

2016 Legislation

AB 611

AB 890

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SB 622

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

AMENDED IN ASSEMBLY MARCH 24, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 611

Introduced by Assembly Member Dahle

February 24, 2015

An act to amend Section 11165.1 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 611, as amended, Dahle. Controlled substances: prescriptions: reporting.

Existing law requires certain health care practitioners and pharmacists to apply to the Department of Justice to obtain approval to access information contained in the Controlled Substance Utilization Review and Evaluation System (CURES) Prescription Drug Monitoring Program (PDMP) regarding the controlled substance history of a patient under his or her care. Existing law requires the Department of Justice, upon approval of an application, to provide the approved health care practitioner or pharmacist the history of controlled substances dispensed to an individual under his or her care. Existing law authorizes an application to be denied, or a subscriber to be suspended, for specified reasons, including, among others, a subscriber accessing information for any reason other than caring for his or her patients.

This bill would also authorize an individual designated to investigate a holder of a professional license to apply to the Department of Justice to obtain approval to access information contained in the CURES PDMP

regarding the controlled substance history of an applicant or a licensee for the purpose of investigating the alleged substance abuse of a licensee. The bill would, upon approval of an application, require the department to provide to the approved individual the history of controlled substances dispensed to the licensee. The bill would clarify that only a subscriber who is a health care practitioner or a pharmacist may have an application denied or be suspended for accessing subscriber information for any reason other than caring for his or her patients. The bill would also specify that an application may be denied, or a subscriber may be suspended, if a subscriber who has been designated to investigate the holder of a professional license accesses information for any reason other than investigating the holder of a professional license.

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 11165.1 of the Health and Safety Code
2 is amended to read:
3 11165.1. (a) (1) (A) (i) A health care practitioner authorized
4 to prescribe, order, administer, furnish, or dispense Schedule II,
5 Schedule III, or Schedule IV controlled substances pursuant to
6 Section 11150 shall, before January 1, 2016, or upon receipt of a
7 federal Drug Enforcement Administration (DEA) registration,
8 whichever occurs later, submit an application developed by the
9 Department of Justice to obtain approval to access information
10 online regarding the controlled substance history of a patient that
11 is stored on the Internet and maintained within the Department of
12 Justice, and, upon approval, the department shall release to that
13 practitioner the electronic history of controlled substances
14 dispensed to an individual under his or her care based on data
15 contained in the CURES Prescription Drug Monitoring Program
16 (PDMP).
17 (ii) A pharmacist shall, before January 1, 2016, or upon
18 licensure, whichever occurs later, submit an application developed
19 by the Department of Justice to obtain approval to access
20 information online regarding the controlled substance history of
21 a patient that is stored on the Internet and maintained within the
22 Department of Justice, and, upon approval, the department shall
23 release to that pharmacist the electronic history of controlled

1 substances dispensed to an individual under his or her care based
2 on data contained in the CURES PDMP.

3 (iii) (I) An individual designated by a board, bureau, or
4 program within the Department of Consumer Affairs to investigate
5 a holder of a professional license may, for the purpose of
6 investigating the alleged substance abuse of a licensee, submit an
7 application developed by the Department of Justice to obtain
8 approval to access information online regarding the controlled
9 substance history of a licensee that is stored on the Internet and
10 maintained within the Department of Justice, and, upon approval,
11 the department shall release to that individual the electronic history
12 of controlled substances dispensed to the licensee based on data
13 contained in the CURES PDMP. ~~An application for an individual~~
14 ~~designated by a board, bureau, or program that does not regulate~~
15 ~~health care practitioners authorized to prescribe, order, administer,~~
16 ~~furnish, or dispense Schedule II, Schedule III, or Schedule IV~~
17 ~~controlled substances pursuant to Section 11150~~ *The application*
18 *shall contain facts demonstrating the probable cause to believe the*
19 *licensee has violated a law governing controlled substances.*

20 (II) *This clause does not require an individual designated by a*
21 *board, bureau, or program within the Department of Consumer*
22 *Affairs that regulates health care practitioners to submit an*
23 *application to access the information stored within the CURES*
24 *PDMP.*

25 (B) An application may be denied, or a subscriber may be
26 suspended, for reasons which include, but are not limited to, the
27 following:

- 28 (i) Materially falsifying an application for a subscriber.
- 29 (ii) Failure to maintain effective controls for access to the patient
30 activity report.
- 31 (iii) Suspended or revoked federal DEA registration.
- 32 (iv) Any subscriber who is arrested for a violation of law
33 governing controlled substances or any other law for which the
34 possession or use of a controlled substance is an element of the
35 crime.
- 36 (v) Any subscriber described in clause (i) or (ii) of subparagraph
37 (A) accessing information for any other reason than caring for his
38 or her patients.

1 (vi) Any subscriber described in clause (iii) of subparagraph
2 (A) accessing information for any other reason than investigating
3 the holder of a professional license.

4 (C) Any authorized subscriber shall notify the Department of
5 Justice within 30 days of any changes to the subscriber account.

6 (2) A health care practitioner authorized to prescribe, order,
7 administer, furnish, or dispense Schedule II, Schedule III, or
8 Schedule IV controlled substances pursuant to Section 11150 or
9 a pharmacist shall be deemed to have complied with paragraph
10 (1) if the licensed health care practitioner or pharmacist has been
11 approved to access the CURES database through the process
12 developed pursuant to subdivision (a) of Section 209 of the
13 Business and Professions Code.

14 (b) Any request for, or release of, a controlled substance history
15 pursuant to this section shall be made in accordance with guidelines
16 developed by the Department of Justice.

17 (c) In order to prevent the inappropriate, improper, or illegal
18 use of Schedule II, Schedule III, or Schedule IV controlled
19 substances, the Department of Justice may initiate the referral of
20 the history of controlled substances dispensed to an individual
21 based on data contained in CURES to licensed health care
22 practitioners, pharmacists, or both, providing care or services to
23 the individual.

24 (d) The history of controlled substances dispensed to an
25 individual based on data contained in CURES that is received by
26 an authorized subscriber from the Department of Justice pursuant
27 to this section shall be considered medical information subject to
28 the provisions of the Confidentiality of Medical Information Act
29 contained in Part 2.6 (commencing with Section 56) of Division
30 1 of the Civil Code.

31 (e) Information concerning a patient's controlled substance
32 history provided to an authorized subscriber pursuant to this section
33 shall include prescriptions for controlled substances listed in
34 Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code
35 of Federal Regulations.

AMENDED IN ASSEMBLY MAY 5, 2015
AMENDED IN ASSEMBLY APRIL 20, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 890

Introduced by Assembly Member Ridley-Thomas

February 26, 2015

An act to add Chapter 7.75 (commencing with Section 3550) to Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 890, as amended, Ridley-Thomas. Anesthesiologist assistants.

Existing law provides for the licensure and regulation of specified healing arts licensees, including, among others, physicians and surgeons, physician assistants, nurses, and nurse anesthetists.

This bill would enact the Anesthesiologist Assistant Practice Act, which would make it unlawful for any person to hold himself or herself out as an anesthesiologist assistant unless he or she meets specified requirements. The bill would make it an unfair business practice to violate these provisions. The bill would require an anesthesiologist assistant to work under the *direction and* supervision of an anesthesiologist, and would require the anesthesiologist to be physically present on the premises and immediately available ~~if needed~~ to the anesthesiologist assistant when medical services are being rendered and to oversee the activities of, and accept responsibility for, the medical services being rendered by the anesthesiologist assistant. The bill would authorize an anesthesiologist assistant under the supervision of an

anesthesiologist to deliver medical services, including, but not limited to, assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient.

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. Chapter 7.75 (commencing with Section 3550)
2 is added to Division 2 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 7.75. ANESTHESIOLOGIST ASSISTANT
6

7 3550. This chapter shall be known and may be cited as the
8 Anesthesiologist Assistant Practice Act.

9 3551. For purposes of this section, the following definitions
10 shall apply:

11 (a) "Anesthesiologist" means a physician and surgeon who has
12 successfully completed a training program in anesthesiology
13 accredited by the Accreditation Council for Graduate Medical
14 Education or the American Osteopathic Association or equivalent
15 organizations and is licensed under Chapter 5 (commencing with
16 Section 2000).

17 (b) "Anesthesiologist assistant" means a person who meets the
18 requirements of Section 3552.

19 3552. (a) A person shall not hold himself or herself out to be
20 an anesthesiologist assistant unless he or she meets the following
21 requirements:

22 (1) Has graduated from an anesthesiologist assistant program
23 recognized by the Commission on Accreditation of Allied Health
24 Education Programs or by its successor agency.

25 (2) Holds an active certification by the National Commission
26 on Certification for Anesthesiologist Assistants.

27 (b) It is an unfair business practice within the meaning of
28 Chapter 5 (commencing with Section 17200) of Part 2 of Division
29 7 for any person to use the title "anesthesiologist assistant" or any
30 other term, including, but not limited to, "certified," "licensed,"
31 "registered," or "AA," that implies or suggests that the person is

1 certified as an anesthesiologist assistant, if the person does not
2 meet the requirements of subdivision (a).

3 3553. An anesthesiologist assistant shall work under the
4 *direction and* supervision of an anesthesiologist. The supervising
5 anesthesiologist shall do both of the following:

6 (a) Be physically present on the premises and immediately
7 available ~~if needed~~ to the anesthesiologist assistant when medical
8 services are being rendered.

9 (b) Oversee the activities of, and accept responsibility for, the
10 medical services being rendered by the anesthesiologist assistant.

11 3554. Notwithstanding any other law, an anesthesiologist
12 assistant under the supervision of an anesthesiologist may ~~deliver~~
13 ~~medical services, including, but not limited to,~~ *assist the*
14 *supervising anesthesiologist in* developing and implementing an
15 anesthesia care plan for a patient.

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AMENDED IN SENATE JULY 1, 2015
AMENDED IN ASSEMBLY MAY 28, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1306

**Introduced by Assembly Member Burke
(Coauthor: Assembly Member Mark Stone)**

February 27, 2015

An act to amend Sections 650.01, 650.02, 2725.1, 2746.2, 2746.5, 2746.51, 2746.52, 4061, 4076, and 4170 of, and to add Section 2746.6 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1306, as amended, Burke. Healing arts: certified nurse-midwives: scope of practice.

(1) Existing law, the Nursing Practice Act, provides for the licensure and regulation of the practice of nursing by the Board of Registered Nursing and authorizes the board to issue a certificate to practice nurse-midwifery to a person who meets educational standards established by the board or the equivalent of those educational standards. The act makes the violation of any of its provisions a misdemeanor punishable upon conviction by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than \$20 nor more than \$1,000, or by both that fine and imprisonment.

This bill would additionally require an applicant for a certificate to practice nurse-midwifery to provide evidence of current advanced level national certification by a certifying body that meets standards established and approved by the board. This bill would also require the board to create and appoint a Nurse-Midwifery Advisory Council

consisting of certified nurse-midwives in good standing with experience in hospital and nonhospital practice settings, *alternative birth settings, and home settings*, a nurse-midwife educator, as specified, and a consumer of midwifery care. This bill would require *the council to consist of a majority of certified nurse-midwives and would require the council to make recommendations to the board on all matters related to nurse-midwifery practice, education, disciplinary actions, standards of care, and other matters specified by the board, and would require the council to meet regularly, but at least twice a year.* This bill would ~~also~~ prohibit corporations and other artificial legal entities from having professional rights, privileges, or powers under the act, except as specified. *The bill would authorize specified entities to employ a certified nurse-midwife and charge for professional services rendered by that certified nurse-midwife, as provided.*

(2) The act authorizes a certified nurse-midwife, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn, and provides that the practice of nurse-midwifery constitutes the furthering or undertaking by a certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal.

This bill would delete those provisions and would instead authorize a certified nurse-midwife to manage a full range of ~~primary health gynecological and obstetric~~ care services for women from adolescence beyond menopause, ~~including, but not limited to, gynecologic and family planning services.~~ *as provided.* The bill would authorize a certified nurse-midwife to practice in ~~all specified~~ settings, including, but not limited to, a home *setting*. This bill would declare that the practice of nurse-midwifery within a health care system provides for consultation, collaboration, or referral as indicated by the health status of the client and the resources of the medical personnel available in the setting of care, and would provide that the practice of nurse-midwifery emphasizes informed consent, preventive care, and early detection and referral of complications to a physician and surgeon. ~~This bill would authorize a certified nurse-midwife to provide peripartum care in an out-of-hospital setting to low-risk women with uncomplicated singleton-term pregnancies who are expected to have uncomplicated birth.~~

(3) The act authorizes a certified nurse-midwife to furnish and order drugs or devices incidentally to the provision of family planning services, routine health care or perinatal care, and care rendered consistently with the certified nurse-midwife's educational preparation in specified facilities and clinics, and only in accordance with standardized procedures and protocols, as specified.

This bill would delete the requirement that drugs or devices are furnished or ordered in accordance with standardized procedures and protocols. The bill would authorize a certified nurse-midwife to furnish and order drugs or devices in connection with care rendered in a home, and would authorize a certified nurse-midwife to directly procure supplies and devices, to order, obtain, and administer drugs and diagnostic tests, to order laboratory and diagnostic testing, and to receive reports that are necessary to his or her practice as a certified nurse-midwife and that are consistent with nurse-midwifery education preparation.

(4) The act also authorizes a certified nurse-midwife to perform and repair episiotomies and to repair first-degree and 2nd-degree lacerations of the perineum in a licensed acute care hospital and a licensed alternate birth center, if certain requirements are met, including, but not limited to, that episiotomies are performed pursuant to protocols developed and approved by the supervising physician and surgeon.

This bill would also authorize a certified nurse-midwife to perform and repair episiotomies and to repair first-degree and 2nd-degree lacerations of the perineum in a home, and would delete all requirements that those procedures be performed pursuant to protocols developed and approved by the supervising physician and surgeon. The bill would require a certified nurse-midwife to provide emergency care to a patient during times when a physician and surgeon is unavailable.

This bill would provide that a consultative relationship between a certified nurse-midwife and a physician and surgeon by it self is not a basis for finding the physician and surgeon liable for any acts or omissions on the part of the certified nurse-midwife. The bill would also update cross-references as needed.

(5) Because the act makes a violation of any of its provisions a misdemeanor, this bill would expand the scope of an existing crime and therefore this bill would impose a state-mandated local program.

(6) Existing law prohibits a licensee, as defined, from referring a person for laboratory, diagnostic, nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home

infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or entity that receives the referral, and makes a violation of that prohibition punishable as a misdemeanor. Under existing ~~law~~ law, the Medical Board of California is required to review the facts and circumstances of any conviction for violating the prohibition, and to take appropriate disciplinary action if the licensee has committed unprofessional conduct. *Existing law provides that, among other exceptions, this prohibition does not apply to a licensee who refers a person to a health facility if specified conditions are met.*

This bill would include a certified nurse-midwife under the definition of a licensee, which would expand the scope of an existing crime and therefore impose a state-mandated local program. The bill would ~~also~~ require the Board of Registered Nursing to review the facts and circumstances of any conviction of a certified nurse-midwife for violating that prohibition, and would require the board to take appropriate disciplinary action if the certified nurse-midwife has committed unprofessional conduct. *The bill would additionally authorize a licensee to refer a person to a licensed alternative birth center, as defined, or a nationally accredited alternative birth center.*

(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 650.01 of the Business and Professions
- 2 Code is amended to read:
- 3 650.01. (a) Notwithstanding Section 650, or any other law, it
- 4 is unlawful for a licensee to refer a person for laboratory, diagnostic
- 5 nuclear medicine, radiation oncology, physical therapy, physical
- 6 rehabilitation, psychometric testing, home infusion therapy, or
- 7 diagnostic imaging goods or services if the licensee or his or her
- 8 immediate family has a financial interest with the person or in the
- 9 entity that receives the referral.

1 (b) For purposes of this section and Section 650.02, the
2 following shall apply:

3 (1) “Diagnostic imaging” includes, but is not limited to, all
4 X-ray, computed axial tomography, magnetic resonance imaging
5 nuclear medicine, positron emission tomography, mammography,
6 and ultrasound goods and services.

7 (2) A “financial interest” includes, but is not limited to, any
8 type of ownership interest, debt, loan, lease, compensation,
9 remuneration, discount, rebate, refund, dividend, distribution,
10 subsidy, or other form of direct or indirect payment, whether in
11 money or otherwise, between a licensee and a person or entity to
12 whom the licensee refers a person for a good or service specified
13 in subdivision (a). A financial interest also exists if there is an
14 indirect financial relationship between a licensee and the referral
15 recipient including, but not limited to, an arrangement whereby a
16 licensee has an ownership interest in an entity that leases property
17 to the referral recipient. Any financial interest transferred by a
18 licensee to any person or entity or otherwise established in any
19 person or entity for the purpose of avoiding the prohibition of this
20 section shall be deemed a financial interest of the licensee. For
21 purposes of this paragraph, “direct or indirect payment” shall not
22 include a royalty or consulting fee received by a physician and
23 surgeon who has completed a recognized residency training
24 program in orthopedics from a manufacturer or distributor as a
25 result of his or her research and development of medical devices
26 and techniques for that manufacturer or distributor. For purposes
27 of this paragraph, “consulting fees” means those fees paid by the
28 manufacturer or distributor to a physician and surgeon who has
29 completed a recognized residency training program in orthopedics
30 only for his or her ongoing services in making refinements to his
31 or her medical devices or techniques marketed or distributed by
32 the manufacturer or distributor, if the manufacturer or distributor
33 does not own or control the facility to which the physician is
34 referring the patient. A “financial interest” shall not include the
35 receipt of capitation payments or other fixed amounts that are
36 prepaid in exchange for a promise of a licensee to provide specified
37 health care services to specified beneficiaries. A “financial interest”
38 shall not include the receipt of remuneration by a medical director
39 of a hospice, as defined in Section 1746 of the Health and Safety
40 Code, for specified services if the arrangement is set out in writing,

1 and specifies all services to be provided by the medical director,
2 the term of the arrangement is for at least one year, and the
3 compensation to be paid over the term of the arrangement is set
4 in advance, does not exceed fair market value, and is not
5 determined in a manner that takes into account the volume or value
6 of any referrals or other business generated between parties.

7 (3) For the purposes of this section, “immediate family” includes
8 the spouse and children of the licensee, the parents of the licensee,
9 and the spouses of the children of the licensee.

10 (4) “Licensee” means a physician as defined in Section 3209.3
11 of the Labor Code, and a certified nurse-midwife as defined in
12 Article 2.5 (commencing with Section 2746) of Chapter 6 of
13 Division 2 of the Business and Professions Code.

14 (5) “Licensee’s office” means either of the following:

15 (A) An office of a licensee in solo practice.

16 (B) An office in which services or goods are personally provided
17 by the licensee or by employees in that office, or personally by
18 independent contractors in that office, in accordance with other
19 provisions of law. Employees and independent contractors shall
20 be licensed or certified when licensure or certification is required
21 by law.

22 (6) “Office of a group practice” means an office or offices in
23 which two or more licensees are legally organized as a partnership,
24 professional corporation, or not-for-profit corporation, licensed
25 pursuant to subdivision (a) of Section 1204 of the Health and Safety
26 Code, for which all of the following apply:

27 (A) Each licensee who is a member of the group provides
28 substantially the full range of services that the licensee routinely
29 provides, including medical care, consultation, diagnosis, or
30 treatment through the joint use of shared office space, facilities,
31 equipment, and personnel.

32 (B) Substantially all of the services of the licensees who are
33 members of the group are provided through the group and are
34 billed in the name of the group and amounts so received are treated
35 as receipts of the group, except in the case of a multispecialty
36 clinic, as defined in subdivision (l) of Section 1206 of the Health
37 and Safety Code, physician services are billed in the name of the
38 multispecialty clinic and amounts so received are treated as receipts
39 of the multispecialty clinic.

1 (C) The overhead expenses of, and the income from, the practice
2 are distributed in accordance with methods previously determined
3 by members of the group.

4 (c) It is unlawful for a licensee to enter into an arrangement or
5 scheme, such as a cross-referral arrangement, that the licensee
6 knows, or should know, has a principal purpose of ensuring
7 referrals by the licensee to a particular entity that, if the licensee
8 directly made referrals to that entity, would be in violation of this
9 section.

10 (d) No claim for payment shall be presented by an entity to any
11 individual, third party payer, or other entity for a good or service
12 furnished pursuant to a referral prohibited under this section.

13 (e) No insurer, self-insurer, or other payer shall pay a charge or
14 lien for any good or service resulting from a referral in violation
15 of this section.

16 (f) A licensee who refers a person to, or seeks consultation from,
17 an organization in which the licensee has a financial interest, other
18 than as prohibited by subdivision (a), shall disclose the financial
19 interest to the patient, or the parent or legal guardian of the patient,
20 in writing, at the time of the referral or request for consultation.

21 (1) If a referral, billing, or other solicitation is between one or
22 more licensees who contract with a multispecialty clinic pursuant
23 to subdivision (l) of Section 1206 of the Health and Safety Code
24 or who conduct their practice as members of the same professional
25 corporation or partnership, and the services are rendered on the
26 same physical premises, or under the same professional corporation
27 or partnership name, the requirements of this subdivision may be
28 met by posting a conspicuous disclosure statement at the
29 registration area or by providing a patient with a written disclosure
30 statement.

31 (2) If a licensee is under contract with the Department of
32 Corrections or the California Youth Authority, and the patient is
33 an inmate or parolee of either respective department, the
34 requirements of this subdivision shall be satisfied by disclosing
35 financial interests to either the Department of Corrections or the
36 California Youth Authority.

37 (g) A violation of subdivision (a) shall be a misdemeanor. In
38 the case of a licensee who is a physician, the Medical Board of
39 California shall review the facts and circumstances of any
40 conviction pursuant to subdivision (a) and take appropriate

1 disciplinary action if the licensee has committed unprofessional
2 conduct. In the case of a licensee who is a certified nurse-midwife,
3 the Board of Registered Nursing shall review the facts and
4 circumstances of any conviction pursuant to subdivision (a) and
5 take appropriate disciplinary action if the licensee has committed
6 unprofessional conduct. Violations of this section may also be
7 subject to civil penalties of up to five thousand dollars (\$5,000)
8 for each offense, which may be enforced by the Insurance
9 Commissioner, Attorney General, or a district attorney. A violation
10 of subdivision (c), (d), or (e) is a public offense and is punishable
11 upon conviction by a fine not exceeding fifteen thousand dollars
12 (\$15,000) for each violation and appropriate disciplinary action,
13 including revocation of professional licensure, by the Medical
14 Board of California, the Board of Registered Nursing, or other
15 appropriate governmental agency.

16 (h) This section shall not apply to referrals for services that are
17 described in and covered by Sections 139.3 and 139.31 of the
18 Labor Code.

19 (i) This section shall become operative on January 1, 1995.

20 *SEC. 2. Section 650.02 of the Business and Professions Code*
21 *is amended to read:*

22 650.02. The prohibition of Section 650.01 shall not apply to
23 or restrict any of the following:

24 (a) A licensee may refer a patient for a good or service otherwise
25 prohibited by subdivision (a) of Section 650.01 if the licensee's
26 regular practice is located where there is no alternative provider
27 of the service within either 25 miles or 40 minutes traveling time,
28 via the shortest route on a paved road. If an alternative provider
29 commences furnishing the good or service for which a patient was
30 referred pursuant to this subdivision, the licensee shall cease
31 referrals under this subdivision within six months of the time at
32 which the licensee knew or should have known that the alternative
33 provider is furnishing the good or service. A licensee who refers
34 to or seeks consultation from an organization in which the licensee
35 has a financial interest under this subdivision shall disclose this
36 interest to the patient or the patient's parents or legal guardian in
37 writing at the time of referral.

38 (b) A licensee, when the licensee or his or her immediate family
39 has one or more of the following arrangements with another

1 licensee, a person, or an entity, is not prohibited from referring a
2 patient to the licensee, person, or entity because of the arrangement:

3 (1) A loan between a licensee and the recipient of the referral,
4 if the loan has commercially reasonable terms, bears interest at
5 the prime rate or a higher rate that does not constitute usury, is
6 adequately secured, and the loan terms are not affected by either
7 party's referral of any person or the volume of services provided
8 by either party.

9 (2) A lease of space or equipment between a licensee and the
10 recipient of the referral, if the lease is written, has commercially
11 reasonable terms, has a fixed periodic rent payment, has a term of
12 one year or more, and the lease payments are not affected by either
13 party's referral of any person or the volume of services provided
14 by either party.

15 (3) Ownership of corporate investment securities, including
16 shares, bonds, or other debt instruments that may be purchased on
17 terms generally available to the public and that are traded on a
18 licensed securities exchange or NASDAQ, do not base profit
19 distributions or other transfers of value on the licensee's referral
20 of persons to the corporation, do not have a separate class or
21 accounting for any persons or for any licensees who may refer
22 persons to the corporation, and are in a corporation that had, at the
23 end of the corporation's most recent fiscal year, or on average
24 during the previous three fiscal years, stockholder equity exceeding
25 seventy-five million dollars (\$75,000,000).

26 (4) Ownership of shares in a regulated investment company as
27 defined in Section 851(a) of the federal Internal Revenue Code, if
28 the company had, at the end of the company's most recent fiscal
29 year, or on average during the previous three fiscal years, total
30 assets exceeding seventy-five million dollars (\$75,000,000).

31 (5) A one-time sale or transfer of a practice or property or other
32 financial interest between a licensee and the recipient of the referral
33 if the sale or transfer is for commercially reasonable terms and the
34 consideration is not affected by either party's referral of any person
35 or the volume of services provided by either party.

36 (6) A personal services arrangement between a licensee or an
37 immediate family member of the licensee and the recipient of the
38 referral if the arrangement meets all of the following requirements:

39 (A) It is set out in writing and is signed by the parties.

1 (B) It specifies all of the services to be provided by the licensee
2 or an immediate family member of the licensee.

3 (C) The aggregate services contracted for do not exceed those
4 that are reasonable and necessary for the legitimate business
5 purposes of the arrangement.

6 (D) A person who is referred by a licensee or an immediate
7 family member of the licensee is informed in writing of the
8 personal services arrangement that includes information on where
9 a person may go to file a complaint against the licensee or the
10 immediate family member of the licensee.

11 (E) The term of the arrangement is for at least one year.

12 (F) The compensation to be paid over the term of the
13 arrangement is set in advance, does not exceed fair market value,
14 and is not determined in a manner that takes into account the
15 volume or value of any referrals or other business generated
16 between the parties.

17 (G) The services to be performed under the arrangement do not
18 involve the counseling or promotion of a business arrangement or
19 other activity that violates any state or federal law.

20 (c) (1) A licensee may refer a person to a health facility, as
21 defined in Section 1250 of the Health and Safety Code, *a licensed*
22 *alternative birth center, as defined in paragraph (4) of subdivision*
23 *(b) of Section 1204 of the Health and Safety Code, or to any*
24 *facility, or nationally accredited alternative birth center, owned*
25 *or leased by a health facility, if the recipient of the referral does*
26 *not compensate the licensee for the patient referral, and any*
27 *equipment lease arrangement between the licensee and the referral*
28 *recipient complies with the requirements of paragraph (2) of*
29 *subdivision (b).*

30 (2) Nothing shall preclude this subdivision from applying to a
31 licensee solely because the licensee has an ownership or leasehold
32 interest in an entire health facility or an entity that owns or leases
33 an entire health facility.

34 (3) A licensee may refer a person to a health facility for any
35 service classified as an emergency under subdivision (a) or (b) of
36 Section 1317.1 of the Health and Safety Code.

37 (4) A licensee may refer a person to any organization that owns
38 or leases a health facility licensed pursuant to subdivision (a), (b),
39 or (f) of Section 1250 of the Health and Safety Code if the licensee
40 is not compensated for the patient referral, the licensee does not

1 receive any payment from the recipient of the referral that is based
2 or determined on the number or value of any patient referrals, and
3 any equipment lease arrangement between the licensee and the
4 referral recipient complies with the requirements of paragraph (2)
5 of subdivision (b). For purposes of this paragraph, the ownership
6 may be through stock or membership, and may be represented by
7 a parent holding company that solely owns or controls both the
8 health facility organization and the affiliated organization.

9 (d) A licensee may refer a person to a nonprofit corporation that
10 provides physician services pursuant to subdivision (l) of Section
11 1206 of the Health and Safety Code if the nonprofit corporation
12 is controlled through membership by one or more health facilities
13 or health facility systems and the amount of compensation or other
14 transfer of funds from the health facility or nonprofit corporation
15 to the licensee is fixed annually, except for adjustments caused by
16 physicians joining or leaving the groups during the year, and is
17 not based on the number of persons utilizing goods or services
18 specified in Section 650.01.

19 (e) A licensee compensated or employed by a university may
20 refer a person for a physician service, to any facility owned or
21 operated by the university, or to another licensee employed by the
22 university, provided that the facility or university does not
23 compensate the referring licensee for the patient referral. In the
24 case of a facility that is totally or partially owned by an entity other
25 than the university, but that is staffed by university physicians,
26 those physicians may not refer patients to the facility if the facility
27 compensates the referring physicians for those referrals.

28 (f) The prohibition of Section 650.01 shall not apply to any
29 service for a specific patient that is performed within, or goods
30 that are supplied by, a licensee's office, or the office of a group
31 practice. Further, the provisions of Section 650.01 shall not alter,
32 limit, or expand a licensee's ability to deliver, or to direct or
33 supervise the delivery of, in-office goods or services according to
34 the laws, rules, and regulations governing his or her scope of
35 practice.

36 (g) The prohibition of Section 650.01 shall not apply to cardiac
37 rehabilitation services provided by a licensee or by a suitably
38 trained individual under the direct or general supervision of a
39 licensee, if the services are provided to patients meeting the criteria
40 for Medicare reimbursement for the services.

1 (h) The prohibition of Section 650.01 shall not apply if a licensee
2 is in the office of a group practice and refers a person for services
3 or goods specified in Section 650.01 to a multispecialty clinic, as
4 defined in subdivision (l) of Section 1206 of the Health and Safety
5 Code.

6 (i) The prohibition of Section 650.01 shall not apply to health
7 care services provided to an enrollee of a health care service plan
8 licensed pursuant to the Knox-Keene Health Care Service Plan
9 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of
10 Division 2 of the Health and Safety Code).

11 (j) The prohibition of Section 650.01 shall not apply to a request
12 by a pathologist for clinical diagnostic laboratory tests and
13 pathological examination services, a request by a radiologist for
14 diagnostic radiology services, or a request by a radiation oncologist
15 for radiation therapy if those services are furnished by, or under
16 the supervision of, the pathologist, radiologist, or radiation
17 oncologist pursuant to a consultation requested by another
18 physician.

19 (k) This section shall not apply to referrals for services that are
20 described in and covered by Sections 139.3 and 139.31 of the
21 Labor Code.

22 (l) This section shall become operative on January 1, 1995.

23 ~~SEC. 2.~~

24 SEC. 3. Section 2725.1 of the Business and Professions Code
25 is amended to read:

26 2725.1. (a) Notwithstanding any other law, a registered nurse
27 may dispense drugs or devices upon an order by a licensed
28 physician and surgeon or an order by a certified nurse-midwife,
29 nurse practitioner, or physician assistant issued pursuant to Section
30 2746.51, 2836.1, or 3502.1, respectively, if the registered nurse is
31 functioning within a licensed primary care clinic as defined in
32 subdivision (a) of Section 1204 of, or within a clinic as defined in
33 subdivision (b), (c), (h), or (j) of Section 1206 of, the Health and
34 Safety Code.

35 (b) No clinic shall employ a registered nurse to perform
36 dispensing duties exclusively. No registered nurse shall dispense
37 drugs in a pharmacy, keep a pharmacy, open shop, or drugstore
38 for the retailing of drugs or poisons. No registered nurse shall
39 compound drugs. Dispensing of drugs by a registered nurse, except
40 a certified nurse-midwife who functions pursuant to Section

1 2746.51 or a nurse practitioner who functions pursuant to a
2 standardized procedure described in Section 2836.1, or protocol,
3 shall not include substances included in the California Uniform
4 Controlled Substances Act (Division 10 (commencing with Section
5 11000) of the Health and Safety Code). Nothing in this section
6 shall exempt a clinic from the provisions of Article 13
7 (commencing with Section 4180) of Chapter 9.

8 (c) This section shall not be construed to limit any other
9 authority granted to a certified nurse-midwife pursuant to Article
10 2.5 (commencing with Section 2746), to a nurse practitioner
11 pursuant to Article 8 (commencing with Section 2834), or to a
12 physician assistant pursuant to Chapter 7.7 (commencing with
13 Section 3500).

14 (d) This section shall not be construed to affect the sites or types
15 of health care facilities at which drugs or devices are authorized
16 to be dispensed pursuant to Chapter 9 (commencing with Section
17 4000).

18 ~~SEC. 3.~~

19 *SEC. 4.* Section 2746.2 of the Business and Professions Code
20 is amended to read:

21 2746.2. (a) Each applicant shall show by evidence satisfactory
22 to the board that he or she has met the educational standards
23 established by the board or has at least the equivalent thereof,
24 including evidence of current advanced level national certification
25 by a certifying body that meets standards established and approved
26 by the board.

27 (b) The board shall create and appoint a Nurse-Midwifery
28 Advisory Council consisting of certified nurse-midwives in good
29 standing with experience in hospital ~~and nonhospital practice~~
30 ~~settings,~~ *settings, alternative birth center settings, and home*
31 *settings,* a nurse-midwife educator who has demonstrated
32 familiarity with ~~consumer needs, collegial practice and~~
33 ~~accompanied liability, and related educational standards in the~~
34 ~~delivery of maternal-child health care, and a consumer of~~
35 ~~midwifery care.~~ *care, and at least two qualified physicians*
36 *appointed by the Medical Board of California, including an*
37 *obstetrician that has experience working with nurse-midwives.*
38 *The council membership shall consist of a majority of certified*
39 *nurse-midwives and shall make recommendations to the board on*
40 *all matters related to nurse-midwifery practice, education, and*

1 other matters as specified by the board. The council shall meet
2 regularly, but at least twice a year.

3 (c) Corporations and other artificial legal entities shall have no
4 professional rights, privileges, or powers. However, the Board of
5 Registered Nursing may in its discretion, after such investigation
6 and review of such documentary evidence as it may require, and
7 under regulations adopted by it, grant approval of the employment
8 of licensees on a salary basis by licensed charitable institutions,
9 foundations, or clinics, if no charge for professional services
10 rendered patients is made by any such institution, foundation, or
11 clinic.

12 (d) *Notwithstanding subdivision (c), the following entities may*
13 *employ a certified nurse-midwife and charge for professional*
14 *services rendered by a certified nurse-midwife; however, the entity*
15 *shall not interfere with, control, or otherwise direct the*
16 *professional judgment of a certified nurse-midwife:*

17 (1) *A clinic operated under subdivision (p) of Section 1206 of*
18 *the Health and Safety Code.*

19 (2) *A hospital owned and operated by a health care district*
20 *pursuant to Division 23 (commencing with Section 32000) of the*
21 *Health and Safety Code.*

22 (3) *A clinic operated primarily for the purpose of medical*
23 *education or nursing education by a public or private nonprofit*
24 *university medical school, which is approved by the Medical Board*
25 *or the Osteopathic Medical Board of California, provided the*
26 *certified nurse-midwife holds an academic appointment on the*
27 *faculty of the university, including, but not limited to, the University*
28 *of California medical schools and hospitals.*

29 (4) *A licensed alternative birth center, as defined in paragraph*
30 *(4) of subdivision (b) of Section 1204 of the Health and Safety*
31 *Code, or a nationally accredited alternative birth center owned*
32 *or operated by a nursing corporation, as defined in Section 2775*
33 *of the Business and Professions Code.*

34 ~~SEC. 4.~~

35 SEC. 5. Section 2746.5 of the Business and Professions Code
36 is amended to read:

37 2746.5. (a) The certificate to practice nurse-midwifery
38 authorizes the holder to manage a full range of primary-health
39 gynecological and obstetric care services for women from
40 adolescence to beyond ~~menopause~~: *menopause, consistent with*

1 *the Core Competencies for Basic Midwifery practice promulgated*
2 *by the American College of Nurse-Midwives, or its successor*
3 *national professional organization, as approved by the board.*
4 *These services include, but are not limited to, primary health care,*
5 *gynecologic and family planning services, preconception care,*
6 *care during pregnancy, childbirth, and the postpartum period,*
7 *immediate care of the newborn, and treatment of male partners for*
8 *sexually transmitted infections. A certified nurse-midwife is*
9 *authorized to practice in all settings, including, but not limited to,*
10 *private practice, clinics, hospitals, birth centers, and homes.*
11 *infections, utilizing consultation, collaboration, or referral to*
12 *appropriate levels of health care services, as indicated.*

13 *(b) A certified nurse-midwife may practice in the following*
14 *settings:*

15 ~~(b)~~

16 *(1) A licensed clinic as described in Chapter 1 (commencing*
17 *with Section 1200) of Division 2 of the Health and Safety Code.*

18 *(2) A facility as described in Chapter 2 (commencing with*
19 *Section 1250) of Division 2 of the Health and Safety Code.*

20 *(3) A facility as described in Chapter 2.5 (commencing with*
21 *Section 1440) of Division 2 of the Health and Safety Code.*

22 *(4) A medical group practice, including a professional medical*
23 *corporation, a medical partnership, a medical foundation exempt*
24 *from licensure pursuant to Section 1206 of the Health and Safety*
25 *Code, or another lawfully organized group of physicians that*
26 *delivers, furnishes, or otherwise arranges for or provides health*
27 *care services.*

28 *(5) A licensed alternative birth center, as described in Section*
29 *1204 of the Health and Safety Code, or nationally accredited birth*
30 *center.*

31 *(6) A nursing corporation, as defined in Section 2775 of the*
32 *Business and Professions Code.*

33 *(7) A home setting.*

34 *(A) Except as provided in subparagraph (B) of this paragraph,*
35 *a certified nurse-midwife shall assist during pregnancy and*
36 *childbirth in the home setting only when all of the following*
37 *conditions apply:*

38 *(i) There is the absence of all of the following:*

39 *(I) Any preexisting maternal disease or condition likely to*
40 *complicate the pregnancy.*

- 1 (ii) Disease arising from the pregnancy likely to cause
2 significant maternal and/or fetal compromise.
- 3 (III) Prior caesarean delivery.
- 4 (ii) There is a singleton fetus.
- 5 (iii) There is cephalic presentation at the onset of labor.
- 6 (iv) The gestational age of the fetus is greater than 370/7 weeks
7 and less than 420/7 completed weeks of pregnancy at the onset of
8 labor.
- 9 (v) Labor is spontaneous or induced in an outpatient setting.
- 10 (B) If a potential certified nurse-midwife client meets the
11 conditions specified in clauses (ii) to (v), inclusive, of
12 subparagraph (A), but fails to meet the conditions specified in
13 clause (i) of subparagraph (A), and the woman still desires to be
14 a client of the certified nurse-midwife, the certified nurse-midwife
15 shall consult with a physician and surgeon trained in obstetrics
16 and gynecology. A certified nurse-midwife may assist the woman
17 in pregnancy and childbirth only if a physician and surgeon trained
18 in obstetrics and gynecology is consulted and the physician and
19 surgeon who performed the consultation determines that the risk
20 factors presented by her disease or condition are not likely to
21 significantly affect the course of pregnancy and childbirth.
- 22 (c) As used in this chapter, the practice of nurse-midwifery
23 within a health care system provides for consultation, collaboration,
24 or referral as indicated by the health status of the patient and the
25 resources and medical personnel available in the setting of care.
26 ~~When providing peripartum care in out-of-hospital settings, the~~
27 ~~certified nurse-midwife shall only provide care to low-risk women~~
28 ~~with uncomplicated singleton-term pregnancies who are expected~~
29 ~~to have an uncomplicated birth.~~ The practice of nurse-midwifery
30 care emphasizes informed consent, preventive care, and early
31 detection and referral of complications to physicians and surgeons.
32 While practicing in a hospital setting, the certified nurse-midwife
33 shall collaboratively care for women with more complex health
34 needs.
- 35 (d) A certified nurse-midwife practicing under subdivision (a)
36 shall be subject to all credentialing and quality standards held by
37 the facility in which he or she practices. The peer review body
38 shall include nurse-midwives as part of the peer review body that
39 reviews nurse-midwives. The peer review body of that facility shall
40 impose standards that assure quality and patient safety in their

1 facility. *The standards shall be approved by the relevant governing*
2 *body unless found by a court to be arbitrary and capricious.*

3 ~~(e)~~

4 *(e) The practice of nurse-midwifery does not include the*
5 *assisting of childbirth by any forcible, or mechanical means, nor*
6 *the performance of any version of those means.*

7 *(f) A certified nurse-midwife is not authorized to practice*
8 *medicine and surgery by the provisions of this chapter.*

9 ~~(d)~~

10 *(g) Any regulations promulgated by a state department that*
11 *affect the scope of practice of a certified nurse-midwife shall be*
12 *developed in consultation with the board and the Nurse-Midwifery*
13 *Advisory Council.*

14 ~~SEC. 5.~~

15 *SEC. 6.* Section 2746.51 of the Business and Professions Code
16 is amended to read:

17 2746.51. (a) Neither this chapter nor any other law shall be
18 construed to prohibit a certified nurse-midwife from furnishing or
19 ordering drugs or devices, including controlled substances
20 classified in Schedule II, III, IV, or V under the California Uniform
21 Controlled Substances Act (Division 10 (commencing with Section
22 11000) of the Health and Safety Code), when the drugs or devices
23 are furnished or ordered related to the provision of any of the
24 following:

25 (1) Family planning services, as defined in Section 14503 of
26 the Welfare and Institutions Code.

27 (2) Routine health care or perinatal care, as defined in
28 subdivision (d) of Section 123485 of the Health and Safety Code.

29 (3) Care rendered, consistent with the certified nurse-midwife's
30 educational preparation or for which clinical competency has been
31 established and maintained, to persons within a facility specified
32 in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the
33 Health and Safety Code, a clinic as specified in Section 1204 of
34 the Health and Safety Code, a general acute care hospital as defined
35 in subdivision (a) of Section 1250 of the Health and Safety Code,
36 a licensed birth center as defined in Section 1204.3 of the Health
37 and Safety Code, or a special hospital specified as a maternity
38 hospital in subdivision (f) of Section 1250 of the Health and Safety
39 Code.

1 (4) Care rendered in a home pursuant to subdivision (a) of
2 Section 2746.5.

3 (b) (1) The furnishing or ordering of drugs or devices by a
4 certified nurse-midwife is conditional on the issuance by the board
5 of a number to the applicant who has successfully completed the
6 requirements of paragraph (2). The number shall be included on
7 all transmittals of orders for drugs or devices by the certified
8 nurse-midwife. The board shall maintain a list of the certified
9 nurse-midwives that it has certified pursuant to this paragraph and
10 the number it has issued to each one. The board shall make the list
11 available to the California State Board of Pharmacy upon its
12 request. Every certified nurse-midwife who is authorized pursuant
13 to this section to furnish or issue a drug order for a controlled
14 substance shall register with the United States Drug Enforcement
15 Administration.

16 (2) The board has certified in accordance with paragraph (1)
17 that the certified nurse-midwife has satisfactorily completed a
18 course in pharmacology covering the drugs or devices to be
19 furnished or ordered under this section. The board shall establish
20 the requirements for satisfactory completion of this paragraph.

21 (3) Certified nurse-midwives who are certified by the board and
22 hold an active furnishing number, who are currently authorized to
23 furnish Schedule II controlled substances, and who are registered
24 with the United States Drug Enforcement Administration shall
25 provide documentation of continuing education specific to the use
26 of Schedule II controlled substances in settings other than a hospital
27 based on standards developed by the board.

28 (c) Drugs or devices furnished or ordered by a certified
29 nurse-midwife may include Schedule II controlled substances
30 under the California Uniform Controlled Substances Act (Division
31 10 (commencing with Section 11000) of the Health and Safety
32 Code) when the drugs and devices are furnished or ordered in
33 accordance with requirements referenced in paragraphs (1) to (3),
34 inclusive, of subdivision (b). *In a nonhospital setting, a Schedule*
35 *II controlled substance shall be furnished by a certified*
36 *nurse-midwife only during labor and delivery and only after a*
37 *consultation with a physician and surgeon.*

38 (d) Furnishing of drugs or devices by a certified nurse-midwife
39 means the act of making a pharmaceutical agent or agents available
40 to the patient.

1 (e) “Drug order” or “order” for purposes of this section means
2 an order for medication or for a drug or device that is dispensed
3 to or for an ultimate user, issued by a certified nurse-midwife as
4 an individual practitioner, within the meaning of Section 1306.03
5 of Title 21 of the Code of Federal Regulations. Notwithstanding
6 any other law, (1) a drug order issued pursuant to this section shall
7 be treated in the same manner as a prescription of a physician; (2)
8 all references to “prescription” in this code and the Health and
9 Safety Code shall include drug orders issued by certified
10 nurse-midwives; and (3) the signature of a certified nurse-midwife
11 on a drug order issued in accordance with this section shall be
12 deemed to be the signature of a prescriber for purposes of this code
13 and the Health and Safety Code.

14 (f) A certified nurse-midwife is authorized to directly procure
15 supplies and devices, to order, obtain, and administer drugs and
16 diagnostic tests, to order laboratory and diagnostic testing, and to
17 receive reports that are necessary to his or her practice as a certified
18 nurse-midwife and consistent with nurse-midwifery education
19 preparation.

20 ~~SEC. 6.~~

21 *SEC. 7.* Section 2746.52 of the Business and Professions Code
22 is amended to read:

23 2746.52. (a) Notwithstanding Section 2746.5, the certificate
24 to practice nurse-midwifery authorizes the holder to perform and
25 repair episiotomies, and to repair first-degree and second-degree
26 lacerations of the perineum, in a licensed acute care hospital, as
27 defined in subdivision (a) of Section 1250 of the Health and Safety
28 Code, in a licensed alternate birth center, as defined in paragraph
29 (4) of subdivision (b) of Section 1204 of the Health and Safety
30 Code, *or a nationally accredited birth center*, and in a home
31 pursuant to ~~subdivision (a) paragraph (7) of subdivision (b) of~~
32 Section 2746.5.

33 (b) The certified nurse-midwife performing and repairing
34 first-degree and second-degree lacerations of the perineum shall
35 do both of the following:

36 (1) Ensure that all complications are referred to a physician and
37 surgeon immediately.

38 (2) Ensure immediate care of patients who are in need of care
39 beyond the scope of practice of the certified nurse-midwife, or

1 provide emergency care for times when a physician and surgeon
2 is not available.

3 ~~SEC. 7.~~

4 *SEC. 8.* Section 2746.6 is added to the Business and Professions
5 Code, to read:

6 2746.6. A consultative relationship between a certified
7 nurse-midwife and a physician and surgeon shall not, by ~~it self,~~
8 *itself*, provide the basis for finding a physician and surgeon liable
9 for any act or omission of the certified nurse-midwife.

10 ~~SEC. 8.~~

11 *SEC. 9.* Section 4061 of the Business and Professions Code is
12 amended to read:

13 4061. (a) A manufacturer's sales representative shall not
14 distribute any dangerous drug or dangerous device as a
15 complimentary sample without the written request of a physician,
16 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
17 pursuant to Section 3640.7. However, a certified nurse-midwife
18 who functions pursuant to Section 2746.51, a nurse practitioner
19 who functions pursuant to a standardized procedure described in
20 Section 2836.1, or protocol, a physician assistant who functions
21 pursuant to a protocol described in Section 3502.1, or a
22 naturopathic doctor who functions pursuant to a standardized
23 procedure or protocol described in Section 3640.5, may sign for
24 the request and receipt of complimentary samples of a dangerous
25 drug or dangerous device that has been identified in the
26 standardized procedure, protocol, or practice agreement.
27 Standardized procedures, protocols, and practice agreements shall
28 include specific approval by a physician. A review process,
29 consistent with the requirements of Section 2725, 3502.1, or
30 3640.5, of the complimentary samples requested and received by
31 a nurse practitioner, certified nurse-midwife, physician assistant,
32 or naturopathic doctor, shall be defined within the standardized
33 procedure, protocol, or practice agreement.

34 (b) Each written request shall contain the names and addresses
35 of the supplier and the requester, the name and quantity of the
36 specific dangerous drug desired, the name of the certified
37 nurse-midwife, nurse practitioner, physician assistant, or
38 naturopathic doctor, if applicable, receiving the samples pursuant
39 to this section, the date of receipt, and the name and quantity of
40 the dangerous drugs or dangerous devices provided. These records

1 shall be preserved by the supplier with the records required by
2 Section 4059.

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

6 ~~SEC. 9.~~

7 *SEC. 10.* Section 4076 of the Business and Professions Code
8 is amended to read:

9 4076. (a) A pharmacist shall not dispense any prescription
10 except in a container that meets the requirements of state and
11 federal law and is correctly labeled with all of the following:

12 (1) Except when the prescriber or the certified nurse-midwife
13 who functions pursuant to Section 2746.51, the nurse practitioner
14 who functions pursuant to a standardized procedure described in
15 Section 2836.1 or protocol, the physician assistant who functions
16 pursuant to Section 3502.1, the naturopathic doctor who functions
17 pursuant to a standardized procedure or protocol described in
18 Section 3640.5, or the pharmacist who functions pursuant to a
19 policy, procedure, or protocol pursuant to Section 4052.1, 4052.2,
20 or 4052.6 orders otherwise, either the manufacturer's trade name
21 of the drug or the generic name and the name of the manufacturer.
22 Commonly used abbreviations may be used. Preparations
23 containing two or more active ingredients may be identified by
24 the manufacturer's trade name or the commonly used name or the
25 principal active ingredients.

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

27 (3) The name of the patient or patients.

28 (4) The name of the prescriber or, if applicable, the name of the
29 certified nurse-midwife who functions pursuant to Section 2746.51,
30 the nurse practitioner who functions pursuant to a standardized
31 procedure described in Section 2836.1 or protocol, the physician
32 assistant who functions pursuant to Section 3502.1, the naturopathic
33 doctor who functions pursuant to a standardized procedure or
34 protocol described in Section 3640.5, or the pharmacist who
35 functions pursuant to a policy, procedure, or protocol pursuant to
36 Section 4052.1, 4052.2, or 4052.6.

37 (5) The date of issue.

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

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

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

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

4 (10) The condition or purpose for which the drug was prescribed
5 if the condition or purpose is indicated on the prescription.

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

10 (i) Prescriptions dispensed by a veterinarian.

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

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

17 (B) This paragraph applies to outpatient pharmacies only.

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

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

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

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

1 functions pursuant to a policy, procedure, or protocol pursuant to
2 Section 4052.1, 4052.2, or 4052.6.

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

13 ~~SEC. 10.~~

14 *SEC. 11.* Section 4170 of the Business and Professions Code
15 is amended to read:

16 4170. (a) A prescriber shall not dispense drugs or dangerous
17 devices to patients in his or her office or place of practice unless
18 all of the following conditions are met:

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

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

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

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

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

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

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

5 (8) A certified nurse-midwife who functions pursuant to Section
6 2746.51, a nurse practitioner who functions pursuant to a
7 standardized procedure described in Section 2836.1, or protocol,
8 a physician assistant who functions pursuant to Section 3502.1, or
9 a naturopathic doctor who functions pursuant to Section 3640.5,
10 may hand to a patient of the supervising physician and surgeon, *if*
11 *applicable*, a properly labeled prescription drug prepackaged by
12 a physician and surgeon, a manufacturer as defined in this chapter,
13 or a pharmacist.

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

23 (c) "Prescriber," as used in this section, means a person, who
24 holds a physician's and surgeon's certificate, a license to practice
25 optometry, a license to practice naturopathic medicine, a license
26 to practice dentistry, a license to practice veterinary medicine, or
27 a certificate to practice podiatry, and who is duly registered by the
28 Medical Board of California, the State Board of Optometry, the
29 Bureau of Naturopathic Medicine, the Dental Board of California,
30 the Veterinary Medical Board, or the Board of Osteopathic
31 Examiners of this state.

32 ~~SEC. 11.~~

33 *SEC. 12.* No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 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.

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AMENDED IN SENATE JUNE 4, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 21, 2015

SENATE BILL

No. 22

Introduced by Senator Roth

December 1, 2014

An act to add Chapter 6 (commencing with Section 128590) to Part 3 of Division 107 of the Health and Safety Code, relating to health care, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 22, as amended, Roth. Residency training.

Existing law, the Song-Brown Health Care Workforce Training Act, declares the intent of the Legislature to increase the number of students and residents receiving quality education and training in the specialty of family practice and as primary care physician's assistants and primary care nurse practitioners. Existing law establishes, for this purpose, a state medical contract program with accredited medical schools, programs that train primary care physician's assistants, programs that train primary care nurse practitioners, registered nurses, hospitals, and other health care delivery systems.

Existing law establishes the California Healthcare Workforce Policy Commission and requires the commission, among other things, to identify specific areas of the state where unmet priority needs for primary care family physicians and registered nurses exist, establish standards for family practice training programs, family practice residency programs, primary care physician assistants programs, and

programs that train primary care nurse practitioners, and review and make recommendations to the Director of Statewide Health Planning and Development concerning the funding of those programs that are submitted to the Healthcare Workforce Development Division for participation in the state medical contract program.

This bill would require the Office of Statewide Health Planning and Development to establish a nonprofit public benefit corporation, to be known as the California Medical Residency Training Foundation, to be governed by a board of trustees consisting of a total of 13 members, to be appointed as specified.

The bill would create the Medical Residency Training Fund in the State Treasury, a continuously appropriated fund, and would require the foundation to solicit and accept funds from business, industry, foundations, and other private or public sources for the purpose of establishing and funding new graduate medical residency training programs in specified areas of the state, including medically underserved areas. By creating a continuously appropriated fund, the bill would make an appropriation. The bill would require the Office of Statewide Health Planning and Development, among other responsibilities, to provide technical support and financial management for the foundation, and to enter into contracts with public and private sector institutions and other health agencies and organizations in order to fund and establish residency positions. *The bill would authorize the Governor to include in the annual budget proposal an amount, as he or she deems reasonable, to be appropriated for this purpose. The bill, if the Legislature appropriates money for this purpose, would require the office to hold the funds and distribute them into the fund, upon request of the foundation, in an amount matching the amount deposited into the fund by the foundation. The bill would require money that was appropriated, but that has not been distributed to the fund at the end of each fiscal year, to be returned to the General Fund.*

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. 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 6 (commencing with Section 128590)
2 is added to Part 3 of Division 107 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 6. CALIFORNIA MEDICAL RESIDENCY TRAINING
6 FOUNDATION
7

8 128590. As used in this chapter:

9 (a) “Board” means the Board of Trustees of the California
10 Medical Residency Training Foundation.

11 (b) “Commission” means the California Healthcare Workforce
12 Policy Commission.

13 (c) “Director” means the Director of Statewide Health Planning
14 and Development.

15 (d) “Foundation” means the California Medical Residency
16 Training Foundation.

17 (e) “Fund” means the Medical Residency Training Fund.

18 (f) “Office” means the Office of Statewide Health Planning and
19 Development.

20 (g) “Primary care” means the medical practice areas of family
21 medicine, general surgery, internal medicine, obstetrics and
22 gynecology, pediatrics, psychiatry, and related specialties and
23 subspecialties as the office deems appropriate.

24 (h) “Residency position” means a graduate medical education
25 residency position in the field of primary care.

26 128591. (a) (1) The office shall establish a nonprofit public
27 benefit corporation to be known as the California Medical
28 Residency Training Foundation.

29 (2) The foundation shall be governed by a board of trustees
30 consisting of a total of 13 members. Seven members shall be
31 appointed by the Governor, one member shall be appointed by the
32 Speaker of the Assembly, one member shall be appointed by the
33 Senate Committee on Rules, two members of the Medical Board
34 of California shall be appointed by the Medical Board of California,
35 and two members of the Osteopathic Medical Board of California
36 shall be appointed by the Osteopathic Medical Board of California.

37 (3) The members of the foundation board appointed by the
38 Governor, the Speaker of the Assembly, and the Senate Committee

1 on Rules shall consist of representatives of designated and
2 nondesignated public hospitals, private hospitals, community
3 clinics, public and private health insurance providers, the
4 pharmaceutical industry, associations of health care practitioners,
5 and other appropriate members of health or related professions.

6 (4) All persons considered for appointment shall have an interest
7 in increasing the number of medical residencies in the state, an
8 interest in increasing access to health care in underserved areas of
9 California, and the ability and desire to solicit funds for the
10 purposes of this chapter, as determined by the appointing power.

11 (5) The chairperson of the commission shall also be a nonvoting,
12 ex officio member of the board.

13 (b) The Governor shall appoint the president of the board from
14 among those members appointed by the Governor, the Speaker of
15 the Assembly, the Senate Committee on Rules, the Medical Board
16 of California, and the Osteopathic Medical Board of California.

17 (c) Of the members of the board first appointed by the Governor,
18 three members shall be appointed to serve a one-year term, three
19 members shall be appointed to serve a two-year term, and one
20 member shall be appointed to serve a three-year term.

21 (d) Of the members of the board first appointed by the Speaker
22 of the Assembly and the Senate Committee on Rules, each member
23 shall be appointed to serve a three-year term.

24 (e) The members appointed by the Medical Board of California
25 and the Osteopathic Medical Board of California shall be appointed
26 to serve a four-year term.

27 (f) Upon the expiration of the initial appointments to the board
28 by the Governor, the Speaker of the Assembly, the Senate
29 Committee on Rules, the Medical Board of California, and the
30 Osteopathic Medical Board of California, each member shall be
31 appointed to serve a four-year term.

32 (g) The director, after consultation with the president of the
33 board, may appoint a council of advisers comprised of up to nine
34 members. The council shall advise the director and the board on
35 technical matters and programmatic issues related to the
36 foundation.

37 (h) (1) Members of the board appointed by the Governor, the
38 Speaker of the Assembly, and the Senate Committee on Rules,
39 and members of the council shall serve without compensation, but
40 shall be reimbursed for any actual and necessary expenses incurred

1 in connection with his or her duties as a member of the board or
2 the council.

3 (2) The members appointed by the Medical Board of California
4 and the Osteopathic Medical Board of California shall serve
5 without compensation, but shall be reimbursed by the Medical
6 Board of California and the Osteopathic Medical Board of
7 California, respectively, for any actual and necessary expenses
8 incurred in connection with his or her duties as a member of the
9 foundation board.

10 (i) Notwithstanding any law relating to incompatible activities,
11 no member of the foundation board shall be considered to be
12 engaged in activities inconsistent and incompatible with his or her
13 duties solely as a result of membership on the Medical Board of
14 California or the Osteopathic Medical Board of California.

15 (j) The foundation shall be subject to the Nonprofit Public
16 Benefit Corporation Law (Part 2 (commencing with Section 5110)
17 of Division 2 of Title 2 of the Corporations Code), except that if
18 there is a conflict with this chapter and the Nonprofit Public Benefit
19 Corporation Law (Part 2 (commencing with Section 5110) of
20 Division 2 of Title 2 of the Corporations Code), this chapter shall
21 prevail.

22 128592. The foundation shall do the following:

23 (a) Solicit and accept funds from business, industry, foundations,
24 and other private or public sources for the purpose of establishing
25 and funding new residency positions in areas of the state described
26 in subdivision (c).

27 (b) Encourage public and private sector institutions, including
28 hospitals, colleges, universities, community clinics, and other
29 health agencies and organizations to identify and provide locations
30 for the establishment of new residency positions in areas of the
31 state described in subdivision (c). The foundation shall solicit
32 proposals for medical residency programs, as described in
33 subdivision (c), and provide the office a copy of all proposals it
34 receives.

35 (c) Upon the sufficient solicitation of funds and at the
36 foundation's discretion, approve proposals and recommend to the
37 office the establishment of new residency positions. A
38 recommendation shall include all pertinent information necessary
39 for the office to enter into the necessary contracts to establish the
40 residency positions. The foundation shall only approve and

1 recommend to the office proposals that would establish residency
2 positions that will serve *in any of* the following medical service
3 areas:

4 (1) A service area that is designated as a primary care shortage
5 area by the office.

6 (2) A service area that is designated as a health professional
7 shortage area for primary care, by either population or geographic
8 designation, by the Health Resources and Services Administration
9 of the United States Department of Health and Human Services.

10 (3) A service area that is designated as a medically underserved
11 area or medically underserved population by the Health Resources
12 and Services Administration of the United States Department of
13 Health and Human Services.

14 (d) Upon office approval of a recommendation, deposit into the
15 fund necessary moneys as required to establish and fund the
16 residency position.

17 (e) Recommend to the director that a portion of the funds
18 solicited from the private sector be used for the administrative
19 requirements of the foundation.

20 (f) Prepare and submit an annual report to the Legislature
21 documenting the amount of money solicited, the amount of money
22 deposited from the foundation into the fund, the recommendations
23 for the location and fields of practice of residency positions, total
24 expenditures for the year, and prospective fundraising goals.

25 128593. The office shall do all of the following:

26 (a) Provide technical and staff support to the foundation in
27 meeting all of its responsibilities.

28 (b) Provide financial management for the foundation.

29 (c) Upon receipt of a recommendation made by the foundation
30 pursuant to subdivision (c) of Section 128592, approve the
31 recommendation if the recommendation fulfills the requirements
32 of subdivision (c) of Section 128592 and the recommendation
33 fulfills the goals of this chapter. Upon sufficient funds being
34 available, an approval shall signal the office's intent to establish
35 the residency position.

36 (d) Establish a uniform process by which the foundation may
37 solicit proposals from public and private sector institutions,
38 including hospitals, colleges, universities, community clinics, and
39 other health agencies and organizations that train primary care
40 residents. The office shall require that these proposals contain all

1 necessary and pertinent information, including, but not limited to,
2 all of the following:

3 (1) The location of the proposed residency position.

4 (2) The medical practice area of the proposed residency position.

5 (3) Information that demonstrates the area's need for the
6 proposed residency position and for additional primary care
7 practitioners.

8 (4) The amount of funding required to establish and operate the
9 residency position.

10 (e) Enter into contracts with public and private sector
11 institutions, including hospitals, colleges, universities, community
12 clinics, and other health agencies and organizations in order to
13 fund and establish residency positions at, or in association with,
14 these institutions.

15 (f) Ensure that the residency position has been, or will be,
16 approved by the Accreditation Council for Graduate Medical
17 Education.

18 (g) Provide all of the following information to the board:

19 (1) The areas of the state that are deficient in primary care
20 services.

21 (2) The areas of the state that have the highest number of
22 Medi-Cal enrollees and persons eligible to enroll in Medi-Cal, by
23 proportion of population.

24 (3) Other information that the office or board finds relevant to
25 assist the board in making its recommendations on possible
26 locations for new residency positions.

27 (h) Monitor the residencies established pursuant to this chapter.

28 (i) (1) Prepare and submit an annual report to the foundation
29 and the Legislature documenting the amount of money contributed
30 to the fund by the foundation, the amount of money expended from
31 the fund, the purposes of those expenditures, the number and
32 location of residency positions established and funded, and
33 recommendations for the location of future residency positions.

34 (2) The report pursuant to paragraph (1) shall be made to the
35 Legislature pursuant to Section 9795 of the Government Code.

36 128594. (a) The Medical Residency Training Fund is hereby
37 created within the State Treasury.

38 (b) The primary purpose of the fund is to allocate funding for
39 new residency positions throughout the state. Money in the fund
40 shall also be used to pay for the cost of administering the goals of

1 the foundation, and for any other purpose authorized by this
2 chapter.

3 (c) The level of expenditure by the office for the administrative
4 support of the foundation is subject to review and approval annually
5 through the ~~State Budget~~ *state budget* process.

6 (d) The office and foundation may solicit and accept public and
7 private donations to be deposited into the fund. All money in the
8 fund is continuously appropriated to the office for the purposes of
9 this chapter. The office shall manage this fund prudently in
10 accordance with applicable laws.

11 128595. Any regulations the office adopts to implement this
12 chapter shall be adopted as emergency regulations in accordance
13 with Section 11346.1 of the Government Code, except that the
14 regulations shall be exempt from the requirements of subdivisions
15 (e), (f), and (g) of that section. The regulations shall be deemed to
16 be emergency regulations for the purposes of Section 11346.1 of
17 the Government Code.

18 128596. Notwithstanding any other law, the office may exempt
19 from public disclosure any document in the possession of the office
20 that pertains to a donation made pursuant to this chapter if the
21 donor has requested anonymity.

22 128597. (a) *The Governor may include in the annual budget*
23 *proposal an amount, as he or she deems reasonable, to be*
24 *appropriated to the office to be used as provided in this chapter.*

25 (b) *If the Legislature appropriates money for purposes of this*
26 *chapter, the money shall be appropriated to the office, which shall*
27 *hold the money for distribution to the fund.*

28 (c) *Funds appropriated to the office shall be paid into the fund,*
29 *upon request of the foundation, in an amount matching the amount*
30 *deposited into the fund by the foundation for the purposes of this*
31 *chapter. Any money that was appropriated to the office and that*
32 *has not been distributed to the fund at the end of each fiscal year*
33 *shall be returned to the General Fund.*

34 SEC. 2. The Legislature finds and declares that Section 1 of
35 this act, which adds Chapter 6 (commencing with Section 128590)
36 to Part 3 of Division 107 of the Health and Safety Code, imposes
37 a limitation on the public's right of access to the meetings of public
38 bodies or the writings of public officials and agencies within the
39 meaning of Section 3 of Article I of the California Constitution.
40 Pursuant to that constitutional provision, the Legislature makes

1 the following findings to demonstrate the interest protected by this
2 limitation and the need for protecting that interest:
3 The need to protect individual privacy of donations made by a
4 donor to fund new residency positions in underserved areas of the
5 state outweighs the interest in the public disclosure of that
6 information.

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AMENDED IN ASSEMBLY JULY 9, 2015
AMENDED IN ASSEMBLY JULY 7, 2015
AMENDED IN ASSEMBLY JUNE 23, 2015
AMENDED IN SENATE APRIL 22, 2015
AMENDED IN SENATE MARCH 26, 2015

SENATE BILL

No. 323

Introduced by Senator Hernandez
(Principal coauthor: Assembly Member Eggman)
(Coauthor: Assembly Member Mark Stone)

February 23, 2015

An act to amend Sections 650.01 and 805 of, to amend and renumber Section 2837 of, and to add Section 2837 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Hernandez. Nurse practitioners: scope of practice.

The Nursing Practice Act provides for the licensure and regulation of nurse practitioners by the Board of Registered Nursing. The act authorizes the implementation of standardized procedures that authorize a nurse practitioner to perform certain acts, including ordering durable medical equipment in accordance with standardized procedures, certifying disability for purposes of unemployment insurance after physical examination and collaboration with a physician and surgeon, and, for an individual receiving home health services or personal care services, approving, signing, modifying, or adding to a plan of treatment

or plan of care after consultation with a physician and surgeon. A violation of those provisions is a crime.

This bill would authorize a nurse practitioner who holds a national certification from a national certifying body recognized by the board to practice without the supervision of a physician and surgeon, if the nurse practitioner meets existing requirements for nurse practitioners and practices in one of certain specified settings. The bill would prohibit entities described in those specified settings from interfering with, controlling, or otherwise directing the professional judgment of such a nurse practitioner, as specified, and would authorize such a nurse practitioner, in addition to any other practice authorized in statute or regulation, to perform specified acts, including the acts described above, without reference to standardized procedures or the specific need for the supervision of a physician and surgeon. The bill, instead, would require a nurse practitioner to refer a patient to a physician and surgeon or other licensed health care provider if a situation or condition of the patient is beyond the scope of the nurse practitioner's education and training. The bill would require a nurse practitioner practicing under these provisions to maintain professional liability insurance appropriate for the practice setting. By imposing new requirements on nurse practitioners, the violation of which would be a crime, this bill would impose a state-mandated local program.

Existing law prohibits a licensee, as defined, from referring a person for laboratory, diagnostic, nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, or diagnostic imaging goods or services if the licensee or his or her immediate family has a financial interest with the person or entity that receives the referral, and makes a violation of that prohibition punishable as a misdemeanor. Under existing law, the Medical Board of California is required to review the facts and circumstances of any conviction for violating the prohibition, and to take appropriate disciplinary action if the licensee has committed unprofessional conduct.

This bill would include a nurse practitioner, as specified, under the definition of a licensee, which would expand the scope of an existing crime and therefore impose a state-mandated local program. The bill would also require the Board of Registered Nursing to review the facts and circumstances of any conviction of a nurse practitioner, as specified, for violating that prohibition, and would require the board to take appropriate disciplinary action if the nurse practitioner has committed unprofessional conduct.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law defines the term “licentiate” for those purposes to include, among others, a physician and surgeon.

This bill would include a nurse practitioner, as specified, under the definition of licentiate, and would require the Board of Registered Nursing to disclose reports, 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. The Legislature finds and declares all of the
2 following:

3 (a) Nurse practitioners are a longstanding, vital, safe, effective,
4 and important part of the state’s health care delivery system. They
5 are especially important given California’s shortage of physicians,
6 with just 16 of 58 counties having the federally recommended ratio
7 of physicians to residents.

8 (b) Nurse practitioners will play an especially important part in
9 the implementation of the federal Patient Protection and Affordable
10 Care Act (Public Law 111-148), which will bring an estimated
11 five million more Californians into the health care delivery system,
12 because they will provide for greater access to primary care
13 services in all areas of the state. This is particularly true for patients
14 in medically underserved urban and rural communities.

15 (c) *In the interest of providing patients with comprehensive care*
16 *and consistent with the spirit of the federal Patient Protection and*
17 *Affordable Care Act, this measure is supportive of the national*
18 *health care movement towards integrated and team-based health*
19 *care models.*

20 (e)

21 (d) Due to the excellent safety and efficacy record that nurse
22 practitioners have earned, the Institute of Medicine of the National
23 Academies has recommended full practice authority for nurse

1 practitioners. Currently, 20 states allow nurse practitioners to
2 practice to the full extent of their training and education.

3 ~~(d)~~

4 (e) Furthermore, nurse practitioners will assist in addressing the
5 primary care provider shortage by removing delays in the provision
6 of care that are created when dated regulations require a physician’s
7 signature or protocol before a patient can initiate treatment or
8 obtain diagnostic tests that are ordered by a nurse practitioner.

9 SEC. 2. Section 650.01 of the Business and Professions Code
10 is amended to read:

11 650.01. (a) Notwithstanding Section 650, or any other
12 provision of law, it is unlawful for a licensee to refer a person for
13 laboratory, diagnostic nuclear medicine, radiation oncology,
14 physical therapy, physical rehabilitation, psychometric testing,
15 home infusion therapy, or diagnostic imaging goods or services if
16 the licensee or his or her immediate family has a financial interest
17 with the person or in the entity that receives the referral.

18 (b) For purposes of this section and Section 650.02, the
19 following shall apply:

20 (1) “Diagnostic imaging” includes, but is not limited to, all
21 X-ray, computed axial tomography, magnetic resonance imaging
22 nuclear medicine, positron emission tomography, mammography,
23 and ultrasound goods and services.

24 (2) A “financial interest” includes, but is not limited to, any
25 type of ownership interest, debt, loan, lease, compensation,
26 remuneration, discount, rebate, refund, dividend, distribution,
27 subsidy, or other form of direct or indirect payment, whether in
28 money or otherwise, between a licensee and a person or entity to
29 whom the licensee refers a person for a good or service specified
30 in subdivision (a). A financial interest also exists if there is an
31 indirect financial relationship between a licensee and the referral
32 recipient including, but not limited to, an arrangement whereby a
33 licensee has an ownership interest in an entity that leases property
34 to the referral recipient. Any financial interest transferred by a
35 licensee to any person or entity or otherwise established in any
36 person or entity for the purpose of avoiding the prohibition of this
37 section shall be deemed a financial interest of the licensee. For
38 purposes of this paragraph, “direct or indirect payment” shall not
39 include a royalty or consulting fee received by a physician and
40 surgeon who has completed a recognized residency training

1 program in orthopedics from a manufacturer or distributor as a
2 result of his or her research and development of medical devices
3 and techniques for that manufacturer or distributor. For purposes
4 of this paragraph, “consulting fees” means those fees paid by the
5 manufacturer or distributor to a physician and surgeon who has
6 completed a recognized residency training program in orthopedics
7 only for his or her ongoing services in making refinements to his
8 or her medical devices or techniques marketed or distributed by
9 the manufacturer or distributor, if the manufacturer or distributor
10 does not own or control the facility to which the physician is
11 referring the patient. A “financial interest” shall not include the
12 receipt of capitation payments or other fixed amounts that are
13 prepaid in exchange for a promise of a licensee to provide specified
14 health care services to specified beneficiaries. A “financial interest”
15 shall not include the receipt of remuneration by a medical director
16 of a hospice, as defined in Section 1746 of the Health and Safety
17 Code, for specified services if the arrangement is set out in writing,
18 and specifies all services to be provided by the medical director,
19 the term of the arrangement is for at least one year, and the
20 compensation to be paid over the term of the arrangement is set
21 in advance, does not exceed fair market value, and is not
22 determined in a manner that takes into account the volume or value
23 of any referrals or other business generated between parties.

24 (3) For the purposes of this section, “immediate family” includes
25 the spouse and children of the licensee, the parents of the licensee,
26 and the spouses of the children of the licensee.

27 (4) “Licensee” means a physician as defined in Section 3209.3
28 of the Labor Code, and a nurse practitioner practicing pursuant to
29 Section 2837.

30 (5) “Licensee’s office” means either of the following:

31 (A) An office of a licensee in solo practice.

32 (B) An office in which services or goods are personally provided
33 by the licensee or by employees in that office, or personally by
34 independent contractors in that office, in accordance with other
35 provisions of law. Employees and independent contractors shall
36 be licensed or certified when licensure or certification is required
37 by law.

38 (6) “Office of a group practice” means an office or offices in
39 which two or more licensees are legally organized as a partnership,
40 professional corporation, or not-for-profit corporation, licensed

1 pursuant to subdivision (a) of Section 1204 of the Health and Safety
2 Code, for which all of the following apply:

3 (A) Each licensee who is a member of the group provides
4 substantially the full range of services that the licensee routinely
5 provides, including medical care, consultation, diagnosis, or
6 treatment through the joint use of shared office space, facilities,
7 equipment, and personnel.

8 (B) Substantially all of the services of the licensees who are
9 members of the group are provided through the group and are
10 billed in the name of the group and amounts so received are treated
11 as receipts of the group, except in the case of a multispecialty
12 clinic, as defined in subdivision (l) of Section 1206 of the Health
13 and Safety Code, physician services are billed in the name of the
14 multispecialty clinic and amounts so received are treated as receipts
15 of the multispecialty clinic.

16 (C) The overhead expenses of, and the income from, the practice
17 are distributed in accordance with methods previously determined
18 by members of the group.

19 (c) It is unlawful for a licensee to enter into an arrangement or
20 scheme, such as a cross-referral arrangement, that the licensee
21 knows, or should know, has a principal purpose of ensuring
22 referrals by the licensee to a particular entity that, if the licensee
23 directly made referrals to that entity, would be in violation of this
24 section.

25 (d) No claim for payment shall be presented by an entity to any
26 individual, third party payer, or other entity for a good or service
27 furnished pursuant to a referral prohibited under this section.

28 (e) No insurer, self-insurer, or other payer shall pay a charge or
29 lien for any good or service resulting from a referral in violation
30 of this section.

31 (f) A licensee who refers a person to, or seeks consultation from,
32 an organization in which the licensee has a financial interest, other
33 than as prohibited by subdivision (a), shall disclose the financial
34 interest to the patient, or the parent or legal guardian of the patient,
35 in writing, at the time of the referral or request for consultation.

36 (1) If a referral, billing, or other solicitation is between one or
37 more licensees who contract with a multispecialty clinic pursuant
38 to subdivision (l) of Section 1206 of the Health and Safety Code
39 or who conduct their practice as members of the same professional
40 corporation or partnership, and the services are rendered on the

1 same physical premises, or under the same professional corporation
2 or partnership name, the requirements of this subdivision may be
3 met by posting a conspicuous disclosure statement at the
4 registration area or by providing a patient with a written disclosure
5 statement.

6 (2) If a licensee is under contract with the Department of
7 Corrections or the California Youth Authority, and the patient is
8 an inmate or parolee of either respective department, the
9 requirements of this subdivision shall be satisfied by disclosing
10 financial interests to either the Department of Corrections or the
11 California Youth Authority.

12 (g) A violation of subdivision (a) shall be a misdemeanor. In
13 the case of a licensee who is a physician, the Medical Board of
14 California shall review the facts and circumstances of any
15 conviction pursuant to subdivision (a) and take appropriate
16 disciplinary action if the licensee has committed unprofessional
17 conduct. In the case of a licensee who is a nurse practitioner
18 functioning pursuant to Section 2837, the Board of Registered
19 Nursing shall review the facts and circumstances of any conviction
20 pursuant to subdivision (a) and take appropriate disciplinary action
21 if the licensee has committed unprofessional conduct. Violations
22 of this section may also be subject to civil penalties of up to five
23 thousand dollars (\$5,000) for each offense, which may be enforced
24 by the Insurance Commissioner, Attorney General, or a district
25 attorney. A violation of subdivision (c), (d), or (e) is a public
26 offense and is punishable upon conviction by a fine not exceeding
27 fifteen thousand dollars (\$15,000) for each violation and
28 appropriate disciplinary action, including revocation of professional
29 licensure, by the Medical Board of California, the Board of
30 Registered Nursing, or other appropriate governmental agency.

31 (h) This section shall not apply to referrals for services that are
32 described in and covered by Sections 139.3 and 139.31 of the
33 Labor Code.

34 (i) This section shall become operative on January 1, 1995.

35 SEC. 3. Section 805 of the Business and Professions Code is
36 amended to read:

37 805. (a) As used in this section, the following terms have the
38 following definitions:

39 (1) (A) "Peer review" means both of the following:

- 1 (i) A process in which a peer review body reviews the basic
- 2 qualifications, staff privileges, employment, medical outcomes,
- 3 or professional conduct of licentiates to make recommendations
- 4 for quality improvement and education, if necessary, in order to
- 5 do either or both of the following:
- 6 (I) Determine whether a licentiate may practice or continue to
- 7 practice in a health care facility, clinic, or other setting providing
- 8 medical services, and, if so, to determine the parameters of that
- 9 practice.
- 10 (II) Assess and improve the quality of care rendered in a health
- 11 care facility, clinic, or other setting providing medical services.
- 12 (ii) Any other activities of a peer review body as specified in
- 13 subparagraph (B).
- 14 (B) “Peer review body” includes:
- 15 (i) A medical or professional staff of any health care facility or
- 16 clinic licensed under Division 2 (commencing with Section 1200)
- 17 of the Health and Safety Code or of a facility certified to participate
- 18 in the federal Medicare program as an ambulatory surgical center.
- 19 (ii) A health care service plan licensed under Chapter 2.2
- 20 (commencing with Section 1340) of Division 2 of the Health and
- 21 Safety Code or a disability insurer that contracts with licentiates
- 22 to provide services at alternative rates of payment pursuant to
- 23 Section 10133 of the Insurance Code.
- 24 (iii) Any medical, psychological, marriage and family therapy,
- 25 social work, professional clinical counselor, dental, or podiatric
- 26 professional society having as members at least 25 percent of the
- 27 eligible licentiates in the area in which it functions (which must
- 28 include at least one county), which is not organized for profit and
- 29 which has been determined to be exempt from taxes pursuant to
- 30 Section 23701 of the Revenue and Taxation Code.
- 31 (iv) A committee organized by any entity consisting of or
- 32 employing more than 25 licentiates of the same class that functions
- 33 for the purpose of reviewing the quality of professional care
- 34 provided by members or employees of that entity.
- 35 (2) “Licentiate” means a physician and surgeon, doctor of
- 36 podiatric medicine, clinical psychologist, marriage and family
- 37 therapist, clinical social worker, professional clinical counselor,
- 38 dentist, physician assistant, or nurse practitioner practicing pursuant
- 39 to Section 2837. “Licentiate” also includes a person authorized to
- 40 practice medicine pursuant to Section 2113 or 2168.

1 (3) “Agency” means the relevant state licensing agency having
2 regulatory jurisdiction over the licentiates listed in paragraph (2).

3 (4) “Staff privileges” means any arrangement under which a
4 licentiate is allowed to practice in or provide care for patients in
5 a health facility. Those arrangements shall include, but are not
6 limited to, full staff privileges, active staff privileges, limited staff
7 privileges, auxiliary staff privileges, provisional staff privileges,
8 temporary staff privileges, courtesy staff privileges, locum tenens
9 arrangements, and contractual arrangements to provide professional
10 services, including, but not limited to, arrangements to provide
11 outpatient services.

12 (5) “Denial or termination of staff privileges, membership, or
13 employment” includes failure or refusal to renew a contract or to
14 renew, extend, or reestablish any staff privileges, if the action is
15 based on medical disciplinary cause or reason.

16 (6) “Medical disciplinary cause or reason” means that aspect
17 of a licentiate’s competence or professional conduct that is
18 reasonably likely to be detrimental to patient safety or to the
19 delivery of patient care.

20 (7) “805 report” means the written report required under
21 subdivision (b).

22 (b) The chief of staff of a medical or professional staff or other
23 chief executive officer, medical director, or administrator of any
24 peer review body and the chief executive officer or administrator
25 of any licensed health care facility or clinic shall file an 805 report
26 with the relevant agency within 15 days after the effective date on
27 which any of the following occur as a result of an action of a peer
28 review body:

29 (1) A licentiate’s application for staff privileges or membership
30 is denied or rejected for a medical disciplinary cause or reason.

31 (2) A licentiate’s membership, staff privileges, or employment
32 is terminated or revoked for a medical disciplinary cause or reason.

33 (3) Restrictions are imposed, or voluntarily accepted, on staff
34 privileges, membership, or employment for a cumulative total of
35 30 days or more for any 12-month period, for a medical disciplinary
36 cause or reason.

37 (c) If a licentiate takes any action listed in paragraph (1), (2),
38 or (3) after receiving notice of a pending investigation initiated
39 for a medical disciplinary cause or reason or after receiving notice
40 that his or her application for membership or staff privileges is

1 denied or will be denied for a medical disciplinary cause or reason,
2 the chief of staff of a medical or professional staff or other chief
3 executive officer, medical director, or administrator of any peer
4 review body and the chief executive officer or administrator of
5 any licensed health care facility or clinic where the licentiate is
6 employed or has staff privileges or membership or where the
7 licentiate applied for staff privileges or membership, or sought the
8 renewal thereof, shall file an 805 report with the relevant agency
9 within 15 days after the licentiate takes the action.

10 (1) Resigns or takes a leave of absence from membership, staff
11 privileges, or employment.

12 (2) Withdraws or abandons his or her application for staff
13 privileges or membership.

14 (3) Withdraws or abandons his or her request for renewal of
15 staff privileges or membership.

16 (d) For purposes of filing an 805 report, the signature of at least
17 one of the individuals indicated in subdivision (b) or (c) on the
18 completed form shall constitute compliance with the requirement
19 to file the report.

20 (e) An 805 report shall also be filed within 15 days following
21 the imposition of summary suspension of staff privileges,
22 membership, or employment, if the summary suspension remains
23 in effect for a period in excess of 14 days.

24 (f) A copy of the 805 report, and a notice advising the licentiate
25 of his or her right to submit additional statements or other
26 information, electronically or otherwise, pursuant to Section 800,
27 shall be sent by the peer review body to the licentiate named in
28 the report. The notice shall also advise the licentiate that
29 information submitted electronically will be publicly disclosed to
30 those who request the information.

31 The information to be reported in an 805 report shall include the
32 name and license number of the licentiate involved, a description
33 of the facts and circumstances of the medical disciplinary cause
34 or reason, and any other relevant information deemed appropriate
35 by the reporter.

36 A supplemental report shall also be made within 30 days
37 following the date the licentiate is deemed to have satisfied any
38 terms, conditions, or sanctions imposed as disciplinary action by
39 the reporting peer review body. In performing its dissemination
40 functions required by Section 805.5, the agency shall include a

1 copy of a supplemental report, if any, whenever it furnishes a copy
2 of the original 805 report.

3 If another peer review body is required to file an 805 report, a
4 health care service plan is not required to file a separate report
5 with respect to action attributable to the same medical disciplinary
6 cause or reason. If the Medical Board of California, the Board of
7 Registered Nursing, or a licensing agency of another state revokes
8 or suspends, without a stay, the license of a physician and surgeon,
9 a peer review body is not required to file an 805 report when it
10 takes an action as a result of the revocation or suspension.

11 (g) The reporting required by this section shall not act as a
12 waiver of confidentiality of medical records and committee reports.
13 The information reported or disclosed shall be kept confidential
14 except as provided in subdivision (c) of Section 800 and Sections
15 803.1 and 2027, provided that a copy of the report containing the
16 information required by this section may be disclosed as required
17 by Section 805.5 with respect to reports received on or after
18 January 1, 1976.

19 (h) The Medical Board of California, the Osteopathic Medical
20 Board of California, the Board of Registered Nursing, and the
21 Dental Board of California shall disclose reports as required by
22 Section 805.5.

23 (i) An 805 report shall be maintained electronically by an agency
24 for dissemination purposes for a period of three years after receipt.

25 (j) No person shall incur any civil or criminal liability as the
26 result of making any report required by this section.

27 (k) A willful failure to file an 805 report by any person who is
28 designated or otherwise required by law to file an 805 report is
29 punishable by a fine not to exceed one hundred thousand dollars
30 (\$100,000) per violation. The fine may be imposed in any civil or
31 administrative action or proceeding brought by or on behalf of any
32 agency having regulatory jurisdiction over the person regarding
33 whom the report was or should have been filed. If the person who
34 is designated or otherwise required to file an 805 report is a
35 licensed physician and surgeon, the action or proceeding shall be
36 brought by the Medical Board of California. The fine shall be paid
37 to that agency but not expended until appropriated by the
38 Legislature. A violation of this subdivision may constitute
39 unprofessional conduct by the licentiate. A person who is alleged
40 to have violated this subdivision may assert any defense available

1 at law. As used in this subdivision, “willful” means a voluntary
2 and intentional violation of a known legal duty.

3 (l) Except as otherwise provided in subdivision (k), any failure
4 by the administrator of any peer review body, the chief executive
5 officer or administrator of any health care facility, or any person
6 who is designated or otherwise required by law to file an 805
7 report, shall be punishable by a fine that under no circumstances
8 shall exceed fifty thousand dollars (\$50,000) per violation. The
9 fine may be imposed in any civil or administrative action or
10 proceeding brought by or on behalf of any agency having
11 regulatory jurisdiction over the person regarding whom the report
12 was or should have been filed. If the person who is designated or
13 otherwise required to file an 805 report is a licensed physician and
14 surgeon, the action or proceeding shall be brought by the Medical
15 Board of California. The fine shall be paid to that agency but not
16 expended until appropriated by the Legislature. The amount of the
17 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
18 violation, shall be proportional to the severity of the failure to
19 report and shall differ based upon written findings, including
20 whether the failure to file caused harm to a patient or created a
21 risk to patient safety; whether the administrator of any peer review
22 body, the chief executive officer or administrator of any health
23 care facility, or any person who is designated or otherwise required
24 by law to file an 805 report exercised due diligence despite the
25 failure to file or whether they knew or should have known that an
26 805 report would not be filed; and whether there has been a prior
27 failure to file an 805 report. The amount of the fine imposed may
28 also differ based on whether a health care facility is a small or
29 rural hospital as defined in Section 124840 of the Health and Safety
30 Code.

31 (m) A health care service plan licensed under Chapter 2.2
32 (commencing with Section 1340) of Division 2 of the Health and
33 Safety Code or a disability insurer that negotiates and enters into
34 a contract with licentiates to provide services at alternative rates
35 of payment pursuant to Section 10133 of the Insurance Code, when
36 determining participation with the plan or insurer, shall evaluate,
37 on a case-by-case basis, licentiates who are the subject of an 805
38 report, and not automatically exclude or deselect these licentiates.

39 SEC. 4. Section 2837 of the Business and Professions Code is
40 amended and renumbered to read:

1 2837.5. Nothing in this article shall be construed to limit the
2 current scope of practice of a registered nurse authorized pursuant
3 to this chapter.

4 SEC. 5. Section 2837 is added to the Business and Professions
5 Code, to read:

6 2837. (a) Notwithstanding any other law, a nurse practitioner
7 who holds a national certification from a national certifying body
8 recognized by the board may practice under this section without
9 supervision of a physician and surgeon, if the nurse practitioner
10 meets all the requirements of this article and practices in one of
11 the following:

12 (1) A clinic as described in Chapter 1 (commencing with Section
13 1200) of Division 2 of the Health and Safety Code.

14 (2) A facility as described in Chapter 2 (commencing with
15 Section 1250) of Division 2 of the Health and Safety Code.

16 (3) A facility as described in Chapter 2.5 (commencing with
17 Section 1440) of Division 2 of the Health and Safety Code.

18 (4) An accountable care organization, as defined in Section
19 3022 of the federal Patient Protection and Affordable Care Act
20 (Public Law 111-148).

21 (5) A group practice, including a professional medical
22 corporation, as defined in Section 2406, another form of
23 corporation controlled by physicians and surgeons, a medical
24 partnership, a medical foundation exempt from licensure, or another
25 lawfully organized group of physicians that delivers, furnishes, or
26 otherwise arranges for or provides health care services.

27 (6) A medical group, independent practice association, or any
28 similar association.

29 (b) An entity described in subdivision (a) shall not interfere
30 with, control, or otherwise direct the professional judgment of a
31 nurse practitioner functioning pursuant to this section in a manner
32 prohibited by Section 2400 or any other law.

33 (c) Notwithstanding any other law, in addition to any other
34 practice authorized in statute or regulation, a nurse practitioner
35 who meets the qualifications of subdivision (a) may do any of the
36 following without physician and surgeon supervision:

37 (1) Order durable medical equipment. Notwithstanding that
38 authority, this paragraph shall not operate to limit the ability of a
39 third-party payer to require prior approval.

- 1 (2) After performance of a physical examination by the nurse
2 practitioner and collaboration, if necessary, with a physician and
3 surgeon, certify disability pursuant to Section 2708 of the
4 Unemployment Insurance Code.
- 5 (3) For individuals receiving home health services or personal
6 care services, after consultation, if necessary, with the treating
7 physician and surgeon, approve, sign, modify, or add to a plan of
8 treatment or plan of care.
- 9 (4) Assess patients, synthesize and analyze data, and apply
10 principles of health care.
- 11 (5) Manage the physical and psychosocial health status of
12 patients.
- 13 (6) Analyze multiple sources of data, identify a differential
14 diagnosis, and select, implement, and evaluate appropriate
15 treatment.
- 16 (7) Establish a diagnosis by client history, physical examination,
17 and other criteria, consistent with this section, for a plan of care.
- 18 (8) Order, furnish, prescribe, or procure drugs or devices.
- 19 (9) Delegate tasks to a medical assistant pursuant to Sections
20 1206.5, 2069, 2070, and 2071, and Article 2 of Chapter 3 of
21 Division 13 of Title 16 of the California Code of Regulations.
- 22 (10) Order hospice care, as appropriate.
- 23 (11) Order diagnostic procedures and utilize the findings or
24 results in treating the patient.
- 25 (12) Perform additional acts that require education and training
26 and that are recognized by the nursing profession as appropriate
27 to be performed by a nurse practitioner.
- 28 (d) A nurse practitioner shall refer a patient to a physician and
29 surgeon or other licensed health care provider if a situation or
30 condition of the patient is beyond the scope of the education and
31 training of the nurse practitioner.
- 32 (e) A nurse practitioner practicing under this section shall
33 maintain professional liability insurance appropriate for the practice
34 setting.
- 35 SEC. 6. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

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

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AMENDED IN SENATE APRIL 30, 2015

AMENDED IN SENATE APRIL 16, 2015

SENATE BILL

No. 482

Introduced by Senator Lara

February 26, 2015

An act to add Section 11165.4 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as amended, Lara. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires dispensing pharmacies and clinics to report specified information for each prescription of a Schedule II, Schedule III, or Schedule IV controlled substance to the department.

This bill would require all prescribers, as defined, prescribing a Schedule II or Schedule III controlled substance, ~~and all dispensers, as defined, dispensing a Schedule II or Schedule III controlled substance,~~ to consult a patient's electronic history in the CURES database before ~~prescribing or dispensing~~ the controlled substance to the patient for the first time. The bill would also require the prescriber to consult the CURES database at least annually when the prescribed controlled substance remains part of the patient's treatment. The bill would prohibit prescribing an additional Schedule II or Schedule III controlled

substance to a patient with an existing prescription until the prescriber determines that there is a legitimate need for the controlled substance.

The bill would make the failure to consult a patient’s electronic history in the CURES database a cause for disciplinary action by the prescriber’s or dispenser’s licensing board and would require the respective licensing boards *licensing boards* to notify all ~~licensees~~ *prescribers* authorized to prescribe or dispense controlled substances of these requirements. The bill would provide that a prescriber or dispenser is not in violation of these requirements during any time that the CURES database is suspended or not accessible, or during any time that the Internet is not operational. The bill would make its provisions operative upon the Department of Justice’s certification that the CURES database is ready for statewide use.

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 11165.4 is added to the Health and Safety
- 2 Code, to read:
- 3 11165.4. (a) A prescriber shall access and consult the CURES
- 4 database for the electronic history of controlled substances
- 5 dispensed to a patient under his or her care before prescribing a
- 6 Schedule II or Schedule III controlled substance for the first time
- 7 to that patient and at least annually when that prescribed controlled
- 8 substance remains part of his or her treatment. If the patient has
- 9 an existing prescription for a Schedule II or Schedule III controlled
- 10 substance, the prescriber shall not prescribe an additional controlled
- 11 substance until the prescriber determines that there is a legitimate
- 12 need for that controlled substance.
- 13 ~~(b) A dispenser shall access and consult the CURES database~~
- 14 ~~for the electronic history of controlled substances dispensed to a~~
- 15 ~~patient under his or her care before dispensing a Schedule II or~~
- 16 ~~Schedule III controlled substance for the first time to that patient.~~
- 17 ~~If the patient has an existing prescription for a Schedule II or~~
- 18 ~~Schedule III controlled substance, the dispenser shall not dispense~~
- 19 ~~an additional controlled substance until the dispenser checks the~~
- 20 ~~CURES database.~~
- 21 (e)

1 (b) Failure to consult a patient’s electronic history as required
2 by subdivision (a) ~~or (b)~~ is cause for disciplinary action by the
3 ~~respective licensing board of the prescriber or dispenser~~
4 *prescriber’s licensing board*. The licensing boards of all prescribers
5 ~~and dispensers~~ authorized to write or issue prescriptions for
6 controlled substances shall notify these licensees of the
7 requirements of this section.

8 ~~(d)~~

9 (c) Notwithstanding any other law, a prescriber ~~or dispenser~~ is
10 not in violation of this section during any period of time in which
11 the CURES database is suspended or not accessible or any period
12 of time in which the Internet is not operational.

13 ~~(e)~~

14 (d) This section shall not become operative until the Department
15 of Justice certifies that the CURES database is ready for statewide
16 use.

17 ~~(f)~~

18 (e) For purposes of this section, ~~the following terms shall have~~
19 ~~the following meanings:~~ “*prescriber*” means a health care
20 practitioner who is authorized to write or issue prescriptions under
21 Section 11150, excluding veterinarians.

22 (1) “Dispenser” means a person who is authorized to dispense
23 a controlled substance under Section 11011.

24 (2) “Prescriber” means ~~a health care practitioner who is~~
25 ~~authorized to write or issue prescriptions under Section 11150,~~
26 ~~excluding veterinarians.~~

27 ~~(g)~~

28 (f) A violation of this section shall not be subject to the
29 provisions of Section 11374.

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE APRIL 16, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 538

Introduced by Senator Block
(Coauthor: Senator Hueso)
(Coauthor: Assembly Member Nazarian)

February 26, 2015

An act to amend Sections 3640 and 3640.5 of the Business and Professions Code, relating to naturopathic doctors.

LEGISLATIVE COUNSEL'S DIGEST

SB 538, as amended, Block. Naturopathic doctors.

(1) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee in the Osteopathic Medical Board of California. Existing law authorizes a naturopathic doctor to perform certain tasks, including physical and laboratory examinations for diagnostic purposes and to order diagnostic imaging studies, consistent with naturopathic training as determined by the committee. Under the act, a naturopathic doctor is authorized to dispense, administer, order, prescribe, furnish, or perform certain things, including health education and health counseling.

This bill would, instead, authorize a naturopathic doctor to perform certain tasks, consistent with the practice of naturopathic medicine, and would additionally authorize a naturopathic doctor to dispense, administer, order, prescribe, provide, or ~~furnish~~, *furnish* devices and

durable medical equipment consistent with the naturopathic training as determined by the committee.

(2) Existing law, the California Uniform Controlled Substances Act, classifies controlled substances into 5 designated schedules, with the most restrictive limitations generally placed on controlled substances classified in Schedule I, and the least restrictive limitation generally placed on controlled substances classified in Schedule V.

Existing law states that nothing in the Naturopathic Doctors Act or any other law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when, among other requirements, the naturopathic doctor is functioning pursuant to standardized procedure, as defined, or protocol developed and approved, as specified, and the Naturopathic Medicine Committee has certified that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be furnished or ordered. Existing law requires that the furnishing or ordering of drugs by a naturopathic doctor occur under the supervision of a physician and surgeon. Existing law also authorizes a naturopathic doctor to furnish or order controlled substances classified in Schedule III, IV, or V of the California Uniform Controlled Substances Act, but limits this authorization to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. Existing law further requires that drugs classified in Schedule III be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician.

This bill would instead provide that, except as specified, nothing in the provisions governing naturopathic doctors or any other law shall be construed to prohibit a naturopathic doctor from administering, furnishing, ordering, or prescribing drugs and would make a conforming change to the scope of the certification duties of the Naturopathic Medicine Committee. The bill would delete certain provisions described above restricting the authority of naturopathic doctors to furnish or order drugs, including the requirements that the naturopathic doctor function pursuant to a standardized procedure, or furnish or order drugs under the supervision of a physician and surgeon for Schedule V controlled substances and for any drug approved by the federal Food and Drug Administration and labeled “for prescription only,” except chemotherapeutics, that is not classified.

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 3640 of the Business and Professions
2 Code is amended to read:

3 3640. (a) A naturopathic doctor may order and perform
4 physical and laboratory examinations for diagnostic purposes,
5 including, but not limited to, phlebotomy, clinical laboratory tests,
6 speculum examinations, orificial examinations, and physiological
7 function tests.

8 (b) A naturopathic doctor may order diagnostic imaging studies,
9 including X-ray, ultrasound, mammogram, bone densitometry,
10 and others, consistent with the practice of naturopathic medicine,
11 but shall refer the studies to an appropriately licensed health care
12 professional to conduct the study and interpret the results.

13 (c) A naturopathic doctor may dispense, administer, order,
14 prescribe, provide, furnish, or perform the following:

15 (1) Food, extracts of food, nutraceuticals, vitamins, amino acids,
16 minerals, enzymes, botanicals and their extracts, botanical
17 medicines, homeopathic medicines, all dietary supplements and
18 nonprescription drugs as defined by the Federal Food, Drug, and
19 Cosmetic Act, consistent with the routes of administration
20 identified in subdivision (d).

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

26 (3) Devices, including, but not limited to, therapeutic devices,
27 barrier contraception, and durable medical equipment consistent
28 with the naturopathic training as determined by the committee.

29 (4) Health education and health counseling.

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

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

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

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

4 (f) ~~Nothing in this~~ This section shall *not* exempt a naturopathic
5 doctor from meeting applicable licensure requirements for the
6 performance of clinical laboratory tests, including the requirements
7 imposed under Chapter 3 (commencing with Section 1200).

8 SEC. 2. Section 3640.5 of the Business and Professions Code
9 is amended to read:

10 3640.5. (a) Except as set forth in this section, nothing in this
11 chapter or any other provision of law shall be construed to prohibit
12 a naturopathic doctor from administering, furnishing, ordering, or
13 prescribing drugs when functioning pursuant to this section.

14 (b) Schedule III and Schedule IV controlled substances under
15 the California Uniform Controlled Substances Act (Division 10
16 (commencing with Section 11000) of the Health and Safety Code)
17 shall be administered, furnished, ordered, and prescribed by a
18 naturopathic doctor in accordance with standardized procedures
19 or protocols developed by the naturopathic doctor and his or her
20 supervising physician and surgeon.

21 (c) The naturopathic doctor shall function pursuant to a
22 standardized procedure, as defined by paragraphs (1) and (2) of
23 subdivision (c) of Section 2725, or protocol. The standardized
24 procedure or protocol shall be developed and approved by the
25 supervising physician and surgeon, the naturopathic doctor, and,
26 where applicable, the facility administrator or his or her designee.

27 (d) The standardized procedure or protocol covering the
28 administering, furnishing, ordering, or prescribing of Schedule III
29 and Schedule IV drugs shall specify which naturopathic doctors
30 may administer, furnish, order, or prescribe Schedule III and
31 Schedule IV drugs, which Schedule III through Schedule IV drugs
32 may be administered, furnished, ordered, or prescribed and under
33 what circumstances, the extent of physician and surgeon
34 supervision, the method of periodic review of the naturopathic
35 doctor’s competence, including peer review, which shall be subject
36 to the reporting requirement in Section 805, and review of the
37 provisions of the standardized procedure.

38 (e) The administering, furnishing, ordering, or prescribing of
39 Schedule III and Schedule IV drugs by a naturopathic doctor shall
40 occur under physician and surgeon supervision. Physician and

1 surgeon supervision shall not be construed to require the physical
2 presence of the physician, but does include all of the following:

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

5 (2) Approval of the standardized procedure.

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

8 (f) When Schedule III controlled substances, as defined in
9 Section 11056 of the Health and Safety Code, are administered,
10 furnished, ordered, or prescribed by a naturopathic doctor, the
11 controlled substances shall be administered, furnished, ordered,
12 or prescribed in accordance with a patient-specific protocol
13 approved by the treating or supervising physician. A copy of the
14 section of the naturopathic doctor's standardized procedure or
15 protocol relating to controlled substances shall be provided, upon
16 request, to a licensed pharmacist who dispenses drugs when there
17 is uncertainty about the naturopathic doctor furnishing the order.

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

20 (h) Notwithstanding subdivision (c), drugs administered,
21 furnished, ordered, or prescribed by a naturopathic doctor without
22 the supervision of a physician and surgeon shall include Schedule
23 V controlled substances under the California Uniform Controlled
24 Substances Act (Division 10 (commencing with Section 11000)
25 of the Health and Safety Code) and any drug approved by the
26 federal Food and Drug Administration and labeled "for prescription
27 only" or words of similar import, except chemotherapeutics, that
28 is not classified.

29 (i) The committee shall certify that the naturopathic doctor has
30 satisfactorily completed adequate coursework in pharmacology
31 covering the drugs to be administered, furnished, ordered, or
32 prescribed under this section. The committee shall establish the
33 requirements for satisfactory completion of this subdivision.

34 (j) Use of the term "furnishing" in this section, in health facilities
35 defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of
36 the Health and Safety Code, shall include both of the following
37 for Schedule III through Schedule IV controlled substances.

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

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

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

8 (l) Notwithstanding any other law, all of the following shall
9 apply:

10 (1) A Schedule III through Schedule IV drug order issued
11 pursuant to this section shall be treated in the same manner as a
12 prescription of the supervising physician.

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

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

AMENDED IN SENATE MAY 4, 2015
AMENDED IN SENATE APRIL 9, 2015

SENATE BILL

No. 622

Introduced by Senator Hernandez

February 27, 2015

An act to amend ~~Section~~ *Sections 3041 and 3110* of, to add Sections 3041.4, 3041.5, 3041.6, 3041.7, and 3041.8 to, and to repeal and add Sections 3041.1, 3041.2, and 3041.3 of, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as amended, Hernandez. Optometry.

The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and defines the practice of optometry to include, among other things, the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and doing certain things, including, but not limited to, the examination of the human eyes, the determination of the powers or range of human vision, and the prescribing of contact and spectacle lenses. Existing law authorizes an optometrist certified to use therapeutic pharmaceutical agents to diagnose and treat specified conditions, use specified pharmaceutical agents, and order specified diagnostic tests. The act requires optometrists treating or diagnosing eye disease, as specified, to be held to the same standard of care to which physicians and surgeons and osteopathic physician and surgeons are held. *The act requires an optometrist, in certain circumstances, to refer a patient to an ophthalmologist or a physician and surgeon,*

including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis. The act makes a violation of any of its provisions a crime. All moneys collected pursuant to the act, except where otherwise provided, are deposited in the Optometry Fund and continuously appropriated to the board to carry out the act.

This bill would revise and recast those provisions. *The bill would delete certain requirements that an optometrist refer a patient to an ophthalmologist or a physician and surgeon, including when a patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved within 48 hours of the diagnosis.* The bill would additionally define the practice of optometry as the provision of habilitative optometric services, and would authorize the board to allow optometrists to use nonsurgical technology to treat any authorized condition under the act. The bill would *additionally* authorize an optometrist *certified* to use ~~diagnostic therapeutic pharmaceutical agents, as specified, including, but not limited to, oral and topical diagnostic pharmaceutical agents that are not controlled substances.~~ *agents to collect a blood specimen by finger prick method, to perform skin tests, as specified, to diagnose ocular allergies, and to use mechanical lipid extraction of meibomian glands and nonsurgical techniques.* The bill would ~~authorize an optometrist to independently initiate and administer vaccines, as specified, for a person 3 years of age and older, if the optometrist meets certain requirements, including, but not limited to, require the board to grant an optometrist certified to treat glaucoma a certificate for the use of specified immunizations if certain conditions are met, including, among others, that he or she the optometrist is certified in basic life support for health care professionals.~~ *support.* The bill would additionally authorize an optometrist certified to use therapeutic pharmaceutical agents to, among other things, be certified to use anterior segment lasers, as specified, and to be certified to perform specified minor procedures, as specified, if certain requirements are met.

The bill would require the board to charge a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use anterior segment ~~lasers.~~ *lasers, a fee of not more than \$150 to cover the reasonable regulatory cost of certifying an optometrist to use minor procedures, and a fee of not more than \$100 to cover the reasonable regulatory cost of certifying an optometrist to use*

immunizations. Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.

Existing law establishes the Office of Statewide Health Planning and Development, which is vested with all the duties, powers, responsibilities, and jurisdiction of the State Department of Public Health relating to health planning and research development.

This bill would declare the intent of the Legislature that the Office of Statewide Health Planning designate a pilot project to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes mellitus, hypertension, and hypercholesterolemia.

Because a violation of the act is a crime, this bill would expand the scope of an existing crime and would, therefore, result in 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: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 3041 of the Business and Professions
2 Code is amended to read:

3 3041. (a) The practice of optometry includes the prevention
4 and diagnosis of disorders and dysfunctions of the visual system,
5 and the treatment and management of certain disorders and
6 dysfunctions of the visual system, as well as the provision of
7 habilitative or rehabilitative optometric services, and is the doing
8 of any or all of the following:

9 (1) The examination of the human eye or eyes, or its or their
10 appendages, and the analysis of the human vision system, either
11 subjectively or objectively.

12 (2) The determination of the powers or range of human vision
13 and the accommodative and refractive states of the human eye or
14 eyes, including the scope of its or their functions and general
15 condition.

1 (3) The prescribing or directing the use of, or using, any optical
2 device in connection with ocular exercises, visual training, vision
3 training, or orthoptics.

4 (4) The prescribing of contact and spectacle lenses for, or the
5 fitting or adaptation of contact and spectacle lenses to, the human
6 eye, including lenses that may be classified as drugs or devices by
7 any law of the United States or of this state.

8 (5) The use of topical pharmaceutical agents for the purpose of
9 the examination of the human eye or eyes for any disease or
10 pathological condition.

11 (b) The State Board of Optometry shall, by regulation, establish
12 educational and examination requirements for licensure to ensure
13 the competence of optometrists to practice pursuant to this ~~chapter.~~
14 *chapter, except as specified in Section 3041.3 related to the use*
15 *of anterior segment lasers and in Section 3041.4 related to minor*
16 *procedures.* Satisfactory completion of the required educational
17 and examination requirements shall be a condition for the issuance
18 of an original optometrist license or required certifications pursuant
19 to this chapter.

20 (c) The board may ~~authorize~~ *promulgate regulations authorizing*
21 *optometrists to use noninvasive, nonsurgical technology to treat a*
22 *condition authorized by this chapter. The board shall require a*
23 *licensee to take a minimum of four hours of education courses on*
24 *the new technology and perform an appropriate number of*
25 *complete clinical procedures on live human patients to qualify to*
26 *use each new technology authorized by the board pursuant to this*
27 *subdivision.*

28 SEC. 2. Section 3041.1 of the Business and Professions Code
29 is repealed.

30 SEC. 3. Section 3041.1 is added to the Business and Professions
31 Code, to read:

32 3041.1. (a) (1) An optometrist who is certified to use
33 therapeutic pharmaceutical agents pursuant to this section may
34 also diagnose and treat the human eye or eyes, or any of its or their
35 appendages, for all of the following conditions:

36 (A) Through medical treatment, infections of the anterior
37 segment and adnexa.

38 (B) Ocular allergies of the anterior segment and adnexa.

39 ~~(C) Ocular inflammation that is nonsurgical in cause, except~~
40 ~~when comanaged with the treating physician and surgeon.~~

1 (C) Ocular inflammation, nonsurgical in cause except when
2 comanaged with the treating physician and surgeon, limited to
3 inflammation resulting from traumatic iritis, peripheral corneal
4 inflammatory keratitis, episcleritis, and unilateral nonrecurrent
5 nongranulomatous idiopathic iritis in patients over 18 years of
6 age.

7 (D) Traumatic or recurrent conjunctival or corneal abrasions
8 and erosions.

9 (E) Corneal and conjunctival surface disease and dry eyes
10 disease.

11 (F) Ocular pain that is nonsurgical in cause, except when
12 comanaged with the treating physician and surgeon.

13 (G) ~~Eyelid disorders, including, but not limited to, hypotrichosis~~
14 ~~and blepharitis. Hypotrichosis and blepharitis.~~

15 (2) For purposes of this section, “treat” means the use of
16 therapeutic pharmaceutical agents, as described in subdivision (b),
17 and the procedures described in subdivision (c).

18 (3) For purposes of this chapter, “adnexa” means ocular adnexa.

19 (b) In diagnosing and treating the conditions listed in subdivision
20 (a), an optometrist certified to use therapeutic pharmaceutical
21 agents pursuant to this section may use all of the following
22 ~~diagnostic and therapeutic pharmaceutical agents:~~

23 ~~(1) Oral and topical diagnostic and therapeutic pharmaceutical~~
24 ~~agents that are not controlled substances. The use of pharmaceutical~~
25 ~~agents shall be limited to the use for which the drug has been~~
26 ~~approved for marketing by the federal Food and Drug~~
27 ~~Administration (FDA).~~

28 ~~(2) Notwithstanding paragraph (1), an optometrist certified to~~
29 ~~use therapeutic pharmaceutical agents may use a drug in a way for~~
30 ~~which the drug has not been approved for marketing by the FDA~~
31 ~~if all of the following requirements are met:~~

32 ~~(A) The drug is approved by the FDA.~~

33 ~~(B) The drug has been recognized for treatment of the condition~~
34 ~~by either of the following:~~

35 ~~(i) The American Hospital Formulary Service’s Drug~~
36 ~~Information.~~

37 ~~(ii) Two articles from major peer-reviewed medical journals~~
38 ~~that present data supporting the proposed off-label use or uses as~~
39 ~~generally safe and effective, unless there is clear and convincing~~

1 ~~contradictory evidence presented in a major peer reviewed medical~~
2 ~~journal.~~

3 ~~(3) Notwithstanding paragraph (1), codeine with compounds~~
4 ~~and hydrocodone with compounds as listed in the California~~
5 ~~Uniform Controlled Substances Act (Division 10 (commencing~~
6 ~~with Section 11000) of the Health and Safety Code) and the federal~~
7 ~~Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) may be~~
8 ~~used. The use of these controlled substances shall be limited to~~
9 ~~five days.~~

10 *(1) Topical pharmaceutical agents for the purpose of the*
11 *examination of the human eye or eyes for any disease or*
12 *pathological condition, including, but not limited to, topical*
13 *miotics.*

14 *(2) Topical lubricants.*

15 *(3) Antiallergy agents. In using topical steroid medication for*
16 *the treatment of ocular allergies, an optometrist shall consult with*
17 *an ophthalmologist if the patient's condition worsens 21 days after*
18 *diagnosis.*

19 *(4) Topical and oral anti-inflammatories.*

20 *(5) Topical antibiotic agents.*

21 *(6) Topical hyperosmotics.*

22 *(7) Topical and oral antiglaucoma agents pursuant to the*
23 *certification process defined in Section 3041.2.*

24 *(8) Nonprescription medications used for the rational treatment*
25 *of an ocular disorder.*

26 *(9) Oral antihistamines.*

27 *(10) Prescription oral nonsteroidal anti-inflammatory agents.*

28 *(11) Oral antibiotics for medical treatment of ocular disease.*

29 *(12) Topical and oral antiviral medication for the medical*
30 *treatment of herpes simplex viral keratitis, herpes simplex viral*
31 *conjunctivitis, periocular herpes simplex viral dermatitis, varicella*
32 *zoster viral keratitis, varicella zoster viral conjunctivitis, and*
33 *periocular varicella zoster viral dermatitis.*

34 *(13) Oral analgesics that are not controlled substances.*

35 *(14) Codeine with compounds and hydrocodone with compounds*
36 *as listed in the California Uniform Controlled Substances Act*
37 *(Division 10 (commencing with Section 11000) of the Health and*
38 *Safety Code) and the United States Uniform Controlled Substances*
39 *Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be*

1 *limited to five days, with a referral to an ophthalmologist if the*
2 *pain persists.*

3 (c) An optometrist who is certified to use therapeutic
4 pharmaceutical agents pursuant to this section may also perform
5 all of the following:

6 (1) Corneal scraping with cultures.

7 (2) Debridement of corneal epithelia.

8 (3) Mechanical epilation.

9 (4) Collection of a blood specimen by finger prick method or
10 venipuncture for testing patients suspected of having diabetes.

11 (5) Suture removal, with prior consultation with the treating
12 health care provider.

13 (6) Treatment or removal of sebaceous cysts by expression.

14 (7) Administration of oral fluorescein to patients suspected as
15 having diabetic retinopathy.

16 (8) Use of an auto-injector to counter anaphylaxis.

17 ~~(9) Ordering of clinical laboratory and imaging tests related to~~
18 ~~the practice of optometry.~~

19 ~~(10) A clinical laboratory test or examination classified as~~
20 ~~waived under CLIA and related to the practice of optometry.~~

21 (9) *Ordering of smears, cultures, sensitivities, complete blood*
22 *count, mycobacterial culture, acid fast stain, urinalysis, tear fluid*
23 *analysis, and X-rays necessary for the diagnosis of conditions or*
24 *diseases of the eye or adnexa. An optometrist may order other*
25 *types of images subject to prior consultation with the appropriate*
26 *physician and surgeon.*

27 (10) *A clinical laboratory test or examination classified as*
28 *waived under the Clinical Laboratory Improvement Amendments*
29 *of 1988 (CLIA)(42 U.S.C. Sec. 263a; Public Law 100-578) or any*
30 *regulations adopted pursuant to CLIA, and that are necessary for*
31 *the diagnosis of conditions and diseases of the eye or adnexa, or*
32 *if otherwise specifically authorized by this chapter.*

33 (11) Skin test to diagnose ocular allergies. Skin tests shall be
34 limited to the superficial layer of the skin.

35 (12) Punctal occlusion by plugs, excluding laser, diathermy,
36 cryotherapy, or other means constituting surgery as defined in this
37 chapter.

38 (13) The prescription of therapeutic contact lenses, diagnostic
39 contact lenses, or biological or technological corneal devices.

1 *devices that diagnose or treat a condition authorized under this*
2 *chapter.*

3 (14) Removal of foreign bodies from the cornea, eyelid, and
4 conjunctiva with any appropriate instrument other than a ~~scalpel~~
5 ~~or needle~~. *scalpel*. Corneal foreign bodies shall be nonperforating,
6 be no deeper than the midstroma, and require no surgical repair
7 upon removal.

8 (15) For patients over 12 years of age, lacrimal irrigation and
9 dilation, excluding probing of the nasal lacrimal tract. The board
10 shall certify any optometrist who graduated from an accredited
11 school of optometry before May 1, 2000, to perform this procedure
12 after submitting proof of satisfactory completion and confirmation
13 of 10 procedures under the supervision of an ophthalmologist or
14 optometrist who is certified in lacrimal irrigation and dilation. Any
15 optometrist who graduated from an accredited school of optometry
16 on or after May 1, 2000, shall be exempt from the certification
17 requirement contained in this paragraph.

18 (16) Use of mechanical lipid extraction of meibomian glands
19 and nonsurgical techniques.

20 ~~(17) Notwithstanding subdivision (b), administration of~~
21 ~~injections for the diagnoses or treatment of conditions of the eye~~
22 ~~and adnexa, excluding intraorbital injections and injections~~
23 ~~administered for cosmetic effect, provided that the optometrist has~~
24 ~~satisfactorily received four hours of continuing education on~~
25 ~~performing all injections authorized by this paragraph.~~

26 (d) In order to be certified to use therapeutic pharmaceutical
27 agents and authorized to diagnose and treat the conditions listed
28 in this section, an optometrist shall apply for a certificate from the
29 board and meet all requirements imposed by the board.

30 (e) The board shall grant a certificate to use therapeutic
31 pharmaceutical agents to any applicant who graduated from a
32 California accredited school of optometry prior to January 1, 1996,
33 is licensed as an optometrist in California, and meets all of the
34 following requirements:

35 (1) Satisfactorily completes a didactic course of no less than 80
36 classroom hours in the diagnosis, pharmacological, and other
37 treatment and management of ocular disease provided by either
38 an accredited school of optometry in California or a recognized
39 residency review committee in ophthalmology in California.

1 (2) Completes a preceptorship of no less than 65 hours, during
2 a period of not less than two months nor more than one year, in
3 either an ophthalmologist's office or an optometric clinic. The
4 training received during the preceptorship shall be on the diagnosis,
5 treatment, and management of ocular, systemic disease. The
6 preceptor shall certify completion of the preceptorship.
7 Authorization for the ophthalmologist to serve as a preceptor shall
8 be provided by an accredited school of optometry in California,
9 or by a recognized residency review committee in ophthalmology,
10 and the preceptor shall be licensed as an ophthalmologist in
11 California, board certified in ophthalmology, and in good standing
12 with the Medical Board of California. The individual serving as
13 the preceptor shall schedule no more than three optometrist
14 applicants for each of the required 65 hours of the preceptorship
15 program. This paragraph shall not be construed to limit the total
16 number of optometrist applicants for whom an individual may
17 serve as a preceptor, and is intended only to ensure the quality of
18 the preceptorship by requiring that the ophthalmologist preceptor
19 schedule the training so that each applicant optometrist completes
20 each of the 65 hours of the preceptorship while scheduled with no
21 more than two other optometrist applicants.

22 (3) Successfully completes a minimum of 20 hours of
23 self-directed education.

24 (4) Passes the National Board of Examiners in Optometry's
25 "Treatment and Management of Ocular Disease" examination or,
26 in the event this examination is no longer offered, its equivalent,
27 as determined by the State Board of Optometry.

28 (5) Passes the examination issued upon completion of the
29 80-hour didactic course required under paragraph (1) and provided
30 by the accredited school of optometry or residency program in
31 ophthalmology.

32 (6) When any or all of the requirements contained in paragraph
33 (1), (4), or (5) have been satisfied on or after July 1, 1992, and
34 before January 1, 1996, an optometrist shall not be required to
35 fulfill the satisfied requirements in order to obtain certification to
36 use therapeutic pharmaceutical agents. In order for this paragraph
37 to apply to the requirement contained in paragraph (5), the didactic
38 examination that the applicant successfully completed shall meet
39 equivalency standards, as determined by the board.

1 (7) Any optometrist who graduated from an accredited school
2 of optometry on or after January 1, 1992, and before January 1,
3 1996, shall not be required to fulfill the requirements contained in
4 paragraphs (1), (4), and (5).

5 (f) The board shall grant a certificate to use therapeutic
6 pharmaceutical agents to any applicant who graduated from a
7 California accredited school of optometry on or after January 1,
8 1996, who is licensed as an optometrist in California, and who
9 meets all of the following requirements:

10 (1) Passes the National Board of Examiners in Optometry's
11 national board examination, or its equivalent, as determined by
12 the State Board of Optometry.

13 (2) Of the total clinical training required by a school of
14 optometry's curriculum, successfully completed at least 65 of those
15 hours on the diagnosis, treatment, and management of ocular,
16 systemic disease.

17 (3) Is certified by an accredited school of optometry as
18 competent in the diagnosis, treatment, and management of ocular,
19 systemic disease to the extent authorized by this section.

20 (4) Is certified by an accredited school of optometry as having
21 completed at least 10 hours of experience with a board-certified
22 ophthalmologist.

23 (g) The board shall grant a certificate to use therapeutic
24 pharmaceutical agents to any applicant who is an optometrist who
25 obtained his or her license outside of California if he or she meets
26 all of the requirements for an optometrist licensed in California to
27 be certified to use therapeutic pharmaceutical agents.

28 (1) In order to obtain a certificate to use therapeutic
29 pharmaceutical agents, any optometrist who obtained his or her
30 license outside of California and graduated from an accredited
31 school of optometry prior to January 1, 1996, shall be required to
32 fulfill the requirements set forth in subdivision (e). In order for the
33 applicant to be eligible for the certificate to use therapeutic
34 pharmaceutical agents, the education he or she received at the
35 accredited out-of-state school of optometry shall be equivalent to
36 the education provided by any accredited school of optometry in
37 California for persons who graduated before January 1, 1996. For
38 those out-of-state applicants who request that any of the
39 requirements contained in subdivision (e) be waived based on
40 fulfillment of the requirement in another state, if the board

1 determines that the completed requirement was equivalent to that
2 required in California, the requirement shall be waived.

3 (2) In order to obtain a certificate to use therapeutic
4 pharmaceutical agents, any optometrist who obtained his or her
5 license outside of California and who graduated from an accredited
6 school of optometry on or after January 1, 1996, shall be required
7 to fulfill the requirements set forth in subdivision (f). In order for
8 the applicant to be eligible for the certificate to use therapeutic
9 pharmaceutical agents, the education he or she received by the
10 accredited out-of-state school of optometry shall be equivalent to
11 the education provided by any accredited school of optometry for
12 persons who graduated on or after January 1, 1996. For those
13 out-of-state applicants who request that any of the requirements
14 contained in subdivision (f) be waived based on fulfillment of the
15 requirement in another state, if the board determines that the
16 completed requirement was equivalent to that required in
17 California, the requirement shall be waived.

18 (3) The State Board of Optometry shall decide all issues relating
19 to the equivalency of an optometrist's education or training under
20 this subdivision.

21 (h) Other than for prescription ophthalmic devices described in
22 subdivision (b) of Section 2541, any dispensing of a therapeutic
23 pharmaceutical agent by an optometrist shall be without charge.

24 (i) Except as authorized by this chapter, the practice of
25 optometry does not include performing surgery. "Surgery" means
26 any procedure in which human tissue is cut, altered, or otherwise
27 infiltrated by mechanical or laser means. "Surgery" does not
28 include those procedures specified in subdivision (c). This section
29 does not limit an optometrist's authority to utilize diagnostic laser
30 and ultrasound technology within his or her scope of practice.

31 (j) In an emergency, an optometrist shall stabilize, if possible,
32 and immediately refer any patient who has an acute attack of angle
33 closure to an ophthalmologist.

34 SEC. 4. Section 3041.2 of the Business and Professions Code
35 is repealed.

36 SEC. 5. Section 3041.2 is added to the Business and Professions
37 Code, to read:

38 3041.2. (a) For purposes of this chapter, "glaucoma" means
39 any of the following:

40 (1) All primary open-angle glaucoma.

1 (2) Exfoliation and pigmentary glaucoma.

2 (3) Increase in intraocular pressure caused by steroid ~~medication.~~
3 *medication prescribed by the optometrist.*

4 (4) *Increase in intraocular pressure caused by steroid*
5 *medication not prescribed by the optometrist, after consultation*
6 *and treatment approval by the prescribing physician.*

7 (b) An optometrist certified pursuant to Section 3041.1 shall be
8 certified for the treatment of glaucoma, as described in subdivision
9 (a), in patients over 18 years of age after the optometrist meets the
10 following applicable requirements:

11 (1) For licensees who graduated from an accredited school of
12 optometry on or after May 1, 2008, submission of proof of
13 graduation from that institution.

14 (2) For licensees who were certified to treat glaucoma under
15 this section prior to January 1, 2009, submission of proof of
16 completion of that certification program.

17 (3) For licensees who completed a didactic course of not less
18 than 24 hours in the diagnosis, pharmacological, and other
19 treatment and management of glaucoma, submission of proof of
20 satisfactory completion of the case management requirements for
21 certification established by the board.

22 (4) For licensees who graduated from an accredited school of
23 optometry on or before May 1, 2008, and are not described in
24 paragraph (2) or (3), submission of proof of satisfactory completion
25 of the requirements for certification established by the board.

26 SEC. 6. Section 3041.3 of the Business and Professions Code
27 is repealed.

28 SEC. 7. Section 3041.3 is added to the Business and Professions
29 Code, to read:

30 3041.3. (a) For the purposes of this chapter, “anterior segment
31 laser” means any of the following:

32 (1) Therapeutic lasers appropriate for treatment of glaucoma.

33 (2) Notwithstanding subdivision (a) of Section 3041.2,
34 peripheral iridotomy for the prophylactic treatment of angle closure
35 glaucoma.

36 (3) Therapeutic lasers used for posterior capsulotomy secondary
37 to cataract surgery.

38 (b) An optometrist certified to treat glaucoma pursuant to
39 Section 3041.2 shall be additionally certified for the use of anterior
40 segment lasers after submitting proof of satisfactory completion

1 of a course that is approved by the board, provided by an accredited
2 school of optometry, and developed in consultation with an
3 ophthalmologist who has experience educating optometric students.
4 *The board shall issue a certificate pursuant to this section only to*
5 *an optometrist that has graduated from an approved school of*
6 *optometry.*

7 (1) The board-approved course shall be ~~a minimum of 16~~ *at*
8 *least 25 hours in length, and include a test for competency of the*
9 *following:*

- 10 (A) Laser physics, hazards, and safety.
- 11 (B) Biophysics of laser.
- 12 (C) Laser application in clinical optometry.
- 13 (D) Laser tissue interactions.
- 14 (E) Laser indications, contraindications, and potential
15 complications.
- 16 (F) Gonioscopy.
- 17 (G) Laser therapy for open-angle glaucoma.
- 18 (H) Laser therapy for angle closure glaucoma.
- 19 (I) Posterior capsulotomy.
- 20 (J) Common complications of the lids, lashes, and lacrimal
21 system.
- 22 (K) Medicolegal aspects of anterior segment procedures.
- 23 (L) Peripheral iridotomy.
- 24 (M) Laser trabeculoplasty.

25 (2) The school of optometry shall require each applicant for
26 certification to perform a sufficient number of *complete* anterior
27 segment laser procedures to verify that the applicant has
28 demonstrated competency to practice independently. At a
29 minimum, each applicant shall complete ~~14~~ *24* anterior segment
30 laser procedures on live ~~humans~~ *humans as follows:*

- 31 (A) *Eight YAG capsulotomy procedures.*
- 32 (B) *Eight laser trabeculoplasty procedures.*
- 33 (C) *Eight peripheral iridotomy procedures.*
- 34 (c) The board, by regulation, shall set the fee for issuance and
35 renewal of a certificate authorizing the use of anterior segment
36 lasers at an amount no higher than the reasonable cost of regulating
37 anterior segment laser certified optometrists pursuant to this
38 section. The fee shall not exceed one hundred fifty dollars (\$150).
- 39 (d) *An optometrist certified to use anterior segment lasers*
40 *pursuant to this section shall complete four hours of continuing*

1 *education on anterior segment lasers as part of the required 50*
2 *hours of continuing education required to be completed every two*
3 *years on the diagnosis, treatment, and management of glaucoma.*

4 SEC. 8. Section 3041.4 is added to the Business and Professions
5 Code, to read:

6 3041.4. (a) For the purposes of this chapter, “minor procedure”
7 means either of the following:

8 (1) Removal, destruction, or drainage of lesions of the eyelid
9 and adnexa clinically evaluated by the optometrist to be
10 noncancerous, not involving the eyelid margin, lacrimal supply or
11 drainage systems, no deeper than the orbicularis muscle, and
12 smaller than five millimeters in diameter.

13 (2) Closure of a wound resulting from a procedure described in
14 paragraph (1).

15 (3) *Administration of injections for the diagnoses or treatment*
16 *of conditions of the eye and adnexa authorized by this chapter,*
17 *excluding intraorbital injections and injections administered for*
18 *cosmetic effect.*

19 (4) *“Minor procedures” does not include blepharoplasty or*
20 *other cosmetic surgery procedures that reshape normal structures*
21 *of the body in order to improve appearance and self-esteem.*

22 (b) An optometrist certified to treat glaucoma pursuant to
23 Section 3041.2 shall be additionally certified to perform minor
24 procedures after submitting proof of satisfactory completion of a
25 course that is approved by the board, provided by an accredited
26 school of optometry, and developed in consultation with an
27 ophthalmologist who has experience teaching optometric students.
28 *The board shall issue a certificate pursuant to this section only to*
29 *an optometrist that has graduated from an approved school of*
30 *optometry.*

31 (1) The board-approved course shall be ~~a minimum of 32 hours~~
32 *at least 25 hours* in length and include a test for competency of
33 the following:

34 (A) Minor surgical procedures.

35 (B) Overview of surgical instruments, asepsis, and the state and
36 federal Occupational Safety and Health Administrations.

37 (C) Surgical anatomy of the eyelids.

38 (D) Emergency surgical procedures.

39 (E) Chalazion management.

40 (F) Epiluminescence microscopy.

- 1 (G) Suture techniques.
- 2 (H) Local anesthesia techniques and complications.
- 3 (I) Anaphylaxis and other office emergencies.
- 4 (J) Radiofrequency surgery.
- 5 (K) Postoperative wound care.
- 6 (L) *Injection techniques.*

7 (2) The school of optometry shall require each applicant for
 8 certification to perform a sufficient number of minor procedures
 9 to verify that the applicant has demonstrated competency to
 10 practice independently. At a minimum, each applicant shall *perform*
 11 *32 complete-five* minor procedures on live humans.

12 (c) *The board, by regulation, shall set the fee for issuance and*
 13 *renewal of a certificate authorizing the use of minor procedures*
 14 *at an amount no greater than the reasonable cost of regulating*
 15 *minor procedure certified optometrists pursuant to this section.*
 16 *The fee shall not exceed one hundred fifty dollars (\$150).*

17 (d) *An optometrist certified to perform minor procedures*
 18 *pursuant to Section 3041.1 shall complete five hours of continuing*
 19 *education on the diagnosis, treatment, and management of lesions*
 20 *of the eyelid and adnexa as part of the 50 hours of continuing*
 21 *education required every two years in Section 3059.*

22 ~~SEC. 9. Section 3041.5 is added to the Business and Professions~~
 23 ~~Code, to read:~~

24 ~~3041.5. (a) An optometrist may independently initiate and~~
 25 ~~administer vaccines listed on the routine immunization schedules~~
 26 ~~recommended by the federal Advisory Committee on Immunization~~
 27 ~~Practices (ACIP), in compliance with individual ACIP vaccine~~
 28 ~~recommendations, and published by the federal Centers for Disease~~
 29 ~~Control and Prevention (CDC) for persons three years of age and~~
 30 ~~older.~~

31 ~~(b) In order to initiate and administer an immunization described~~
 32 ~~in subdivision (a), an optometrist shall do all of the following:~~

33 ~~(1) Complete an immunization training program endorsed by~~
 34 ~~the CDC or the Accreditation Council for Pharmacy Education~~
 35 ~~that, at a minimum, includes hands-on injection technique, clinical~~
 36 ~~evaluation of indications and contraindications of vaccines, and~~
 37 ~~the recognition and treatment of emergency reactions to vaccines,~~
 38 ~~and shall maintain that training.~~

39 ~~(2) Be certified in basic life support for health care professionals.~~

1 ~~(3) Comply with all state and federal recordkeeping and~~
 2 ~~reporting requirements, including providing documentation to the~~
 3 ~~patient’s primary care provider and entering information in the~~
 4 ~~appropriate immunization registry designated by the immunization~~
 5 ~~branch of the State Department of Public Health.~~

6 SEC. 9. Section 3041.5 is added to the Business and Professions
 7 Code, to read:

8 3041.5. (a) The board shall grant to an optometrist a
 9 certificate for the use of immunizations described in subdivision
 10 (b), if the optometrist is certified pursuant to Section 3041.2 and
 11 after the optometrist meets all of the following requirements:

12 (1) Completes an immunization training program endorsed by
 13 the federal Centers for Disease Control (CDC) that, at a minimum,
 14 includes hands-on injection technique, clinical evaluation of
 15 indications and contraindications of vaccines, and the recognition
 16 and treatment of emergency reactions to vaccines, and maintains
 17 that training.

18 (2) Is certified in basic life support.

19 (3) Complies with all state and federal recordkeeping and
 20 reporting requirements, including providing documentation to the
 21 patient’s primary care provider and entering information in the
 22 appropriate immunization registry designated by the immunization
 23 branch of the State Department of Public Health.

24 (b) For the purposes of this section, “immunization” means the
 25 administration of immunizations for influenza, herpes zoster virus,
 26 and pneumococcus in compliance with individual Advisory
 27 Committee on Immunization Practices (ACIP) vaccine
 28 recommendations published by the CDC for persons 18 years of
 29 age or older.

30 (c) The board, by regulation, shall set the fee for issuance and
 31 renewal of a certificate for the use of immunizations at the
 32 reasonable cost of regulating immunization certified optometrists
 33 pursuant to this section. The fee shall not exceed one hundred
 34 dollars (\$100).

35 SEC. 10. Section 3041.6 is added to the Business and
 36 Professions Code, to read:

37 3041.6. An optometrist licensed under this chapter is subject
 38 to the provisions of Section 2290.5 for purposes of practicing
 39 telehealth.

1 SEC. 11. Section 3041.7 is added to the Business and
2 Professions Code, to read:

3 3041.7. Optometrists diagnosing or treating eye disease shall
4 be held to the same standard of care to which physicians and
5 surgeons and osteopathic physicians and surgeons are held. An
6 optometrist shall consult with and, if necessary, refer to a physician
7 and surgeon or other appropriate health care provider when a
8 situation or condition occurs that is beyond the optometrist's scope
9 of practice.

10 SEC. 12. Section 3041.8 is added to the Business and
11 Professions Code, to read:

12 3041.8. It is the intent of the Legislature that the Office of
13 Statewide Health Planning and Development, under the Health
14 Workforce Pilot Projects Program, designate a pilot project to test,
15 demonstrate, and evaluate expanded roles for optometrists in the
16 performance of management and treatment of diabetes mellitus,
17 hypertension, and hypercholesterolemia.

18 *SEC. 13. Section 3110 of the Business and Professions Code*
19 *is amended to read:*

20 3110. The board may take action against any licensee who is
21 charged with unprofessional conduct, and may deny an application
22 for a license if the applicant has committed unprofessional conduct.
23 In addition to other provisions of this article, unprofessional
24 conduct includes, but is not limited to, the following:

25 (a) Violating or attempting to violate, directly or indirectly
26 assisting in or abetting the violation of, or conspiring to violate
27 any provision of this chapter or any of the rules and regulations
28 adopted by the board pursuant to this chapter.

29 (b) Gross negligence.

30 (c) Repeated negligent acts. To be repeated, there must be two
31 or more negligent acts or omissions.

32 (d) Incompetence.

33 (e) The commission of fraud, misrepresentation, or any act
34 involving dishonesty or corruption, that is substantially related to
35 the qualifications, functions, or duties of an optometrist.

36 (f) Any action or conduct that would have warranted the denial
37 of a license.

38 (g) The use of advertising relating to optometry that violates
39 Section 651 or 17500.

1 (h) Denial of licensure, revocation, suspension, restriction, or
2 any other disciplinary action against a health care professional
3 license by another state or territory of the United States, by any
4 other governmental agency, or by another California health care
5 professional licensing board. A certified copy of the decision or
6 judgment shall be conclusive evidence of that action.

7 (i) Procuring his or her license by fraud, misrepresentation, or
8 mistake.

9 (j) Making or giving any false statement or information in
10 connection with the application for issuance of a license.

11 (k) Conviction of a felony or of any offense substantially related
12 to the qualifications, functions, and duties of an optometrist, in
13 which event the record of the conviction shall be conclusive
14 evidence thereof.

15 (l) Administering to himself or herself any controlled substance
16 or using any of the dangerous drugs specified in Section 4022, or
17 using alcoholic beverages to the extent, or in a manner, as to be
18 dangerous or injurious to the person applying for a license or
19 holding a license under this chapter, or to any other person, or to
20 the public, or, to the extent that the use impairs the ability of the
21 person applying for or holding a license to conduct with safety to
22 the public the practice authorized by the license, or the conviction
23 of a misdemeanor or felony involving the use, consumption, or
24 self-administration of any of the substances referred to in this
25 subdivision, or any combination thereof.

26 (m) (1) Committing or soliciting an act punishable as a sexually
27 related crime, if that act or solicitation is substantially related to
28 the qualifications, functions, or duties of an optometrist.

29 (2) Committing any act of sexual abuse, misconduct, or relations
30 with a patient. The commission of and conviction for any act of
31 sexual abuse, sexual misconduct, or attempted sexual misconduct,
32 whether or not with a patient, shall be considered a crime
33 substantially related to the qualifications, functions, or duties of a
34 licensee. This paragraph shall not apply to sexual contact between
35 any person licensed under this chapter and his or her spouse or
36 person in an equivalent domestic relationship when that licensee
37 provides optometry treatment to his or her spouse or person in an
38 equivalent domestic relationship.

39 (3) Conviction of a crime that requires the person to register as
40 a sex offender pursuant to Chapter 5.5 (commencing with Section

1 290) of Title 9 of Part 1 of the Penal Code. A conviction within
2 the meaning of this paragraph means a plea or verdict of guilty or
3 a conviction following a plea of nolo contendere. A conviction
4 described in this paragraph shall be considered a crime substantially
5 related to the qualifications, functions, or duties of a licensee.

6 (n) Repeated acts of excessive prescribing, furnishing, or
7 administering of controlled substances or dangerous drugs specified
8 in Section 4022, or repeated acts of excessive treatment.

9 (o) Repeated acts of excessive use of diagnostic or therapeutic
10 procedures, or repeated acts of excessive use of diagnostic or
11 treatment facilities.

12 (p) The prescribing, furnishing, or administering of controlled
13 substances or drugs specified in Section 4022, or treatment without
14 a good faith prior examination of the patient and optometric reason.

15 (q) The failure to maintain adequate and accurate records
16 relating to the provision of services to his or her patients.

17 (r) Performing, or holding oneself out as being able to perform,
18 or offering to perform, any professional services beyond the scope
19 of the license authorized by this chapter.

20 (s) The practice of optometry without a valid, unrevoked,
21 unexpired license.

22 (t) The employing, directly or indirectly, of any suspended or
23 unlicensed optometrist to perform any work for which an optometry
24 license is required.

25 (u) Permitting another person to use the licensee's optometry
26 license for any purpose.

27 (v) Altering with fraudulent intent a license issued by the board,
28 or using a fraudulently altered license, permit certification or any
29 registration issued by the board.

30 (w) Except for good cause, the knowing failure to protect
31 patients by failing to follow infection control guidelines of the
32 board, thereby risking transmission of bloodborne infectious
33 diseases from optometrist to patient, from patient to patient, or
34 from patient to optometrist. In administering this subdivision, the
35 board shall consider the standards, regulations, and guidelines of
36 the State Department of Public Health developed pursuant to
37 Section 1250.11 of the Health and Safety Code and the standards,
38 guidelines, and regulations pursuant to the California Occupational
39 Safety and Health Act of 1973 (Part 1 (commencing with Section
40 6300) of Division 5 of the Labor Code) for preventing the

1 transmission of HIV, hepatitis B, and other bloodborne pathogens
2 in health care settings. As necessary, the board may consult with
3 the Medical Board of California, the Board of Podiatric Medicine,
4 the Board of Registered Nursing, and the Board of Vocational
5 Nursing and Psychiatric Technicians, to encourage appropriate
6 consistency in the implementation of this subdivision.

7 (x) Failure or refusal to comply with a request for the clinical
8 records of a patient, that is accompanied by that patient's written
9 authorization for release of records to the board, within 15 days
10 of receiving the request and authorization, unless the licensee is
11 unable to provide the documents within this time period for good
12 cause.

13 (y) Failure to refer a patient to an appropriate physician in either
14 of the following circumstances:

15 (1) ~~Where~~ *physician* if an examination of the eyes indicates a
16 substantial likelihood of any pathology that requires the attention
17 of that physician.

18 (2) ~~As required by subdivision (e) of Section 3041.~~

19 ~~SEC. 13.~~

20 *SEC. 14.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.