1
II.	Methodology	2
III.	Summary of Findings	2
IV.	Recommended Changes	3
V.	Discussion and Analysis	3
VI.	Implementation	8
VII.	Documentation	10
	Appendix A: DPA Allocation Factors	
	Appendix B: Investigator, DCA Specification	
	Appendix C: Medical Board Investigator Duty Statements	
	Appendix D: Specification and Salary Chart	
	Appendix E: Special Agent, DOJ specification	
	Appendix F: Training Courses	
	Appendix G: Investigator Interview Questions	

MEDICAL BOARD OF CALIFORNIA INVESTIGATOR STUDY

Problem Identification

The Medical Board of California is responsible for promoting quality healthcare by licensing physicians and by enforcing the standards of the Medical Practices Act. A fundamental component of the enforcement function, ensuring that physicians meet professional standards of practice, is an educated and motivated investigative staff.

For many years, the Medical Board has experienced significant recruitment and retention issues in the Investigator and Senior Investigator, Department of Consumer Affairs (Investigator) classes. Recent procedural and regulatory changes, such as implementation of a vertical enforcement model, have exacerbated these problems. As a result, it has been extremely difficult to maintain staffing levels necessary to produce quality investigations in the statutory time allotted.

Administratively, the Medical Board functions under the umbrella of the Department of Consumer Affairs (DCA). The Investigator series is used in the Medical Board, the Dental Board and the DCA headquarters investigative unit. Similar investigative classes are used throughout state service.

The Medical Board retained Cooperative Personnel Services (CPS) to perform a classification study of the Investigator series to:

- evaluate the series and compensation levels to determine if they are appropriate for the duties performed at the Medical Board
- evaluate similar classes in other state agencies to determine relative levels of responsibilities and compensation
- recommend classification changes or alternative actions as necessary to ensure that Investigators are performing duties as outlined in the class specification and are receiving appropriate compensation

The deliverable is a final report outlining the findings and recommendations for classification changes or other options.

Methodology
The methodology used in this study includes the following steps:

- Meeting with management and administrative staff to identify specific concerns and gather background information
- Review of existing specification duty statements, organization charts, relevant statutes and other background material at the Medical Board
- Comparison of Investigator series with other investigative classes by review of duty statements, class specifications, compensation, peace officer status and other minimum qualifications
- Identification of significant issues for further research and discussion
- Interviews with rank and file investigators and investigative management staff on duties, training and comparisons with other peace officer positions
- Research on technical classification and compensation alternatives
- Development of final findings and recommendations

Summary of Findings

There does not appear to be enough differentiation from other Investigator classes to justify the establishment of an Investigator series unique to the Medical Board. However, the consultants did find:

- significant differences in the amount of training Investigators receive at the Medical Board compared to those elsewhere in DCA and at other state agencies
- different procedures and investigative processes at the Medical Board than in other DCA units
- a higher level of complexity in the issues confronted by Investigators at the Medical Board
- increased visibility, public interest and legislative pressure in Medical Board investigations in general

The above findings, although likely not sufficient for establishment of a new classification under Department of Personnel Administration (DPA) and State Personnel Board (SPB) criteria, make a supportable technical argument for higher compensation for most Medical Board Investigators. A base pay increase would be exceedingly difficult to achieve but the findings may support the establishment of an alternate range or pay differential for any Investigator (employed by the Medical Board or elsewhere in DCA) who has completed a certain amount of time in the class performing the more complex duties and

completed a specified course of POST-certified training after appointment as an Investigator.

Recommended Changes

Our recommendation is that the Medical Board take the following actions:

(1) Complete the Medical Board drafting and review of the new Investigator duty statements and submit them to the Department of Consumer Affairs (DCA) Human Resources Office for final approval. These new duty statements, initially requested by CPS, should reflect changes in responsibilities and expectations as a result of the implementation of the vertical enforcement model and include brief explanations of the complexity and training factors. They are an integral part of the justification for any higher compensation.
(2) Formalize the Investigator training program by ensuring that all Investigators complete a specified number of POST-certified courses, in addition to any on-the-job training, by a specified time after their original appointments and issue official certificates of completion for the entire curriculum. Include required refresher courses for all continuing Investigators with similar criteria. If no formal tracking mechanism on Medical Board post-employment training exists, establish one.
(3) Craft an official request for a two stage pay differential (suggested 5% and 10%) focusing on additional training. Details of the proposal and the commitment to training and monitoring must be provided by the Medical Board.
(4) Submit the request to the DCA Human Resources Office for review and future inclusion in bargaining or other compensation review requests when the fiscal crisis eases.

CPS has the resources to provide additional assistance but these activities are outside the scope of the current contract

Discussion and Analysis

Investigator is the entry level class in this series and for all practical purposes Senior Investigator is the working level. Since incumbents move through the series as rapidly as experience and testing allow, there are very few employees at the Investigator level. For purposes of this study, these classes are combined into "Investigator".

DPA has established generic standards for allocation and pay determination (Appendix A). These standards are applied to all allocation determinations. Peace officer classifications such as Investigator are also routinely assessed by risk (generally included under the "working conditions/environment" factors and by the amount of official Peace Officer Standards and Training (POST) curricula they must complete. This report focuses on POST training and complexity of duties as points of comparison.

In researching this issue, CPS consultants reviewed and analyzed information from the following sources:

(1) Class specifications, salary comparisons and duty statements. Appendices B and C contain the series specification for the Investigator, Department of Consumer Affairs (Investigator) and a draft of the Medical Board Investigator duty statement that reflects the changes imposed by the vertical enforcement model. Consultants reviewed duties, minimum qualifications and salaries for a number of Investigator classes and, as specifically requested by the Medical Board, for Special Agent, Department of Justice (DOJ). Appendix D is a chart comparing several of those classes.

This research showed that salaries among Investigator classes in state service are virtually identical. One intriguing difference is that at the Employment Development Department and the Department of Motor Vehicles the Investigator and Senior Investigator classes have been consolidated into one three range class. Maximum salaries at each range are the same as those for the Medical Board Investigator series. The specification for the Special Agent, DOJ (Appendix E) describes a class that is significantly broader in responsibilities, with a focus on performing field work on narcotics, sexual predators, terrorism, weapons and other felony offenses. For these reasons, DPA has not historically viewed it as a valid comparison with Investigator classes. Medical Board staff raised the issue of those Special Agents assigned to the Medi-Cal Fraud unit as being most similar to Investigators in their daily tasks. While there is some support for this, there is no mechanism to split these Special Agents off from their colleagues in the rest of DOJ. For purposes of comparison, DPA considers all employees in a class to have similar duties despite possible individual expertise or temporary differences in assignment and requires a comparison with the entire spectrum of Special Agent duties. This is not to minimize the specialized knowledge that Medical Board Investigators must have to be effective in their jobs nor the extended investigative process that they follow. It does mean, however, that it would be exceedingly difficult to make a successful comparison between Investigators and Special Agents for purposes of convincing DPA that a base salary increase is indicated.

The current philosophy at DPA and at SPB is to minimize differences and consolidate classes rather than to create new classes. In order to create a new class, an agency must demonstrate significant differences in responsibilities, initial experience and education necessary for appointment or (in the case of peace officers) peace officer status and training. The differentiations among Investigator positions in DCA do not meet these criteria. The current Investigator, DCA specification is written broadly enough to encompass any such differences. The Human Resources Modification Project has been tasked with reviewing the more than 4400 existing state classifications with a view to major consolidations. They have already proposed such changes to the scientific classes in Bargaining Unit 10 are currently gathering information on the administrative classes in Bargaining Unit 1 and will likely propose similar consolidations in the Bargaining Unit 7 (peace officer) classifications.

The specification describes the series as used in positions that "...conduct and supervise complex and sensitive administrative, criminal and civil investigations.... on ...professional licensees of the Department of Consumer Affairs..." It goes on to describe such typical tasks as "...locate and interview suspects and witnesses and analyze and evaluate their testimony...gather, assemble, preserve and report facts, statements or affidavits and other evidence...make felony arrests...conduct undercover and surveillance operations...interpret and explain the laws, rules and regulations of the boards and bureaus; (and) recommend action to be taken." One of the factors distinguishing Medical Board Investigators is that they make final recommendations on the disposition of cases. Others are the complexity of medical investigations and the subsequent necessity for understanding medical statutes and regulations in all medical specialties and their continuing dialog with medical consultants, although these factors are not fully developed in official duty statements. While duty statements for individual positions add specifics to these descriptions and individual boards may have different procedures and protocols, it is clear that the Medical Board investigators fit comfortably under the umbrella of the Investigator, DCA series. In the current climate at DPA and SPB, it is not likely that a request to create a new class solely for the Medical Board would be successful.

Caveat: There are limitations to what can be learned from specifications and duty statements. As was illustrated with the Medical Board's own Investigator duty statements, they frequently do not reflect recent changes in policies and procedures and even the most up-to-date duty statements and specifications do not contain the kind of detail that is sometimes necessary for a complete comparison. Typically this information is only

available from a job audit or interview and outside departments do not have this capability.

(2) Medical Board management and administrative staff interviews. CPS met with, telephoned or obtained email information from the Executive Officer, Chief Deputy, Chief and Deputy Chief of Enforcement, Training Officer and a DCA Investigator Task Force member. These contacts provided valuable background information and documents on the Medical Board structure, investigatory procedures (including the Enforcement Program Monitor report from November 2004), internal post-appointment training, recruitment and retention statistics and previous attempts to address the salary and retention issues. CPS also used these contacts as ongoing resources to further explain information gathered in other arenas.

From the information provided, it appears that the staffing problem is primarily one of retention. While recruitment is difficult, it is the constant drain of experienced staff to other entities that is paramount. It results in management spending uncounted hours recruiting and training new investigators. It is also our conclusion that the vertical enforcement model, while it may be difficult to work with, does not provide the type of substantiation that DPA would recognize as important in raising salaries. In fact, the early involvement of Deputy Attorney Generals in these investigations, as difficult as the interagency coordination may be, would likely be viewed by DPA as a loss of independence for the field investigators.

The Medical Board does have an ambitious post-employment training program. Although it appears to be in a transitional state currently, there are over 100 hours of POST-certified training courses (Appendix F) available for new and experienced employees dealing with the particular skills and knowledge necessary to be an effective medical investigator. This program, when fully implemented and tracked, could be the focus for requesting additional pay as it clearly differentiates the Medical Board from DCA and from other departments.

(3) Discussions with current and former DCA staff, DPA staff, and former Supervising Special Investigator II. Attempts to obtain duty statements, the results of previous studies or perspectives on the situation from DCA staff met with little or no results. Telephone calls were not returned; when contact was made, the promised documents did not arrive. Most significant information in this area came from a former DCA employee who had been involved in previous reviews. CPS also obtained professional insight on peace officer salary criteria and history on attempts to modify

them from DPA and from a former Supervising Special Investigator II with many years of experience dealing with these issues.

Although there have been previous attempts, both from the Medical Board and from DCA, going back as far as 1995 to resolve the recruitment and retention problems in the Investigator series, they have been unsuccessful. Reasons for this range from technical difficulties in making a case for a higher salary, sensitive political issues in differentiating Medical Board Investigators from those elsewhere at DCA and a lack of adequate technical knowledge or commitment to follow through and fight for a proposal at the control agency level. Earlier attempts appeared to focus on recruitment and retention as a primary issue. While the Medical Board statistics certainly indicate there is a problem, this problem exists throughout state service. There is a predictable reluctance on the part of DCA to institute a partial solution for one board which would cause obvious problems elsewhere in the department. DPA has a similar reluctance to implement a salary increase for one department, knowing that other departments would immediately clamor for the same increase. Past attempts to include all of DCA in such an increase diluted the Medical Board recruitment and retention statistics, at least partially accounting for DPA's denial.

While the differentiations between Medical Board Investigators and other DCS Investigators would not support the creation of a new class, there are several factors that could support a carefully crafted pay differential. DPA has sole authority for establishing pay differentials, although DOF typically must agree that funding is available. Pay differential requests do not require SPB approval. The basic criterion is that there must be special circumstances in the work that differentiates it from others, whether it is working conditions, professional licensing or specialized training that does not apply to every employee in the class. The typical pay differential is based on either special certification or training or on recruitment and retention difficulties. In this instance, the complexity of advanced investigative work at the Medical Board and the required specialized training that is necessary to perform this work provide a reasonable argument for a pay differential. This approach would be more persuasive than one based simply on almost universal recruitment and retention difficulties. The two-stage differential will be more effective at retaining staff as most will have several additional base pay and differential increases to look forward to; granting the pay differential on an annual basis rather than monthly will increase the retentive potential.

(4) Medical Board Investigator interviews. CPS conducted telephone interviews with three Supervising Investigators and ten Investigators, most

with many years of peace officer experience with the Medical Board and other law enforcement entities (Appendix G). The purpose of these interviews was to determine the "real life" perspective on jobs that often does not appear in official duty statements and specifications, to obtain information on investigative work with the Medical Board compared to investigative work elsewhere and to understand the relative complexity of their cases.

These interviews produced a wealth of information. The investigators ranged in Medical Board experience from seven to twenty years; many had worked for other entities such as the California Highway Patrol, the California Youth Authority, the Department of Health Services and a local Sherriff's Office. These individuals were well-placed to make comparisons with other investigative jobs. In answer to a question on the most hazardous situations they or their staff have faced they named: serving search and arrest warrants; confronting witnesses or potential defendants at their offices and homes; dealing with mentally ill complainants and doing occasional undercover work. Many outsiders likely believe that Medical Board investigators spend their days sorting through mountains of paperwork. While paperwork and related research is a part of any investigative job, the there is significant field work involved. While the direct contact and field work portions of Medical Board investigation work cannot rise to the frequency of risk that Special Agents face, these situations should be more fully reflected in duty statements or supporting documents and included in any salary proposal.

The Investigators were also, as one would expect, the most informative at explaining the complexity of their jobs. Among the complexities they cited is that to be effective in the initial investigation plans and their interaction with medical consultants as the case progresses they must be familiar not only with Medical Board statutes and regulations but with many aspects of medical practice and treatment. Although they do work with medical consultants, it is imperative that a good investigator understand the nature of the work s/he is investigating without constant recourse to experts. This allows an investigation to move ahead smoothly and quickly. When asked what they considered the most complex parts of their jobs, Investigators named: understanding the changing medical codes, protocols and practices; working with the Deputy Attorney Generals in the vertical enforcement model; understanding the different standards for criminal versus civil cases and dealing with highly paid and skilled doctors' attorneys.

Although this information is anecdotal, its persuasive abilities as part of a more technical proposal should not be discounted.

Implementation

A proposal to implement a pay differential for Medical Board Investigators faces a series of reviews and approvals, from the Department of Consumer Affairs, the State and Consumer Services Agency, the Department of Personnel Administration, and the Department of Finance (DOF).

It is reasonable to assume that, as in the past, DCA will have serious concerns about the effects of a pay differential for Medical Board Investigators on Investigators at the Dental Board and in the Headquarters Investigative Unit. To be successful, the Medical Board must find a way to mitigate these concerns. One possibility would be to write the differential without limiting it to the Medical Board but referencing the training curricula that, for now at least, exists only at the Medical Board. Should the Dental Board or HQ Investigative Unit be willing to invest in similar training in the future their Investigators would be eligible. Such a strategy might also satisfy any Agency concerns about equity or potential staff movement.

DPA will have both union and technical concerns that must be addressed in the careful crafting of the pay differential criteria. Among these will be the ability for DPA to explain to other departments the uniqueness of Medical Board investigations and to address potential salary compaction issues. A successful proposal should include considerable and relevant background information and measurable standards. After several failed attempts, it is imperative that the first submission of this new proposal be substantive and address all probable DPA concerns. Both DPA and DOF, representing the Governor's Office, will likely be concerned about the political repercussions of granting additional money in a time of grave fiscal uncertainties regardless of the funding source.

DPA Allocation Factors

Variety and Scope of Responsibility

The number of tasks which make up a position. Variety and scope become relatively unimportant factors where each task or problem is itself of a limited degree of difficulty (e.g., some clerical positions, janitors, etc.). As the level of difficulty of the tasks making up the combination increases, variety may become more significant.

Supervision and Guidelines Received

A measurement of the extent to which tasks performed, actions taken, and decisions made are controlled or limited by supervision or by established law, policy, procedures, guidelines, or technical practices. Refer to Section 170 for the meaning of terms like "Under supervision," "Under general supervision," "Under direction," etc.

Supervision Exercised

A measurement of the nature and extent of the position's authority and responsibility for supervision of the other employees' work. This is reflected by the scope and variety of activities covered, the amount of planning, organizing, directing, assigning work, instructing, training, and disciplining of employees required. The number of employees supervised may be used as a guide to differentiate between different supervisory levels. Refer to Section 170 for different terms to describe this factor, such as: "to have technical supervision," "to supervise," "to direct," "to plan, organize, and direct," etc.

Complexity of Work

This is often a critical allocation factor, especially when attempting to distinguish between full-journey and super-journey levels (i.e., Associate and Staff Specialist). Some elements to consider when determining the complexity of work are:

- status of work or state of development of problem when first presented to employee;
- selection of assignments for employee;
- analytical and problem solving requirements;
- the extent to which plans or actions must be initiated, developed, or decided upon by the employee;
- variety and scope of work (e.g., audits of individuals vs. audits of large corporations).

It should be noted that it is very useful to indicate typical tasks associated with the various levels of complexity ascribed to different classes within a series.

Knowledge and Abilities Required

A measurement of the knowledge, skills, and abilities which the individual must bring to the job. The subject matter of the work and the nature of the problems to be solved will indicate the educational background and the degree of mentality, skill, and analytical ability needed.

Responsibility for Decisions and Actions

A measurement of the nature and extent of the position's authority and responsibility for recommendations, decisions, commitments, or actions. Subject matter, nature of review, and result of error are considered in evaluating positions in this factor.

Personal Contacts/Relationships

This measures types of contact required (employee's own supervisor vs. department director or outside public officials); scope of the subject matter dealt with in the contacts (explaining straightforward procedures vs. negotiating procedures and policies); and the tact, poise, persuasiveness, skill required in the contact.

Working Conditions/Environment

This refers to the physical characteristics/surroundings of the job that make specific demands upon a worker's capacity. These may include work location (inside, outside, or both); machines, tools, equipment required to operate; special physical demands (climbing, lifting, etc.); noise and/or vibration; special hazards or dangers; and other atmospheric conditions.

Consequence of Error

This evaluates the significance of an error, omission, or wrong decision in the carrying out of job duties. The following should be considered:

- impact of the error (e.g., time, inconvenience, inefficiency, money, equipment, health, or life and death);
- scope of the error (e.g., is the error strictly internal or does it affect other units, the public, or both?);
- probability for error to occur (e.g., is there frequent and/or detailed review of work?);
- degree of difficulty in correcting or reversing the error.

Area of Responsibility

This refers to the geographic or program area over which the position has responsibility. For example, does the position have statewide or regional responsibility for a given program; or is the position in a headquarters setting with departmentwide responsibility vs. in an institutional setting?

Administrative Responsibility

This measures the extent to which the position is involved in administrative tasks such as developing and monitoring program goals and objectives; developing and monitoring program budget; and performing personnel, contracts, and business services related activities.

SPEC: INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS
Series Specification
(Established April 9, 1991)

SCOPE

This series specification describes four Investigator, Department of Consumer Affairs, classes used by the Department of Consumer Affairs. These classes are used for positions that conduct and supervise complex and sensitive administrative, civil and criminal investigations related to alleged violations against the vocational or professional licensees of the Department of Consumer Affairs, as well as criminal unlicensed activity. Investigators of the Department of Consumer Affairs perform the full range of peace officer duties and responsibilities in the accomplishment of their assignments. Investigators of the Department of Consumer Affairs may be assigned to provide technical assistance and training to local, State and Federal law enforcement agencies, pharmacists, medical/dental societies, hospital medical staff, technical and professional associations, as well as board and bureau members.

Schem Code	Class Code	Class
VI95	8594	Investigator, Department of Consumer Affairs
VI96	8595	Senior Investigator, Department of Consumer Affairs
VI97	8596	Supervising Investigator I, Department of Consumer Affairs
VI98	8597	Supervising Investigator II, Department of Consumer Affairs

DEFINITION OF SERIES

Investigators of the Department of Consumer Affairs conduct or supervise independent and diverse administrative, civil and criminal investigations against the vocational and professional licensees of the boards and bureaus within the Department of Consumer Affairs; detect or verify suspected violations of provisions of the Government Code, Health and Safety Code, Business and Professions Code, California Penal Code, Uniform Controlled Substances Act, and other related codes; locate and interview suspects and witnesses and analyze and evaluate their testimony; examine a variety of records to secure or verify information concerning suspected violations and violators; contact and interview individuals and representatives of business and governmental organizations; gather, assemble, preserve and report facts, statements or affidavits and other evidence for use in legal actions; make felony arrests; investigate complaints; conduct undercover and surveillance operations; investigate the financial and moral character of applicants for licenses; develop and utilize confidential informants; issue misdemeanor citations; investigate suspected misuse of license privileges; monitor

probationary licensees; appear as a witness and arrange for the appearance of witnesses to present testimony in criminal, administrative or civil actions; serve legal papers; interpret and explain the laws, rules and regulations of the boards and bureaus; cooperate, train and maintain liaison with Federal, State, and local law enforcement agencies; participate in community forums; prepare correspondence, reports of investigations, affidavits and recommend action to be taken; prepare and serve search warrants, subpoenas, subpoena duces tecum, temporary restraining orders, civil injunctions, and asset forfeiture documents; conduct drug audits; issue administrative fines and citations; may develop program investigation policies and procedures which specifically require investigative or law enforcement expertise; act as technical advisors; and perform other related work.

FACTORS AFFECTING POSITION ALLOCATION

Complexity and variety of investigations, independence of action and decision making, and degree of supervision exercised and received.

DEFINITION OF LEVELS

INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS

This is the entry, training, and full journey level in the series. Under close supervision, incumbents receive on-the-job training from either a supervisor or an advanced journey level investigator to learn the full range of difficult and complex investigative work. As a full journey level investigator, incumbents will work with a high degree of independence on complex and sensitive cases.

SENIOR INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS

This is the advanced journey level in the series. Under minimal supervision, incumbents independently conduct the most sensitive, complex and diverse criminal and administrative investigations; may act in a lead capacity to direct or review the work of lower-level investigators; may perform program or policy development and interpretation duties which specifically require investigatory or law enforcement expertise; may be involved as a member of a multi-agency investigation or assignment; and may have independent responsibility to oversee an entire investigative operation or project.

SUPERVISING INVESTIGATOR I, DEPARTMENT OF CONSUMER AFFAIRS

This is the working supervisory level in the series. Incumbents plan, organize and direct a staff of investigators assigned to a geographical area in a region; provide assistance to high-level staff in the development of policies and procedures; may be assigned to headquarters to assist a superior in planning, developing and directing a major investigative program; may be assigned Internal Affairs, Special Investigation and background investigative duties; may act as liaison with related law enforcement and allied agencies; may perform other administrative duties; and prepare reports and correspondence.

SUPERVISING INVESTIGATOR II, DEPARTMENT OF CONSUMER AFFAIRS

This is the full supervisory level in the series. Incumbents plan, organize, and direct the investigation program in an assigned geographic region of the State; assign priorities and develop specific work plans for all program components in their region; review work progress and workload requirements; assist in the development and implementation of administrative policies and procedures. Incumbents may assist the Chief in planning, developing and directing a statewide investigative program/operations; act in the absence of the Chief; and may act as liaison with related law enforcement and allied agencies.

JOB CHARACTERISTICS

ALL LEVELS:

All levels in the Investigator, Department of Consumer Affairs, class series will be required to satisfactorily complete a basic investigative training course as prescribed by the Commission on Peace Officer Standards and Training (POST) prior to the completion of their probationary period. In addition, the Supervising Investigator classes will be required to complete the supervisory course as prescribed by POST. These courses must also be completed prior to the completion of the probationary period of the respective class. Failure to do so will be considered evidence of unsatisfactory progress and cause for rejection during the probationary period.

MINIMUM QUALIFICATIONS

INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS

Either I

Education: Equivalent to graduation from college with a major in criminal justice, law enforcement or criminology or a minor in criminal justice, law enforcement or criminology with evidence that the following courses or their equivalent have been completed: introduction to criminal justice; introduction to criminal law; basic investigation, evidence, criminal procedure; and philosophy of law. (Registration as a senior in a recognized institution will admit applicants to the examination, but they must provide evidence of graduation or its equivalent before they can be considered eligible for appointment.)

Or II

Experience: Two years of experience as a peace officer performing preliminary investigative work as part of the regular law enforcement activity; and

Education: Equivalent to two years of college with a major in criminal justice, police science, law enforcement or criminology.

Or III

Experience: One year of experience in the California state service performing duties equivalent to those of an Investigator Assistant. (Applicants who have completed six months of service in the class of Investigator Assistant will be admitted to the examination, but they must satisfactorily complete one year of experience in the class

before they can be considered eligible for appointment.)

SENIOR INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS

Either I

One year of experience in the California state service performing the duties of an Investigator, Department of Consumer Affairs, Range C.

Or II

Experience: Three years of progressively responsible experience as a peace officer involved in full-time civil or criminal investigative work; and

Education: Equivalent to two years of college with a major in criminal justice, police science, law enforcement or criminology.

SUPERVISING INVESTIGATOR I, DEPARTMENT OF CONSUMER AFFAIRS

Either I

One year of experience in the California state service performing the duties of a Senior Investigator, Department of Consumer Affairs.

Or II

Two years of experience in the California state service performing the duties of a Investigator, Department of Consumer Affairs, Range C.

Or III

Experience: Three years of progressively responsible experience as a peace officer involved in civil or criminal investigative work, including or supplemented by at least one year of supervisory experience in an investigative assignment. (Experience in California state service applied toward this requirement must include at least two years performing duties of a class at a level not less than that of Investigator, Department of Consumer Affairs, Range C.); and

Education: Equivalent to two years of college with a major in criminal justice, police science, law enforcement or criminology.

SUPERVISING INVESTIGATOR II, DEPARTMENT OF CONSUMER AFFAIRS

Either I

One year of experience in the California state service performing the duties of a Supervising Investigator I, Department of Consumer Affairs.

Or II

Three years of experience in the California state service performing the duties of a Senior Investigator, Department of Consumer Affairs.

Or III

Experience: Five years of progressively responsible experience as a peace officer involved in civil or criminal investigative work, including or supplemented by at least two years of supervisory experience in an investigative assignment. (Experience in California state service applied toward this requirement must include at least three years performing duties of a class at a level not less than that of Senior Investigator, Department of Consumer Affairs.); and

Education: Equivalent to completion of two years of college with a major in criminal justice, police science, law enforcement or criminology.

KNOWLEDGE AND ABILITIES

ALL LEVELS:

Knowledge of: Administrative and criminal investigative techniques; interview and interrogation processes and procedures; provisions of the Government Code, Health and Safety Code, Business and Professions Code, California Penal Code, Controlled Substances Act, and other related codes; administrative and criminal procedures; methods used in securing and preserving of evidence; general training techniques and methods as applied to peace officer training; laws of arrest; search and seizure.

Ability to: Develop techniques, methods and skills required in the conducting of administrative and criminal investigations; apply laws and rules of evidence to specific situations; gather and analyze facts and evidence and present such evidence as required; analyze situations accurately and take effective action; participate actively in surveillance investigations; interview and interrogate; effectively control informants, paid operatives and confidential informants; appear as an expert witness; use and maintain firearms; serve subpoenas, write and execute search warrants and subpoena duces tecum; prepare accurate investigation reports; establish and maintain cooperative working relationships; communicate effectively both orally and in writing.

SENIOR INVESTIGATOR, DEPARTMENT OF CONSUMER AFFAIRS

Knowledge of: All of the above, and program policies and procedures.

Ability to: All of the above, and plan and conduct independently the most sensitive and complex investigations; effectively make use of computerized data and discern patterns of fraud; apply laws and rules of evidence to specific situations; effectively develop and control confidential informants and paid operatives; provide technical advice and assistance to, and conduct training for, appropriate law enforcement and allied health agencies; speak effectively before groups; coordinate multi-agency investigations; function in a lead capacity; provide field training; and act as evidence custodian.

SUPERVISING INVESTIGATOR I, DEPARTMENT OF CONSUMER AFFAIRS

Knowledge of: All of the above, and principles and techniques of supervision; advanced training techniques and methods as applied to peace officer training; the Department's Affirmative Action Program objectives, a supervisor's role in the Affirmative Action Program and the processes available to meet affirmative action objectives.

Ability to: All of the above, and plan and conduct the most difficult, complex and sensitive administrative and criminal investigations; effectively supervise the work of a team of investigators and other administrative personnel; conduct and conclude background and internal affairs investigations; independently direct a special project or assignment in a given geographical area or region; and effectively contribute to the Department's affirmative action objectives.

SUPERVISING INVESTIGATOR II, DEPARTMENT OF CONSUMER AFFAIRS

Knowledge of: All of the above, and techniques and methods used in administering specialized investigative and enforcement programs, in implementing training programs and in exchanging information with multi-jurisdictional agencies; current management theories and methods of evaluation, organization and functions of the Department of Consumer Affairs, and other local, State and Federal agencies.

Ability to: All of the above, and administer and manage a law enforcement program; plan, organize, coordinate, evaluate and direct the investigative efforts of multiple field offices in a given geographical area; implement training programs; assist in the formulation of the program's policies; assist in administering specialized investigator training programs statewide; address boards and bureaus, general public and allied agencies regarding the Department's mission and purpose; utilize effective and contemporary methods of sound fiscal and personnel management; research, recommend and implement alternative organizational improvements.

SPECIAL PERSONAL CHARACTERISTICS

ALL LEVELS:

Willingness to work in various locations throughout the State and at odd and irregular hours; keenness of observation; good memory for names, faces, places, and incidents; tact; willingness to associate with criminally inclined persons and environments; satisfactory record as a law-abiding citizen; ability to work under stress and adverse conditions; and possession of a valid California driver's license of the appropriate class issued by the Department of Motor Vehicles.

SPECIAL PHYSICAL CHARACTERISTICS

ALL LEVELS:

Good health, emotional maturity and stability; sound physical condition; strength, endurance and agility necessary to cope with the demands of the job; normal hearing; normal vision or vision corrected to normal; weight proportional to age and height.

CITIZENSHIP REQUIREMENT

ALL LEVELS:

Existing law provides that peace officers be either a U.S. citizen or a permanent resident alien who is eligible for and has applied for U.S. citizenship at least one year prior to the final file date for this examination. The one-year requirement does not apply to permanent resident aliens who have applied for peace officer classes prior to their 19th birthday.

MINIMUM AGE

ALL LEVELS:

Minimum age at time of appointment: 18 years.

FELONY DISQUALIFICATIONS

ALL LEVELS:

Existing law provides that persons convicted of a felony are disqualified from employment as peace officers. Such persons are not eligible to compete for, or be appointed to, positions in this class. In addition, use of "hard drugs" (e.g., heroin, cocaine, or hallucinogenics) at any time as an adult constitutes basis for disqualification from peace officer examinations.

BACKGROUND INVESTIGATION AND PSYCHOLOGICAL SCREENING

ALL LEVELS:

Pursuant to Government Code Sections 1031(a) and 8880.38 all persons successful in examinations for this class will be required to undergo a thorough background investigation prior to appointment.

Government Code Section 1031(f) and POST Regulation 1002(a) (7) requires psychological screening of applicants for peace officer classifications.

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Investigator, Department of Consumer Affairs	4/9/91	--	--
Senior Investigator, Department of Consumer Affairs	4/9/91	--	--
Supervising Investigator I, Department of Consumer Affairs	4/9/91	--	--
Supervising Investigator II, Department of Consumer Affairs	4/9/91	--	--

Department of Consumer Affairs **APPENDIX C**

Position Duty Statement

HR-041 (New 07/08)

Classification Title Investigator, DCA	**Board/Bureau/Division** Medical Board of California
Working Title	**Office/Unit /Section/ Geographic Location** Enforcement
Position Number	**Effective Date**

The Investigator is the entry level and training level position for the investigator series. Under close supervision of the Supervising Investigator I, the Medical Board of California Investigator conducts diverse administrative, criminal, and civil investigations of physician and surgeons and certain allied healthcare professionals. Under close supervision, the investigator works a variety of cases including, but not limited to: criminal sexual exploitation of patients, cases involving drug violations, unlicensed practice of medicine, unlicensed corporate practice of medicine, insurance fraud and allegations of practicing medicine while impaired (drug use, alcohol abuse and mental disorders).

Pursuant to Government Code section 12529.6, because of the critical importance of the health and safety function of MBC and the complexity of cases involving alleged misconduct by physicians and surgeons, the MBC investigators work closely with the Health Quality Enforcement Section of the Office of the Attorney General under the "vertical enforcement model."

A. Specific Assignments

75% (E) Investigations *(Driving, sitting, balance and carrying required)*

25% Locates and interviews victims, witnesses and suspected violators; analyzes and evaluates testimony. Consults with medical experts regarding complex issues involving the standard of medical care. Prepares written and recorded statements and evaluates their testimony for possible use in judicial proceedings.

20% Examines a variety of complex medical treatment or other records to secure or verify information concerning suspected violations and violators.

20% Consults with the Deputy Attorney General and/or local prosecutor in planning and coordinating investigations and preparing cases for court. Locates and serves subpoenas on witnesses and suspects. Prepares and serves subpoenas for a variety of medical records. Testifies in criminal court or administrative hearings, as necessary.

10% Coordinates and assists in the preparation and service of search warrants, subpoenas and other legal papers; conducts undercover and surveillance operations. Makes physical arrests of suspects and transports those in custody. Issues citations; seizes and logs evidence; cooperates with federal, state, and local law enforcement agencies on investigations.

20% (E) Investigative Reports *(Sitting required)*

20% Prepares complex investigation reports for presentation to the Deputy Attorney General for administrative disciplinary action or to the local district attorney to file a criminal complaint.

5% (E) Training/Administrative (*Driving, sitting, balance and carrying required)*

5% Participates in firearms qualifications and hand-to-hand defensive tactics training and specialized law enforcement technical training. Prepares and performs internal administrative functions such as monthly activity reporting and mileage logs.

B. Supervision Received

The employee reports directly to, and receives assignments from, the Supervising Investigator I. However, assignments and direction may come from a designated lead such as a Field Training Officer or higher level management.

C. Supervision Exercised

None.

D. Administrative Responsibility

None.

E. Personal Contacts

The employee has daily contact with a supervisor and other employees in the office, attorneys of the Office of Attorney General and with licensees and general public as subjects, complainants or witnesses. The employee has occasional to frequent contact with other criminal justice agencies at the county, city, state and federal levels.

F. Actions and Consequences

Failure to complete assigned casework in a timely manner, or inefficiency in conducting investigations, may result in failure to protect the healthcare consumer. Investigations not completed in a timely manner may allow the statute of limitations for the particular violation to lapse. Investigations not completed in a timely manner can delay case resolution. An inadequate investigation may result in allowing a violation of the law (criminal or administrative) to go undetected or unpunished. Many of the cases being investigated affect the health and safety of consumers.

Failure to make a lawful or justified arrest may expose the state to a lawsuit. The excessive or improper use of force in making an arrest may result in injury or death to an employee, suspect or other person and may expose the state to a lawsuit.

G. Functional Requirements

Physical Demands:

The employee is required to perform the full range of peace officer duties. Pursuant to Government Code Section 1031 (f), employees in these positions must be found to be free from physical, emotional, or mental condition, which might adversely affect the exercise of the powers of a peace officer. The employee must be able to demonstrate his/her ability to perform various physical tasks.

In an 8-hour work shift, an employee will routinely:

Stand/Walk/Run:	Occasionally
Sit:	Continuously
Drive:	Frequently
Bend/Stoop:	Occasionally
Squat/Crouch:	Occasionally
Crawl:	Occasionally
Climb:	Occasionally
Reach/Stretch:	Occasionally
Balance:	Continuously
Push/Pull:	Occasionally
Carry:	Continuously, up to 15 pounds as s/he is required to carry a semi-automatic pistol, extra ammunition, handcuffs, chemical agent, etc. The employee will wear body armor (approximately 8 pounds), when required. The employee will occasionally carry up to 80 pounds.
Lift:	Occasionally
Kneel:	Occasionally
Twist:	Occasionally
Foot Movement:	Occasionally, the employee will use repetitive foot movements when driving a vehicle.
Hand Manipulation:	The employee uses hands respectively for fine manipulating motor skills and firm grasping with all joints and digits for the following: writing or typing reports, maintenance of firearm proficiency, performance of physical arrests and in-service defensive tactics training.

Occasionally	=	1- 33% of workday
Frequently	=	34- 66% of workday
Continuously	=	67-100% of workday

Environmental Conditions:
The employee is required to work both indoors and outdoors, depending on the situation he or she is involved in, at any given time. While indoors, the temperature and humidity is reasonably controlled, but while out of doors, the employee is exposed to climatic conditions. The employee may be exposed to dust and fumes. The employee may occasionally be exposed to toxic materials or have contact with persons believed to have a contagious disease. There is a reasonable expectation of contact with blood-borne pathogens, or bodily fluids, or other potentially infectious materials or chemicals. The employee is exposed to gunpowder and fumes during quarterly firearm/shotgun qualifications and periodic chemical agent training.

H. Other Information

The employee routinely works with sensitive and confidential issues and/or materials, which may include sexually explicit materials and graphic medical procedures such as autopsies. The employee is expected to maintain the privacy and confidentiality of documents and topics pertaining to individuals or to sensitive investigative matters at all times. This position requires working in and driving to, various locations throughout the state and, on occasion, odd or irregular hours. The employee is required to maintain regular and consistent attendance; report to work on time; work his/her full day and work under changing priorities and deadlines. In addition, the employee is required to dress and act professionally, work cooperatively with others and exhibit courteous behavior towards coworkers and the public. Knowledge and proficiency in the use of personal computers and standard office software is desired. A valid California driver license is required.

POST CERTIFICATION

The employee will be required to satisfactorily complete or provide proof of successful completion of a basic investigative training course as prescribed by the California Commission on Peace Officer Standards and Training (POST) prior to the completion of the probationary period. If the employee does not successfully complete the POST course during the probationary period, the employee will be rejected during the probationary period.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

_____

Employee Signature Date

_____

Name, Title (printed)

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

_____

Supervisor Signature Date

_____

Name, Title (printed)

➢ **Revision Date: September 25, 2008**

Department of Consumer Affairs
Position Duty Statement
HR-041 (New 07/08)

Classification Title Senior Investigator, DCA	**Board/Bureau/Division** Medical Board of California
Working Title	**Office/Unit /Section/ Geographic Location** Enforcement
Position Number	**Effective Date**

Under minimal supervision of the Supervising Investigator I, the Medical Board of California (MBC), Senior Investigator (employee) independently conducts complex administrative, criminal, and civil investigations of physician and surgeons and certain allied healthcare professionals. Examples of complex investigations include, but are not limited to: criminal sexual exploitation of patients, cases involving drug violations, unlicensed practice of medicine, unlicensed corporate practice of medicine, insurance fraud and allegations of practicing medicine while impaired (drug use, alcohol abuse and mental disorders).

Pursuant to Government Code section 12529.6, because of the critical importance of the health and safety function of MBC and the complexity of cases involving alleged misconduct by physicians and surgeons, the MBC investigators work closely with the Health Quality Enforcement Section of the Office of the Attorney General under the "vertical enforcement model."

A. Specific Assignments

75% (E) Investigations *(Driving, sitting, balance and carrying required)*

25% Locates and interviews victims, witnesses and suspected violators; analyzes and evaluates testimony. Consults with medical experts regarding complex issues involving the standard of medical care. Prepares written and recorded statements and evaluates their testimony for possible use in judicial proceedings.

20% Examines a variety of complex medical treatment or other records to secure or verify information concerning suspected violations and violators.

20% Consults with the Deputy Attorney General and/or local prosecutor in planning and coordinating investigations and preparing cases for court. Locates and serves subpoenas on witnesses and suspects. Prepares and serves subpoenas for a variety of medical records. Testifies in criminal court or administrative hearings, as necessary.

10% Coordinates and assists in the preparation and service of search warrants, subpoenas and other legal papers; conducts undercover and surveillance operations. Makes physical arrests of suspects and transports those in custody. Issues citations; seizes and logs evidence; cooperates with federal, state, and local law enforcement agencies on investigations.

20% (E) Investigative Reports *(Sitting required)*

20% Prepares complex investigation reports for presentation to the Deputy Attorney General for administrative disciplinary action or to the local district attorney to file a criminal complaint.

5% (E) Training/Administrative (*Driving, sitting, balance and carrying required)*

5% Participates in firearms qualifications and hand-to-hand defensive tactics training and specialized law enforcement technical training. Prepares and performs internal administrative functions such as monthly activity reporting and mileage logs.

B. Supervision Received

The employee reports directly to, and receives assignments from, the Supervising Investigator I. However, assignments and direction may come from a designated lead or higher level management.

C. Supervision Exercised

None.

D. Administrative Responsibility

None.

E. Personal Contacts

The employee has daily contact with a supervisor and other employees in the office, attorneys of the Office of Attorney General and with licensees and general public as subjects, complainants or witnesses. The employee has occasional to frequent contact with other criminal justice agencies at the county, city, state and federal levels.

F. Actions and Consequences

Failure to complete assigned casework in a timely manner, or inefficiency in conducting investigations, may result in failure to protect the healthcare consumer. Investigations not completed in a timely manner may allow the statute of limitations for the particular violation to lapse. Investigations not completed in a timely manner can delay case resolution. An inadequate investigation may result in allowing a violation of the law (criminal or administrative) to go undetected or unpunished. Many of the cases being investigated affect the health and safety of consumers.

Failure to make a lawful or justified arrest may expose the state to a lawsuit. The excessive or improper use of force in making an arrest may result in injury or death to an employee, suspect or other person and may expose the state to a lawsuit.

G. Functional Requirements

Physical Demands:

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Crawl:	Occasionally
Climb:	Occasionally
Reach/Stretch:	Occasionally
Balance:	Continuously
Push/Pull:	Occasionally
Carry:	Continuously, up to 15 pounds as s/he is required to carry a semi-automatic pistol, extra ammunition, handcuffs, chemical agent, etc. The employee will wear body armor (approximately 8 pounds), when required. The employee will occasionally carry up to 80 pounds.
Lift:	Occasionally
Kneel:	Occasionally
Twist:	Occasionally
Foot Movement:	Occasionally, the employee will use repetitive foot movements when driving a vehicle.
Hand Manipulation:	The employee uses hands respectively for fine manipulating motor skills and firm grasping with all joints and digits for the following: writing or typing reports, maintenance of firearm proficiency, performance of physical arrests and in-service defensive tactics training.

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H. Other Information

The employee routinely works with sensitive and confidential issues and/or materials, which may include sexually explicit materials and graphic medical procedures such as autopsies. The employee is expected to maintain the privacy and confidentiality of documents and topics pertaining to individuals or to sensitive investigative matters at all times. This position requires working in and driving to, various locations throughout the state and, on occasion, odd or irregular hours. The employee is required to maintain regular and consistent attendance; report to work on time; work his/her full day and work under changing priorities and deadlines. In addition, the employee is required to dress and act professionally, work cooperatively with others and exhibit courteous behavior towards coworkers and the public. Knowledge and proficiency in the use of personal computers and standard office software is desired. A valid California driver license is required.

POST CERTIFICATION

The employee will be required to satisfactorily complete or provide proof of successful completion of a basic investigative training course as prescribed by the California Commission on Peace Officer Standards and Training (POST) prior to the completion of the probationary period. If the employee does not successfully complete the POST course during the probationary period, the employee will be rejected during the probationary period.

I have read and understand the duties listed above and I can perform these duties with or without reasonable accommodation. (If you believe reasonable accommodation is necessary, discuss your concerns with the hiring supervisor. If unsure of a need for reasonable accommodation, inform the hiring supervisor, who will discuss your concerns with the Health & Safety analyst.)

_____

Employee Signature Date

_____

Name, Title (printed)

I have discussed the duties of this position with and have provided a copy of this duty statement to the employee named above.

_____

Supervisor Signature Date

_____

Name, Title (printed)

- **Revision Date: September 25, 2008**

Table of Contents

Introduction **1**

Background 2

Methodology 3

Phase I.....Specification Comparison

Phase II....Duty Statement Comparison

Class Information Summary **4**

Department of Consumer Affairs Investigator 5

Department of Consumer Affairs, Senior Investigator 6

Department of Justice, Special Agent 6

Department of Insurance, Fraud Investigator 6

Department of Health Care Services, Special Investigator 6

Employment Development Department, Criminal Investigator 6

Department of Corporations, Corporations Investigator 6

Department of Corporations, Associate Corporations Investigator 6

Specification Comparison **4**

Department of Consumer Affairs Investigator 5

Department of Consumer Affairs, Senior Investigator 6

Department of Justice, Special Agent 6

Department of Insurance, Fraud Investigator 6

Department of Health Care Services, Special Investigator 6

Employment Development Department, Criminal Investigator 6

Department of Corporations, Corporations Investigator 6

Department of Corporations, Associate Corporations Investigator 6

Classification Information Summary

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Justice (DOJ)	Insurance (DOI)
Classification	Investigator	Senior Investigator	Special Agent	Fraud Investigator
Class code	8594	8595	8482	7539
Salary	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00	4,888.00 - 6,194.00	A 3,740.00 - 4,840.00 B 4,474.00 - 6,085.00 C 5,397.00 - 7,341.00	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	318	NA	175	301
Pay Differentials	Van Pool Incentive #188 $100.00	Van Pool Incentive #188 $100.00	SA Field Training Officer #56 One Step Van Pool Incentive #188 $100.00	FI R&R #173 $200.00 Per pay Period Los Angles County Santa Clara County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA	NA	NA	NA
Established/ Filled Positions As of 3/31/08	21/18	51/39.80	412.80/297	184/129.5

	Departments			
	Health Care Services (DHCS)	Employment Development (EDD)	Corporations (DOC)	Corporations (DOC)
Classification	Fraud Investigator	Criminal Investigator	Corporations Investigator	Associate Corporations Investigator
Class code	8064	7568	8570	8571
Salary	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00	4,888.00 - 6,194.00
Alternate Ranges	421	425	252	NA
Pay Differentials	SI R&R #173 $200.00 Per pay Period Los Angles County Van Pool Incentive #188 $100.00	SI R&R #173 $200.00 Per pay Period Los Angles County Van Pool Incentive #188 $100.00	Van Pool Incentive #188 $100.00	Van Pool Incentive #188 $100.00
Hire Above Minimum	NA	NA		NA
Established/ Filled Positions As of 3/31/08	117/102	37/35	2/2	1/1

Salary Comparison

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Justice (DOJ)	Justice (DOJ)
Classification	Investigator	Investigator	Special Agent	Special Agent
Class code	8594	8594	8482	8482
Salary	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00		A +109.00 - 464.00 B+419.00 – 953.00 C+943.00 – 1,710.00	A 3,740.00 - 4,840.00 B 4,474.00 - 6,085.00 C 5,397.00 - 7,341.00
Alternate Ranges	318			175
Pay Differentials	Van Pool Incentive #188 $100.00			SA Field Training Officer #56 One Step Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Justice (DOJ)	Justice (DOJ)
Classification	Senior Investigator	Senior Investigator	Special Agent	Special Agent
Class code	8595	8595		8482
Salary	4,888.00 - 6,194.00	Compared to Range C ($509.00 -1,147.00)		A 3,740.00 - 4,840.00 B 4,474.00 - 6,085.00 C 5,397.00 - 7,341.00
Alternate Ranges	NA			175
Pay Differentials	Van Pool Incentive #188 $100.00			SA Field Training Officer #56 One Step Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

Salary Comparisons

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Insurance (DOI)	Insurance (DOI)
Classification	Investigator	Investigator	Fraud Investigator	Fraud Investigator
Class code	8594	8594	7539	7539
Salary	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00		A +$271.00 - 328.00 B +$399.00 - 499.00 C+$434.00 - 563.00	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	318			301
Pay Differentials	Van Pool Incentive #188 $100.00		+$200.00 Los Angles County Santa Clara County	R&R #173 $200.00 Per pay Period Los Angles County Santa Clara County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Insurance (DOI)	Insurance (DOI)
Classification	Senior Investigator	Senior Investigator	Fraud Investigator	Fraud Investigator
Class code	8595	8595	7539	7539
Salary	4,888.00 - 6,194.00	0 = To Range C	0	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	NA			301
Pay Differentials	Van Pool Incentive #188 $100.00		+$200.00 Los Angles County Santa Clara County	R&R #173 $200.00 Per pay Period Los Angles County Santa Clara County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

Salary Comparison

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Health Care Services (DHCS)	Health Care Services (DHCS)
Classification	Investigator	Investigator	Fraud Investigator	Fraud Investigator
Class code	8594	8594	8064	8064
Salary	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00		A +271.00 - 328.00 B +399.00 - 499.00 C+434.00 - 563.00	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	318			421
Pay Differentials	Van Pool Incentive #188 $100.00		+ $200.00 Los Angles County	SI R&R #173 $200.00 Per pay Period Los Angles County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Health Care Services (DHCS)	Health Care Services (DHCS)
Classification	Senior Investigator	Senior Investigator	Fraud Investigator	Fraud Investigator
Class code	8595	8595	8064	8064
Salary	4,888.00 - 6,194.00	0 = To Range C	0	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	NA			421
Pay Differentials	Van Pool Incentive #188 $100.00	0 = To Range C	+$200.00 Los Angles County	SI R&R #173 $200.00 Per pay Period Los Angles County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

Salary Comparison

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Employment Development (EDD)	Employment Development (EDD)
Classification	Investigator	Investigator	Criminal Investigator	Criminal Investigator
Class code	8594	8594	7568	7568
Salary	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00		A +271.00 - 328.00 B +399.00 - 499.00 C+434.00 - 563.00	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	318			425
Pay Differentials	Van Pool Incentive #188 $100.00		+ $200.00 Los Angles County	SI R&R #173 $200.00 Per pay Period Los Angles County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Employment Development (EDD)	Employment Development (EDD)
Classification	Senior Investigator	Senior Investigator	Criminal Investigator	Criminal Investigator
Class code	8595	8595	7568	7568
Salary	4,888.00 - 6,194.00	0 = To Range C	0	A 3,902.00 - 4,704.00 B 4,454.00 - 5,631.00 C 4,888.00 - 6,194.00
Alternate Ranges	NA			425
Pay Differentials	Van Pool Incentive #188 $100.00		+ $200.00 Los Angles County	SI R&R #173 $200.00 Per pay Period Los Angles County Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

Salary Comparison

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Corporations (DOC)	Corporations (DOC)
Classification	Investigator	Investigator	Corporations Investigator	Corporations Investigator
Class code	8594	8594	8570	8570
Salary	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00	0	0	A 3,631.00-4,376.00 B 4,055.00-5,132.00 C 4,454.00-5,631.00
Alternate Ranges	318			252
Pay Differentials	Van Pool Incentive #188 $100.00			Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Corporations (DOC)	Corporations (DOC)
Classification	Senior Investigator	Senior Investigator	Associate Corporations Investigator	Associate Corporations Investigator
Class code	8595	8595	8571	8571
Salary	4,888.00 - 6,194.00	0	0	4,888.00 - 6,194.00
Alternate Ranges	NA			NA
Pay Differentials	Van Pool Incentive #188 $100.00			Van Pool Incentive #188 $100.00
Hire Above Minimum	NA			NA

Specifications Comparisons

	Departments			
	Consumer Affairs (DCA) Medical Board of CA	Consumer Affairs (DCA) Medical Board of CA	Justice (DOJ)	Insurance (DOI)
Classification	Investigator	Senior Investigator	Special Agent	Fraud Investigator
Class code	8594	8595	8482	7539
Definition of Levels	This is the entry, training, and full journey level in the series. Under close supervision, incumbents receive on-the-job training from either a supervisor or an advanced journey level investigator to Learn the full range of difficult and complex investigative work. As a full journey level investigator, incumbents will work with a high degree of independence on complex and sensitive cases.	This is the advanced journey level in the series. Under minimal supervision, incumbents independently conduct the most sensitive, complex and diverse criminal and administrative investigations; may act in a lead capacity to direct or review the work of lower-level investigators; may perform program or policy development and interpretation duties which specifically require investigatory or law enforcement expertise; may be involved as a member of a multi-agency investigation or assignment; and may have independent responsibility to oversee an entire investigative operation or project.	Incumbents in this class conduct civil, criminal, or narcotic investigation and enforcement activities for the Department of Justice. Incumbents are assigned to a team and may work independently or as a leadsperson coordinating the work of other law enforcement personnel. Incumbents may be assigned to provide training and technical assistance to law enforcement personnel.	This is the entry, first journey, and full journey level in the Fraud Investigator, Department of Insurance, and series. Under close supervision of a Supervising Fraud Investigator I, incumbents are assigned law enforcement responsibilities commensurate with their background and training; conduct criminal investigations of felony violations of State and Federal law relating to insurance fraud and white-collar crime. Incumbents may work alone, with a team, or as a lead criminal investigator assigned to conduct investigations of criminal enterprises and profiteering and assist in the prosecution of cases involving these groups in both State and Federal courts; and conduct investigations involving a broad range of felony violations, both State and Federal judicial systems.
Minimum Qualifications	Either I Education: Equivalent to graduation from college with a major in criminal justice, law enforcement or criminology or a minor in criminal justice, law enforcement or criminology with evidence that the following courses or their equivalent have been completed: Introduction to criminal justice; introduction to criminal law; basic investigation, evidence, criminal procedure; and philosophy of law. (Registration as a senior in a	Either I One year of experience in the California state service performing the duties of an Investigator, Department of Consumer Affairs, Range C. Or II Experience: Three years of progressively responsible experience as a peace officer involved in full-time civil or criminal investigative work; and Education: Equivalent to two years of college with a major in criminal	Either I One year of experience in the California state service performing the duties of the class of Special Agent Trainee, Department of Justice. (Applicants who have completed six months performing the duties of a Special Agent Trainee, Department of Justice, will be admitted to the examination, but they must satisfactorily complete one year of experience in the class of Special Agent Trainee, Department of Justice, before they will be	Either I Education: Equivalent to graduation from an accredited four-year college with a major in criminal justice, law enforcement, criminology, administration of justice, police science, or a minor in law enforcement, criminology, administration of justice, or police science with evidence that the following courses or their equivalent have been completed: Introduction to Criminal Justice; Introduction to Criminal Law; Basic Investigation,

	recognized institution will admit applicants to the examination, but they must provide evidence of graduation or its equivalent before they can be considered eligible for appointment.) Or II Experience: Two years of experience as a peace officer performing preliminary investigative work as part of the regular law enforcement activity; and Education: Equivalent to two years of college with a major in Criminal justice, police science, law enforcement or criminology. Or III Experience: One year of experience in the California state service performing duties equivalent to those of an Investigator Assistant. (Applicants who have completed six months of service in the class of Investigator Assistant will be admitted to the examination, but they must satisfactorily complete one year of experience in the class before they can be considered eligible for appointment.)	justice, police science, law enforcement or criminology.	considered eligible for appointment.) Or II Experience: Two years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work. (Patrol experience may be substituted for the required investigative experience on the basis of one year of patrol experience being equivalent to six months of investigative experience.) and Education: Equivalent to completion of two years of college (60semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.) Or III Experience: One year of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work. (Patrol experience may be substituted for the required investigative experience on the basis of one year of patrol experience being equivalent to six months of investigative experience.) and Education: Equivalent to graduation from college.	Evidence, Criminal Procedure; and Philosophy of Law. (Registration as a senior in a recognized institution will admit applicants to the examination, however they must produce evidence of graduation or its equivalent before they can be considered eligible for appointment.) Or II Experience: Two years of peace officer experience (as defined by the California Penal Code, Chapter 4.5, Sections 830.1, 830.2, 830.3, and 830.8) in an investigative assignment in a government agency. and Education: Equivalent to completion of two years of college (60 semester hours) from an accredited college with a major in law enforcement, criminal justice, administration of justice, police science, or criminology. (Additional qualifying experience may be substituted for the required education on a year-for-year basis. Applicants who are being considered for positions assigned as "Peace Officer" status, as defined by California law, must possess the educational equivalent of completion of the 12th grade.) Or III Experience: One year of experience in the California state service performing the duties at a level comparable to an Investigator Assistant. (Applicants who are within six months of satisfying the experience requirement for this class will be admitted to the examination, but they must fully meet the experience requirement before being eligible for appointment.) and Education: Equivalent to two years

				(60 semester units) of college with a major in criminal justice, law enforcement, police science, administration of justice, or criminology, with evidence of completion of courses in the following subject areas: Introduction to Criminal Justice, Introduction to Criminal Law, Basic Investigation, Evidence, Criminal Procedure, and Philosophy of Law.)
Knowledge and Abilities	ALL LEVELS: Knowledge of: Administrative and criminal investigative techniques; interview and interrogation processes and procedures; provisions of the Government Code, Health and Safety Code, Business and Professions Code, California Penal Code, Controlled Substances Act, and other related codes; administrative and criminal procedures; methods used in securing and preserving of evidence; general training techniques and methods as applied to peace officer training; laws of arrest; search and seizure. Ability to: Develop techniques, methods and skills required in the conducting of administrative and criminal investigations; apply laws and rules of evidence to specific situations; gather and analyze facts and evidence and present such evidence as required; analyze situations accurately and take effective action; participate actively in surveillance investigations; interview and interrogate; effectively control informants, paid operatives and confidential informants; appear as an expert witness; use and maintain firearms;	Knowledge of: All of the above, and program policies and procedures. Ability to: All of the above, and plan and conduct independently the most sensitive and complex investigations; effectively make use of computerized data and discern patterns of fraud; apply laws and rules of evidence to specific situations; effectively develop and control confidential informants and paid operatives; provide technical advice and assistance to, and conduct training for, appropriate law enforcement and allied health agencies; speak effectively before groups; coordinate multi-agency investigations; function in a lead capacity; provide field training; and act as evidence custodian.	Knowledge of: All of the above, and major investigative operational plans; interview, interrogation, information, and intelligence gathering processes and procedures; proper tactics and use of force in affecting arrests of suspects, felony car stops, and entry in fortified buildings; proper techniques to plan and coordinate multisuspect/multidwelling enforcement actions; sophisticated investigative techniques including use of wiretaps, pin registers, traps, tracking devices, subpoenas, and complex search warrants; peace officer training techniques and methods; applicable Department policies and procedures; the interrelationship of other law enforcement agencies with the Department of Justice; techniques for securing, preserving, and handling evidence; techniques used to prevent diversion of licit drugs to illicit channels; undercover operations using paid and unpaid operators; use of relational database software to analyze and evaluate fiscal data from various sources and to analyze seized computerized data; the role and availability of forensic support services in the investigative process; contemporary computer technology and communications	Knowledge of: Criminal investigative techniques and procedures; rules of evidence and court procedures; laws of arrest, search and seizure, including seizure of computers; proper tactics and use of force in making arrest, felony car stops, and high risk entries; service of legal process and the legal rights of citizens; interview and interrogation techniques; provisions of the California Penal Code, Insurance code, Evidence Code, Business and Professions Code Health and Safety Code, and related Federal statutes; techniques for securing, preserving, and handling evidence; the use and capabilities of the California Law Enforcement Telecommunications System (CLETS) and the Fraud Integrated Data Base (FIDB); sources of information in locating witnesses and suspects; general training techniques and methods as applied to peace officer training; undercover operations utilizing informants; procedures for operating specialized surveillance equipment; computer applications and software utilized by the Fraud Division; Department and Branch policies and procedures. Ability to: Plan and conduct complex investigations into insurance fraud and white-collar crime; apply laws

	serve subpoenas, write and execute search warrants and subpoena duces tecum; prepare accurate investigation reports; establish and maintain cooperative working relationships; communicate effectively both orally and in writing	systems used in the investigative process; use of computers to prepare search warrants, affidavits, and reports in field locations; use of computers to maintain administrative time reports, reports of investigation, and case and file management systems. Ability to: All of the above, and identify controlled substances; gather, analyze, and present facts and evidence; utilize various software programs to analyze computerized data from various State and Federal fiscal intermediaries and identify patterns of fraud; analyze situations accurately and take effective action; work undercover; participate actively in covert moving, stationary, and aerial surveillances, investigations, and interviews; file complaints and serve legal documents; conduct and coordinate multiagency and/or complex investigations as a lead agent; plan and coordinate raid and operational actions as a case agent; coordinate with prosecutorial agencies and the court in the prosecution of suspects as the trial agent; photograph crime scenes; use and maintain communications and investigative equipment; appear as an expert witness; prepare and present well-organized, accurate court testimony; use proper techniques during tactical operations; provide technical assistance to and conduct training for other allied and public agencies and law enforcement personnel; develop and maintain sources of information.	and rules of evidence to specific situations; gather and analyze facts and evidence; write clear and concise reports of case investigation for State and Federal prosecutors; analyze situations accurately and take effective action; conduct interviews of witnesses and interrogate suspects; effectively participate in, or direct, undercover operations and surveillance assignments operations; establish and maintain effective working relationships and be able to speak effectively before groups; adapt quickly to changing situations; photograph crime scenes and use sophisticated evidence gathering equipment; properly prepare and execute search warrants including, but not limited to, the search and seizure of computer equipment; make felony arrests using proper tactics; appear and testify as an expert witness in State and Federal courts; file criminal complaints in State and Federal courts; use, maintain, and qualify with Division approved firearms, and maintain firearms, and maintain firearm proficiency as required by POST and Division policy; properly utilize emergency equipped vehicles; serve legal documents; transcribe and dictate reports of surreptitious recordings; develop and control confidential informants;; operate computer applications and software utilized by the Fraud Division; participate in covert stationary, mobile, or aerial surveillances; serve as range master, defensive tactics, and computer forensic expert on special forensic assignments; assume fictitious identities for undercover roles; plan, conduct, and coordinate complex investigations as a lead

			agent; conduct and coordinate multiagency task force operations; provide insurance fraud awareness, detection, and training on reporting requirements to allied law enforcement insurance industry personnel, and the general public; conduct background and internal affair investigations as required; act as a Division Training Instructor or Field Training Investigator.
Special Personal Characteristics	Willingness to work in various locations throughout the State and at odd and irregular hours; keenness of observation; good memory for names, faces, places, and incidents; tact; willingness to associate with criminally inclined persons and environments; satisfactory record as a law-abiding citizen; ability to work under stress and adverse conditions; and possession of a valid California driver's license of the appropriate class issued by the Department of Motor Vehicles.	No illegal involvement in controlled substances as an adult; willingness to work throughout the State and at unusual hours; ability to work under stress and adverse conditions; keenness of observation; good memory for names, faces, places, and incidents; willingness to associate with criminally inclined persons and environments in performance of duties; willingness to work undercover and participate in covert moving, stationary, and aerial surveillances; willingness to utilize a variety of weaponry, including shotguns, machine guns, tear gas, and distractionary devices; willingness to pursue violent repeat offenders and effect their arrest; willingness to operate a police vehicle under emergency circumstances; willingness to deal with toxic materials and chemicals; willingness to handle gruesome crime scenes involving persons of all ages; satisfactory record as a law-abiding citizen; maintain good credit; possession of a valid driver license; willingness to use all appropriate means, including deadly force, to carry out peace officer duties; exercise good judgment; and demonstrate good work habits.	Willingness to work throughout the State and at unusual hours, as required; keenness of observation; good memory for names, faces, places, and incidents; associate with criminally inclined persons and environments in performance of duties; satisfactory maintain a clean record as a law-abiding citizen; possess a valid driver license of the appropriate class issued by the Department of Motor Vehicles; work under stress and adverse conditions; perform tedious tasks (e.g., reading through large case investigation files, or working in a surveillance vehicle for long periods of time); learn about insurance fraud and related legal issues and procedures; comply with established policies and procedures of the Fraud Division; physically restrain suspects while performing the duties of a peace officer; carry out all peace officer duties; speak in front of groups; carry firearms; travel frequently; and safely operate a motor vehicle.

Special Physical Characteristics	Good health, emotional maturity and stability; sound physical condition; strength, endurance and agility necessary to cope with the demands of the job; normal hearing; normal vision or vision corrected to normal; weight proportional to age and height.		Good health, sound physical condition, freedom from any physical, mental, or emotional condition or limitation that would interfere with the full performance of the essential duties of positions in these classes; effective use of both hands; strength, endurance, and agility; normal hearing; vision sufficient to perform the essential functions of the class; and weight proportionate to height.	Good health, sound physical condition, and free from any physical or mental condition that would interfere with performance of duties; effective use of both hands; strength, endurance, and agility; emotional stability; normal hearing; normal vision or vision corrected to normal; and weight proportional to age and height.
Additional Desirable Characteristics	NA	NA	In addition to the above knowledge and abilities, possession of the appropriate certificates as evidence of increased competency at each level is desirable. Also desirable is evidence of completed course work in the following subject areas: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law.	In addition to the above knowledge and abilities, possession of the appropriate certificates as evidence of increased competency at each level is desirable. Also desirable is evidence of completed course work in the following subject areas: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure and laws of arrest, and search and seizure.
Citizenship Requirements	Existing law provides that peace officers be either a U.S. citizen or a permanent resident alien who is eligible for and has applied for U.S. citizenship at least one year prior to the final file date for this examination. The one-year requirement does not apply to permanent resident aliens who have applied for peace officer classes prior to their 19th birthday.			
Minimum Age	Minimum age at time of appointment: 18 years.	NA	SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE Minimum age for appointment is 18 years of age	Minimum age at time of appointment: 21 years.
Felony Disqualification	Existing law provides that persons convicted of a felony are disqualified from employment as peace officers. Such persons are not eligible to compete for, or be appointed to, positions in this class In addition, use		**PEACE OFFICER STANDARDS** ALL LEVELS: **Felony Disqualification:** Pursuant to Government Code Section 1029,	PEACE OFFICER STANDARDS ALL LEVELS: **Citizenship Requirement:** Pursuant to Government Code Section

	of "hard drugs" (e.g., heroin, cocaine, or hallucinogenic) at any time as an adult constitutes basis for disqualification from peace officer examinations.	persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes. **Firearm Conviction Disqualification:** Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications. **Citizenship Requirement:** Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must be either a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U.S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied. **Background Investigation:** Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment. Persons who have previously undergone a Department of Justice background investigation may be required to undergo an additional background investigation.	1031(a), in order to be a peace officer, a person must be either a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U.S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied. **Felony Disqualification:** Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes. **Firearm Conviction Disqualification:** Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications. **Background Investigation and Psychological Screening:** Pursuant to Government Code Section 1031(a) and 888.38, all persons successful in examinations for these classes shall be required to undergo a thorough background investigation prior to appointment. Government Code Section 1031(f) and Peace Officer's Standard Training Regulation (P.O.S.T.) 1002(a)(7) require

		Training Requirements: Under provisions of Penal Code Section 832, successful completion of a training course in laws of arrest, search and seizure, and in firearms and chemical agents is a requirement for permanent status in these classifications. **Medical Requirement:** Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential of the job safely and effectively. **Drug Testing Requirement:** Applicants for positions in these classes are required to pass a drug-screening test. (The drug-screening test will be waived for employees who are currently in a designated "sensitive" class for which drug testing is required under State Personnel Board Rule 213.)	psychological screening of applicants for peace officer classifications. **Medical Requirement:** Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.
Background Investigation and Psychological Screening	Pursuant to Government Code Sections 1031(a) and 8880.38 all persons successful in examinations for this class will be required to undergo a thorough background investigation prior to appointment. Government Code Section 1031(f) and POST Regulation 1002(a) (7) requires psychological screening of applicants for peace officer classifications.		

Specifications Comparisons

	Departments			
	Health Care Services (DHCS)	Employment Development (EDD)	Corporations (DOC)	Corporations (DOC)
Classification	Fraud Investigator	Criminal Investigator	Corporations Investigator	Associate Corporations Investigator
Class code	8064	7568	8570	8571
Salary				
Definition of Levels	This is the entry, journey, and full journey level in the series. Under close supervision, incumbents receive on-the-job training to learn the full range of investigative work. As a full journey level investigator, incumbents independently conduct investigations of criminal violations of fraud, abuse, and neglect perpetrated by applicants/recipients of the Medi-Cal and other Department of Health Services programs. Incumbents may work alone, within a group, or as a lead person coordinating the work of other investigators.	This is the entry, journey, and full journey level in the series. Under close supervision, incumbents receive formal and on-the-job training to learn the full range of investigative work. As a full journey level investigator, incumbents independently conduct the most sensitive, complex, and diverse criminal and administrative investigations; may act in a lead capacity to direct or review the work of lower-level investigators; assist in program or policy development and interpretation; may be involved as a member of a multiagency investigation or assignment; and may have independent responsibility to oversee an entire investigative operation or project.	This is the entry, first journey and full journey level in the series. Under supervision, incumbents are trained in investigative techniques and conduct civil and criminal investigations. Incumbents in this class assist higher level enforcement staff and gradually assume, as a full journey level investigator, responsibility for the most complex investigations, work independently, and lead or review work of subordinate staff.	This is a technical litigation specialist position. Incumbents are assigned complex specialized administrative, civil and criminal litigation cases with technical emphasis in areas of accounting, real estate principles, health law, commodities, computer theory and application, and other specialized areas as identified by departmental officials. Where it is perceived that the Department will have to commence administrative or civil action or refer the case for criminal prosecution, incumbents will assist and provide technical expertise to departmental personnel, District Attorneys and other law enforcement agencies. Incumbents may work independently or as a leadperson coordinating the work of a team of Corporations Investigators on complex administrative, civil and criminal cases that are characterized by fragmentary books, sophisticated computerized data input and extraction, and elaborate financial and real estate schemes.
Minimum Qualifications	Either I Education: Equivalent to graduation from a four-year college with a major in criminal justice, law enforcement, or criminology; or a minor in criminal justice, law enforcement, or criminology with evidence that the following courses or their equivalent have been	Either I Education: Equivalent to graduation from college with a major in criminal justice, law enforcement, police science, administration of justice, or criminology; or a minor in criminal justice, law enforcement, police science, administration of justice, or criminology, with evidence that the	Either I Education: Equivalent to a four-year degree from college with a major preferably in criminal justice, administration of justice, or police science. (Registration as a senior in a recognized institution will admit applicants to the examination, but they must produce evidence of	Either I One year of experience in the California state service performing the duties of a Corporations Investigator, Range C. Or II Experience: Two years of responsible experience as an investigator or detective in a

	completed: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law. (Registration as a senior in a recognized institution will admit applicants to the examination, but they must produce evidence of graduation or its equivalent before they can be considered eligible for appointment.) Or II Experience: Two years of peace officer experience in an investigative assignment in a governmental agency. and Education: Equivalent to two years of college with a major in criminal justice, law enforcement, or criminology. Evidence of satisfactory completion of courses in the following subject areas: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law. (Additional qualifying experience may be substituted for the required education on a year-for-year basis. Applicants being considered for Fraud Investigator, Department of Health Services, positions and assigned "peace officer" status, as defined by California state law, must possess the educational equivalent to completion of the 12th grade.) Or III Experience: One year of experience in the California state service performing duties comparable to those of an Investigator Assistant. (Applicants who have completed six months of service in the class of Investigator Assistant will be admitted to the examination, but they must satisfactorily complete	following courses or their equivalent have been completed: Introduction to Criminal Justice; Introduction to Criminal Law; Basic Investigation, Evidence, and Criminal Procedure; and Philosophy of Law. (Registration as a senior in a recognized institution will admit applicants to the examination, but they must provide evidence of graduation or its equivalent before they can be considered eligible for appointment. Or II Experience: Two years of peace officer experience (defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code) performing criminal investigative work as part of the regular law enforcement activity and possession of a current Peace Officer Standards and Training (POST) Basic or Specialized Basic Law Enforcement Certificate. and Education: Equivalent to two years of college with a major in criminal justice, law enforcement, police science, administration of justice, or criminology, with evidence of completion of courses in the following subject areas: Introduction to Criminal Justice; Introduction to Criminal Law; Basic Investigation, Evidence, and Criminal Procedure; and Philosophy of Law. Or III Experience: One year of experience in the California state service performing the duties of an Investigator Assistant. (Applicants who have completed six months of service in the class of Investigator Assistant will be admitted to the examination, but they must satisfactorily complete one year of experience in the class before they	graduation or its equivalent before they can be considered eligible for appointment.) Or II Experience: Two years of experience in investigative work; and Education: Equivalent to two years of college. (Additional qualifying experience may be substituted for the required education on a year-for-year basis.) Or III Experience: One year of experience in the California state service performing the duties comparable to those of an Investigator Assistant or in an investigation assignment in the class of Management Services Technician, Range B. Applicants who are being considered for Corporations Investigator positions assigned "Peace Officer" status (as determined by California state law) must possess the educational equivalent to completion of the twelfth grade. (Applicants who have completed six months of service as an investigator Assistant or six months at Range B of the Management Services Technician will be admitted to the examination, but they must satisfactorily complete one year of experience in either of these classes before they can be considered eligible for appointment.)	governmental or private agency involved in full-time civil or criminal investigative work. and Education: Equivalent to a four-year degree with a major preferably in criminal justice, administration of justice, or police science. Up to two years of the educational requirement may be satisfied by substituting experience on a year-for-year basis.

	one year of experience in the class before they can be considered eligible for appointment). and Education: Equivalent to two years of college with a major in criminal justice, law enforcement, or criminology. Evidence of satisfactory completion of courses in the following subject areas: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law.	can be considered eligible for appointment.) and Education: Equivalent to two years of college with a major in criminal justice, law enforcement, police science, administration of justice, or criminology, with evidence of completion of courses in the following subject areas: Introduction to Criminal Justice; Introduction to Criminal Law; Basic Investigation, Evidence, and Criminal Procedure; and Philosophy of Law.	
Knowledge and Abilities	Knowledge of: Civil and criminal investigation techniques and interview and interrogation processes and procedures; provisions of the California Penal Code, Code of Civil Procedures; Evidence Code; the State Controlled Substances Act; Health and Safety Code, Welfare and Institutions Code, Code of Federal Regulations, the Federal Social Security Act, the Immigration and Naturalization Act, and other State and Federal laws pertaining to crimes committed against Medi-Cal and other related programs; the relative functions and duties of other Federal, State, and local law enforcement and regulatory agencies; the State and Federal criminal justice system; he securing and preservation of evidence; general training techniques and methods as applied to police officer training; laws of arrest, and search and seizure. Ability to: Develop techniques, methods, and skills and apply applicable laws required to conduct civil and criminal investigations; effectively make use of the computerized data maintained by	Knowledge of: Criminal law and criminal investigative techniques and procedures; rules of evidence and court procedures; laws of arrest and search and seizure, including search and seizure of computers; evidence securing and preserving; service of legal process and the legal rights of citizens; interview and interrogation techniques, processes, and procedures; interpreting and applying the provisions of the California Unemployment Insurance Code, California Penal and Evidence Codes, and related State and Federal statutes; sources of information used in locating persons; general training techniques and methods as applied to peace officer training. Ability to: Plan and conduct the most difficult and complex criminal investigations of alleged fraud violations; conduct background and/or internal affairs investigations; apply laws and rules of evidence to specific situations; gather and analyze facts and evidence; write clear and concise reports of investigation for local, State, and Federal prosecutors; analyze situations accurately and take	ALL LEVELS: Knowledge of: civil and criminal investigation techniques and interview and interrogation processes and procedures; provisions of appropriate laws found in the California Corporations, Financial and Health and Safety Codes, the California Penal Code, the Code of Civil Procedures and Federal laws relating to the qualification and sale of securities; duties of Federal, State, and local law enforcement agencies; methods and terminology used in the modus operandi system; the securing and preservation of evidence; and general training techniques and methods as applied to peace officer training. Ability to: develop techniques, methods and skills required in the conducting of civil and criminal investigations; apply laws and rules to specific situations; gather and analyze facts and evidence and present such evidence as required; analyze situations accurately and take effective action; participate actively in interviews and interrogation; appear as an expert

	the State and fiscal intermediaries; read computerized data and discern patterns of fraud; apply laws to specific situations; gather and analyze facts and evidence and present such evidence as required; analyze situations accurately and take effective action; participate actively in extended surveillance, interviews, and interrogations; use sophisticated surveillance equipment; effect arrests; effectively control informants and paid operant's; appear as an expert witness; proficiently use and maintain firearms; file complaints, and serve criminal subpoenas and subpoena duces tecums; write and execute search and arrest warrants; prepare factual reports; provide technical assistance to and conduct training for appropriate law enforcement and allied health agencies; communicate effectively before groups; establish and maintain cooperative working relationships.	appropriate action; interview witnesses and interrogate suspects; participate in undercover and surveillance assignments; establish and maintain effective working relationships and be able to communicate effectively before groups; use sophisticated evidence gathering and photographic equipment; plan and coordinate complex fraud investigations involving surveillance and tailing activities, service of multiple search warrants, felony arrest warrants, and undercover operations that involve sensitive handling of suspects; prepare and execute search warrants to include the search and seizure of computer evidence; make felony arrests; testify as an expert witness for prosecutors in State and Federal courts; file criminal complaints; prepare and serve subpoenas; act as lead investigator and trainer over entry-level investigators.	witness; file complaints, conduct interrogations, serve subpoenas, take depositions; prepare copies and accurate reports and microfilm documents/evidence in the field; provide technical assistance to and conduct training for local law enforcement agencies; speak effectively before groups; establish and maintain cooperative working relationships; speak and write effectively.
Special Personal Characteristics	Willingness to work in various locations throughout the State and at odd and irregular hours; keenness of observation; good memory for names, faces, places, and incidents; emotional stability; tact; willingness to associate with criminally inclined persons and environments in performance of duties; satisfactory record as a law- abiding citizen; possession of a valid driver license; willingness to use all appropriate means, including deadly force, to carry out peace officer duties; ability to work under stress and adverse conditions; exercise good judgment; demonstrate good work habits; and satisfactory completion, as a condition of probation, of all training	Possession of a valid driver license of the appropriate class issued by the Department of Motor Vehicles; willingness to work in various locations throughout the State and at odd and irregular hours; keenness of observation; good memory for names, faces, places, and incidents; tact; reliability; satisfactory record as a law-abiding citizen; willingness to associate with criminally inclined persons and environments in performance of duties; willingness to work undercover and participate in covert moving or stationary surveillance; willingness to pursue potentially violent repeat offenders and effect their arrest; willingness to use all appropriate means to carry	ALL LEVELS: Willingness to work throughout the State and at unusual hours; keenness of observation; good memory for names, faces, places, and incidents; satisfactory record as a law-abiding citizen, and possession of a valid California driver's license.

	prescribed by POST.	out peace officer duties; ability to work under stress and adverse conditions; exercise good judgment; demonstrate good work habits; and satisfactory completion, as a condition of probation, of all training prescribed by POST.	
Special Physical Characteristics	Good health, emotional maturity, and stability; sound physical condition; freedom from any physical, mental, or emotional condition or limitation that would interfere with the full performance of the essential duties of positions in these classes; effective use of both hands; strength; endurance and agility necessary to cope with the demands of the job; normal hearing; normal vision or corrected to normal; and weight proportional to age and height.	Good health, emotional maturity, and stability; sound physical condition; freedom from any physical, mental, or emotional condition or limitation that would interfere with the full performance of the essential duties of positions in these classifications; effective use of both hands; strength; endurance and agility necessary to cope with the demands of the job; normal hearing; normal vision or corrected to normal; and weight proportional to age and height.	ALL LEVELS: Good health, sound physical condition, strength, endurance, and agility; normal hearing; and body weight in normal proportion to height.
Additional Desirable Characteristics	In addition to the above knowledge and abilities, possession of the appropriate certificates as evidence of increased competency at each level and evidence of completed coursework in the following subjects: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law.	NA	
Citizenship Requirements			ALL LEVELS: Existing law provides that peace officers be either a U.S. citizen or a permanent resident alien who is eligible for and has applied for U.S. citizenship at least one year prior to the final file date for his examination. The one-year requirement does not apply to permanent resident aliens who have applied for peace officer classes

			prior to their 19th birthday.
Minimum Age	Minimum age at time of appointment: 18 years.	Minimum age requirement at time of appointment: 21 years.	Minimum age at time of appointment: 18 years.
Felony Disqualification	**PEACE OFFICER STANDARDS** ALL LEVELS: **Felony Disqualification:** Existing law provides that persons convicted of a felony or other states equivalent are disqualified from employment as peace officers. Such persons are not eligible to compete for, or be appointed to, positions in this class. In addition, use of hard drugs (e.g., heroin, cocaine, or hallucinogens) at any time as an adult constitutes basis for disqualification from peace officer examinations. **Firearm Conviction Disqualification:** Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications. **Citizenship Requirement:** Existing law provides that peace officers be either a U.S. citizen or a permanent resident alien who is eligible for and has applied for U.S. citizenship at least one year prior to the final file date for the examination. The one-year requirement does not apply to permanent resident aliens who have applied for peace officer classes prior to their 19th birthday. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for	**PEACE OFFICER STANDARDS** ALL LEVELS: **Citizenship Requirement:** Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must be either a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U.S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied. **Felony Disqualification:** Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in this class. Firearm Conviction Disqualification: Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for appointment to any position in these classifications.	ALL LEVELS: Existing law provides that persons convicted of a felony are disqualified from employment as peace officers. Such persons are not eligible to compete for, or be appointed to, positions in this class.

	citizenship is denied. **Background Investigation:** Pursuant to Government Code Section 1031(a) and 8880.38, all persons successful in examinations for this class will be required to undergo a thorough background investigation prior to appointment. **POST Training Requirements:** Under Penal Code Section 832, successful completion of a training course in laws of arrest, search and seizure, and in firearms and chemical agents is a requirement for permanent status in these classifications. **Psychological Screening:** Government Code Section 1031(f) and POST Regulation 1002(a)(7) require psychological screening of applicants for peace officer classifications. **Medical Requirement:** Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.	**Firearm Requirement:** Persons convicted of a misdemeanor crime of domestic violence as defined in the amended Federal Gun Control Act of 1968 are disqualified from appointment to these classifications. **Background Investigation:** Pursuant to Government Code 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment. Persons who have previously undergone an Employment Development Department background investigation may be required to undergo an additional background investigation. **Medical Requirement:** Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively. **Psychological Screening:** Government Code Section 1031(f) and POST Regulation 1002(a)(7) require psychological screening of applicants for peace officer classifications. **POST Training Requirements**: Under Penal Code Section 832, successful completion of a training course in laws of arrest, search and seizure, and in firearms and chemical agents is a requirement for permanent status in these classifications.
Background Investigation and Psychological Screening		

SPEC: SPECIAL AGENT, DEPARTMENT OF JUSTICE, SERIES
CALIFORNIA STATE PERSONNEL BOARD

SPECIFICATION

SPECIAL AGENT, DEPARTMENT OF JUSTICE
Series Specification
(Established April 6, 1972)

SCOPE

This series specification describes five Special Agent classes used by the Department of Justice. Incumbents in these classes conduct, supervise, or manage complex and sensitive civil, criminal, and narcotic investigations and enforcement activities. Special Agents, Department of Justice, may be assigned to provide technical assistance and training to other law enforcement officers and may serve in special assignments for the Department. Special Agents of the Department of Justice perform the full range of peace officer duties and responsibilities in accomplishing their assignments.

Schem Code	Class Code	Class
VG15	8514	Special Agent Trainee, Department of Justice
VG25	8482	Special Agent, Department of Justice
VG45	8524	Special Agent Supervisor, Department of Justice
VG50	8523	Special Agent-In-Charge, Department of Justice
VG55	8522	Senior Special Agent-In-Charge, Department of Justice

DEFINITION OF SERIES

Special Agents, Department of Justice, conduct complex civil and criminal investigations involving the illegal manufacture, distribution, sales, diversion, possession, and use of controlled substances; conduct investigations of cases involving organized criminal activity including, but not limited to, sexual predators, violent repeat offenders, terrorists, and users of illegal weapons; plan, coordinate, and participate in enforcement actions involving multiple felony suspects; work undercover as well as participate in covert stationary, mobile, and aerial surveillances; conduct complex investigations of antitrust violations, Medi-Cal (Medicaid) and Federal health care program provider fraud, money laundering, asset forfeiture, physical and financial abuse, neglect, and sexual assault of elders, dependant adults, and patients, and consumer and investment frauds; assist other law enforcement agencies to conduct complex investigations; plan, direct, and coordinate enforcement activities with other law enforcement agencies; interrogate and interview suspects and witnesses; make arrests; confer with and/or assist prosecutors in preparing cases for court; serve search warrants to seize evidence of criminal activity; investigate conspiracies in restraint of trade, monopolistic, and unfair trade practices by business organizations; investigate the diversion by doctors, pharmacists, nurses, or other medical practitioners or medical providers of controlled substances to illicit use of legally manufactured controlled substances that relates to a MediCal/Medicaid provider; appear as witnesses; advise and consult with Federal, State, and local law enforcement agencies concerned with the criminal, public health, and educational aspects of the suppression

of illegal narcotic traffic; plan and coordinate narcotic enforcement activities involving State, Federal, county, and local law enforcement personnel; make arrests of law violators; gather intelligence data; investigate allegations of illegal activity or irregularities by State or local officials; provide training and technical assistance in the latest techniques of enforcement and investigation to State and local law enforcement agencies; serve in special assignments including, but not limited to, aircraft pilot, Foreign Prosecution, Criminal Investigative Profiler, drug task force supervisor, or legislative advocate for the Department; conduct inspections of Department regional office operations and internal affairs investigations and recommend any necessary actions; make public presentations; and provide protective services to public officials.

DEFINITION OF LEVELS

SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

This class is used for the recruitment and development of individuals with a four-year college degree who do not possess investigative law enforcement experience. Incumbents will receive comprehensive, on-the-job training in the application of the principles and techniques of conducting civil, criminal, or narcotic investigations and enforcement activities for the Department of Justice.

Special Agent Trainees, Department of Justice, must successfully complete all academy courses, including academic classes, physical training, physical methods of arrest, vehicle operation, and use of weapons in order to be eligible to qualify to move to the class of Special Agent, Department of Justice. Failure in the Special Agent Trainee, Department of Justice, class to qualify for movement to the class of Special Agent, Department of Justice, within the prescribed training period will be cause for termination.

SPECIAL AGENT, DEPARTMENT OF JUSTICE

Incumbents in this class conduct civil, criminal, or narcotic investigation and enforcement activities for the Department of Justice. Incumbents are assigned to a team and may work independently or as a leadperson coordinating the work of other law enforcement personnel. Incumbents may be assigned to provide training and technical assistance to law enforcement personnel.

SPECIAL AGENT SUPERVISOR, DEPARTMENT OF JUSTICE

Incumbents in this class function (1) as a working supervisor directing a team of three or more agents or other law enforcement personnel; or (2) as the highest journey level agent assigned the most difficult and complex cases with broad discretion and independence of action; or (3) in a staff assignment, to coordinate the efforts of 5-10 individuals assigned to a specialized statewide law enforcement program outside normal investigation operations. Incumbents can work closely with other law enforcement agencies to coordinate respective investigative efforts. Incumbents may provide high-level technical assistance and training in investigation and enforcement activities.

SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

Incumbents in this class function as either (1) the manager responsible for planning, organizing, and directing the law enforcement programs in a designated geographical area of the State or a statewide enforcement program; or (2) the manager of multiple specialized, investigative, enforcement, or training programs or projects in the Department of Justice.

SENIOR SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

This is the full managerial and supervisory level responsible for planning, organizing, and directing one of the Division of Law Enforcement's largest and most complex investigation programs in an assigned area of the State. The area of responsibility is to be sufficiently large and complex as to require subordinate managers. These positions will be distinguished from Special Agents-in-Charge, Department of Justice, based upon span of control, level and classification of subordinates, program complexity, and responsibility.

Positions at this level are to be characterized by the following criteria:

1. Manages/supervises one of the largest Division of Law Enforcement's investigation programs in an assigned area of the State, with a span of control of at least seven managers/supervisors with operational responsibility. and

2. Staffing for which the position is either directly or indirectly responsible for at least 100 law enforcement personnel. and

3. The regional office is responsible for 12 or more different operational programs.

MINIMUM QUALIFICATIONS

SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

Education: Equivalent to graduation from college. (Registration as a senior student in a recognized institution will admit applicants to the examination, but they must produce evidence of successful completion of the curriculum and the prescribed courses before they may be considered eligible for appointment.)

SPECIAL AGENT, DEPARTMENT OF JUSTICE

Either I

One year of experience in the California state service performing the duties of the class of Special Agent Trainee, Department of Justice. (Applicants who have completed six months performing the duties of a Special Agent Trainee, Department of Justice, will be admitted to the examination, but they must satisfactorily complete one year of experience in the class of Special Agent Trainee, Department of Justice, before they will be considered eligible for appointment.)

Or II

Experience: Two years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work. (Patrol experience may be substituted for the required investigative experience on the basis of one year of patrol experience being equivalent to six months of investigative

experience.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

Or III

Experience: One year of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work. (Patrol experience may be substituted for the required investigative experience on the basis of one year of patrol experience being equivalent to six months of investigative experience.) and

Education: Equivalent to graduation from college.

SPECIAL AGENT SUPERVISOR, DEPARTMENT OF JUSTICE

Either I

Two years of experience in the California state service performing duties of the class of Special Agent, Department of Justice, Range C.

Or II

Three years of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent, Department of Justice, Range C. and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

Or III

Experience: Five years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotic law enforcement work, including or supplemented by one year of supervisory experience. (Experience in the California state service applied toward this requirement must include at least three years performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent, Department of Justice, Range C.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

Or IV

Experience: Four years of experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotics law enforcement work, including or supplemented by one year of supervisory experience. (Experience in the California state service applied toward this requirement must include at least three years performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent, Department of Justice, Range C.) and

Education: Equivalent to graduation from college.

Promotional candidates who are within six months of satisfying the experience requirement for this class will be admitted to the examination, but they must fully meet the experience requirement before they will be considered eligible for appointment.

SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

Either I

One year of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.

Or II

Experience: Five years of increasingly responsible experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotic law enforcement work, at least two years of which must have been in a supervisory capacity. (Experience in the California state service applied toward this requirement must include at least one year performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

SENIOR SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

Either I

One year of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent-in-Charge, Department of Justice.

Or II

Three years of experience in the California state service performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.

Or III

Experience: Five or more years of increasingly responsible experience as a peace officer (as defined in Sections 830.1, 830.2, or 830.3 of the California Penal Code or equivalent Federal and out-of-State law enforcement) in an investigative assignment performing civil, criminal, or narcotic law enforcement work, at least two years of which must have been in a supervisory capacity. (Experience in the California state service applied toward this requirement must include at least one year performing investigative duties of a class with a level of responsibility equivalent to that of a Special Agent Supervisor, Department of Justice.) and

Education: Equivalent to completion of two years of college (60 semester units). (Additional qualifying experience may be substituted for the required college education on a year-for-year basis.)

KNOWLEDGE AND ABILITIES

SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

Knowledge of: Civil, criminal, and narcotic investigation techniques; provisions of the California Penal Code, the Evidence Code, the Code of Civil Procedures, the State Controlled Substances Act, the Welfare and Institutions Code, Business and Professions Code, Health and Safety Code, Title XXII of the California Code of Regulations, Code of Federal Regulations, the Federal Social Security Act, and other State and Federal laws relating to controlled substances and relating to crimes committed against the Medi-Cal Program and aged, disabled, and dependant adults; individual's constitutional rights including those relating to laws of arrest, search and seizure, and the service of legal process.

Ability to: Develop techniques, methods, and skills and apply applicable laws required to conduct civil, criminal, and narcotic investigations; operate a vehicle safely and effectively; use, maintain, and qualify with approved firearms; communicate effectively; prepare and present well organized, accurate, and timely written reports; establish and maintain cooperative working relationships; gain and maintain First Aid and CPR certification.

SPECIAL AGENT, DEPARTMENT OF JUSTICE

Knowledge of: All of the above, and major investigative operational plans; interview, interrogation, information, and intelligence gathering processes and procedures; proper tactics and use of force in affecting arrests of suspects, felony car stops, and entry in fortified buildings; proper techniques to plan and coordinate multisuspect/multidwelling enforcement actions; sophisticated investigative techniques including use of wiretaps, pin registers, traps, tracking devices, subpoenas, and complex search warrants; peace officer training techniques and methods; applicable Department policies and procedures; the interrelationship of other law enforcement agencies with the Department of Justice; techniques for securing, preserving, and handling evidence; techniques used to prevent diversion of licit drugs to illicit channels; undercover operations using paid and unpaid operators; use of relational database software to analyze and evaluate fiscal data from various sources and to analyze seized computerized data; the role and availability of forensic support services in the investigative process; contemporary computer technology and communications systems used in the investigative process; use of computers to prepare search warrants, affidavits, and reports in field locations; use of computers to maintain administrative time reports, reports of investigation, and case and file management systems.

Ability to: All of the above, and identify controlled substances; gather, analyze, and present facts and evidence; utilize various software programs to analyze computerized data from various State and Federal fiscal intermediaries and identify patterns of fraud; analyze situations accurately and take effective action; work undercover; participate actively in covert moving, stationary, and aerial surveillances, investigations, and interviews; file complaints and serve legal documents; conduct and coordinate multiagency and/or complex investigations as a lead agent; plan and coordinate raid and operational actions as a case agent; coordinate with prosecutorial agencies and the court in the prosecution of suspects as the trial agent; photograph crime scenes; use and maintain communications and investigative equipment; appear as an expert witness; prepare and present well-organized, accurate court testimony; use proper techniques during tactical operations; provide technical assistance to and conduct training for other allied and public agencies and law enforcement personnel; develop and maintain sources of information.

SPECIAL AGENT SUPERVISOR, DEPARTMENT OF JUSTICE

Knowledge of: All of the above, and principles and techniques of supervision; advanced peace officer training techniques and methods; applicable collective bargaining memorandum of understanding and related issues; State, Department, and Bureau policies and procedures; disciplinary guidelines and personnel rules; a manager's/supervisor's responsibility for promoting equal opportunity in hiring and employee development and promotion, and for maintaining a work environment that is free of discrimination and harassment.

Ability to: All of the above, and plan, direct, and conduct the most difficult and complex civil, criminal, and narcotic investigations; plan for and allocate resources to achieve program goals and objectives; effectively supervise the work of a group of Special Agents, Department of Justice, other law enforcement personnel, investigative auditor, and support staff; review and monitor cases for efficient and effective progress; effectively coordinate the preparation and presentation of the prosecution of fraud and patient abuse cases with the assigned Deputy Attorney General; initiate and review personnel matters; effectively promote equal opportunity employment and maintain a work environment that is free of discrimination and harassment.

SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

Knowledge of: All of the above, and techniques and methods for managing specialized investigative and enforcement programs and implementing intelligence exchange with multijurisdictional agencies; training programs for other law enforcement agencies; organization and functions of the Department of Justice; goals and objectives of the Department and the Bureau; roles, relationships, and responsibilities of other law enforcement agencies and other governmental agencies.

Ability to: All of the above, and plan, organize, and direct the investigation and enforcement programs in designated geographical areas of the State; develop and maintain administrative and operational quality control measures; manage nonsworn personnel in carrying out the functions of the program; implement, develop, and evaluate training programs; manage specialized investigative and enforcement programs or projects.

SENIOR SPECIAL AGENT-IN-CHARGE, DEPARTMENT OF JUSTICE

Knowledge of: All of the above.

Ability to: All of the above, and plan, organize, and direct a large number of investigative programs and personnel in an assigned area of the State; effectively direct and supervise the activities of managerial staff.

SPECIAL PERSONAL CHARACTERISTICS

ALL LEVELS:

No illegal involvement in controlled substances as an adult; willingness to work throughout the State and at unusual hours; ability to work under stress and adverse conditions; keenness of

observation; good memory for names, faces, places, and incidents; willingness to associate with criminally inclined persons and environments in performance of duties; willingness to work undercover and participate in covert moving, stationary, and aerial surveillances; willingness to utilize a variety of weaponry, including shotguns, machine guns, tear gas, and distractionary devices; willingness to pursue violent repeat offenders and effect their arrest; willingness to operate a police vehicle under emergency circumstances; willingness to deal with toxic materials and chemicals; willingness to handle gruesome crime scenes involving persons of all ages; satisfactory record as a law-abiding citizen; maintain good credit; possession of a valid driver license; willingness to use all appropriate means, including deadly force, to carry out peace officer duties; exercise good judgment; and demonstrate good work habits.

SPECIAL PHYSICAL CHARACTERISTICS

ALL LEVELS:

Good health, sound physical condition, freedom from any physical, mental, or emotional condition or limitation that would interfere with the full performance of the essential duties of positions in these classes; effective use of both hands; strength, endurance, and agility; normal hearing; vision sufficient to perform the essential functions of the class; and weight proportionate to height.

ADDITIONAL DESIRABLE CHARACTERISTICS

ALL LEVELS:

In addition to the above knowledge and abilities, possession of the appropriate certificates as evidence of increased competency at each level is desirable. Also desirable is evidence of completed course work in the following subject areas: introduction to criminal justice, introduction to criminal law, basic investigation, evidence, criminal procedure, and philosophy of law.

AGE LIMITATION

SPECIAL AGENT TRAINEE, DEPARTMENT OF JUSTICE

Minimum age for appointment is 18 years of age.

PEACE OFFICER STANDARDS

ALL LEVELS:

Felony Disqualification: Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179(b), or Division 2.5, Chapter 1, Article 4, Section 1772(b). Except as provided for by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classes.

Firearm Conviction Disqualification: Anyone who is restricted for employment-related purposes from accessing, possessing, carrying, receiving, or having under his/her control a firearm or ammunition under all applicable State or Federal laws is ineligible for

appointment to any position in these classifications.

Citizenship Requirement: Pursuant to Government Code Section 1031(a), in order to be a peace officer, a person must be either a U.S. Citizen or be a permanent resident alien who is eligible for and has applied for U.S. Citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

Background Investigation: Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment. Persons who have previously undergone a Department of Justice background investigation may be required to undergo an additional background investigation.

Training Requirements: Under provisions of Penal Code Section 832, successful completion of a training course in laws of arrest, search and seizure, and in firearms and chemical agents is a requirement for permanent status in these classifications.

Medical Requirement: Pursuant to Government Code Section 1031, persons appointed to a peace officer class shall undergo a medical examination to determine that he or she can perform the essential functions of the job safely and effectively.

Drug Testing Requirement: Applicants for positions in these classes are required to pass a drug-screening test. (The drug-screening test will be waived for employees who are currently in a designated "sensitive" class for which drug testing is required under State Personnel Board Rule 213.)

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Special Agent Trainee, Department of Justice	10/1/95	10/20/98	--
Special Agent, Department of Justice	8/31/82	10/20/98	--
Special Agent Supervisor, Department of Justice	4/6/72	10/20/98	6/28/88
Special Agent-In-Charge, Department of Justice	4/6/72	10/20/98	6/28/88
Senior Special Agent-in-Charge, Department of Justice	4/13/90	10/20/98	--

APPENDIX F

MEDICAL BOARD OF CALIFORNIA P.O.S.T. CONTROL NUMBER: 5390						
MBC S&K#	POST Course #	POST CLASS TITLE	MBC Class Name	Hours	Date POST Certified	Date recertified
1			Misdemeanor Citation	6	02/06/98	
2	35046	Pain Management and Marijuana	Pain Management	2	06/18/98	
3			Medical Board Licensure	6	03/28/98	
4			Sexual Misconduct-Therapist	8	12/16/98	
5			PDIN			
13						
14			Central Complaint Unit	2	03/22/99	
15			Peace Officer Enforcement/	4	03/22/99	
16			Organizaiton of DCA & MBC	4	03/22/99	
17A			MBC Probation Program	3	03/22/99	
17B			MBC Diversion Program	2	03/22/99	
18			Interviewing Techniques		03/22/99	
19			Interpersonal Relations		03/22/99	
20	12139	Admin./Disciplinary Process	Administrative Procedures	6	03/22/99	Oct-05
21-23	31531	Quality of Care Case Mgnt.	Quality of Care	12	03/22/99	Oct-05
24			Professional Responsibility		03/22/99	
25			Medical Records		03/22/99	
26			Professional Competency Exams		03/22/99	
27	31464	Interviewing Techniques (MBC)	Interviewing Witnesses	4	03/22/99	Oct-05
28	31546	Interviewing Physicians/MBC Inv	Interviewing MDs	4	03/22/99	Oct-05
29	22706	Report Writing/Investigators	Report Writing for Investigations	4	03/22/99	Oct-05
30			Locating People		03/22/99	
31			Evidence		03/22/99	
32	22704	Adminstrative Subpoena Process	Adminstrative Subpoenas	4	03/22/99	Oct-05
33			Basic Criminal Law		03/22/99	
34			Officer Survival		03/22/99	
35	33412	Sexual Misconduct/Med Exams	Sexual Misconduct -	8	09/23/99	Oct-05
36			Sexual Misconduct-Interviews		07/25/00	
37			Unlicnesed Practice		07/25/00	
38	33419	Physician Investigation-Impaired	Impaired Physicians	8	08/24/00	Oct-05
39	28262	Prescription Drugs Intro	Prescription Drugs-Intro	8	08/24/00	Oct-05
40			Prescription Drugs-Trendy		08/24/00	

41			Prescription Drugs-Intelligence		08/24/00	
42			Healthcare Fraud		09/05/00	
43			Midwives & Outpt Surgery		09/05/00	
44			Dispesing Opticians		09/05/00	
45			Courtroom Testimony		09/05/00	
46			Physician Assistants		09/05/00	
47			Podiatry		09/05/00	
48			Psychology		09/05/00	
49			Undercover Operations		10/01/00	
50			Midwives and Dispensing Opticians		05/07/01	
		MEDICAL BOARD OF CALIFORNIA P.O.S.T. CONTROL NUMBER: 5390				
MBC S&K#	**POST Course #**	**POST CLASS TITLE (S&K #)**	**MBC Class Name**	**Hours**	**Date POST Certified**	**Date recertified**
51			Internet Prescribing		05/07/01	
52			CLETS		05/24/01	
53			Complimentary & Alternative		09/04/01	
54			CPR/First Aid		02/25/02	
55			Bloodborne Pathogens		04/02/02	
56			Safe Methods of Evidence		04/02/02	
57	30972	Probation Trng/Med Invest	Probation Investigator Training	8	04/08/03	Jan-05
58	20311	Drug Abuse Recognition	DAR	8	11/01/04	
59			Search Warrants			
60	21422	Controlled Substance/Prescribing	Controlled Substance/Prescribing	2	03/01/05	Oct-05
61			Prop 115 - Hearsay			
62	31456	Focused Conversation/Investgators	Focused Conversation	4	03/01/06	
	29501	Firearms (PSP)		4		
	29000	POST Multi-Media		14		
66	28381	Ethics in Law Enforcement		2	05/22/07	
	31466	Interview Techniques Update		8	02/08/08	
63	31661	Physicians-Addicted/Controlled Substances		2	05/06/07	

	12280	Supervisory Update		34	02/08/08	

APPENDIX G

Name: _____
Date: _____

MEDICAL BOARD
INVESTIGATOR INTERVIEWS

Introduction

The Medical Board has engaged CPS to look at your Investigator series to determine if the pay and responsibilities are appropriate. At the end of this study, we will submit a report to the Board and it will be up to them to determine what the next steps might be. Rene Threadgill gave me your name as someone who could contribute on-the-job expertise to this project. I've allotted 30 minutes for our meeting. I've got some questions to ask you and then would be glad to discuss anything that hasn't come up that you think we should consider.

(1) How long have you been with the Medical Board? Do you have any other peace officer experience?

(2) What specialized training have you received at the Medical Board?

(3) What kind of tactical training have you had? Who provided this training?

(4) How often have you used this tactical training on the job at the Medical Board? In what situations?

(5) What would you consider the most hazardous situation you have faced at the Medical Board?

(6) What would you consider the most complex part of your job?

(7) What is the situation in which you act most independently? What's the worst mistake you can make?

(8) We've heard the caseloads here are very heavy compared to those of other state Investigators. Is that your perception?

(9) What do you think the criteria should be to determine peace officer salaries?

(10) Anything else?

Thanks for your input. If you think of anything later, please call or email me.

Name: _____
Date:_____

MEDICAL BOARD
SUPERVISING INVESTIGATOR INTERVIEWS

Introduction

The Medical Board has engaged CPS to look at your Investigator series to determine if the pay and responsibilities are appropriate. At the end of this study, we will submit a report to the Board and it will be up to them to determine what the next steps might be. Rene Threadgill gave me your name as someone who could contribute on-the-job expertise to this project. I've allotted 30 minutes for our meeting. I've got some questions to ask you and then would be glad to discuss anything that hasn't come up that you think we should consider.

(1) How long have you been with the Medical Board? Do you have any other peace officer experience?

(2) What specialized training has your staff received at the Medical Board?

(3) What kind of tactical training does your staff have? Who provided this training?

(4) How often do they use this tactical training on the job at the Medical Board? In what situations? What kind of tactical planning process do you use? How do you mitigate risk? Who goes with you on these tactical maneuvers (local law enforcement? DOJ?)

(5) What would you consider the most hazardous situation your staff have faced at the Medical Board?

(6) What would you consider the most complex part of the investigator job?

(7) What is the situation in which they act most independently? What's the worst mistake they can make?

(8) We've heard the caseloads here are very heavy compared to those of other state Investigators. Do you have any caseload statistics?

(9) What do you think the criteria should be to determine peace officer salaries?

(10) Anything else?

Thanks for your input. If you think of anything later, please call or email me.

MEDICAL BOARD ACCUSATIONS AND PETITIONS FOR SUSPENSION ORDERS ACCEPTED FOR PROSECUTION IN 2008

ACCUSATIONS*	Average	Median	Record Count
Number of Days Between Case Accepted and Accusation Sent	53	35	145
Number of Days Between Accusation Sent and Pleading Filed	17	14	145
Number of Days Between Case Accepted and Pleading Filed	70	50	145
PETITIONS FOR SUSPENSION ORDERS			
Number of Days Between Request to Suspension Order Granted	19	10	21
*Accusations do not include Petitions to Revoke Probation, or for Reinstatement or Reduction of Penalty, or Out-of-State Discipline or Statement of Issues cases			

Medical Board of California

Investigation & Prosecution Timeframes*

	2005	2006		2007		2008		Q1 2009	
	Prior to VE	All	VE	All	VE	All	VE	All	VE
Calendar Day Age from Case Assigned to Case Closed Not Resulting in Prosecution									
Average	271	299	138	330	268	374	358	402	402
Median	252	285	134	304	269	335	324	341	341
Record Count	827	703	192	648	539	609	588	153	153
Calendar Day Age from Request to Suspension Order Granted									
Average	51	44	4	34	38	19	19	47	28
Median	17	3	2	22	23	10	10	2	1
Record Count	24	21	11	17	13	21	17	8	7
Calendar Day Age from Request to Receipt of Medical Records									
Average	58	53	37	59	57	63	58	60	60
Median	32	31	26	31	31	28	28	36	36
Record Count	475	376	228	264	259	256	252	43	43
Calendar Day Age from Request to Physician Interview Completed									
Average	48	51	43	52	50	63	63	60	60
Median	36	42	38	37	36	41	42	40	40
Record Count	597	453	172	406	371	473	466	127	127
Calendar Day Age from Request to Receipt of Expert Opinion									
Average	51	47	35	51	43	50	50	45	45
Median	41	35	31	36	35	39	38	31	31
Record Count	519	424	82	344	270	374	359	67	66
Calendar Day Age from Case Assigned to Completed Investigation and Accusation Filed									
Average	556	554	140	543	340	565	493	645	624
Median	525	504	120	523	339	541	486	634	575
Record Count	187	149	17	198	95	157	131	42	39
Calendar Day Age from Accusation Filed to Disciplinary Outcome**									
Average	608	602	85	576	188	561	243	481	345
Median	526	466	99	426	182	384	238	326	296
Record Count	212	195	3	226	29	203	80	55	39

*Excludes Out of State and Headquarters Cases
**Excludes Outcomes where no Accusation Filed

Medical Board of California

Citations Issued & Civil Actions Filed by Calendar Year

	2005	2006	2007	2008	Q1 2009
***Citations Issued**	80	81	76	109	39
Citations Issued for Failure to Produce Records	0	6	3	3	2
Civil Actions Filed	3	3	1	1	0
Civil Actions Filed for Failure to Produce Records	2	2	1	1	0

*Excludes citations issued for failure to comply with CME audit and for failure to notify Board of change of address

TOTALS FOR OPEN COMPLAINTS ASSIGNED PRIOR TO JANUARY 1, 2006

PRE 2006 PHYSICIAN AND SURGEON COMPLAINTS = 1
PRE 2006 ALLIED HEALTH COMPLAINTS = 0
PRE 2006 OSTEOPATHIC COMPLAINTS = 0

TOTALS FOR OPEN COMPLAINTS ASSIGNED ON OR AFTER JANUARY 1, 2006

POST 2006 PHYSICIAN AND SURGEON COMPLAINTS = 1117
POST 2006 ALLIED HEALTH COMPLAINTS = 132
POST 2006 OSTEOPATHIC COMPLAINTS = 35

THE TOTAL NUMBER OF OPEN ASSIGNED COMPLAINTS = 1285