# MEDICAL BOARD OF CALIFORNIA - 2015 TRACKER LIST
## April 30, 2015

| BILL | AUTHOR | TITLE | STATUS | POSITION | AMENDED |
|---|---|---|---|---|---|
| **AB 26** | Jones-Sawyer | Medical Cannabis | Asm. B&P | Support | |
| **AB 34** | Bonta & Jones-Sawyer | Medical Cannabis Regulation and Enforcement | Asm. Approps | Reco: Support | 4/23/15 |
| **AB 159** | Calderon | Investigational Drugs, Biological Products, and Devices | Asm. Approps | No Position | 4/28/15 |
| **AB 266** | Cooley | Medical Marijuana | Asm. Approps | Reco: Neutral | 4/14/15 |
| **AB 483** | Patterson | Healing Arts: Initial License Fees: Proration | Asm. Approps | Reco: Neutral if Amended | 4/9/15 |
| **AB 595** | Alejo | Registered Dispensing Opticians: Optometrists: Practice | Asm. B&P | 2-year Bill | 4/15/15 |
| **AB 611** | Dahle | Controlled Substances: Prescriptions: Reporting | Asm. B&P | 2-year Bill | 4/15/15 |
| **AB 637** | Campos | Physician Orders for Life Sustaining Treatment Forms | Senate | Reco: Support | |
| **AB 684** | Bonilla | Healing Arts: Licensees: Disciplinary Actions | Asm. Approps | Reco: Neutral if Amended | 4/23/15 |
| **AB 773** | Baker | Psychology Licensing | Assembly | Reco: Support if Amended | |
| **AB 890** | Ridley-Thomas | Anesthesiologist Assistants | Asm. Approps | Reco: Neutral if Amended | 4/20/15 |
| **AB 1306** | Burke | Healing Arts: Certified Nurse-Midwives: Scope of Practice | Asm. Approps | Reco: Oppose Unless Amended | |
| **ACR 29** | Frazier | Donate Life California Day: Driver's License | Sen. 3rd Reading | Reco: Support | 4/20/15 |
| **SB 19** | Wolk | Physician Orders for Life Sustaining Treatment Form: Statewide Registry | Sen. Approps | Support in Concept | 3/25/15 |
| **SB 22** | Roth | Residency Training | Sen. Approps | Reco: Support | 4/21/15 |

**Pink – Sponsored Bill, Green – For Discussion , Blue – No Discussion Needed**

# MEDICAL BOARD OF CALIFORNIA - 2015 TRACKER LIST
## April 30, 2015

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| **SB 128** | Wolk | End of Life | Sen. Approps | No Position | 4/14/15 |
| **SB 149** | Stone | Investigational Drugs, Biological Products, or Devices: Right to Try | Sen. Approps | See AB 159 Tab | 4/14/15 |
| **SB 277** | Pan | Public Health: Vaccinations | Sen Approps | Reco: Support | 4/22/15 |
| **SB 323** | Hernandez | Nurse Practitioners | Sen. Approps | Reco: Oppose | 4/22/15 |
| **SB 337** | Pavley | Physician Assistants | Sen. Approps | Reco: Oppose Unless Amended | 4/13/15 |
| **SB 396** | Hill | Outpatient Settings and Surgical Clinics | Sen. Approps | Sponsor/Support MBC Provisions | 4/22/15 |
| **SB 408** | Morrell | Midwife Assistants | Sen. 3rd Reading | Sponsor/Support | 4/6/15 |
| **SB 482** | Lara | Controlled Substances: CURES Database | Sen. Approps | Reco: Support | 4/16/15 |
| **SB 538** | Block | Naturopathic Doctors | Sen. Approps | Reco: Oppose | 4/16/15 |
| **SB 622** | Hernandez | Optometry | Sen. Approps | Reco: Oppose Unless Amended | 4/9/15 |
| **SB 643** | McGuire | Medical Marijuana | Sen. Approps | Reco: Neutral | 4/6/15 |
| **SB 715** | Anderson | Investigational Drugs, Biological Products, or Devices: Right to Try | Sen. Health | See AB 159 Tab | |
| **SB 738** | Huff | Pupil Health: Epinephrine Auto-Injectors: Liability Limitation | Sen. Judiciary | Reco: Support | 4/15/15 |
| **SB 800** | Sen. B&P | Health Omnibus | Sen. Approps | Sponsor/Support MBC Provisions | 4/20/15 |
| **SJR 7** | Pan | Medical Residency Programs | Assembly | Reco: Support | 4/6/15 |

**Pink – Sponsored Bill, Green – For Discussion , Blue – No Discussion Needed**

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 26
**Author:** Jones-Sawyer
**Bill Date:** December 1, 2014, Introduced
**Subject:** Medical Cannabis
**Sponsor:** Author
**Position:** Support

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Medical Cannabis Regulation and Control Act and would create the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control. However, this analysis will only cover the portion of the bill related to the requirements on physicians recommending medical marijuana and the Medical Board of California (Board).

This bill would include in the Board's priorities, cases that allege a physician has recommended marijuana to patients for medical purposes without a good faith prior examination and medical reason therefor. This bill would require physicians to perform an appropriate prior examination before recommending marijuana for a medical purpose, which must include an in-person examination; a violation of this would constitute unprofessional conduct. This bill would also specify that recommending marijuana for a nonmedical purpose constitutes unprofessional conduct. Lastly, this bill would not allow a marijuana clinic or dispensary to directly or indirectly employ physicians to provide marijuana recommendations.

## BACKGROUND:

In 1996, California voters approved the Compassionate Use Act (Proposition 215), which allowed Californians access to marijuana for medical purposes, and prohibited punitive action against physicians for making marijuana recommendations. SB 420 (Vasconcellos, Chapter 875, Statutes of 2003), the Medical Marijuana Program Act, included issuance of identification cards for qualified patients, and allowed patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes.

In 2014, AB 1894 (Ammiano) was amended on May 23, 2014 and the amendments basically included the same language as the language included in this bill. The Board took a support position on AB 1894.

## ANALYSIS:

This bill would give the Board some much needed enforcement tools to more efficiently regulate physicians who recommend marijuana for a medical purpose. This bill expressly requires a physician to perform an appropriate prior examination before

recommending marijuana for a medical purpose, which must include an in-person examination. This is an important amendment because the prescribing requirements in existing law do not necessarily apply to marijuana recommendations. This bill would make it clear that recommending marijuana for a non-medical purpose constitutes unprofessional conduct. This bill would also make marijuana recommendation cases a priority of the Board, which will help to ensure consumer protection. Lastly, this bill would not allow physicians to be employed by marijuana clinics or dispensaries, which will help to ensure that physicians are not making marijuana recommendations for financial or employment reasons.

The Board took a support position on this bill because it will provide the Board with enforcement tools that will help ensure consumer protection and it would will ensure that physicians are not making marijuana recommendations for financial or employment reasons.

**FISCAL:** None to the Board

**SUPPORT:** None on file

**OPPOSITION:** None on file

# ASSEMBLY BILL No. 26

**Introduced by Assembly Member Jones-Sawyer**

December 1, 2014

An act to amend Sections 2220.05, 2242, and 2264 of, and to add Chapter 18 (commencing with Section 26000) to Division 9 of, the Business and Professions Code, to add Section 23028 to the Government Code, and to amend Section 11362.7 of, and to amend and repeal Section 11362.775 of, the Health and Safety Code, relating to medical cannabis, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

AB 26, as introduced, Jones-Sawyer. Medical cannabis.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature, commonly referred to as the Medical Marijuana Program Act, requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.

The Medical Practice Act provides for the regulation and licensing of physicians and surgeons by the Medical Board of California and requires the board to prioritize investigations and prosecutions of physicians and surgeons representing the greatest threat of harm, as specified. Existing law identifies the cases that are to be given priority, which include cases of repeated acts of excessively prescribing, furnishing, or administering controlled substances without a good faith

prior examination of the patient. Existing law makes it unprofessional conduct for a physician and surgeon to prescribe, dispense, or furnish dangerous drugs without an appropriate prior examination and medical indication. Existing law also makes it unprofessional conduct to employ, aid, or abet an unlicensed person in the practice of medicine. Existing law generally makes any person who violates these provisions guilty of a misdemeanor.

This bill would enact the Medical Cannabis Regulation and Control Act and would create the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control, to be administered by a person exempt from civil service who is appointed by the Director of Alcoholic Beverage Control. The bill would grant the department the power to register persons for the cultivation, manufacture, testing, transportation, storage, distribution, and sale of medical cannabis within the state provided that the authority of a city or county to adopt ordinances inconsistent with the requirements of the act that ban, regulate, or tax medical cannabis activities, and to enforce those ordinances, would not be affected by the act. The bill would provide that the director and persons employed by the department to administer and enforce its provisions are peace officers. The bill would prescribe requirements for the issuance, renewal, suspension, and revocation of mandatory commercial registrations and fees in relation to these activities. The bill would permit the department to assist statewide taxation authorities in the development of uniform policies for state taxation of mandatory commercial medical cannabis registrants and to assist in the development of regulation in connection with work safety in this industry. The bill would authorize the division to establish a grant program for the purpose of funding medical cannabis regulation and enforcement.

The bill would establish the Medical Cannabis Regulation Fund and would require deposit of fees into the fund. The bill would continuously appropriate moneys within the fund to the division for the purposes of administering the program. The bill would require the deposit of penalty money into the General Fund.

The bill would require the department, on or before January 1, 2017, to issue regulations as necessary for the implementation and enforcement of mandatory commercial medical cannabis registration, as specified, including requirements analogous to statutory environmental, agricultural, consumer protection, and food and product safety requirements. The bill would require the department to administer and

enforce these requirements. The bill would prescribe requirements for provisional registrations to be operative January 1, 2016. The bill would prohibit approval of a mandatory commercial registration for specified reasons, including if a licensed physician making patient recommendations for medical cannabis is an interested party in the proposed operation, and would prohibit a physician from recommending medical cannabis to a patient while he or she is a mandatory commercial registrant, or associated, as specified, with a mandatory commercial registrant. The bill would prohibit a registrant from holding a registration in more than one class of medical cannabis activities.

The bill would require a registrant to keep various records in connections with medical cannabis activities and would prescribe requirements for making records available to the department and any state or local agency. The bill would provide that certain patient and caregiver information is excluded from disclosure to the public. The bill would provide that the act does not apply to the protections granted to a patient or primary caregiver acting pursuant to the Compassionate Use Act of 1996 and would exempt these parties from the application of the act, provided they act consistently with specified requirements. The bill would provide that the actions of a mandatory commercial registrant or provisional registrant, its employees, and its agents that are permitted pursuant to a valid mandatory commercial registration issued by the division and that are conducted in accordance with the requirements of the act are not unlawful under state law, as specified. The bill would provide a similar state law immunity for a property owner who allows his or her property to be used by a mandatory commercial registrant or provisional registrant.

The bill would require the department to work in conjunction with law enforcement entities throughout the state to implement and enforce the rules and regulations regarding medical cannabis and to take appropriate action against businesses and individuals that fail to comply with the law. The bill would prohibit, on and after January 1, 2017, a person other than a mandatory commercial registrant from selling cannabis or cannabis products or performing other actions related to cannabis, except as specified. The bill would provide that its provisions do not prevent specified city or county actions, including zoning ordinances banning or regulating the location, operation, or establishment of a commercial registrant. The bill would make certain violations of its provisions a crime, thereby imposing a state-mandated local program. The bill would establish requirements for the

transportation of medical cannabis. The bill would specify that its provisions are severable.

The bill would specify that recommending marijuana to patients without a good faith examination and medical reason or recommending marijuana for nonmedical purposes is unprofessional conduct. The bill would provide that specified acts of recommending marijuana without a good faith examination are among the types of cases that should be given priority for investigation and prosecution by the Medical Board of California, as described above. The bill would also specify that employment by, or an agreement with, a mandatory medical cannabis registrant to provide recommendations for medical marijuana constitutes unprofessional conduct. By broadening the definition of a crime, the bill would impose a state-mandated local program. The bill would repeal, 90 days after the department posts a specified notice on its Internet Web site, the provisions described above prohibiting prosecution of qualified patients, persons with valid identification cards, and designated primary caregivers who associate in California, collectively or cooperatively, to cultivate marijuana for medical purposes.

(2) Existing law authorizes the board of supervisors of a county and the governing body of a city to impose various taxes, including a transactions and use tax at a rate of 0.25%, or a multiple thereof, if approved by the required vote of the board or governing body and the required vote of qualified voters, and limits the combined rate of transactions and use taxes within a city or county to 2%.

This bill would authorize the board of supervisors of a county to impose, by ordinance, a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing cannabis or cannabis products, including a transactions and use tax at any rate specified by the board. The bill would authorize the tax to be imposed for either general or specific governmental purposes. The bill would require a tax imposed pursuant to this authority to be subject to any applicable voter approval requirement.

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

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

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

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

SECTION 1. This act shall be known, and may be cited, as the Medical Cannabis Regulation and Control Act.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) In 1996, the people of the State of California enacted the Compassionate Use Act of 1996, codified in Section 11362.5 of the Health and Safety Code. The people of the State of California declared that their purpose in enacting the measure was, among other things, "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief."

(2) The Compassionate Use Act of 1996 called on state government to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(3) In 2003, the Legislature enacted the Medical Marijuana Program Act (MMPA), codified in Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

(4) Greater certainty and minimum statewide standards are urgently needed regarding the obligations of medical marijuana facilities and for the imposition and enforcement of regulations to prevent unlawful cultivation and the diversion of marijuana to nonmedical use.

(5) Despite the passage of the Compassionate Use Act of 1996 and the MMPA, because of the lack of an effective statewide system for regulating and controlling medical marijuana, local law enforcement officials have been confronted with uncertainty about the legality of some medical marijuana cultivation and distribution activities. The current system of collectives and cooperatives makes law enforcement difficult and endangers patient safety because of an inability to monitor the supply of medical marijuana in the state and the lack of quality control, testing, and labeling requirements.

(6) For the protection of all Californians, the state must act to regulate and control medical marijuana and not preempt local government ordinances. Cities and counties should be allowed to impose local taxes and enact zoning regulations and other restrictions, including bans, applicable to the commercial cultivation and distribution of medical marijuana based on a local governing body's determination of local needs. In order to provide patients with access to safe medical marijuana products, while at the same time preventing diversion of marijuana to nonmedical uses and protecting the public, it is necessary to amend the MMPA and to establish a comprehensive structure for regulating the cultivation, production, and distribution of medical marijuana products.

(7) A state entity shall be created to regulate and control the mandatory registration of all entities involved in the commercial cultivation, processing, manufacturing, testing, transportation, distribution, provision, donation, and sale of medical marijuana in this state. Patients and their primary caregivers who cultivate medical marijuana for the personal medical purposes of individual patients shall not be subject to the statewide system of regulation established by this act but only medical marijuana produced in compliance with this act may be sold or commercially distributed.

(8) This act is not intended to prevent cities and counties from imposing local taxes and enacting zoning regulations and other restrictions, including bans, applicable to the commercial cultivation and distribution of medical marijuana based on a local governing body's determination of local needs.

(9) It is the intent of the Legislature that the state entity created to regulate and control medical marijuana solicit input from cities and counties in the process of promulgating standards and regulations pursuant to this act.

(10) It is the intent of the Legislature that entities provided immunity under Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election, shall be considered the equivalent of entities that are registered, permitted, or licensed as a medical marijuana business, dispensary, or other entity involved in providing medical marijuana to patients under a local ordinance and shall be considered in compliance with a local ordinance for the purposes of the implementation of this act

and any regulations promulgated by the Department of Alcoholic Beverage Control.

(11) The provisions of this act are enacted pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

(12) Nothing in this act is intended to require any individual or entity to engage in any conduct that violates federal law or to exempt anyone from any requirement of federal law or to pose any obstacle to federal enforcement of federal law.

(b) It is therefore the intent of the Legislature, in enacting this act, to accomplish all of the following:

(1) To establish a statewide system for regulating and controlling commercial medical cannabis activities by creating a state entity to enact and enforce regulations governing the cultivation, processing, manufacturing, testing, transportation, distribution, provision, donation, and sale of commercial medical cannabis.

(2) To allow cities and counties to enact zoning regulations or other restrictions, including bans, applicable to the cultivation, processing, manufacturing, testing, and distribution of commercial medical cannabis based on a local governing body's determination of local needs.

(3) To establish the Division of Medical Cannabis Regulation and Enforcement to be located within the Department of Alcoholic Beverage Control to provide a governmental agency that will ensure the strict, honest, impartial, and uniform administration and enforcement of the statewide regulatory system established by this act throughout the state.

(4) To enact legislation in furtherance of the Compassionate Use Act of 1996, which provides for the Legislature to "implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana."

(5) To establish a statewide registration process for commercial medical cannabis activities to identify for law enforcement which entities are exempt from state criminal penalties for the cultivation, processing, manufacturing, testing, transportation, distribution, provision, donation, and sale of medical cannabis solely on the basis of their activities conducted in compliance with this act.

(6) To reduce the cost of commercial medical cannabis enforcement by controlling commercial medical cannabis production and distribution through comprehensive statewide

regulation and providing law enforcement guidelines to more easily determine whether or not a person is acting in conformance with the state's medical cannabis laws.

SEC. 3. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled ~~substances~~ *substances, or recommending marijuana to patients for medical purposes,* without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 4. Section 2242 of the Business and Professions Code is amended to read:

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section ~~4022~~ *4022, or recommending marijuana to a patient for a medical purpose,* without an appropriate prior examination and a medical indication, *including an in-person examination when recommending marijuana, or recommending marijuana for a nonmedical purpose,* constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

SEC. 5. Section 2264 of the Business and Professions Code is amended to read:

2264. The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of ~~medicine~~ *medicine, including employment by, other agreement with, a mandatory commercial registrant acting pursuant to the Medical Cannabis Regulation and Control Act or a dispensary to provide recommendations for medical marijuana,* or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.

SEC. 6. Chapter 18 (commencing with Section 26000) is added to Division 9 of the Business and Professions Code, to read:

## Chapter 18. Medical Cannabis Regulation

### Article 1. General Provisions

26000. (a) It is the intent of the Legislature in enacting this chapter to provide for the comprehensive regulation of the commercial cultivation, manufacturing, testing, transportation, distribution, provision, donation, and sale of medical cannabis and the enforcement of laws relating to commercial medical cannabis activities without preempting city or county ordinances regulating or banning these activities.

(b) This chapter is an exercise of the police powers of the state for the protection of the safety, welfare, health, peace, and morals of the people of the state.

26001. Without limiting the authority of a city or county pursuant to Section 7 of Article XI of the California Constitution or any other provision of law, and subject to that authority, the state shall have the right and power to regulate and register persons for the cultivation, manufacture, testing, transportation, storage, distribution, provision, donation, sale, purchase, and possession of medical cannabis within the state. In the exercise of these rights and powers, the Legislature shall not constitute the state or any of its agencies as a cultivator, manufacturer, transporter, tester, or seller of medical cannabis.

26002. For the purpose of this chapter:

(a) “Cannabis” means all parts of the plant Cannabis sativa, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

(b) “Commercial” means any cultivation, processing, possession, storage, manufacturing, testing, transportation, distribution, provision, donation, or sale of cannabis or cannabis product, whether or not gratuitous, except as provided in subdivision (b) of Section 26052.

(c) “Department” means the Department of Alcoholic Beverage Control.

(d) “Dispensary” means a mandatory commercial registrant that dispenses cannabis or medical cannabis products through a retail storefront.

(e) “Division” means the Division of Medical Cannabis Regulation and Enforcement.

(f) “Edible cannabis product” means a cannabis product that is used or intended for use in whole or in part for human consumption and includes chewing gum.

(g) “Fund” means the Medical Cannabis Regulation Fund established pursuant to Section 26028.

(h) “Identification program” means the universal identification certificate program for mandatory commercial registrants.

(i) “Mandatory commercial registrant” or “registrant” means any individual, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, syndicate, or any other group or combination thereof acting as a unit to cultivate, process, possess, store, manufacture, test, transport, distribute, provide, donate, or sell medical cannabis in compliance with this chapter, other than a patient or a patient’s primary caregiver, as defined by the Compassionate Use Act of 1996,

growing, possessing, storing, manufacturing, transporting, or providing medical cannabis exclusively for the personal medical purposes of individual patients as defined in subdivision (b) of Section 26052.

(j) "Medical cannabis product" or "cannabis product" means any product containing cannabis, including concentrates and extractions, that is cultivated, manufactured, processed, packaged, and distributed in full compliance with the requirements of this chapter and with any regulations adopted by the department pursuant to its rulemaking authority. "Medical cannabis product" includes products that contain medical cannabis and are intended for oral or topical consumption by a qualified patient.

(k) "Person" includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(*l*) "Testing and labeling" means mandatory labeling and a quality assurance plan in place that addresses all of the following:

(1) Potency.

(2) Chemical residue.

(3) Microbiological contaminants.

(4) Random sample testing of medical cannabis and medical cannabis products.

(5) Handling, care, and storage.

(6) Date and location of production and manufacturing.

26010. This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code do not prevent a city or county from doing any of the following:

(a) Adopting local ordinances inconsistent with this chapter that ban or regulate the location, operation, or establishment of a mandatory commercial registrant or other individual, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, syndicate, or any other group or combination thereof acting as a unit, that cultivates, processes, possesses, stores, manufactures, tests, transports, distributes, provides, donates, or sells medical cannabis.

(b) The civil or criminal enforcement of the ordinances described in subdivision (a).

(c) Establishing a fee or tax for the operation of a mandatory commercial registrant within its jurisdiction.

(d) Enacting and enforcing other laws or ordinances pursuant to the authority granted by Section 7 of Article XI of the California Constitution.

## Article 2. Administration

26020. (a) There is hereby created in the Department of Alcoholic Beverage Control the Division of Medical Cannabis Regulation and Enforcement. The division shall be administered by a person exempt from the civil service who is appointed by the director.

(b) The department shall have the power, consistent with the provisions of this chapter, to register persons for the cultivation, manufacture, testing, transportation, storage, distribution, and sale of medical cannabis within the state and to collect registration fees in connection with these actions.

26022. The department shall have all power necessary for administration of this chapter, including, but not limited to, the following:

(a) Establishing statewide minimum standards for the commercial cultivation, manufacturing, testing, transportation, storage, distribution, provision, donation, and sale of medical cannabis and medical cannabis products and procedures for the issuance, renewal, suspension, and revocation of registrations of mandatory commercial registrants.

(b) Establishing a scale of application, registration, and renewal fees, to be imposed by the state, for mandatory commercial registrants for the cultivation, manufacturing, testing, transportation, distribution, and sale of medical cannabis and medical cannabis products. The department may charge separate fees for each mandatory commercial registration application for cultivation, manufacturing, transportation, distribution, and sale. The total fees imposed pursuant to this chapter shall be based on the actual costs of administering and enforcing this chapter.

(c) The department shall make and prescribe those rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and perform the duties conferred upon it by this chapter and in accordance with

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the department has the powers as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Approving or denying mandatory commercial registration applications for cultivation, manufacturing, testing and labeling, transportation, distribution, provision, donation, and sale of medical cannabis pursuant to this chapter.

(e) The department shall have the power, in its discretion, to deny, suspend, revoke, or fine any registration issued pursuant to this chapter if the department determines that the granting or continuance of the registration would be contrary to public welfare or morals or that a person holding or seeking a registration has violated any law prohibiting conduct involving moral turpitude or an applicable local ordinance.

(f) Imposing any penalty authorized by this chapter or any rule or regulation adopted pursuant to this chapter.

(g) Taking any action with respect to a mandatory commercial registration application in accordance with procedures established pursuant to this chapter.

(h) Upon the denial of any application for a registration, the department shall notify the applicant in writing. After service of the notice and within the time prescribed by the department, the applicant may present his or her written petition for a registration to the department. Upon receipt by the department of a petition for a registration in proper form, the petition shall be set for hearing.

(i) (1) For any hearing held pursuant to this chapter, the department may delegate the power to hear and decide to an administrative law judge appointed by the director. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Prior to suspending, revoking, or fining any registration, the department shall file an accusation as provided for in Section 11503 of the Government Code, and the registrant may request a hearing. If the department determines that the public interest requires that a registration be summarily suspended pending hearing on charges

of misconduct that include any of the causes for suspension or revocation specified in this chapter, or if the department has information that leads it to believe that a registrant has violated any law prohibiting conduct involving moral turpitude or any applicable local ordinance, the department may, without hearing, temporarily suspend the registration for a period not exceeding 60 days pending a hearing and decision on the charges.

(j) Developing any forms, identification certificates, and applications that are necessary or convenient in the discretion of the department for the administration of this chapter or any of the rules or regulations adopted pursuant to this chapter.

(k) Overseeing the operation of the Medical Cannabis Regulation Fund established pursuant to Section 26028.

(*l*) Establishing fees for processing all applications, registrations, notices, or reports required to be submitted to the department. The amount of the fees shall reflect, but shall not exceed, the direct and indirect costs of the department for the administration of this chapter and the rules or regulations adopted pursuant to this chapter.

(m) The department may consult with other state agencies, departments, or public or private entities for the purposes of establishing statewide standards and regulations.

26024. (a) The department may assist state taxation authorities in the development of uniform policies for the state taxation of mandatory commercial registrants.

(b) The department shall assist the Division of Occupational Safety and Health in the Department of Industrial Relations in the development of industry-specific regulations related to commercial medical cannabis activities.

26028. (a) The Medical Cannabis Regulation Fund is hereby established within the State Treasury. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the money in the fund.

(b) All fees collected pursuant to this chapter shall be deposited into the Medical Cannabis Regulation Fund. Notwithstanding Section 13340 of the Government Code, all moneys within the fund are hereby continuously appropriated, without regard to fiscal year, to the department solely for the purposes of fully funding and administering this chapter, including, but not limited to, the costs incurred by the department for its administrative expenses.

(c) All moneys collected pursuant to this chapter as a result of penalties imposed under this division shall be deposited directly into the General Fund, to be available upon appropriation.

(d) The department may establish and administer a grant program to allocate moneys from the Medical Cannabis Regulation Fund to state and local entities for the purpose of assisting with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to registrants.

26030. (a) The director and the persons employed by the department for the administration and enforcement of this chapter are peace officers in the enforcement of the penal provisions of this chapter, the rules of the department adopted under the provisions of this chapter, and any other penal provisions of law of this state prohibiting or regulating the cultivation, processing, storing, manufacturing, testing, transporting, or selling of medical cannabis, and these persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

(b) The director, the persons employed by the department for the administration and enforcement of this chapter, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this chapter, visit and inspect the premises of any mandatory commercial registrant at any time during which the registrant is acting pursuant to the registration.

(c) Peace officers of the Department of the California Highway Patrol, members of the University of California and California State University police departments, and peace officers of the Department of Parks and Recreation, as defined in subdivisions (a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in enforcing this chapter, visit and inspect the premises of any mandatory commercial registrant located on state property at any time during which the registrant is acting pursuant to the registration.

26034. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the department for the purposes of administering this chapter are confidential and exempt from the California Public Records Act (Chapter 3.5 (commencing

with Section 6250) of Division 7 of Title 1 of the Government Code) and are not subject to disclosure to any individual or private entity, except as necessary for authorized employees of the State of California to perform official duties pursuant to this chapter:

(b) (1) Nothing in this section precludes the following:

(A) Division employees notifying state or local agencies about information submitted to the division that the employee suspects is falsified or fraudulent.

(B) Notifications from the division to state or local agencies about apparent violations of this chapter or any applicable local ordinance.

(C) Verification of requests by state or local agencies to confirm registrants and certificates issued by the division or other state agency.

(D) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(2) Information shall not be disclosed beyond what is necessary to achieve the goals of a specific investigation or notification or the parameters of a specific court order or subpoena.

## Article 3. Mandatory Commercial Registration

26040. (a) On or before January 1, 2017, the department shall promulgate regulations necessary for the implementation and enforcement of this chapter. These regulations shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of mandatory commercial registrations.

(2) Application, registration, and renewal forms and fees consistent with this act.

(3) Time periods, not to exceed 90 days, by which the department shall approve or deny an application for medical cannabis registration.

(4) Qualifications for registrants.

(5) Security requirements, including, but not limited to, procedures for limiting access to facilities and for the screening of employees. The department shall require all registrants to maintain an accurate roster of any employee's name, date of birth, and relevant personally identifying information, which shall be

available for inspection by the department or state or local law enforcement upon demand.

(6) Testing and labeling requirements, including, but not limited to, disclosure of the active cannabinoid profile, constituent elements, active ingredients, and results of testing for contaminants.

(7) Health and safety requirements, including, but not limited to, prohibitions on shipping or distribution of products containing microbiological, bacterial, pathogenic yeast or mold counts, or any adulterant or contaminant, that exceed levels to be determined by the department.

(8) Inspection and tracking requirements, including, but not limited to, an electronic production and inventory tracking system that will allow the department to monitor inventory data at every level of the cultivation, processing, and distribution system through a secure, Internet Web site-based portal.

(9) Storage, packaging, and transportation procedures and protocols.

(10) Advertising restrictions and requirements.

(11) Requirements to ensure conformance with standards analogous to state statutory environmental, agricultural, consumer protection, and food and product safety requirements. These standards shall be administered and enforced by the department and shall be in addition to, and not limit, any other state requirements. At a minimum, these standards shall:

(A) Prescribe sanitation standards analogous to the California Retail Food Code for food preparation, storage, and handling and sale of edible cannabis products.

(B) Require that edible cannabis products produced, distributed, provided, donated, or sold by mandatory commercial registrants shall be limited to nonpotentially hazardous food as established by the State Department of Public Health pursuant to Section 114365.5 of Health and Safety Code.

(C) Provide standards for labeling edible cannabis products to ensure that the products cannot be mistaken as food not containing cannabis.

(D) Require that facilities where edible cannabis products are prepared shall be constructed in accordance with applicable building standards, health and safety standards, and other state laws.

(E) Ensure that edible products distributed or sold by dispensaries are not produced or stored in private homes.

(F) Provide that any weighing or measuring devices used in connection with the sale or distribution of cannabis are required to meet standards analogous to Division 5 (commencing with Section 12001).

(G) Require that any application of pesticides or other pest control in connection with the indoor or outdoor cultivation of cannabis shall meet standards analogous to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(H) Protect the state's clean water and environment, including, but not limited to, protections related to land conversion, grading, water diversion and pond development, and agricultural discharges.

(12) Requirements to prevent the diversion of cannabis to nonmedical use, including procedures and protocols for disposal of excess, contaminated, adulterated, or deteriorated products.

(13) Civil penalties for the failure to comply with regulations adopted pursuant to this chapter.

(b) A mandatory commercial registration application or renewal shall not be approved if the department determines any of the following:

(1) The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to this chapter or any applicable city or county ordinance or regulation.

(2) The applicant, or any of its officers, directors, owners, members, or shareholders is under 21 years of age.

(3) The applicant has knowingly answered a question or request for information falsely on the application form or failed to provide information requested.

(4) The applicant, or any of its officers, directors, owners, members, or shareholders has been convicted in the previous five years of a violent felony, as specified in subdivision (c) of Section 667.5 of the Penal Code, a serious felony as specified in subdivision (c) of Section 1192.7 of the Penal Code, a felony offense involving fraud or deceit, or any other felony that, in the department's estimation, would impair the applicant's ability to appropriately operate as a mandatory commercial registrant.

(5) The applicant, or any of its officers, directors, owners, members, or shareholders is a licensed physician making patient recommendations for medical cannabis.

(6) The applicant, or any of its officers, directors, owners, members, or shareholders has been sanctioned by the department, a city, or a county for cannabis activities conducted in violation of this chapter or any applicable local ordinance or has had a mandatory commercial registration revoked in the previous three years.

(7) A sufficient number of mandatory commercial registrants already exists in the state, a city, or a county to provide a sufficient amount of medical cannabis to satisfy patients' medical use in that jurisdiction.

(8) The proposed cultivation, processing, possession, storage, manufacturing, testing, transporting, distribution, provision, donation, or sale of medical cannabis will violate any applicable local law or ordinance.

(c) (1) In order to protect the public safety and provide patients with prompt, safe access to medical cannabis during implementation of this chapter, within 180 days of January 1, 2016, the department shall issue emergency regulations consistent with this chapter that allow a qualified applicant for mandatory commercial registration to apply, be reviewed, and be registered to cultivate, process, manufacture, store, and transport medical cannabis so as to ensure an adequate supply of medical cannabis upon full implementation of this chapter.

(2) The department shall establish appropriate fees as part of its emergency regulations adopted pursuant to this chapter.

26042. For the purpose of regulating the commercial cultivation, manufacturing, testing, transportation, distribution, provision, donation, and sale of medical cannabis, the department shall establish various classes or types of registration for specific commercial medical cannabis-related activities, as set forth in this chapter. At a minimum, registrants engaged in the cultivation and processing of cannabis shall be in a different class from those registrants operating dispensaries.

26043. (a) Each mandatory commercial registration application approved by the department pursuant to this chapter is separate and distinct. A registrant shall not hold a mandatory commercial registration in more than one class of specified medical cannabis

activities. A registrant shall not be an officer, director, member, owner, or shareholder registrant in another class. The officers, directors, owners, members, or shareholders of a registrant in one class may not hold a registration in another class, shall not be an officer, director, member, owner, or shareholder of a registrant in another class.

(b) A mandatory commercial registration application approved by the department pursuant to this chapter shall be valid for a period not to exceed one year from the date of approval unless revoked or suspended earlier than that date pursuant to this chapter or the rules or regulations adopted pursuant to this chapter.

26044. (a) The department shall limit the number of registrations statewide for the cultivation, processing, extraction, packaging, and transportation of medical cannabis to a number no greater than what is necessary to meet statewide need. In determining the appropriate number of registrations, the department may take into account information obtained from sources that include, but need not be limited to, municipalities, patients, and registrants.

(b) The department shall ensure that the number of registrations that it approves does not exceed the ability of the department to enforce the provisions of this chapter, particularly with respect to ensuring patient safety and preventing illegal diversion of cannabis.

(c) In establishing limits pursuant to this section, the department shall consider the following:

(1) The purposes and intent of the Compassionate Use Act of 1996 to ensure an adequate supply of medical cannabis while endeavoring to prevent an oversupply of cannabis that may result in diversion.

(2) The number of applicants for mandatory commercial registrations whose application demonstrates that they will be able to produce consistent products with strict quality controls, in full compliance with this chapter and with all applicable state and local regulations, and the amount of medical cannabis those applicants will be able to provide.

26045. Every mandatory commercial registration is renewable unless the registration has been revoked if the renewal registration is made and the fee for it is paid. A registration that has been suspended, but not revoked, may be renewed under this section, provided that the suspension shall remain in effect upon renewal.

All registrations expire at 12 midnight on the last day of the month posted on the registration. All registrations issued shall be renewed as follows:

(a) The application to renew the registration may be filed before the registration expires upon payment of the annual fee.

(b) For 60 days after the registration expires, the registration may be renewed upon payment of the annual renewal fee plus a penalty fee that shall be equal to 50 percent of the annual fee.

(c) Unless otherwise terminated, or unless renewed pursuant to subdivision (a) or (b), a registration that is in effect on the month posted on the registration continues in effect through 12 midnight of the 60th day following the month posted on the registration, at which time it is automatically canceled.

(d) A registration that has been canceled pursuant to subdivision (c) may be reinstated during the 30 days immediately following cancellation upon payment by cashier's check or money order of the annual renewal fee, plus a penalty fee that shall be equal to 100 percent of the annual fee. A registration that has been canceled pursuant to subdivision (c) and that has not been reinstated within 30 days pursuant to this subdivision is automatically revoked on the 31st day after the registration has been canceled.

(e) A renewal application shall not be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the required renewal fee has been paid at, any office of the department during office hours, or unless both the document and fee have been filed and remitted pursuant to Section 11003 of the Government Code.

26046. An application for mandatory commercial registration shall include, but shall not be limited to, all of the following:

(a) For all applicants:

(1) The legal name and proposed physical addresses of the mandatory commercial registrant.

(2) The name, address, and date of birth of each principal officer and board member.

(3) Operating and inventory control procedures to ensure security and prevent diversion.

(4) Detailed operating procedures for the proposed facility, which shall include, but not be limited to, provisions for facility and operational security, prevention of diversion, employee

screening, storage of medical cannabis, personnel policies, and recordkeeping procedures.

(5) A list of all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on any property that will be used by the applicant.

(6) Evidence of the legal right to occupy and use an established location, or an immunity from prosecution for that occupancy or use pursuant to a local ordinance or ordinances, including, but not limited to, Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election, for the activities to be conducted if the desired registration is granted consistent with the provisions of this chapter and the regulations developed by the department.

(7) Documentation that the applicant will be in compliance with all local ordinances and regulations, including an entity granted immunity under Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election.

(8) Evidence that officers and owners of the applicant organization are citizens of the United States and residents of the State of California.

(b) For applications for cultivation and processing, in addition to the requirements of subdivision (a), the application shall also include detailed operating procedures for cultivation, extraction and infusion methods, transportation of products, inventory procedures, procedures for quality control, and onsite testing of product for potential contaminants.

26047. Upon receipt of an application for a registration and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a registration is applied qualify for the registration and whether the provisions of this chapter have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a registration if either the applicant or the premises for which a registration is applied do not qualify for a registration under this chapter. The department further shall deny an application for a registration if the department finds that issuance of that registration would create a law enforcement problem. The department may place conditions upon registrations if grounds exist for denial of the registration, and the department finds those

grounds may be removed by the imposition of those conditions, provided that the requirements set forth in paragraphs (6) and (8) of subdivision (b) of Section 26040 shall not be waived.

26048. A physician shall not recommend medical cannabis to a patient while the physician is a mandatory commercial registrant, or an officer, director, owner, member, shareholder, employee, or financial beneficiary of a mandatory commercial registrant.

26049. (a) The actions of a mandatory commercial registrant or provisional registrant, its employees, and its agents, permitted pursuant to a mandatory commercial registration or provisional registration issued by the department or otherwise permitted by this chapter, that are conducted in accordance to the requirements of this chapter and regulations adopted pursuant to the authority granted by this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith and upon investigation, allows his or her property to be used by a mandatory commercial registrant or provisional registrant, its employees, and its agents, as permitted pursuant to a mandatory commercial registration or provisional registration issued by the department or otherwise permitted by this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(c) This section shall not be deemed to limit the authority or remedies of a city or county under any provision of law, including, without limitation, Section 26010 or 26060 of this code or Section 7 of Article XI of the California Constitution.

26050. (a) A registrant shall not cultivate, process, store, manufacture, test, transport, or sell medical cannabis in the state unless accurate records are kept at the registered premises of the growing, processing, storing, manufacturing, testing, transporting, or selling by the registrant in the state. These records shall include the name and address of the supplier of any cannabis or cannabis products received or possessed by the registrant, the location at which the cannabis was cultivated, the amount of cannabis received, the form in which it is received, the name of the employee receiving it, and the date of receipt. These records shall further

include receipts for all expenditures incurred by the registrant and banking records, if any, for all funds obtained or expended in the performance of any activity under the authority of the registration, provided that a registrant registered to act at more than one premises may keep all records at one of the registered premises. Required records shall be kept for a period of seven years from the date of the transaction.

(b) The department and any state or local agency may make any examination of the books and records of any registrant and may visit and inspect the premises of any registrant that the department may deem necessary to perform its duties under this chapter.

(c) Any books or records requested by the department or any state or local agency shall be provided by the registrant no later than at the end of the next business day after the request is made.

(d) The department or any state or local agency may enter and inspect the premises of any facility operated by a registrant between the hours of 8 a.m. and 8 p.m. on any day that the facility is open, or at any reasonable time, to ensure compliance and enforcement of the provisions of this chapter or any local ordinance.

(e) In the event that the registrant or any employee of the registrant refuses, impedes, obstructs, or interferes with an inspection pursuant to this chapter or local ordinance, or if the registrant fails to maintain or provide the books and records required by this section, the registration may be summarily suspended pursuant to paragraph (2) of subdivision (i) of Section 26022 and the department shall directly commence proceedings for the revocation of the registration in accordance with this chapter.

26052. (a) This chapter shall not apply to, and shall have no diminishing effect on, the rights and protections granted to a patient or a primary caregiver pursuant to the Compassionate Use Act of 1996.

(b) (1) A patient who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use and who does not sell, distribute, donate, or provide cannabis to any other person is not considered a commercial registrant and is exempt from mandatory commercial registration under this chapter.

(2) A primary caregiver who cultivates, possesses, stores, manufactures, transports, or provides cannabis exclusively for the

personal medical purposes of a specified qualified patient for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code and who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code is not considered a commercial registrant and is exempt from mandatory commercial registration under this chapter.

26054. Beginning January 1, 2015, the department shall provide for provisional registrations as follows:

(a) The department shall request that every city or county provide the department with a list of approved entities providing medical cannabis to qualified patients and caregivers within the city or county's jurisdiction, if any, the location at which the entity is operating, and the names of the persons who operate the entity. If the jurisdiction represents that the entity has been operating in compliance with local laws and regulations, or has limited immunity under local laws, including, but not limited to, Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election, the department shall issue a provisional registration to the entity until the time that the entity's application for mandatory commercial registration has been approved or denied under this chapter, but no later than 90 days after the department begins accepting applications for mandatory commercial registration.

(b) The department shall issue a provisional registration to individuals and entities that the department determines were, during the six months prior to January 1, 2016, regularly cultivating or distributing medical cannabis collectively or cooperatively in full compliance with paragraphs A and B of Section IV of the Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use, issued by the Department of Justice in August 2008, and any applicable local ordinance, to continue to do so until such time as the registrant's application for mandatory commercial registration has been approved or denied under this chapter, but no later than 90 days after the department begins accepting applications for mandatory commercial registration. To qualify, provisional registrants shall be required to disclose to the department the following information in writing on or before January 20, 2016, in order to obtain provisional registration:

(1) The names, addresses, and dates of birth of each principal officer, owner, or board member.

(2) The common street address and assessor's parcel number of the property at which the registrant conducts any activity under the authority of the registration.

(3) The common street address and assessor's parcel number of the property at which any cultivation activity was or is to be conducted.

(4) For the six months prior to January 1, 2016, the quantity of cannabis cultivated at a location and the quantity expected to be cultivated from January 1, 2016, to June 30, 2016, inclusive. The registrant shall make its records of current activity and activity for the six months prior to January 1, 2016, available to the department upon request.

(c) The department shall charge an application fee of five thousand dollars ($5,000) for each provisional registration.

(d) Notwithstanding any other provision of this section, the department shall not issue a provisional registration to any individual or entity, or for any premises, against whom there are pending state or local administrative or judicial proceedings or actions initiated by a city or county under any applicable local ordinance or who has been determined through those proceedings to have violated any applicable local ordinance.

26055. Entities that are provided immunity under Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election, shall be considered the equivalent of entities that are registered, permitted, or licensed as a medical marijuana business, dispensary, or other entity involved in providing medical marijuana to patients under a local ordinance and shall be considered in compliance with a local ordinance for the purposes of the implementation of the act adding this section and any regulations promulgated by the department.

26056. In addition to other regulations adopted by the department pertaining to mandatory commercial registrants and without limiting the authority of a city or a county pursuant to Section 7 of Article XI of the California Constitution or any other law, the department shall adopt regulations regarding the minimum standards for the operation of dispensaries that establish all of the following:

(a) Standards for labeling of products, including the name of the mandatory commercial registrant from which the product was obtained, and a requirement that dispensaries provide patients with detailed written information about the contents of the cannabis and medical cannabis products they obtain.

(b) Requirements for inventory control and reporting that require all dispensaries to be able to demonstrate the present location, amounts, and descriptions of all medical cannabis products from the time of delivery to the dispensary until purchase by a qualified patient or primary caregiver.

(c) The maximum number of dispensaries that may operate in a city or county or the unincorporated areas of a county based on population, taking into consideration the distances that patients in rural areas may need to travel in order to reach a dispensary and the availability of public transportation in both rural and urban areas. The number established by the department for any city or county may not exceed the number of dispensaries allowed by any applicable local ordinance.

(d) Minimum educational and testing requirements for dispensary staff, including background checks, and a requirement that every dispensary maintain dedicated, licensed security staff both inside and outside the dispensary.

(e) Maximum hours of operation for every dispensary.

(f) Minimum standards governing signage and advertising for dispensaries.

26057. The department shall make recommendations to the Legislature pertaining to the establishment of an appeals and judicial review process for persons aggrieved by a final decision of the department.

## Article 4. Enforcement

26060. (a) The department shall work in conjunction with law enforcement entities throughout the state for the purpose of implementing and enforcing the rules and regulations regarding commercial medical cannabis and taking appropriate action against businesses and individuals who fail to comply with the law.

(b) Nothing in this chapter or in Article 2 (commencing with Section 11357) or Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall

prevent a city, county, or city and county from adopting or enforcing a zoning ordinance or other law, ordinance, or regulation that bans or regulates the location, operation, or establishment of a mandatory commercial registrant or other individual, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, syndicate, or any other group or combination thereof acting as a unit, that cultivates, processes, possesses, stores, manufactures, tests, transports, distributes, provides, donates, or sells medical cannabis.

26062. Except for a person identified in Section 26052, a person shall not exercise the privilege or perform any act that a registrant may exercise or perform under the authority of a registration unless the person is acting pursuant to a registration, including a provisional registration, issued pursuant to this chapter.

26063. (a) Commencing January 1, 2017, any product containing cannabis that is distributed, except in the case of a primary caregiver distributing to a qualified patient, or offered for sale shall comply with the testing, labeling, and food safety requirements established through regulation by the department.

(b) No person shall steal or fraudulently use a mandatory commercial registrant identification certificate or registration or other registrant's identification card or registration issued by the department to acquire, cultivate, transport, produce, possess for sale, sell, provide, donate, or distribute cannabis.

(c) No person shall counterfeit, tamper with, or fraudulently produce an identification card or registration status.

(d) Any person who violates this section, or Section 26062, is guilty of a misdemeanor and shall be subject to the following penalties:

(1) For the first offense, imprisonment in a county jail for no more than six months or a fine not to exceed five thousand dollars ($5,000), or both.

(2) For a second or subsequent offense, imprisonment in a county jail for no more than one year or a fine not to exceed eight thousand dollars ($8,000), or both.

(e) Any person who is charged, prosecuted, or subjected to a civil penalty under this chapter shall not also be charged or prosecuted pursuant to the Health and Safety Code for conduct arising from the same set of facts.

26064. Any person operating an unregistered facility, building, structure, or location where cannabis is being commercially cultivated, manufactured, or possessed for sale in violation of this chapter may be subject to civil penalties of up to twenty-five thousand dollars ($25,000) for each violation, and the department may order the destruction of any cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. Any civil fines collected pursuant to this section shall be deposited into the General Fund pursuant to Section 26028.

26066. The director or any district attorney, county counsel, city attorney, or city prosecutor may bring an action in the name of the people of the State of California to enjoin a violation or the threatened violation of any provision of this chapter, including, but not limited to, a registrant's failure to correct objectionable conditions following notice or as a result of any rule promulgated pursuant to this chapter. The action shall be brought in the county in which the violation occurred or is threatened to occur. Any proceeding brought pursuant to this chapter shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

26068. A state or local law enforcement agency shall immediately notify the department of any arrests made for violations over which the department has jurisdiction which involve a registrant or registered premises. Notice shall be given within 10 days of the arrest. The department shall promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of a registration of the registrant.

26070. This chapter shall not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a mandatory commercial registrant.

26072. The department shall create and maintain a searchable database that will allow state and local law enforcement to verify a mandatory commercial registration.

## Article 5. Transportation of Medical Cannabis

26100. To claim the protections of this chapter and to maintain a valid mandatory commercial registration, a registrant shall transport medical cannabis products only to the registered facilities

of a mandatory commercial registrant and only in response to a request for a specific quantity and variety from that registrant.

26102. (a) Prior to transporting any medical cannabis product, a mandatory commercial registrant shall do the following:

(1) Complete a shipping manifest using a form prescribed by the department.

(2) Securely transmit a copy of the manifest to the mandatory commercial registrant that will receive the medical cannabis product and to the department prior to transport.

(b) The mandatory commercial registrant shipping and the registrant receiving shall maintain each shipping manifest and make it available to the department upon request.

26104. (a) Transported medical cannabis products shall:

(1) Be transported only in a locked, safe and secure storage compartment that is securely affixed to the interior of the transporting vehicle.

(2) Not be visible from outside the vehicle.

(b) Any vehicle transporting medical cannabis products shall travel directly from the facilities of the mandatory commercial registrant to the registered facilities of the registrant authorized to receive the shipment.

26106. (a) A mandatory commercial registrant shall staff all transport vehicles with a minimum of two employees. At least one delivery team member shall remain with the vehicle at all times that the vehicle contains medical cannabis.

(b) Each delivery team member shall have access to a secure form of communication by which each member can communicate with personnel at the mandatory commercial registrant facility at all times that the vehicle contains medical cannabis.

(c) Each delivery team member shall possess documentation of mandatory commercial registration and a government-issued identification card at all times when transporting or delivering medical cannabis and shall produce it to any representative of the department or law enforcement official upon request.

26107. This chapter shall not be construed to authorize or permit any registrant to transport, or cause to be transported, cannabis or cannabis products outside the state.

SEC. 7. Section 23028 is added to the Government Code, to read:

23028. (a) (1) In addition to any authority otherwise provided by law, the board of supervisors of any county may impose, by ordinance, a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing cannabis or cannabis products by a mandatory commercial registrant operating pursuant to Chapter 18 (commencing with Section 26000) of Division 9 of the Business and Professions Code. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, and the manner of collection of the tax. A tax imposed pursuant to this section is a tax and not a fee or special assessment, and the tax is not required to be apportioned on the basis of benefit to any person or property or be applied uniformly to all taxpayers or all real property.

(3) A tax imposed by a county pursuant to this section by a county may include a transactions and use tax imposed solely for cannabis or cannabis products, which shall otherwise conform to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Notwithstanding Section 7251.1 of the Revenue and Taxation Code, the tax may be imposed at any rate specified by the board of supervisors, and the tax rate authorized by this section shall not be considered for purposes of the combined tax rate limitation established by that section.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitously, as determined by the board of supervisors.

(5) The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(b) In addition to any other method of collection authorized by law, the board of supervisors may provide for collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county.

(c) Any tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by any other law.

(d) For purposes of this section, "cannabis" and "cannabis products" shall have the meanings set forth in Section 26001 of the Business and Professions Code.

(e) This section does not limit or prohibit the levy or collection or any other fee, charge, or tax, or any license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of any county as provided by other law.

SEC. 8. Section 11362.7 of the Health and Safety Code is amended to read:

11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has ~~conducted a medical examination of~~ *performed an appropriate prior examination, found* that ~~patient before recording in the patient's medical record the physician's assessment of whether~~ the patient has a ~~serious medical condition and whether the~~ *medical indication, and recommends marijuana for* medical ~~use of marijuana is appropriate.~~ *purposes to treat a serious medical condition.*

(b) "Department" means the State Department of ~~Health Services.~~ *Public Health.*

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing

with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of *Public* Health ~~Services~~ that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.
(3) Arthritis.
(4) Cachexia.
(5) Cancer.
(6) Chronic pain.
(7) Glaucoma.
(8) Migraine.
(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
(10) Seizures, including, but not limited to, seizures associated with epilepsy.
(11) Severe nausea.
(12) Any other chronic or persistent medical symptom that either:
(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.
SEC. 9. Section 11362.775 of the Health and Safety Code is amended to read:
11362.775. *(a)* Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.
*(b) This section shall remain in effect only until 90 days after the Department of Alcoholic Beverage Control posts a notice on its Internet Web site that it began accepting applications for mandatory commercial registration pursuant to Article 3*

*(commencing with Section 26040) of Chapter 18 of Division 9 of the Business and Professions Code, and as of that date is repealed.*

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. The Legislature finds and declares that Section 3 of this act imposes a limitation on the public's right of access to documents in the possession of a public agency within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting that interest:

It is necessary to maintain the confidentiality of patient and physician information provided to the Division of Medical Cannabis Regulation and Enforcement in order to protect the private medical information of patients who use medical cannabis and to preserve the essential confidentiality of the physician and patient relationship.

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 34
**Author:** Bonta and Jones-Sawyer
**Bill Date:** April 23, 2015, Amended
**Subject:** Medical Cannabis Regulation and Enforcement
**Sponsor:** Authors

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Medical Cannabis Regulation and Control Act and would create the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control, the Division of Medical Cannabis Manufacturing and Testing within the California Department of Public Health, and the Division of Medical Cannabis Cultivation within the Department of Food and Agriculture. However, this analysis will only cover the portion of the bill related to the requirements on physicians recommending medical marijuana and the Medical Board of California (Board).

The portions of this bill that impact the Board are very similar to the provisions in AB 26 (Jones-Sawyer). It appears that AB 26 and this bill have been merged, as Asm. Jones-Sawyer is now a co-author of this bill. This bill would include in the Board's priorities, cases that allege a physician has recommended marijuana to patients for medical purposes without a good faith prior examination and medical reason therefor. This bill would state that physicians recommending marijuana to a patient for a medical purpose without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. Lastly, this bill would not allow a marijuana clinic or dispensary to directly or indirectly employ physicians to provide marijuana recommendations, a violation would constitute unprofessional conduct.

## BACKGROUND:

In 1996, California voters approved the Compassionate Use Act (Proposition 215), which allowed Californians access to marijuana for medical purposes, and prohibited punitive action against physicians for making marijuana recommendations. SB 420 (Vasconcellos, Chapter 875, Statutes of 2003), the Medical Marijuana Program Act, included issuance of identification cards for qualified patients, and allowed patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes.

In 2014, AB 1894 (Ammiano) was amended on May 23, 2014 and the amendments basically included the same language as the language included in this bill. The Board took a support position on AB 1894.

**ANALYSIS:**

This bill would give the Board some much needed enforcement tools to more efficiently regulate physicians who recommend marijuana for a medical purpose. This bill expressly requires a physician to perform an appropriate prior examination before recommending marijuana for a medical purpose. This is an important amendment because the prescribing requirements in existing law do not necessarily apply to marijuana recommendations. This bill would also make marijuana recommendation cases a priority of the Board, which will help to ensure consumer protection. Lastly, this bill would not allow physicians to be employed by marijuana clinics or dispensaries, which will help to ensure that physicians are not making marijuana recommendations for financial or employment reasons.

In January, the Board voted to support AB 26 (Jones-Sawyer), which includes very similar language as the language included in this bill. The only exception is the requirement for an in-person examination. The Board supported AB 26 because it would provide the Board with enforcement tools that would help ensure consumer protection and it would ensure that physicians are not making marijuana recommendations for financial or employment reasons. As such, Board staff is suggesting that the Board take a support position on this bill.

**FISCAL:** None to the Board

**SUPPORT:** American Nurses Association\California; Conscious Cannabis Ventures; Emerald Growers Association; Heritage Associates; United Food and Commercial Workers Union; and 1 owner of a cannabis dispensary

**OPPOSITION:** Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California Narcotics Officers' Association; California Police Chiefs Association; California College and University Police Chiefs Association; California Correctional Supervisors Organization; City of Concord; City of Tulare; Family Winemakers of California; International Faith Based Coalition; League of California Cities; Los Angeles Police Protective League; and Riverside Sheriffs Association

**POSITION:** Recommendation: Support

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# ASSEMBLY BILL No. 34

**Introduced by Assembly Members Bonta and Jones-Sawyer**

December 1, 2014

An act to amend Sections 2220.05, 2242, and 2264 of, and to add Chapter 18 (commencing with Section 26000) to Division 9 of, the Business and Professions Code, to add Section 23028 to the Government Code, to amend Section 11362.775 of the Health and Safety Code, and to add Sections 147.5 and 3094 to the Labor Code, relating to medical cannabis, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

AB 34, as amended, Bonta. Medical cannabis regulation and enforcement.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes.

Existing law enacted by the Legislature, commonly referred to as the Medical Marijuana Program Act (MMPA), requires the establishment of a program for the issuance of identification cards to qualified patients so that they may use marijuana for medical purposes without arrest or prosecution under specified state law, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.

This bill would enact the Medical Cannabis Regulation and Control Act and would establish the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage ~~Control.~~ *Control, the Division of Medical Cannabis Manufacturing and Testing within the State Department of Public Health, and the Division of Medical Cannabis Cultivation within the Department of Food and Agriculture and would set forth the duties of the respective regulatory authorities.*

The bill would, 180 days after the division posts a specified notice on its Internet Web site, make those provisions of the MMPA that prohibit prosecution of qualified patients, persons with valid identification cards, and designated primary caregivers who associate in California, collectively or cooperatively, to cultivate marijuana for medical purposes, inapplicable to licensees. The bill would, thereafter, permit a dispensary to provide patients with medical marijuana and medical marijuana products obtained only from persons licensed under this bill.

The bill would require the ~~division~~ *regulatory authorities* to license persons to engage in the various aspects of commercial cannabis activity, as defined. The bill would designate as peace officers ~~the Director of the Department of Alcoholic Beverage Control and persons employed by the division to administer and enforce its provisions~~ *specified officers and employees of the regulatory authorities*. The bill would prescribe requirements for the issuance, renewal, suspension, and revocation of a mandatory commercial license and would authorize the assessment of related fees.

The bill would not preclude a city or county from adopting a local ordinance, not consistent with this bill, that regulates the location, operation, or establishment of a licensee or prohibits commercial cannabis activity within its jurisdiction. The bill would require state agencies to collaborate with local agencies, and would require local agencies to, within the scope of their jurisdiction, assist state agencies in the enforcement of the bill. By imposing these enforcement duties on local agencies, the bill would impose a state-mandated local program.

The bill would establish the Medical Marijuana Regulation Fund with separate accounts for fees and for penalties, and would require deposit of fees and penalties into their respective accounts within the fund. The bill would continuously appropriate moneys within the fees account to the division for the purposes of administering the program.

The bill would authorize the ~~division~~ *regulatory authorities* to *collaborate to* establish a regulation and enforcement assistance grant program and would authorize the Department of Transportation to conduct research and develop protocols regarding determining whether a driver is operating a vehicle under the influence of marijuana to assist law enforcement agencies. The bill would make the fines and penalties deposited into the fund available, upon appropriation by the Legislature, for funding these programs.

The bill would require the ~~division,~~ *regulatory authorities*, as soon as practicable, to allow qualified applicants for licensure to apply for and receive a provisional license to engage in commercial cannabis activity and to adopt emergency regulations for that purpose.

The bill would require the ~~division~~ *regulatory authorities* to adopt regulations necessary for the implementation and enforcement of this bill in consultation with prescribed state agencies relating to environmental, agricultural, consumer protection, worker safety, and food and product safety requirements. The bill would authorize the ~~division~~ *regulatory authorities* to enter into interagency agreements to pay, from fees deposited into the fund, the associated costs incurred by these state agencies.

The bill would establish a cannabis employee certification, training, and apprenticeship program for cultivation sites and dispensaries, as defined. The bill would require the Division of Labor Standards Enforcement to maintain and enforce minimum standards for the competency and training of employees and to certify cannabis employees. The bill would require the Division of Labor Standards Enforcement, by January 1, 2017, to convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of licensed facilities. The bill would require the advisory committee to present to the Occupational Safety and Health Standards Board its findings and recommendations for consideration by the board, and would require the board, by July 1, 2017, to render a decision regarding the adoption of industry-specific regulations.

The bill would require a licensee to keep various records in connections with commercial cannabis activities and would prescribe requirements for making records available to the division and any state or local agency. The bill would prohibit the disclosure of certain patient and caregiver information pursuant to the California Public Records Act.

The bill would declare that it does not apply to, or diminish the protections granted to, a patient or primary caregiver acting pursuant to the Compassionate Use Act of 1996 and would exempt these parties from the application of the act.

The bill would declare that the actions of a licensee or provisional licensee, its employees, and its agents that are within the scope of a valid license are not unlawful under state law, as specified. The bill would provide similar state law immunity for a property owner who allows his or her property to be used by a licensee or provisional licensee.

The bill would require the ~~division~~ *regulatory authorities* to work in conjunction with law enforcement entities throughout the state to implement and enforce the rules and regulations regarding medical cannabis and to take appropriate action against businesses and individuals that fail to comply with the law.

The bill would authorize the director of ~~the division,~~ *any regulatory authority,* and prescribed local entities, to bring an action to enjoin violations. The bill would require the ~~division~~ *regulatory authority* to establish a digital database and to allow on its Internet Web site to permit state and local law enforcement agencies to verify licenses.

~~The bill would make certain violations of its provisions a crime, thereby imposing a state-mandated local program.~~

(2) Existing law, the Medical Practice Act, establishes the Medical Board of California and sets forth its powers and duties, including, but not limited to the licensing and regulation of physicians and surgeons. Existing law sets forth the conduct that would constitute unprofessional conduct for a physician and surgeon, including, but not limited to, prescribing certain drugs without an appropriate examination or medical indication. Existing law generally makes a violation of these provisions a misdemeanor.

This bill would specify that recommending marijuana to patients without an appropriate prior examination and a medical indication is unprofessional conduct.

The bill would provide that specified acts of recommending marijuana without a good faith examination are among the types of cases that should be given priority for investigation and prosecution by the Medical Board of California, as described above. The bill would deem as unprofessional conduct a physician and surgeon being employed by, or entering into an agreement with, a medical cannabis licensee to provide recommendations for medical marijuana.

By broadening the definition of a crime, the bill would impose a state-mandated local program.

(3) Existing law authorizes the board of supervisors of a county and the governing body of a city to impose various taxes, including a transactions and use tax at a rate of 0.125%, or a multiple thereof, if approved by the required vote of the board or governing body and the required vote of qualified voters, and limits the combined rate of transactions and use taxes within a city or county to 2%.

This bill would authorize the board of supervisors of a county to impose, by ordinance, a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing cannabis or cannabis products, including a transactions and use tax at any rate specified by the board. The bill would authorize the tax to be imposed for either general or specific governmental purposes. The bill would require a tax imposed pursuant to this authority to be subject to any applicable voter approval requirement.

(4) This bill would specify that its provisions are severable.

(5) 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.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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

(a) The people of California enacted the Compassionate Use Act of 1996 to ensure that seriously ill Californians have access to marijuana for medical purposes. The Compassionate Use Act of 1996 urged the state and federal governments to implement a plan to provide for the safe and affordable distribution of medical marijuana to all patients in medical need of the drug.

(b) Under federal law, marijuana is a Schedule 1 drug. Its placement in that schedule is based upon a finding that marijuana has no currently accepted medical use. That finding, if correct at the time it was made, is no longer accurate. California, exercising its traditional power to regulate the practice of medicine, has determined that marijuana has a significant role to play.

(c) California, acting alone, is powerless to change federal law and to correct this misunderstanding in federal law about the role that marijuana can and does play in the practice of medicine. However, federal enforcement authorities have recognized that in states that have authorized marijuana use and have enacted strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those regulatory and enforcement systems is less likely to threaten federal priorities and, thus, less likely to require federal enforcement intervention (See: Memorandum For All United States Attorneys—Guidance Regarding Marijuana Enforcement, by James M. Cole, Deputy Attorney General, August 29, 2013).

(d) The purpose of this act is to establish for California a robust medical cannabis regulatory and enforcement system to ensure that conduct in compliance with California's medical marijuana laws does not threaten the federal priorities as set forth in the James M. Cole memorandum, and, therefore, does not require federal enforcement intervention.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a

priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances, or recommending marijuana to patients for medical purposes, without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2242 of the Business and Professions Code is amended to read:

2242. (a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct. Prescribing or recommending marijuana to a patient for

a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.

SEC. 4. Section 2264 of the Business and Professions Code is amended to read:

2264. The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct. Employment by, or other agreement with, a mandatory commercial licensee acting pursuant to the Medical Cannabis Regulation and Control Act or a dispensary to provide recommendations for medical marijuana constitutes unprofessional conduct.

SEC. 5. Chapter 18 (commencing with Section 26000) is added to Division 9 of the Business and Professions Code, to read:

CHAPTER 18. MEDICAL CANNABIS REGULATION AND CONTROL

Article 1. General Provisions

26000. (a) This chapter shall be known, and may be cited, as the Medical Cannabis Regulation and Control Act.

(b) It is the intent of the Legislature in enacting this chapter to provide for the statewide regulation of the commercial cannabis activity and the enforcement of laws relating to commercial cannabis activities without preempting city or county ordinances regulating or banning these activities. This chapter is an exercise of the police powers of the state for the protection of the safety, welfare, health, peace, and morals of the people of the state.

26001. Without limiting the authority of a city or county pursuant to Section 7 of Article XI of the California Constitution, or any other provision of law, and subject to that authority, the state shall have the exclusive right and power to regulate and license persons for the cultivation, manufacture, transportation, sale, and other related activities regarding medical cannabis within the state. In the exercise of these rights and powers, the state and each of its agencies are hereby deemed not to be engaged in activities requiring licensure under this chapter.

26002. For the purpose of this chapter:

~~(a) "Department" means the Department of Alcoholic Beverage Control.~~

~~(b) "Director" means the Director of the Department of Alcoholic Beverage Control, unless the context otherwise clearly indicates.~~

*(a) "Regulatory authority" means the Division of Medical Cannabis Regulation and Enforcement within the Department of Alcoholic Beverage Control, the Division of Medical Cannabis Manufacturing and Testing within the State Department of Public Health, or the Division of Medical Cannabis Cultivation within the Department of Food and Agriculture, as appropriate to the context.*

*(b) "Regulatory director" means the Director of the Department of Alcoholic Beverage Control, the Director of Consumer Affairs,*

*the Director of the Department of Public Health, or the Director of the Department of Food and Agriculture.*

(c) "Division" means the Division of Medical Cannabis Regulation and Enforcement within the ~~department.~~ *Department of Alcoholic Beverage Control, unless otherwise specified.*

(d) "Cannabis" means all parts of the plant Cannabis sativa, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

(e) "Commercial cannabis activity" means any cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of cannabis or cannabis product, except as set forth in subdivision (b) of Section 26052.

(f) "Medical cannabis product," "medical marijuana product," or "cannabis product" means any product containing cannabis, including, but not limited to, concentrates and extractions intended to be sold for use by medical marijuana patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215).

(g) "Manufactured cannabis" means raw marijuana that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(h) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the ~~cannabinoid~~ *tetrahydrocannabinol* active ingredient, thereby increasing the product's potency.

(i) "Cannabinoid" means a chemical compound that is unique to and derived from cannabis, also known as phytocannabinoid.

(j) "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum.

(k) "Topical cannabis" means manufactured product intended for external use.

(*l*) "Identification program" means the universal identification certificate program for licensees.

(m) "Mandatory commercial license" or "license" means a mandatory commercial license issued pursuant to Article 3 (commencing with Section 26040).

(n) "Licensee" means any person licensed under this chapter to engage in commercial cannabis activity related to medical cannabis *or medical cannabis products* as set forth in this chapter.

(o) "Dispensary" means a retail location that distributes cannabis or medical cannabis products and is owned and operated by a licensee for these activities pursuant to this chapter.

(p) "Testing and labeling" means a labeling and quality assurance plan that addresses all of the following:

(1) Potency.

(2) Chemical residue.

(3) Microbiological contaminants.

(4) Handling, care, and storage.

(5) Date and location of cultivation, processing, and manufacturing.

(q) "Fund" means the Medical Cannabis Control Fund established pursuant to Section 26028.

(r) "Person" means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(s) "Cultivation site" means a location that grows cannabis or medical cannabis products and is owned and operated by a licensee for these activities pursuant to this ~~chapter.~~ *chapter, including a nursery.*

(t) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

*(u) "Cultivation" means any activity involving the planting, growing, harvesting, drying, processing, or trimming of cannabis.*

*(v) "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products.*

26010. This chapter does not, nor does Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, prevent a city or county from doing any of the following:

(a) Adopting local ordinances inconsistent with this chapter that do the following:

(1) Regulate the location, operation, or establishment of a licensee or any person that cultivates, processes, possesses, stores, manufactures, tests, transports, distributes, or sells medical cannabis.

(2) Prohibit commercial cannabis activity within their jurisdiction.

(b) The administrative, civil, or criminal enforcement of the ordinances described in subdivision (a).

(c) Establishing a fee or tax for the operation of a licensee within its jurisdiction.

(d) Enacting and enforcing other laws or ordinances pursuant to the authority granted by Section 7 of Article XI of the California Constitution.

## Article 2. Administration

26020. (a) The Division of Medical Cannabis Regulation and Enforcement is hereby established within the Department of Alcoholic Beverage Control. The ~~division shall be~~ *Division of Medical Cannabis Regulation and Enforcement shall do all of the following:*

*(1) Be* administered by a person who is appointed by the ~~director. The division shall administer this chapter.~~ *Director of the Department of Alcholic Beverage Control.*

*(2) Administer this chapter, as it pertains to commercial cannabis activity relating to dispensaries.*

*(3) Lead all state and local authorities regarding the tracking of medical cannabis, medical cannabis products, and licensees pursuant to this chapter.*

*(b) The Division of Medical Cannabis Manufacturing and Testing is hereby established within the Department of Public Health. The Division of Medical Cannabis Manufacturing and Testing shall do all the following:*

*(1) Be administered by a person who is appointed by the State Health Officer.*

*(2) Administer this chapter, as it pertains to manufacturing, testing, and certification of testing laboratories for medical cannabis.*

*(c) The Division of Medical Cannabis Cultivation is hereby established within the Department of Food and Agriculture. The Division of Medical Cannabis Cultivation shall do all of the following:*

*(1) Be administered by a person who is appointed by the Secretary of the Department of Food and Agriculture.*

*(2) Administer this chapter as it pertains to cultivation of medical cannabis.*

*(d) The regulatory authorities shall issue licenses to applicants to engage in commercial cannabis activity pursuant to this chapter. No person shall engage in commercial cannabis activity unless the person obtains permission pursuant to section 26045.*

*(e) The division shall maintain a registry of all permit holders and shall maintain a record of all licenses and commercial cannabis activity of the permit holder throughout the length of licensure and for a minimum of seven years following the expiration of each license.*

~~(b) No person shall engage in commercial cannabis activity unless licensed by the division under this chapter. The division shall issue licenses to applicants to engage in commercial cannabis activity pursuant to this chapter.~~

~~(c) The division~~

*(f) Each regulatory authority* shall adopt regulations as needed to implement that licensing program as set forth in Article 3 (commencing with Section 26040) within one year following the establishment of provisional licenses, pursuant to Section 26054. The regulations shall not limit the authority of a city or a county pursuant to Section 7 of Article XI of the California Constitution, Section 26010 or 26060, or any other law. The regulations shall, in addition, do all of the following:

(1) Establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(A) ~~The division~~*Each regulatory authority* shall charge each applicant for licensure or renewal an application or renewal fee that shall be calculated to cover the costs of processing the

application or renewal. This fee may vary depending upon the varying costs associated with approving the application or renewal related to the varying activities covered by the license, but shall not exceed ___dollars ($____) for an initial application, and ____dollars ($____) for a renewal application.

(B) ~~Upon the issuance of a license, the division~~ *Each regulatory authority* shall charge each licensee a licensure ~~fee.~~ *fee upon the issuance of a license.* The licensure fee shall be calculated to cover the costs of administering this chapter, other than the costs of processing applications. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, but shall not be less than ____ dollars ($____), nor more than ____ dollars ($____).

(C) The total fees assessed pursuant to this chapter, including, but not limited to, provisional license fees set forth in Section 26054, shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter, including, but not limited to, costs set forth in Section 26023.

(2) Establish procedures for approval or denial of applications for licensure for each and every aspect of commercial cannabis activity, including, but not limited to, cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, and sale of cannabis.

(3) Establish applicant qualifications.

(4) Establish licensee employee qualifications, including, but not limited to, training and screening requirements.

(5) Establish licensee security requirements, including, but not limited to, procedures to limit access to facilities and to prevent diversion of product to nonmedical use.

(6) Establish procedures and protocols for identifying, managing, and disposing of contaminated, adulterated, deteriorated, or excess product.

(7) Establish advertising, marketing, signage, and labeling requirements and restrictions.

(8) Establish procedures for the suspension, revocation, or surrender of a license and establishing related fines and penalties to be assessed against licensees for violations of this chapter.

(9) Establish procedures for the oversight of the fund established pursuant to Section 26028.

26021. ~~(a) The division, in consultation with the Division of Labor Standards Enforcement, shall adopt regulations establishing worker safety standards in cultivation sites, manufacturing facilities, and retail dispensary sites.~~

~~(b)~~ The ~~division,~~ *Division of Medical Cannabis Cultivation shall do all of the following:* ~~in~~

*(a) Adopt regulations, in* consultation with the Department of Water Resources, ~~shall adopt regulations~~ to ensure that commercial cannabis activity licensed pursuant to this chapter does not threaten the state's clean water and environment.

~~(c)~~

*(b)* ~~The division, in consultation with the Department of Food and Agriculture, shall adopt~~*Adopt* regulations ensuring that the cultivation of cannabis under this chapter is in compliance with standards equivalent to the statutory and regulatory requirements applicable to the production of a food crop, including, but not limited to, all of the following:

(1) Regulations regarding the verification of cannabis stock for the purposes of cultivation.

(2) Cultivation protocols ensuring the quality, availability, and safety of the cannabis crop, including both indoor and outdoor cultivation standards and regulations regarding carbon offsets for indoor cultivation.

(3) Environmentally sound agricultural practices, including all of the following:

(A) A requirement that any actual, or potential for, environmental damage be addressed by the relevant state agency, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, California regional water quality control boards, the Department of the California Highway Patrol, or the Department of Justice.

(B) A provision authorizing revocation of a licensee if the state determines that the conduct of the licensee threatens to inflict or has inflicted significant damage to the environment.

(C) Standards controlling the application of pesticides. These standards shall, at a minimum, require that if pesticides are to be used, the use comply with standards equivalent to Division 6

(commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

*(c) Adopt regulations to establish cultivation labeling and packaging standards and requirements, including, but not limited to, cultivation labeling requirements requiring labeling to include, at a minimum, cannabinoid levels, cannabinoid profile, and active ingredients.*

~~(d) The division, in consultation with the Department of Consumer Affairs, shall adopt regulations to certify laboratories for the testing of medical cannabis and medical cannabis products, as defined in this chapter. Certification of testing laboratories shall be consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, including, but not limited to, ISO/IEC 17025.~~

26021.5. (a) State agencies shall collaborate with local agencies, and local agencies, within the scope of their jurisdiction, and to the extent that resources are available, shall assist state agencies in the enforcement of this chapter. This section shall not limit any other state or local requirements.

(b) No cannabis shall be cultivated on public lands pursuant to this chapter.

26022. The~~ division,~~ *Division of Medical Cannabis Manufacturing and Testing,* in consultation with the State Department of Public Health, shall adopt regulations to do all of the following:

(a) Establish *product* labeling and packaging standards and requirements, including, but shall not be limited to, all of the following:

~~(1) Cultivation labeling requirements requiring labeling to include, at a minimum, cannabinoid levels, cannabinoid profile, and active ingredients.~~

~~(2)~~

*(1)* ~~Edible, manufactured, and topical cannabis~~*All manufactured cannabis* product labeling and packaging standards, including, but not limited to, all of the following:

(A) A requirement that the label include the manufacturing date, *the name of the mandatory commercial licensee from which it was obtained,* the active ingredients, net weight, cannabinoid profile,

nutritional facts, dosage in total milligrams of cannabinoids delivered, and any potential allergens.

(B) A requirement that the label include the warnings: "KEEP OUT OF REACH OF CHILDREN AND ANIMALS," and "FOR MEDICAL USE ONLY."

(C) A requirement that packaging contain a clear indication in bold font that the package contains medical cannabis, and that the package not be designed in a manner that attracts minors.

(D) Standards for labeling food that clearly distinguish edible cannabis products from non-cannabis products.

*(E) The name of the mandatory commercial licensee that manufactured the product.*

(b) Establish consumer protection, food and product safety requirements, including, but not limited to, all of the following:

(1) Adverse event reporting and product recall systems that include batch, lot, or control number tracking, the requirement that employees who manufacture or otherwise handle edible medical cannabis products thoroughly wash their hands before commencing production and before handling finished edible medical cannabis products.

(2) Standards for cannabinoid dosage in edible products.

(3) Sanitation standards equivalent to the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code) for food preparation, storage, handling, and sale of medical cannabis products.

(4) A requirement that edible medical cannabis products be limited to foods that are not potentially hazardous food as set forth in Section 114365.5 of the Health and Safety Code.

(5) A requirement that facilities in which edible medical cannabis products are prepared shall be constructed in accordance with building standards and health and safety standards applicable to a food production facility, including the requirement that edible products distributed or sold by dispensaries not be produced or stored in private homes.

(6) Weighing or measuring standards, including, but not limited to, the requirement that devices used in connection with the sale or distribution of cannabis meet standards equivalent to Division 5 (commencing with Section 12001) of the Business and Professions Code.

(7) Standards controlling the application of pesticides. These standards shall, at a minimum, require that if pesticides are to be used, the use comply with standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(8) A requirement that all edible medical cannabis products shall be individually wrapped at the original point of preparation.

(c) Establish testing requirements for all *medical cannabis and* medical cannabis products, including edible cannabis products and those used, or intended for use, via inhalation, including, but not limited to:

(1) Testing for the active cannabinoid-profile, constituent elements, and microbiological, bacterial, pathogenic yeast, and mold counts.

(2) Testing standards by which to test and measure the potency of *medical cannabis and* medical cannabis products. The division shall also determine maximum standards in the potency of *medical cannabis and* medical cannabis products.

(3) Testing standards by which to test and measure the quality of the *medical cannabis and medical* cannabis product.

(4) Protocols for *medical cannabis and medical* cannabis product safety testing.

*(d) Establish procedures for certifying laboratories for the testing of medical cannabis and medical cannabis products, as defined in this chapter. Certification of testing laboratories shall be consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, including, but not limited to, ISO/IEC 17025.*

*(e) Ensure licensed cannabis cultivation entities have access to existing agricultural incentive and support programs.*

26022.5. The regulations shall not limit the authority of a city or a county pursuant to Section 7 of Article XI of the California Constitution, Section 26010 or 26060, or any other law.

26023. The regulations shall set forth the inspection and enforcement responsibilities of *the Department of Alcohol and Beverage Control, the State Department of Public Health,* the Division of Labor Standards Enforcement, the Department of Water Resources, the State Department of Public Health, and the Department of Food and Agriculture associated with this chapter.

26023.5. (a) Without limiting the authority of a city or a county pursuant to Section 7 of Article XI of the California Constitution or any other law, the ~~division~~ *Division of Medical Cannabis Regulation and Enforcement* shall adopt regulations regarding the minimum standards for the operation of dispensaries. The regulations shall establish all of the following:

(1) ~~Standards for labeling of products, including the name of the mandatory commercial licensee from which the product was obtained, and a~~ *A* requirement that dispensaries provide patients with detailed written information about the contents of the cannabis and medical cannabis products they obtain.

(2) Requirements for inventory control and reporting that require all dispensaries to be able to demonstrate the present location, amounts, and descriptions of all medical cannabis products from the time of delivery to the dispensary until purchase by a qualified patient or primary caregiver.

(3) Minimum educational and testing requirements for licensee staff, including, but not limited to, background checks and a requirement that every dispensary maintain dedicated, licensed security staff both inside and outside the dispensary.

(4) Minimum standards governing signage and advertising for dispensaries.

(b) Commencing 180 days after the division begins issuing provisional licenses, a dispensary shall provide patients medical cannabis and medical cannabis products obtained only from persons licensed under this chapter.

(c) Out-of-state medical cannabis patients with current, valid verification that they are allowed to receive medical cannabis treatment within their home state may receive medical cannabis treatment, including the ability to purchase medical cannabis from licensed dispensaries within this state upon verification of the documents by the dispensary, pursuant to protocols established by the division.

26024. ~~(a) The division~~ *The regulatory authorities* may assist state taxation authorities in the development of uniform policies for the state taxation of mandatory commercial licensees.

~~(b) The division shall assist the Division of Occupational Safety and Health in the Department of Industrial Relations in the development of industry-specific regulations related to commercial medical cannabis activities.~~

26028. (a) The Medical Cannabis Control Fund is hereby established within the State Treasury. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) All fees collected pursuant to this chapter shall be deposited into the fees account, which is hereby established within the fund. Notwithstanding Section 13340 of the Government Code, all moneys within the fees account are hereby continuously appropriated, without regard to fiscal year, to the ~~division~~ *Division of Medical Cannabis Regulation and Enforcement* solely for the purposes of fully funding and administering this chapter, including, but not limited to, the costs incurred by the division for its administrative expenses and costs *and the costs of all regulatory authorization as* set forth in Section 26023.

(c) All moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the fines and penalties account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) The ~~division~~ *regulatory authorities* shall *collaboratively* establish and administer a grant program to allocate moneys from the fines and penalties account to state and local entities for the purpose of assisting with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to licensees. The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the fines and penalties account.

(e) The Department of Transportation shall conduct research regarding determining whether a driver is operating a vehicle under the influence of cannabis, and shall develop protocols setting forth best practices to assist law enforcement agencies. The costs of the Department of Transportation under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the fines and penalties account.

(f) The total fees charged pursuant to this chapter shall be sufficient to pay the costs associated with the administrative and enforcement duties of the division and of the associated state agencies in administering this chapter.

(g) The ~~division~~ *regulatory authorities* shall enter into an interagency agreement with *the Department of Alcohol and Beverage Control, the Department of Consumer Affairs,* the Division of Labor Standards Enforcement, the Department of Water Resources, the State Department of Public Health, and the Department of Food and Agriculture setting forth the duties of those agencies under this chapter and providing for reimbursement *to the appropriate state and local authorities* of associated costs from revenues deposited into the fees account of the fund.

26030. (a) The ~~director~~ *regulatory directors* and the persons employed by the ~~division~~ *regulatory authorities* for the administration and enforcement of this chapter are peace officers in the enforcement of the penal provisions of this chapter, the rules of the division adopted under this chapter, and any other penal provisions of law of this state prohibiting or regulating the cultivation, processing, storing, manufacturing, testing, transporting, or selling of medical cannabis, and these persons are authorized, while acting as peace officers, to enforce any penal provisions of state law while in the course of their employment.

(b) The ~~director,~~ *regulatory directors,* the persons employed by the ~~division~~ *regulatory authorities* for the administration and enforcement of this chapter, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing this chapter, visit and inspect the premises of any licensee at any time during which the licensee is acting pursuant to the mandatory commercial license.

(c) Peace officers of the Department of the California Highway Patrol, members of the University of California and California State University police departments, and peace officers of the Department of Parks and Recreation, as defined in subdivisions (a), (b), (c), and (f) of Section 830.2 of the Penal Code, may, in enforcing this chapter, visit and inspect the premises of any licensee at any time during which the licensee is acting pursuant to the license.

26034. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the ~~division~~ *regulatory authorities* for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California

Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city or county to perform official duties pursuant to this chapter, or a local ordinance adopted in accordance with Section 26010.

(b) Nothing in this section precludes the following:

(1) ~~Division employees~~ *Employees of any of the regulatory authorities* notifying state or local agencies about information submitted to the division that the employee suspects is falsified or fraudulent.

(2) Notifications from ~~the division~~ *any of the regulatory authorities* to state or local agencies about apparent violations of this chapter or any applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the ~~division~~ *regulatory authorities* or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(c) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, a notification, or the parameters of a specific court order or subpoena.

26035. This chapter does not require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or to affect the ability of employers to have policies restricting the use of cannabis by employees.

## Article 3. Mandatory Commercial License

26040. (a) The ~~division~~ *regulatory authorities* shall adopt regulations establishing a tiered licensing scheme to accommodate the different levels and types of activity to be licensed, ~~including, but not limited to, licenses for the cultivation, testing, manufacture, transportation, and dispensing of medical cannabis and medical cannabis products. The~~ *as follows:*

*(1) The Division of Medical Cannabis Cultivation shall adopt regulations for a tiered licensing structure for the cultivation of medical cannabis.*

*(2) The Division of Medical Cannabis Manufacturing and Testing shall adopt regulations, in consultation with the Department of Consumer Affairs, for the tiered licensing structure of the following:*

*(A) Manufacturing of medical cannabis products.*

*(B) Testing of medical cannabis products.*

*(C) Certification of medical cannabis testing laboratories.*

*(3) The Division of Medical Cannabis Regulation and Enforcement shall adopt regulations for the tiered licensing structure for all the following:*

*(A) Wholesale of medical cannabis products, which shall include large-scale storage and distribution, as defined by the regulatory authority.*

*(B) Dispensing of medical cannabis products.*

*(b) The* regulations shall set forth the application and licensure process, including, but not limited to, all of the following:

(1) A description of the various specific forms of commercial cannabis activity to be authorized by the various types of licenses.

(2) The establishment of license application, issuance, renewal, suspension, surrender, and revocation procedures for the various types of licenses to be issued.

(3) The procedures for the issuance, renewal, suspension, and revocation of mandatory commercial licenses.

(4) Time periods, not to exceed 90 days, by which the division shall approve or deny an application for mandatory commercial licensure. The failure of the division to act upon an application for licensure within the time prescribed shall not be deemed approval of the application.

(5) Qualifications for licensees.

(6) Security requirements, including, but not limited to, procedures for limiting access to facilities and for the screening of employees.

~~(b)~~

*(c)* Each mandatory commercial license application approved by the ~~division~~ *respective licensing authority* pursuant to this chapter is separate and distinct.

~~(c)~~

*(d)* A mandatory commercial license application approved by the ~~division~~ *respective licensing authority* pursuant to this chapter shall be valid for a period not to exceed one year from the date of approval unless revoked or suspended earlier than that date pursuant to this chapter or the rules or regulations adopted pursuant to this chapter

*(e) Each regulatory authority may adopt regulations for additional licenses for any cannabis activity within its statutory jurisdiction pursuant to this chapter, as deemed necessary.*

*(f) Each mandatory commercial license application approved by the respective regulatory authority shall be reported to the Division of Medical Cannabis Regulation and Enforcement within 24 hours of its approval.*

26041. ~~An individual licensed pursuant to this chapter shall do~~ *Regulations adopted by the regulatory authorities shall require, at a minimum, all of* the following, as applicable:

(a) ~~A~~ *The regulations on the* cultivation ~~licensee~~ *of medical cannabis* shall *do all of the following*:

(1) ~~Comply~~ *Require that the cultivation licensee comply* with all regulations of the Department of Food and Agriculture pursuant to this chapter regarding the cultivation of medical cannabis.

(2) ~~Comply~~ *Require that the cultivation licensee comply* with any other applicable requirement of the division pursuant to this chapter.

*(3) Establish criteria for different tiers of cultivation licenses, including, but not limited to small, mid-sized, and large commercial cultivation licenses, based on the area, in square feet, in cannabis cultivation.*

*(4) Authorize commercial cultivation licensees to transport and deliver medical cannabis for commercial purposes to only another licensee of commercial cannabis activity pursuant to this chapter. Cultivation licensees, without a separate dispensary license, who deliver directly to any entity not licensed pursuant to this chapter shall be fined and be under review for the revocation of licensure by the Division of Medical Cannabis Cultivation.*

*(5) Require licensees to track all cannabis products and report to the division, as specified by this chapter and any regulations promulgated pursuant to this chapter.*

*(6) Require a cultivation licensee to obtain a seller's permit from the Board of Equalization to validate the authority of the*

*licensee to sell commercial cannabis products to another licensee of commercial cannabis activity.*

*(7) Require a cultivation licensee to obtain a resale certificate upon the sale of cannabis to another licensee of commercial cannabis activity, to track the quantities exchanged.*

*(8) Require all medical cannabis to be tested by a laboratory that has been certified and licensed pursuant to this chapter, prior to commercial exchange with a dispensary. If the licensee has a separate dispensary license, all medical cannabis and medical cannabis products must be tested by a laboratory that has been certified and licensed pursuant to this chapter, prior to retail directly to consumers.*

*(9) Ensure licensed cannabis cultivation entities have access to existing agricultural incentive and support programs.*

(b) ~~Testing licensees shall be subject to~~ *The regulations on the testing of medical cannabis shall do all of* the following:

(1) ~~A~~ *Prohibit a* testing licensee ~~shall not receive~~ *from receiving* medical cannabis products except through ~~the division~~ *a regulatory authority* or a medical cannabis licensee.

(2) ~~A~~ *Prohibit a* testing licensee ~~shall not be~~ *from being* licensed for any *other* activity authorized under this article, and ~~shall not hold~~ *from holding* an ownership interest in any real property, personal property, or other assets associated or used in any other license category.

(3) ~~Any~~ *Require the licensee to follow any* other applicable requirement of the division pursuant to this chapter.

~~(c) A manufacturing licensee shall comply with any applicable requirement of the division pursuant to this chapter.~~

~~(d) A transportation licensee of medical cannabis shall:~~

*(c) Regulations on the manufacturing of medical cannabis shall do all of the following:*

*(1) Require the manufacturing licensee comply with all regulations of the State Department of Public Health pursuant to this chapter regarding the cultivation of medical cannabis.*

*(2) Require the manufacturing licensee comply with any other applicable requirement of the Division of Medical Cannabis Regulation and Enforcement pursuant to this chapter.*

*(3) Establish criteria for different tiers of manufacturing licenses, including, but not limited to small, mid-sized, and large commercial manufacturing licenses.*

*(4) Authorize commercial manufacturing licensees to transport and deliver medical cannabis for commercial purposes to only another licensee of commercial cannabis activity pursuant to this chapter. Manufacturing licensees, without a separate dispensary license, who deliver directly to any entity not licensed pursuant to this chapter shall be fined and be under review for the revocation of licensure by the Division of Medical Cannabis Manufacturing and Testing.*

*(5) Require licensees to track all cannabis products and report to the Division of Medical Cannabis Regulation and Enforcement, as specified by this chapter and any regulations promulgated pursuant to this chapter.*

*(6) Require a manufacturing licensee to obtain a seller's permit from the Board of Equalization to validate the authority of the licensee to sell commercial manufactured cannabis products to another licensee of commercial cannabis activity.*

*(7) Require a manufacturing licensee to obtain a resale certificate upon the sale of manufactured medical cannabis products to another licensee of commercial cannabis activity, to track the quantities exchanged.*

*(8) Require all manufactured medical cannabis and medical cannabis products to be tested by a laboratory that has been certified and licensed pursuant to this chapter, prior to commercial exchange with a dispensary. If the licensee has a separate dispensary license, all manufactured cannabis and medical cannabis products shall be tested by a laboratory that has been certified and licensed pursuant to this chapter, prior to retail sale directly to consumers.*

*(d) Regulations for the dispensing of medical cannabis shall do all of the following:*

*(1) Require the dispensary licensee comply with all regulations of the division pursuant to this chapter regarding the dispensing of medical cannabis*

*(2) Require the dispensary licensee comply with any other applicable requirements of the division pursuant to this chapter.*

*(3) Allow dispensary licensees to store limited quantities of medical cannabis and medical cannabis products for commercial purposes pursuant to this chapter, in a manner deemed safe and secure by the regulatory authority.*

*(4) Allow all non-mobile, non-vehicular, and non-Internet-based dispensaries to be licensed to transport medical cannabis and medical cannabis products directly to consumers.*

*(5) Require all mobile, vehicular and Internet-based dispensaries to maintain a business contract with a non-vehicular and non-mobile dispensary, and report all records of commercial activity to said entity.*

*(6) Require licensees to track all medical cannabis and medical cannabis products and report to the division, as specified by this chapter and any regulations promulgated pursuant to this chapter.*

*(7) Require all dispensary licensees to obtain a seller's permit from the Board of Equalization to validate the authority of the licensee to sell medical cannabis and medical cannabis products, and to maintain receipts of all sales transactions.*

*(8) Require that, upon receipt of medical cannabis, manufactured medical cannabis, and medical cannabis products, the dispensary licensee shall request and record evidence that the product has been tested by a laboratory that has been certified and licensed pursuant to this chapter.*

*(e) Regulations for the wholesale of medical cannabis shall do all of the following:*

*(1) Require all wholesale licensees to comply with all regulations of the division pursuant to this chapter regarding the wholesale storage and distribution of medical cannabis.*

*(2) Require the dispensary licensee comply with any other applicable requirements of the division pursuant to this chapter.*

*(3) Establish criteria for the qualifications of a wholesale licensee, including maximum quantities of medical cannabis that each licensee may store at one time.*

*(4) Authorize all wholesale licensees to do commercial business with only other licensees of commercial cannabis activity. All other licensees under this chapter shall not be required to work only with a wholesale licensee directly.*

*(5) Require that all medical cannabis and medical cannabis products be tested by the wholesale licensee prior to commercial exchange with a dispensary.*

*(6) Require licensees to track all medical cannabis and medical cannabis products and report to the Division on Medical Cannabis Regulation and Enforcement, as specified by this chapter and any regulations promulgated pursuant to this chapter.*

*(f) All regulations related to transportation of cannabis shall require a medical cannabis licensee to do all of the following:*

(1) Maintain intrastate operating authority.

(2) Maintain interstate operating authority, *for the commercial purposes of the licensee, and only* to the extent permitted by federal law.

(3) Be allowed by local jurisdictions to transport medical cannabis, if the licensee is in compliance with this chapter.

~~(e) Dispensary licensees shall:~~

~~(1) Be permitted to store quantities of medical cannabis for commercial purposes pursuant to this chapter, as deemed safe by the division.~~

~~(2) Comply with all applicable requirements of the division pursuant to this chapter.~~

26042. ~~The division~~ *Each regulatory authority* shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) ~~The division~~ *Each regulatory authority* shall charge each applicant for licensure or renewal an application or renewal fee that shall be calculated to cover the costs of processing the application or renewal. This fee may vary depending upon the varying costs associated with approving the application or renewal related to the varying activities covered by the license, but shall not exceed ____ dollars ($____) for an initial application, and ____dollars ($____) for a renewal application.

(b) Upon the issuance of a license, the ~~division~~ *respective regulatory authority* shall charge each licensee a licensure fee. The licensure fee shall be calculated to cover the costs of administering this chapter, other than the costs of processing applications. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, but shall not be less than ____ dollars ($____), nor more than ____ dollars ($____).

(c) ~~The division~~ *Each regulatory authority* shall establish appropriate fees as part of its emergency regulations for the issuance of provisional licenses adopted pursuant to Section 26043.

(d) The total fees assessed pursuant to this chapter, including, but not limited to, provisional license fees set forth in Section 26054, shall be set at an amount that will fairly and proportionately

generate sufficient total revenue to fully cover the total costs of administering this chapter, including, but not limited to, costs set forth in Section 26023.

26043. ~~The division~~ *Each regulatory authority* shall adopt, as soon as practicable, emergency regulations consistent with this chapter to allow a qualified applicant for licensure to apply for and receive a provisional license to engage in commercial cannabis activity so as to ensure an adequate supply of medical cannabis upon full implementation of this chapter as set forth in Section 26054.

~~26045.~~

*26044.* Every mandatory commercial license is renewable unless the license has been revoked if the renewal application is submitted and the fee for it is paid. A license that has been suspended, but not revoked, may be renewed under this section, however, the act of renewal shall not affect the suspension and the suspension shall remain in effect upon renewal. All licenses expire at 12 midnight on the last day of the month posted on the license. All licenses shall be renewed as follows:

(a) The application to renew the license may be filed before the license expires upon payment of the annual fee.

(b) For 60 days after the license expires, the license may be renewed upon payment of the annual renewal fee plus a penalty fee that shall be equal to 50 percent of the annual fee.

(c) Unless otherwise terminated, or unless renewed pursuant to subdivision (a) or (b), a license that is in effect on the month posted on the license continues in effect through 12 midnight of the 60th day following the month posted on the license, at which time it is automatically canceled.

(d) A license that has been canceled pursuant to subdivision (c) may be reinstated during the 30 days immediately following cancellation upon payment by cashier's check or money order of the annual renewal fee, plus a penalty fee that shall be equal to 100 percent of the annual fee. A license that has been canceled pursuant to subdivision (c) and that has not been reinstated within 30 days pursuant to this subdivision is automatically revoked on the 31st day after the license has been canceled.

(e) A renewal application shall not be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the required renewal fee has been paid at, any

office of the division during office hours, or unless both the document and fee have been filed and remitted pursuant to Section 11003 of the Government Code.

*26045. A person shall engage in commercial cannabis activity only if the person has complied with all of the following conditions:*

*(a) The person has obtained permission from local authorities approving the proposed commercial cannabis activity. This requirement shall not apply to a person who holds a valid business license, conditional use permit, or other locally issued permit for commercial cannabis activity. For the purposes of this subdivision, the document granting the permission shall include, at a minimum, all of the following:*

*(1) The legal name, address and date of birth of the applicant.*

*(2) The type of license the applicant is requesting a permit for.*

*(3) Documentation that the applicant has been in compliance with local ordinances and regulations, including, but not limited to, an entity granted immunity under Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election.*

*(4) A statement of whether or not the applicant has previously committed a felony, as described in paragraph (8) of subdivision (e) of Section 26047.*

*(5) A statement signed by the applicant under penalty of perjury that the information provided in the application is true.*

*(b) The person submits a copy of the permission, or equivalent qualifying documents, to the division for recordation. Upon receipt of an approved permission, the division shall provide the applicant with a certificate of approval for licensure, to be presented to the relevant regulatory authority under which the person seeks licensure. No regulatory authority shall grant approval of an application without a certificate of approval for application of commercial cannabis licensure for the applicant.*

*(c) The person applies for licensure for commercial cannabis activity from a regulatory authority and receives approval for that licensure.*

*(d) The person abides by all local and state ordinances and regulations pursuant to this chapter.*

26046. (a) An application for a license shall include, but shall not be limited to, all of the following:

*(1) A certificate of approval for licensure by the Division of Medical Cannabis Regulation and Enforcement.*

~~(1)~~

*(2)* The legal name and proposed physical addresses of the mandatory commercial licensee.

~~(2)~~

*(3)* The name, address, and date of birth of each principal officer and board member.

~~(3)~~

*(4)* Operating and inventory control procedures to ensure security and prevent diversion.

~~(4)~~

*(5)* Detailed operating procedures for the proposed facility, which shall include, but not be limited to, provisions for facility and operational security, prevention of diversion, employee screening, storage of medical cannabis, personnel policies, and recordkeeping procedures.

~~(5)~~

*(6)* A list of all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on any property that will be used by the applicant.

~~(6)~~

*(7)* Evidence of the legal right to occupy and use an established location, or an immunity from prosecution for that occupancy or use pursuant to a local ordinance or ordinances, including, but not limited to, Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election.

~~(7)~~

*(8)* Documentation that the applicant will be in compliance with all local ordinances and regulations, including, but not limited to, an entity granted immunity under Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election.

~~(8)~~

*(9)* Evidence that ~~a minimum of 75 percent~~ *all* of the officers and owners of the applicant organization have been residents of the State of California for at least three years.

~~(9)~~

*(10)* For an applicant with 20 employees or more, a statement that the applicant will enter into, or demonstrate that it has already

entered into, and abide by the terms of, a "labor peace agreement," as defined by the division in consultation with the Division of Labor Standards Enforcement.

~~(10)~~

*(11)* For an applicant seeking a license to cultivate, a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

~~(11)~~

*(12)* A statement signed by the applicant under penalty of perjury that the information provided in the application is true.

(b) For applicants seeking a license to cultivate and process, the application shall also include a detailed description of the operating procedures for all of the following:

(1) Cultivation.

(2) Extraction and infusion methods.

(3) The transportation process.

(4) Inventory procedures.

(5) Quality control procedures.

26047. (a) Upon receipt of an application for licensure and the applicable fee, the ~~division~~ *respective regulatory authority* shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for the license and whether this chapter has been complied with, and shall investigate all matters connected therewith that may affect the public welfare and morals.

(b) The ~~division~~ *respective regulatory authority* shall deny an application if either the applicant or the premises for which a license is applied do not qualify for licensure under this chapter.

(c) The ~~division~~ *respective regulatory authority* may, at its discretion, issue a license to an applicant who has obtained a certificate of rehabilitation pursuant to Section 4852.13 of the Penal Code.

(d) The ~~division~~ *respective regulatory authority* may place reasonable conditions upon licensure if grounds exist for denial of the license, and the division finds those grounds may be removed by the imposition of those conditions. However, the limitations

set forth in paragraph (6) of subdivision (b) of Section 26040 shall not be waived.

(e) The ~~division~~ *respective regulatory authority* shall deny the application for licensure or renewal if any of the following conditions apply:

(1) Granting or continuation of a license would be contrary to the public welfare or morals.

(2) The applicant holding or seeking a license has violated any law prohibiting conduct involving moral turpitude.

(3) Local agencies have notified the division and provided evidence that a licensee or applicant within its jurisdiction is in violation of local ordinances relating to cannabis activities.

(4) The application has failed to state with sufficient specificity the jurisdiction in which the applicant proposes to establish operations.

(5) The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to this chapter, or any applicable city or county ordinance or regulation.

(6) The applicant, or any of its officers, directors, or owners, is under 21 years of age.

(7) The applicant has knowingly answered a question or request for information falsely on the application form or failed to provide information requested.

(8) The applicant, or any of its officers, directors, or owners has been convicted of a felony criminal conviction for drug trafficking, a violent felony, as specified in subdivision (c) of Section 667.5 of the Penal Code, a serious felony as specified in subdivision (c) of Section 1192.7 of the Penal Code, a felony offense involving fraud or deceit, or any other felony that, in the division's determination, would impair the applicant's ability to appropriately operate as a mandatory commercial licensee.

(9) The applicant, or any of its officers, directors, or owners is a licensed physician making patient recommendations for medical cannabis.

(10) The applicant, or any of its officers, directors, or owners has been sanctioned by the division, a city, or a county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the previous three years.

(11) Applicants shall be notified of a denied application in writing via personal service or mail addressed to the address of

the applicant or licensee set forth in the application. The denial letter shall contain the detailed reasons for which the application has been denied. The applicant shall have the right to appeal the denial and be given a hearing within 30 days of the appeal. On appeal, the decision shall be upheld unless the applicant demonstrates that the applicant is in fact eligible for licensure and the application is in compliance with this chapter.

26048. (a) The ~~division~~ *respective regulatory authority* shall electronically submit to the Department of Justice fingerprint images and related information for all applicants for cultivation, dispensing, manufacturing, and transportation licenses for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information regarding whether the person is free on bail, or on his or her own recognizance, pending trial or appeal.

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

(c) The division shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in this section.

(d) The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the requests described in this section.

26049. (a) The actions of a mandatory commercial licensee or provisional licensee, its employees, and its agents, permitted pursuant to a mandatory commercial license or provisional license issued by the division or otherwise permitted by this chapter, that are within the scope of the license issued pursuant to this chapter and the regulations adopted pursuant to the authority granted by this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under law.

(b) The actions of a person who, in good faith and upon investigation, allows his or her property to be used by a mandatory commercial licensee or provisional licensee, its employees, and its agents, as permitted pursuant to a mandatory commercial license or provisional license issued by the division or otherwise permitted by this chapter, are not unlawful under state law and shall not be

an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(c) Conduct that is within the scope of a license issued pursuant to this chapter but not fully in compliance with this chapter shall be subject to the enforcement provisions of this chapter and shall not be subject to the penal provisions generally prohibiting cannabis-related activity, unless and until the license is revoked.

(d) This section shall not be deemed to limit the authority or remedies of a city or county under any provision of law, including, without limitation, Section 7 of Article XI of the California Constitution or Section 26010 or 26060.

26050. (a) A licensee shall keep, at the licensed premises, accurate records of the specific commercial cannabis activity conducted by the licensee. The records shall include, at a minimum, all of the following for each batch of product:

(1) The name and address of the supplier.

(2) The dates on which the product was received.

(3) The amounts, form, and batch and lot number.

(4) The location of the cultivation site.

(5) The name of the employee who received the product.

(6) Records demonstrating compliance by the licensee with state and federal rules and regulations regarding reporting and taxation of income received.

(b) The records shall be kept for a minimum of seven years.

(c) The division may make any examination of the books and records of any licensee and may visit and inspect the premises of any licensee that the division may deem necessary to perform its duties under this chapter.

(d) If the licensee or any employee of the licensee refuses, impedes, obstructs, or interferes with an inspection pursuant to this chapter or local ordinance, or if the licensee fails to maintain or provide the books and records required by this section, the license may be summarily suspended and the division shall directly commence proceedings for the revocation of the license in accordance with this chapter.

(e) All cultivation, dispensing, and retail sales licensees shall be subject to an annual audit by the State Auditor in order to ensure proper documentation is kept at each site or facility.

26052. (a) This chapter shall not apply to, and shall have no diminishing effect on, the rights and protections granted to a patient or a primary caregiver pursuant to the Compassionate Use Act of 1996.

(b) (1) A patient who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not sell or distribute cannabis to any other person is not, thereby, engaged in commercial cannabis activity and is, therefore, exempt from the licensure requirements of this chapter.

(2) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of a specified qualified patient for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code is not, thereby, engaged in commercial cannabis activity and is, therefore, exempt from the licensure requirements of this chapter.

26054. (a) ~~The division~~ *Each regulatory authority* shall, as soon as practicable following January 1, 2016, allow a qualified applicant for licensure to apply for and receive a provisional license to engage in commercial cannabis activity so as to ensure an adequate supply of medical cannabis upon full implementation of this chapter.

(b) ~~The division~~ *Each regulatory authority* shall establish appropriate fees not to exceed ____ dollars ($____) for the issuance of a provisional license *under its jurisdiction* pursuant to this chapter.

~~(c) The division shall accept applications for provisional commercial licenses for medical cannabis activity as follows:~~

~~(1) The division shall request that every city or county provide the division with a list of approved entities providing medical cannabis to qualified patients and caregivers within the city or county's jurisdiction, if any, the location at which the entity is operating, and the names of the persons who operate the entity. If the jurisdiction represents that the entity has been operating in compliance with local laws and regulations, or has limited immunity under local laws, including, but not limited to, Measure D, approved by the voters of the City of Los Angeles at the May~~

~~21, 2013, general election, the division shall issue a provisional license to the entity until the time that the entity's application for mandatory commercial licensure has been approved or denied under this chapter, but no later than 90 days after the division begins accepting applications for mandatory commercial licensure.~~

~~(2) The division~~

*(c) Each regulatory authority* shall issue a provisional license to individuals and entities that ~~the division~~ *the regulatory authority* determines were, during the ~~12~~ *3* months prior to January 1, 2016, regularly cultivating, processing, manufacturing, transporting, or distributing medical cannabis collectively or cooperatively in full compliance with ~~paragraphs A and B of Section IV of the Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use, issued by the Department of Justice in August 2008, and~~ any applicable local ordinance, to continue to do so until the licensee's application for mandatory commercial licensure has been approved or denied under this chapter, but no later than 90 days after the ~~division~~ *regulatory authority* begins accepting applications for regular mandatory commercial licenses. The ~~division~~ *regulatory authority* may consult with relevant local agencies in making a determination on whether a provisional license applicant is in compliance with any applicable ordinance.

(d) To qualify for a provisional mandatory commercial license, applicants shall disclose to the ~~division~~ *appropriate regulatory authority* all of the following information in writing:

(1) The names, addresses, and dates of birth of each principal officer, owner, or board member.

(2) The common street address and assessor's parcel number of the property at which the licensee conducts any activity under the authority of the licensee.

(3) The common street address and assessor's parcel number of the property at which any cultivation activity was or is to be conducted.

(4) For the ~~12~~ *3* months prior to January 1, 2016, the quantity of cannabis cultivated, processed, manufactured, tested, transported, or sold at a location and the quantity expected to be cultivated, processed, manufactured, tested, transported, or sold from January 1, 2016, to July 1, 2016, inclusive. The licensee shall make its records of current activity and activity for the ~~12~~ *3* months prior to January 1, 2016, available to the division upon request.

(e) Upon receipt of the application materials and fee, the division may issue a provisional license and send a proof of issuance to the applicant, if the applicant has not committed any act or crime constituting grounds for the denial of licensure.

(f) Notwithstanding any other provision of this section, the division shall not issue a provisional license to an individual or entity, or for a premises, against whom there are pending state or local administrative or judicial proceedings or actions initiated by a city, county, or city and county under any applicable local ordinance or who has been determined through those proceedings to have violated any local ordinance related to cannabis activity, or that knowingly provides false or fraudulent information on an application for licensure.

(g) Entities that are provided immunity under Measure D, approved by the voters of the City of Los Angeles at the May 21, 2013, general election, shall be considered the equivalent of entities that are registered, permitted, or licensed as a medical marijuana business, dispensary, or other entity involved in providing medical marijuana to patients under a local ordinance and shall be considered in compliance with a local ordinance for the purposes of the implementation of this section.

(h) Provisional licensees shall comply with all standards and requirements applicable to a licensee under this chapter, including, but not limited to, the production, recordkeeping, security, and transportation requirements and standards.

*(i) Beginning July 1, 2017, all commercial cannabis activity shall be conducted between licensees of commercial cannabis activity, pursuant to this chapter. If the regulatory authorities have not promulgated their respective regulations by that date, the regulatory authorities shall provide an extension for all provisional licenses for applicants abiding by the provisions of this chapter.*

26055. The ~~division~~ *regulatory authority* may adopt regulations to permit the transfer of a license from a licensee to another person who demonstrates to the ~~division~~ *regulatory authority* that he or she is eligible for licensure under this chapter, if the ~~following requirements are met:~~

~~(a) The division has determined that granting an additional license of the type in question in the geographic region in question may lead to the availability of product in excess of the amounts needed to meet the medical need.~~

~~(b) The~~ prospective recipient of the license complies with all of the requirements of this chapter relating to a new application for licensure, including, but not limited to, payment to the ~~division~~ *regulatory authority* of a reasonable license transfer fee.

26057. ~~The division~~ *Each regulatory authority* shall make recommendations to the Legislature pertaining to the establishment of an appeals and judicial review process for persons aggrieved by a final decision of the ~~division~~ *regulatory authority*.

## Article 4. Enforcement

26060. (a) ~~The division~~ *Each regulatory authority* shall work in conjunction with law enforcement agencies for the purposes of implementing, administering, and enforcing this chapter and the division's regulations and taking appropriate action against licensees and others who fail to comply with this chapter or the regulations adopted pursuant to this chapter.

(b) Nothing in this chapter or in Article 2 (commencing with Section 11357) or Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code, shall prevent a city, county, or city and county from adopting or enforcing a zoning ordinance or other law, ordinance, or regulation that regulates the location, operation, or establishment of a licensee or other person that engages in commercial cannabis activity.

26062. Except for a person identified in Section 26052, a person shall not exercise the privilege or perform any act that a licensee may exercise or perform under the authority of a license unless the person is acting pursuant to a license, including, but not limited to, a provisional license issued pursuant to this chapter.

~~26063. (a) Any product containing cannabis that is distributed or offered for sale by a licensee shall comply with the testing, labeling, and food safety requirements established pursuant to this chapter.~~

~~(b) No person shall steal or fraudulently use a licensee's identification certificate or license, or other licensee's identification card or license issued by the division, to acquire, cultivate, process, manufacture, test, transport, produce, possess for sale, sell, or distribute cannabis.~~

~~(c) No person shall counterfeit, tamper with, or fraudulently produce an identification card or license status.~~

~~(d) Any person who violates this section, or Section 26062, is guilty of a misdemeanor and shall be subject to the following penalties:~~

~~(1) For the first offense, imprisonment in a county jail for no more than ____months or a fine not to exceed ____dollars ($____), or both.~~

~~(2) For a second or subsequent offense, imprisonment in a county jail for no more than ____ or a fine not to exceed ____ dollars ($____), or both.~~

~~(e) Any person who is charged, prosecuted, or subjected to a civil penalty under this chapter shall not also be charged or prosecuted pursuant to the Health and Safety Code for conduct arising from the same set of facts.~~

26064. Any person engaging in commercial cannabis activity and operating an unlicensed facility, building, structure, vehicle, mobile unit, or location in violation of this chapter shall be subject to civil penalties of up to ____ dollars ($____) for each violation, and the division or court may order the destruction of any cannabis associated with that violation. All civil fines collected pursuant to this section shall be deposited into the fines and penalties account established pursuant to Section 26028. If an action for civil penalties is brought by the Attorney General, the penalty collected shall be deposited into the General Fund pursuant to Section 26028. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city in which the judgment was entered.

26066. (a) ~~The~~ *Any regulatory* director or any district attorney, county counsel, city attorney, or city prosecutor may bring an action in the name of the people of the State of California to enjoin a violation or the threatened violation of any provision of this chapter, including, but not limited to, a licensee's failure to correct objectionable conditions following notice or as a result of any rule promulgated pursuant to this chapter, and to assess and recover civil penalties in accordance with this chapter. The action shall be brought in the county in which the violation occurred or is threatened to occur. Any proceeding for injunctive relief brought pursuant to this chapter shall conform to the requirements of

Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(b) A state or local agency shall immediately notify the division of any violations or arrests made for violations over which the division has jurisdiction which involve a licensee or licensed premises. Notice shall be given within 10 days of the violation or arrest. The division shall promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of the license.

(c) This chapter shall not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a mandatory commercial licensee.

(d) The division shall keep a complete record of all entities licensed pursuant to this chapter. This record shall be made available on the division's Internet Web site so as to permit state and local law enforcement to verify a mandatory commercial license.

(e) ~~The department shall authorize the~~ *A* city, county, or city and county ~~to~~ *may* impose a ~~"temporary local suspension"~~ *temporary local suspension* of the license of a commercial licensee for up to 30 days for violations of this chapter. The ~~department~~ *regulatory authority* shall promptly cause an investigation to be made as to whether grounds exist for continued suspension or revocation of the license. *A city, county, or city and county may impose a subsequent temporary local suspension of the license of a commercial licensee for the same violation until the regulatory authority's investigation and all appeals are complete.*

## Article 5. Transportation of Medical Cannabis

26100. A ~~licensed transporter shall~~ *licensee authorized to* transport medical cannabis and medical cannabis products *shall do so* only ~~between licensed facilities.~~ *as set forth in this chapter.*

26102. (a) Prior to transporting *medical cannabis or* medical cannabis products, a ~~licensed transporter~~ *licensee authorized to transport medical cannabis or medical cannabis products* shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the division.

(2) Securely transmit the manifest to the division and the licensee that will receive the medical cannabis product.

(b) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the division, local law enforcement officers, or any other designated enforcement agency.

(c) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to agents of the division, local law enforcement officers, or any other designated enforcement agency.

(d) Upon receipt of the shipment, a licensed facility shall submit to the division a record verifying receipt of the shipment and the details of the shipment.

26104. (a) Transported *medical cannabis or* medical cannabis products shall be transported only in a storage compartment that is securely affixed to the interior of the transporting vehicle, and shall not be visible from outside the vehicle. *This requirement shall only apply to licensees transporting medical cannabis or medical cannabis products with a total retail value of over five hundred dollars ($500).*

(b) A vehicle transporting medical cannabis products shall travel only directly between licensed facilities.

(c) All transport vehicles shall be staffed with a minimum of two employees. At least one transport member shall remain with the vehicle at all times when the vehicle contains medical cannabis. *This requirement shall only apply to licensees transporting medical cannabis or medical cannabis products with a total retail value of over five thousand dollars ($5,000).*

(d) Each transport team member shall possess documentation of licensing and a government-issued identification card at all times when transporting or delivering medical cannabis and shall produce it upon the request of agents of ~~the division~~ *any regulatory authority* or any law enforcement officials.

26105. (a) The division shall develop a database containing the electronic shipping manifests, which shall include, but are not limited to, the following information:

(1) The quantity, or weight, and variety of products shipped.

(2) The estimated times of departure and arrival.

(3) The quantity or weight, and variety of products received.

(4) The actual time of arrival.

(5) A categorization of the product.

(b) The database shall be designed to flag irregularities for ~~the division~~ *any regulatory authority* to investigate. ~~The division~~ *Any regulatory authority* may, at any time, inspect shipments and request documentation for current inventory.

Article 6. Cannabis Employee Certification and Apprenticeship Program for Cultivation Sites and Dispensaries

26140. This article applies only to cultivation sites and dispensaries.

26140.5. The Division of Labor Standards Enforcement shall do all of the following:

(a) Maintain minimum standards for the competency and training of employees of a licensed cultivator or dispensary through a system of testing and certification.

(b) Maintain an advisory committee and panels as necessary to carry out its functions under this article. There shall be employer representation on the committee and panels.

(c) Adopt regulations as determined to be necessary to implement this article.

(d) Issue certification cards to employees certified pursuant to this article.

(e) Establish registration fees in an amount reasonably necessary to implement this article, not to exceed twenty-five dollars ($25) for the initial registration. There shall be no fee for annual renewal of registration. Fees shall be placed in the fund.

26141. (a) ~~Commencing~~ *By* January 1, ~~2019,~~ *2017, the Division of Labor Standards Enforcement shall develop a certification program for cannabis employees. Commencing January 1, 2019,* except as provided in subdivision (c), *certification shall be required of all* persons who perform work as cannabis ~~employees shall be certified by the Division of Labor Standards Enforcement.~~ *employees.*

(b) ~~Commencing January 1, 2019, individuals~~ *Individuals* desiring to be certified shall submit an application for certification and examination.

(c) (1) Certification is not required for registered apprentices working as cannabis employees as part of ~~an apprenticeship program approved on or after January 1, 2019, under~~ a

state-approved apprenticeship program. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(2) ~~On or after~~ *Commencing* January 1, 2019, an uncertified person may perform work for which certification is otherwise required in order to acquire the necessary on-the-job experience for certification provided that the person shall be under the direct supervision of a cannabis employee certified pursuant to Section 26141 who is responsible for supervising no more than one uncertified person.

(3) The Division of Labor Standards Enforcement may develop additional criteria governing this subdivision.

26141.5. (a) The following shall constitute additional grounds for disciplinary proceedings, including suspension or revocation of the license issued pursuant to this chapter:

(1) The licensee willfully employs one or more uncertified persons to perform work as cannabis employees in violation of this section.

(2) The licensee willfully fails to provide adequate supervision of uncertified workers.

(3) The licensee willfully fails to provide adequate supervision of apprentices performing work pursuant to paragraph (1) of subdivision (c) of Section 26141.

(b) The Labor Commissioner shall maintain a process for referring cases to the ~~Division of Medical Cannabis Regulation and Enforcement~~ *appropriate regulatory authority* when it has been determined that a violation of this section has likely occurred. The Labor Commissioner shall have a memorandum of understanding with the ~~Division of Medical Cannabis Regulation and Enforcement~~ *regulatory authorities* in furtherance of this section.

(c) Upon receipt of a referral by the Labor Commissioner alleging a violation under this section, the ~~Division of Medical Cannabis Regulation and Enforcement~~ *appropriate regulatory authority* shall open an investigation. Disciplinary action against the licensee shall be initiated within 60 days of the receipt of the referral. The ~~Division of Medical Cannabis Regulation and Enforcement~~ *regulatory authority* may initiate disciplinary action

against a licensee upon his or her own investigation, the filing of a complaint, or a finding that results from a referral from the Labor Commissioner alleging a violation under this section. Failure of the employer or employee to provide evidence of certification or apprentice status shall create a rebuttable presumption of violation of this provision.

(d) This section shall become operative on January 1, 2019.

SEC. 6. Section 23028 is added to the Government Code, to read:

23028. (a) (1) In addition to any authority otherwise provided by law, the board of supervisors of any county may impose, by ordinance, a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing cannabis by a licensee operating pursuant to the Medical Cannabis Regulation and Control Act (Chapter 18 (commencing with Section 26000) of Division 9 of the Business and Professions Code). The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, and the manner of collection of the tax. A tax imposed pursuant to this section is a tax and not a fee or special assessment, and the tax is not required to be apportioned on the basis of benefit to any person or property or be applied uniformly to all taxpayers or all real property.

(3) A tax imposed by a county pursuant to this section by a county may include a transactions and use tax imposed solely for cannabis or cannabis products, which shall otherwise conform to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Notwithstanding Section 7251.1 of the Revenue and Taxation Code, the tax may be imposed at any rate specified by the board of supervisors, and the tax rate authorized by this section shall not be considered for purposes of the combined tax rate limitation established by that section.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for

compensation or gratuitously, as determined by the board of supervisors.

(5) The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(b) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county.

(c) Any tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by any other law.

(d) For purposes of this section, "marijuana" *or "cannabis"* shall have the meanings set forth in Section 26002 of the Business and Professions Code.

(e) This section does not limit or prohibit the levy or collection or any other fee, charge, or tax, or any license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of any county as provided by other law.

(f) The total taxation of state and local authorities shall not be in excess of 25 percent of retail prices.

SEC. 7. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) Commencing 180 days following the issuance of provisional licenses pursuant to the Medical Cannabis Regulation and Control Act (Chapter 18 (commencing with Section 26000) of Division 9 of the Business and Professions Code), subdivision (a) shall not apply to licensees under that act. ~~The Division of Medical Cannabis Regulation and Enforcement~~ *Each regulatory authority* shall post a notice on its Internet Web site indicating when it has commenced

issuing provisional licenses and when the 180-day period has been exhausted.

SEC. 8. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the division shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 18 (commencing with Section 26000) of Division 9 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 9. Section 3094 is added to the Labor Code, to read:

3094. The Division of Apprenticeship Standards shall investigate, approve, or reject applications for apprenticeship programs for employees of a licensee subject to Article 6 (commencing with Section 26140) of Chapter 18 of Division 9 of the Business and Professions Code. The Division of Apprenticeship Standards shall adopt regulations necessary to implement and regulate the establishment of the apprenticeship programs described in this section.

SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 11. The Legislature finds and declares that Section 5 of this act, which adds Chapter 18 (commencing with Section 26000) to Division 9 of the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

It is necessary to maintain the confidentiality of patient and physician information provided to the ~~Division of Medical Cannabis Regulation and Enforcement~~ *regulatory authorities* in order to protect the private medical information of patients who

use medical cannabis and to preserve the essential confidentiality of the physician and patient relationship.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 159
**Author:** Calderon
**Bill Date:** April 28, 2015, Amended
**Subject:** Investigational Drugs, Biological Products, and Devices
**Sponsor:** Author
**Position:** No Position

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow the manufacturer of an investigational drug, biological product, or device to make the product available to eligible patients. This bill would prohibit the Medical Board of California (Board) or the Osteopathic Medical Board of California from taking disciplinary action against a physician's license for prescribing or treating a patient with an investigational drug, biological product, or device.

## BACKGROUND

Existing law in the Health and Safety Code strictly prohibits the sale, delivery, or giving away of a new drug or device unless the California Department of Public Health has approved the new drug's application, or the drug has been approved by a federal provision, including approval for use from the federal Food and Drug Administration (FDA).

Many patients in California currently seek access to drugs, devices, or other medical products that have not yet received approval for use from the FDA. Current FDA regulations provide for the expanded access program, also referred to as compassionate use, that makes drugs and devices not yet approved by the FDA available to patients with serious or immediately life-threatening diseases. According to the author's office, approval for participation in this program can take anywhere from a few weeks to several months and many of these patients do not have the ability to wait for this approval. In addition, the FDA has been having great difficulty in getting patients to participate in clinical trials of investigational drugs, because patients do not want to take the chance that they will be in the control group and not receive the experimental drug. This exacerbates the time it takes to get these drugs approved by the FDA.

Legislation similar to this bill has been passed with bipartisan support and signed into law in Colorado, Michigan, Missouri, and Louisiana. A "Right to Try" ballot initiative in Arizona passed in November of 2014.

**ANALYSIS**

This bill would enact the Right to Try Act. This bill would allow a manufacturer of an investigational drug, biological product, or device to make available the drug, product, or device to an eligible patient.

This bill would define an investigational drug, biological product, or device as a drug, product, or device that has successfully completed phase one of a clinical trial approved by the FDA, but has not been approved for general use and remains under investigation in a clinical trial approved by the FDA. This bill would define an eligible patient as a person who meets the following:

- Has a serious or immediately life-threatening disease or condition;
- Has considered all other treatment options currently approved by the FDA;
- Has been unable to participate in a clinical trial for the serious or immediately life-threatening disease or condition within 100 miles of his or her home or has not been accepted to that clinical trial within one week of completion of the clinical trial application process;
- Has received a recommendation from his or her primary physician for an investigational drug, biological product, or device;
- Has given written informed consent for the use of the investigational drug, biological product, or device; and
- Has documentation from his or her primary physician and consulting physician attesting that the patient has met the requirements of this subdivision.

This bill would define an immediately life-threatening disease or condition as a stage of disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment. This bill would define a serious disease or condition as a disease or condition associated with morbidity that has a substantial impact on day-to-day functioning.

This bill would define written, informed consent as a written document that has been approved by the physician's institutional review board or an accredited independent institutional review board, is signed by an eligible patient, or his or her legally authorized representative where the patient lacks the ability to consent, and attested to by the patient's primary physician and a witness that, at a minimum, does all of the following:

- Explains the currently approved products and treatments for the serious or immediately life-threatening disease or condition from which the patient suffers;
- Attests to the fact that the patient concurs with the patient's primary physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;
- Clearly identifies the specific proposed investigational drug, biological product, or device that the patient is seeking to use;
- Describes the potentially best and worst outcomes of using the investigational drug, biological product, or device and describes the most likely outcome;

- Clearly states that the patient's health benefit plan and provider are not obligated to pay for the investigational drug, biological product, or device, or any treatments consequent to their use;
- Clearly states that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment, and may be reinstated if the curative treatment ends;
- Clearly states that in-home health care may be denied if treatment begins; and
- States that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device.

The consulting physician would be required to: examine the qualified individual and his or her relevant medical records; confirm in writing the primary physician's diagnosis and prognosis; and verify, in the opinion of the consulting physician, that the eligible patient is competent, acting voluntarily, and has made an informed decision.

This bill would specify that if a clinical trial for an investigational drug, biological product, or device is closed due to the lack of efficacy or for toxicity, the investigational drug, biological product, or device shall not be offered. If notice is given for an investigational drug, biological product, or device, taken by a patient outside of a clinical trial, the manufacturer and the patient's primary physician shall notify the patient of the information from the safety committee of the clinical trial.

This bill would require the written informed consent to be consistent with the informed consent requirements of the Protection of Human Subjects in Medical Experimentation Act.

This bill would allow a manufacturer to provide an investigational drug, biological product, or device to an eligible patient without compensation or the manufacturer can require the eligible patient to pay the costs of, or associated with, the manufacture of the drug, product or device. This bill does not require a health benefit plan to provide coverage for the cost of manufacturing or cost for services related to the use of an investigational drug, biological product, or device. This bill does specify that if an eligible patient dies while being treated, the patient's heirs are not liable for any outstanding debt related to the treatment or lack of insurance for the treatment.

This bill would not allow the Board or the Osteopathic Medical Board of California to revoke, fail to renew, or take any other disciplinary action against a physician's license based solely on the physician's recommendation to an eligible patient regarding, or prescription for or treatment with, an investigational drug, biological product, or device, provided that the recommendation or prescription is consistent with the medical protocol approved by the physician's institutional review board or an accredited independent institutional review board. The physician's institutional review board or an accredited institutional review board shall biannually report the following information to the California Department of Public Health, the Board, and the Osteopathic Medical Board of California: the number of requests made for an investigation drug, biological product, or device; the status of the requests made; the duration of treatment; and the costs of the treatment paid by eligible patients.

This bill also contains liability protections for manufacturers and would not allow state officials and agencies to alter or block recommendations for investigational drugs, biological products, or devices.

The Board, as a regulatory agency, historically has not taken positions on policy bills that affect an individual's rights in end-of-life health care choices. The FDA already allows individuals access to investigational drugs, biological products, or devices in specific circumstances. Board staff has met with the author's office and provided technical assistance, including identifying concerns specific to the Board. Board staff discussed the concern that this bill would not allow the Board to take disciplinary action against a physician who has recommended an investigational drug, biological product, or device if that recommendation is consistent with the medical standard of care; however, recommending non-approved FDA drugs would never be within the standard of care. Board staff also relayed a concern with the broad definition of "terminal illness"; amendments were made to address this concern and the bill now refers to a serious or immediately life-threatening disease or condition.

In addition, there are two other bills in the Legislature that are largely similar to this bill, SB 149 (Stone) and SB 715 (Anderson). The differences in the three bills are in some of the definitions in the bills and in the liability exemptions; however, the concepts are the same.

**FISCAL:** None to the Board

**SUPPORT:** County of Los Angeles and several individuals

**OPPOSITION:** Association of Northern California Oncologists
California Medical Association
California Nurses Association

AMENDED IN ASSEMBLY APRIL 28, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# ASSEMBLY BILL No. 159

**Introduced by Assembly Member Calderon**
**(Coauthors: Assembly Members Brown, Daly, Lackey, Obernolte, Olsen, and Waldron)**
(Coauthors: Senators Allen, Anderson, and Stone)

January 21, 2015

An act to add Article 4.5 (commencing with Section 111548) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to drugs and devices.

## LEGISLATIVE COUNSEL'S DIGEST

AB 159, as amended, Calderon. Investigational drugs, biological products, and devices.

Existing law, the federal Food, Drug, and Cosmetic Act, prohibits a person from introducing into interstate commerce any new drug unless the drug has been approved by the United States Food and Drug Administration (FDA). Existing law requires the sponsor of a new drug to submit to the FDA an investigational new drug application and to then conduct a series of clinical trials to establish the safety and efficacy of the drug in human populations and submit the results to the FDA in a new drug application.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of drugs and devices and is administered by the State Department of Public Health. A violation of that law is a crime. The Sherman Food, Drug, and Cosmetic Law

prohibits, among other things, the sale, delivery, or giving away of a new drug or new device unless either the department has approved a new drug or device application for that new drug or new device and that approval has not been withdrawn, terminated, or suspended or the drug or device has been approved pursuant to specified provisions of federal law, including the federal Food, Drug, and Cosmetic Act.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and requires the board to take action against a licensee who is charged with unprofessional conduct. The Osteopathic Act provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California and requires the board to enforce the Medical Practice Act with respect to its licensees.

This bill would permit a manufacturer of an investigational drug, biological product, or device to make the product available to eligible patients with a serious or immediately life-threatening disease or condition, as specified. The bill would authorize, but not require, a health benefit plan, as defined, to provide coverage for any investigational drug, biological product, or device made available pursuant to these provisions. The bill would prohibit the Medical Board of California and the Osteopathic Medical Board of California from taking any disciplinary action against the license of a physician based solely on the physician's recommendation to an eligible patient regarding, or prescription for or treatment with, an investigational drug, biological product, or device, provided that the recommendation or prescription is consistent with ~~medical standards of care.~~ *protocol approved by the physician's institutional review board or an accredited institutional review board, and would require the institutional review board to biannually report specified information to the State Department of Public Health, among others.* The bill would prohibit a state agency from altering any recommendation made to the federal Centers for Medicare and Medicaid Services regarding a health care provider's certification to participate in the Medicare or Medicaid program based solely on the recommendation from an individual health care provider that a patient have access to an investigational drug, biological product, or device. The bill would prohibit an official, employee, or agent of the state from blocking an eligible patient's access to the investigational drug, biological product, or device pursuant to the bill's provisions.

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

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

SECTION 1. Article 4.5 (commencing with Section 111548) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4.5. Right to Try Act

111548. This article shall be known and may be cited as the Right to Try Act.

111548.1. In this article, unless the context otherwise requires, the following definitions shall apply:

*(a) "Consulting physician" means a physician and surgeon licensed under the Medical Practice Act or an osteopathic physician and surgeon licensed under the Osteopathic Act who shall perform all of the following:*

*(A) Examine the qualified individual and his or her relevant medical records.*

*(B) Confirm in writing the primary physician's diagnosis and prognosis.*

*(C) Verify, in the opinion of the consulting physician, that the eligible patient is competent, acting voluntarily, and has made an informed decision.*

~~(a)~~

*(b)* "Eligible patient" means a person who meets all of the following conditions:

(1) Has a serious or immediately life-threatening disease or condition.

(2) Has considered all other treatment options currently approved by the United States Food and Drug Administration.

(3) Has been unable to participate in a clinical trial for the serious or immediately life-threatening disease or condition identified in paragraph (1) within 100 miles of his or her home or has not been accepted to that clinical trial within one week of completion of the clinical trial application process.

(4) Has received a recommendation from his or her *primary* physician *and a consulting physician* for an investigational drug, biological product, or device.

(5) Has given written informed consent for the use of the investigational drug, biological product, or device, or if he or she

lacks the capacity to consent, his or her legally authorized representative has given written informed consent on his or her behalf.

(6) Has documentation from his or her *primary* physician *and a consulting physician* attesting that the patient has met the requirements of this subdivision.

~~(b)~~

*(c)* "Health benefit plan" means any plan or program that provides, arranges, pays for, or reimburses the cost of health benefits. "Health benefit plan" includes, but is not limited to, a health care service plan contract issued by a health care service plan, as defined in Section 1345 of this code, and a policy of health insurance, as defined in Section 106 of the Insurance Code, issued by a health insurer.

~~(c)~~

*(d)* (1) "Immediately life-threatening disease or condition" means a stage of disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

(2) "Serious disease or condition" means a disease or condition associated with morbidity that has a substantial impact on day-to-day functioning.

~~(d)~~

*(e)* "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial approved by the United States Food and Drug Administration, but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

~~(e) "Physician"~~

*(f) "Primary physician"* means a physician and surgeon licensed under the Medical Practice Act or an osteopathic physician and surgeon licensed under the Osteopathic Act.

~~(f)~~

*(g)* "State regulatory board" means the Medical Board of California or the Osteopathic Medical Board of California.

~~(g)~~

*(h)* (1) "Written, informed consent" means a written document that has been approved by the *primary* physician's institutional

review board or an accredited independent institutional review board, is signed by an eligible patient, or his or her legally authorized representative ~~where~~ *when* the patient lacks the capacity to consent, and attested to by the patient's *primary* physician and a witness that, at a minimum, does all of the following:

(A) Explains the currently approved products and treatments for the serious or immediately life-threatening disease or condition from which the patient suffers.

(B) Attests to the fact that the patient, or ~~where~~ *when* the patient lacks the capacity to consent, his or her legally authorized representative, concurs with the patient's *primary* physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life.

(C) Clearly identifies the specific proposed investigational drug, biological product, or device that the patient is seeking to use.

(D) Describes the potentially best and worst outcomes of using the investigational drug, biological product, or device and describes the most likely outcome. This description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the *primary* physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition.

(E) Clearly states that the patient's health benefit plan, if any, and health care provider are not obligated to pay for the investigational drug, biological product, or device or any care or treatments consequent to use of the investigational drug, biological product, or device.

(F) Clearly states that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment and that care may be reinstated if the curative treatment ends and the patient meets hospice eligibility requirements.

(G) Clearly states that in-home health care may be denied if treatment begins.

(H) States that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device, and that this liability extends to the patient's estate, except as otherwise provided in the patient's health benefit plan or a contract between the patient and the manufacturer of the drug, biological product, or device.

(2) Written, informed consent for purposes of this article shall be consistent with the informed consent requirements of the Protection of Human Subjects in Medical Experimentation Act (Chapter 1.3 (commencing with Section 24170) of Division 20).

111548.2. (a) Notwithstanding Section 110280, 111520, or 111550, a manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to an eligible patient pursuant to this article. This article does not require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

(b) A manufacturer may do both of the following:

(1) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

(2) Require an eligible patient to pay the costs of or associated with the manufacture of the investigational drug, biological product, or device.

(c) (1) This article does not expand or otherwise affect the coverage provided under Sections 1370.4 and 1370.6 of this code, Sections 10145.3 and 10145.4 of the Insurance Code, or Sections 14087.11 and 14132.98 of the Welfare and Institutions Code.

(2) This article does not require a health benefit plan to provide coverage for the cost of any investigational drug, biological product, or device, or the costs of services related to the use of an investigational drug, biological product, or device under this article. A health benefit plan may provide coverage for an investigational drug, biological product, or device made available pursuant to this section.

*(d) If the clinical trial for an investigational drug, biological product, or device is closed due to the lack of efficacy or for toxicity, the investigational drug, biological product, or device shall not be offered. If notice is given for an investigational drug, biological product, or device taken by a patient outside of a clinical trial, the manufacturer and the patient's primary physician shall notify the patient of the information from the safety committee of the clinical trial.*

~~(d)~~

*(e)* If an eligible patient dies while being treated by an investigational drug, biological product, or device made available pursuant to this article, the patient's heirs are not liable for any

outstanding debt related to the treatment or lack of insurance for the treatment.

111548.3. (a) Notwithstanding any other law, a state regulatory board shall not revoke, fail to renew, or take any other disciplinary action against a physician's license based solely on the physician's recommendation to an eligible patient regarding, or prescription for or treatment with, an investigational drug, biological product, or device, provided that the recommendation or prescription is consistent with ~~medical standards of care.~~ *protocol approved by the physician's institutional review board or an accredited independent institutional review board.*

*(b) The physician's institutional review board or an accredited institutional review board shall biannually report the following information to the State Department of Public Health, the Medical Board of California, and the Osteopathic Medical Board of California:*

*(1) The number of requests made for an investigational drug, biological product, or device.*

*(2) The status of the requests made.*

*(3) The duration of the treatment.*

*(4) The costs of the treatment paid by eligible patients.*

~~(b)~~

*(c)* A state agency shall not alter any recommendation made to the federal Centers for Medicare and Medicaid Services regarding a health care provider's certification to participate in the Medicare or Medicaid program based solely on the recommendation from an individual health care provider that a patient have access to an investigational drug, biological product, or device.

~~(c)~~

*(d)* An official, employee, or agent of this state shall not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device pursuant to this article. Counseling, advice, or a recommendation consistent with medical standards of care from an individual licensed under Division 2 (commencing with Section 500) of the Business and Professions Code shall not be considered a violation of this section.

~~(d)~~

*(e)* A violation of this section shall not be subject to Chapter 8 (commencing with Section 111825).

111548.5. This article does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device, or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device, for any harm done to the eligible patient resulting from the investigational drug, biological product, or device, so long as the manufacturer or other person or entity is complying in good faith with the terms of this article, unless there was a failure to exercise reasonable care.

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AMENDED IN SENATE APRIL 14, 2015

# SENATE BILL No. 149

**Introduced by Senator Stone**
***(Coauthor: Senator Anderson)***

January 29, 2015

An act to add Article 4.1 (commencing with Section 111546) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to drugs and devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 149, as amended, Stone. Investigational drugs, biological products, or devices: right to try.

Existing law, the federal Food, Drug, and Cosmetic Act, prohibits a person from introducing into interstate commerce any new drug unless the drug has been approved by the ~~federal~~ *United States* Food and Drug Administration (FDA). Existing law requires the sponsor of a new drug to submit to the FDA an investigational new drug application and to then conduct a series of clinical trials to establish the safety and efficacy of the drug in human populations and submit the results to the FDA in a new drug application.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of drugs and devices and is administered by the State Department of Public Health. A violation of that law is a crime. The Sherman Food, Drug, and Cosmetic Law prohibits, among other things, the sale, delivery, or giving away of a new drug or new device unless either the department has approved a new drug or device application for that new drug or new device and that approval has not been withdrawn, terminated, or suspended or the

drug or device has been approved pursuant to specified provisions of federal law, including the federal Food, Drug, and Cosmetic Act.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and requires the board to take action against a licensee who is charged with unprofessional conduct. The Osteopathic Act provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California and requires the board to enforce the Medical Practice Act with respect to its licensees.

This bill, among other things, would permit a manufacturer of an investigational drug, biological product, or device to make the product available to eligible patients with terminal illnesses, as specified. The bill would provide that the act does not require a health benefit plan, as defined, or governmental agency to provide coverage for the cost of any investigational drug, biological product, or device made available pursuant to these provisions. The bill would authorize a health benefit plan to provide coverage for an investigational drug, biological product, or device. The bill would also prohibit the Medical Board of California and the Osteopathic Medical Board of California from taking any disciplinary action against the license of a physician based solely on the physician's recommendation to an eligible patient regarding, or prescription for, or treatment with, an investigational drug, biological product, or device.

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

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

SECTION 1. Article 4.1 (commencing with Section 111546) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4.1. Right to Try Act

111546. This article shall be known and may be cited as the Right to Try Act.

111546.1. In this article, unless the context otherwise requires, the following definitions shall apply:

(a) "Eligible patient" means a person to whom all of the following conditions apply:

(1) He or she has a terminal illness as determined by that person's physician and a consulting physician.

(2) His or her physician has determined that the person has no comparable or satisfactory United States Food and Drug Administration approved treatment options available to diagnose, monitor, or treat the disease or condition involved, and that the probable risk to the person from the investigational drug, biological product, or device is not greater than the probable risk from the disease or condition.

(3) He or she has received a prescription or recommendation from his or her physician for an investigational drug, biological product, or device.

(4) He or she has given written informed consent for the use of the investigational drug, biological product, or device, or if he or she is a minor or lacks the capacity to provide informed consent, his or her parent, legal guardian, or legally authorized representative has given written informed consent on his or her behalf.

(5) He or she has documentation from his or her physician that the patient has met the requirements of this subdivision.

(b) "Health benefit plan" means any plan or program that provides, arranges, pays for, or reimburses the cost of health benefits. "Health benefit plan" includes, but is not limited to, a health care service plan contract issued by a health care service plan, as defined in Section 1345 of this code, and a policy of health insurance, as defined in Section 106 of the Insurance Code, issued by a health insurer.

(c) "Health facility" has the same meaning as in Section 1250.

(d) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial approved by the United States Food and Drug Administration, but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

(e) "Physician" means a physician and surgeon licensed under the Medical Practice Act or an osteopathic physician and surgeon licensed under the Osteopathic Act, and who is providing medical care or treatment to the eligible patient for the terminal illness, but does not include a primary care physician.

(f) "State regulatory board" means the ~~California~~ Medical Board *of California* or the Osteopathic Medical Board of California.

(g) "Terminal illness" means a disease that, without life-sustaining procedures, will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

111546.2. (a) Notwithstanding Section 110280, 111520, or 111550, a manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to an eligible patient pursuant to this article. This article does not require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

(b) A manufacturer may do any of the following:

(1) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

(2) Require an eligible patient to pay the costs of or associated with the manufacture of the investigational drug, biological product, or device.

(3) Require an eligible patient to participate in data collection relating to the use of the investigational drug, biological product, or device.

(c) (1) Except as otherwise required by law, this article does not require a health benefit plan or any state agency to provide coverage for the cost of any investigational drug, biological product, or device.

(2) A health benefit plan may provide coverage for an investigational drug, biological product, or device.

111546.3. (a) Notwithstanding any other law, a state regulatory board shall not revoke, fail to renew, or take any other disciplinary action against a physician's license based solely on the physician's recommendation to an eligible patient regarding, or prescription for, or treatment with, an investigational drug, biological product, or device pursuant to this article.

(b) Notwithstanding any other law, a state agency shall not take any action against a health facility's license based solely on the facility's participation in the treatment by or use of an investigational drug, biological product, or device pursuant to this article.

(c) A violation of this article shall not be subject to Chapter 8 (commencing with Section 111825).

*(d) This article does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device, or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device, for any harm to the eligible patient resulting from the investigational drug, biological product, or device so long as the manufacturer or other person or entity complies in good faith with the terms of this article and exercises reasonable care.*

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**SENATE BILL** **No. 715**

**Introduced by Senator Anderson**

February 27, 2015

An act to add Article 4.3 (commencing with Section 111547) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to drugs and devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 715, as introduced, Anderson. Investigational drugs, biological products, or devices: right to try.

Existing law, the federal Food, Drug, and Cosmetic Act, prohibits a person from introducing into interstate commerce any new drug unless the drug has been approved by the federal Food and Drug Administration (FDA). Existing law requires the sponsor of a new drug to submit to the FDA an investigational new drug application and to then conduct a series of clinical trials to establish the safety and efficacy of the drug in human populations and submit the results to the FDA in a new drug application.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of drugs and devices and is administered by the State Department of Public Health. A violation of that law is a crime. The Sherman Food, Drug, and Cosmetic Law prohibits, among other things, the sale, delivery, or giving away of a new drug or new device unless either the department has approved a new drug or device application for that new drug or new device and that approval has not been withdrawn, terminated, or suspended or the drug or device has been approved pursuant to specified provisions of federal law, including the federal Food, Drug, and Cosmetic Act.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and

requires the board to take action against a licensee who is charged with unprofessional conduct. The Osteopathic Act provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California and requires the board to enforce the Medical Practice Act with respect to its licensees.

This bill, among other things, would permit a manufacturer of an investigational drug, biological product, or device to make the product available to eligible patients with terminal illnesses, as specified. The bill would authorize, but not require, a health benefit plan, as defined, or governmental agency to provide coverage for any investigational drug, biological product, or device made available pursuant to these provisions or the associated costs. The bill would prohibit the Medical Board of California and the Osteopathic Medical Board of California from taking any disciplinary action against the license of a physician based solely on the physician's recommendation to an eligible patient regarding, or prescription for or treatment with, an investigational drug, biological product, or device, provided that the recommendation or prescription is consistent with medical standards of care. The bill would prohibit a state agency from altering any recommendation made to the federal Centers for Medicare and Medicaid Services regarding a health care provider's certification to participate in the Medicare or Medicaid program based solely on the recommendation from an individual health care provider that an eligible patient have access to an investigational drug, biological product, or device. The bill would prohibit an official, employee, or agent of the state from blocking an eligible patient's access to the investigational drug, biological product, or device pursuant to the bill's provisions.

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

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

SECTION 1. Article 4.3 (commencing with Section 111547) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4.3. Right to Try Act

111547. This article shall be known and may be cited as the Right to Try Act.

111547.1. In this article, unless the context otherwise requires, the following definitions shall apply:

(a) "Eligible patient" means a person who meets all of the following conditions:

(1) Has a terminal illness, attested to by the eligible patient's treating physician.

(2) Has considered all other treatment options currently approved by the United States Food and Drug Administration.

(3) Has received a recommendation from his or her physician for an investigational drug, biological product, or device.

(4) Has given written, informed consent for the use of the investigational drug, biological product, or device, or if he or she lacks the capacity to consent, his or her legally authorized representative has given written informed consent on his or her behalf.

(5) Has documentation from his or her treating physician attesting that the eligible patient has met the requirements of this subdivision.

(b) "Health benefit plan" means any plan or program that provides, arranges, pays for, or reimburses the cost of health benefits. "Health benefit plan" includes, but is not limited to, a health care service plan contract issued by a health care service plan, as defined in Section 1345 of this code, and a policy of health insurance, as defined in Section 106 of the Insurance Code, issued by a health insurer.

(c) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial approved by the United States Food and Drug Administration, but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

(d) "Physician" means a physician and surgeon licensed under the Medical Practice Act or an osteopathic physician and surgeon licensed under the Osteopathic Act.

(e) "State regulatory board" means the California Medical Board or the Osteopathic Medical Board of California.

(f) "Terminal illness" means progressive disease or medical or surgical condition that entails significant functional impairment, that is not considered by a treating physician to be reversible even

with theadministration of current United States Food and Drug Administration approved and available treatments, and that, without life-sustaining procedures, will soon result in death.

(g) "Written, informed consent" means a written document that is signed by an eligible patient, parent or legal guardian if the eligible patient is a minor, or his or her legally authorized representative if the eligible patient lacks the capacity to consent, and attested to by the eligible patient's physician and a witness that, at a minimum, does all of the following:

(1) Explains the currently approved products and treatments for the terminal illness from which the eligible patient suffers.

(2) Attests to the fact that the eligible patient, or if the eligible patient lacks the capacity to consent, his or her legally authorized representative, concurs with the eligible patient's physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the eligible patient's life.

(3) Clearly identifies the specific proposed investigational drug, biological product, or device that the eligible patient is seeking to use.

(4) Describes the potentially best and worst outcomes of using the investigational drug, biological product, or device and provides a realistic description of the most likely outcome. This description shall include the possibility that new, unanticipated, different, or worse symptoms may result and that death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's condition.

(5) States that the eligible patient's health benefit plan or third-party administrator, if any, and health care provider are not obligated to pay for the investigational drug, biological product, or device or any care or treatments consequent to use of the investigational drug, biological product, or device, unless otherwise specifically required to do so by law or contract.

(6) States that the eligible patient's eligibility for hospice care may be withdrawn if the eligible patient begins curative treatment with the investigational drug, biological product, or device and that care may be reinstated if the curative treatment ends and the eligible patient meets hospice eligibility requirements.

(7) States that the eligible patient understands that he or she is liable for all expenses consequent to the use of the investigational

drug, biological product, or device, and that this liability extends to the eligible patient's estate, except as otherwise provided in the eligible patient's health benefit plan or a contract between the eligible patient and the manufacturer of the drug, biological product, or device.

111547.2. (a) Notwithstanding Section 110280, 111520, or 111550, a manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to an eligible patient pursuant to this article. This article does not require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

(b) A manufacturer may do both of the following:

(1) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

(2) Require an eligible patient to pay the costs of, or associated with, the manufacture of the investigational drug, biological product, or device.

(c) (1) This article does not expand or otherwise affect the health care coverage required to be provided by a health benefit plan or governmental agency pursuant to the laws of this state.

(2) This article does not expand or otherwise affect the coverage provided under Sections 1370.4 and 1370.6 of this code, Sections 10145.3 and 10145.4 of the Insurance Code, or Sections 14087.11 and 14132.98 of the Welfare and Institutions Code.

(3) A health benefit plan, third-party administrator, if any, or governmental agency may, but is not required to, provide coverage for the cost of an investigational drug, biological product, or device, or the cost of services related to the use of an investigational drug, biological product, or device under this article.

(4) This article does not require any governmental agency to pay costs associated with the use, care, or treatment of an eligible patient with an investigational drug, biological product, or device.

(5) This article does not require a health facility, as described in Section 1250, to provide new or additional services, unless approved by the health facility.

(d) If an eligible patient dies while being treated by an investigational drug, biological product, or device made available pursuant to this article, the eligible patient's heirs are not liable

for any outstanding debt related to the treatment or lack of insurance for the treatment.

111547.3. (a) Notwithstanding any other law, a state regulatory board shall not revoke, fail to renew, suspend, or take any other disciplinary action against a physician's license based solely on the physician's recommendation to an eligible patient regarding, prescription for, or treatment with, an investigational drug, biological product, or device, provided that the recommendation or prescription is consistent with medical standards of care.

(b) A state agency shall not alter any recommendation made to the federal Centers for Medicare and Medicaid Services regarding a health care provider's certification to participate in the Medicare or Medicaid program based solely on the recommendation from an individual health care provider that an eligible patient have access to an investigational drug, biological product, or device.

(c) An official, employee, or agent of this state shall not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device pursuant to this article. Counseling, advice, or a recommendation consistent with medical standards of care from an individual licensed under Division 2 (commencing with Section 500) of the Business and Professions Code shall not be considered a violation of this section.

(d) A violation of this article shall not be subject to Chapter 8 (commencing with Section 111825).

111547.4. This article does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device, or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device, for any harm done to the eligible patient resulting from the investigational drug, biological product, or device, so long as the manufacturer or other person or entity is complying in good faith with the terms of this article, unless there was a failure to exercise reasonable care.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

| | |
|---|---|
| **Bill Number:** | AB 266 and SB 643 |
| **Author:** | Cooley and McGuire |
| **Bill Date:** | April 14, 2015 and April 6, 2015, Amended |
| **Subject:** | Medical Marijuana |
| **Sponsor:** | AB 266 - League of California Cities and California Police Chiefs Associations<br>SB 643 - Author |

## DESCRIPTION OF CURRENT LEGISLATION:

AB 266 and SB 643 would both put various licensing and enforcement requirements on medical marijuana dispensaries and cultivation facilities and would create a Bureau of Medical Marijuana Regulation (Bureau) in the Department of Consumer Affairs that would be the regulatory agency performing the licensing functions. They would also give local agencies the primary responsibility for enforcement of Bureau standards, in accordance with Bureau regulations.

These bills would both impose almost identical requirements on physicians recommending marijuana to patients for medical purposes and on the Medical Board of California (Board). However, this analysis will only cover the portions of the bills related to the requirements on physicians recommending marijuana and requirements of the Board.

## BACKGROUND:

In 1996, California voters approved the Compassionate Use Act (Proposition 215), which allowed Californians access to marijuana for medical purposes, and prohibited punitive action against physicians for making medical marijuana recommendations. SB 420 (Vasconcellos, Chapter 875, Statutes of 2003), the Medical Marijuana Program Act, included issuance of identification cards for qualified patients, and allowed patients and their primary caregivers to collectively or cooperatively cultivate medical marijuana. According to the author's office, no feasible, broad regulatory structure has been established for medical marijuana, and the implementation of the Compassionate Use Act has resulted in conflicting authorities, regulatory chaos, intermittent federal action, and a series of lawsuits. According to the author's office, the purpose of this bill is to put a framework around medical marijuana regulation and address the many associated public safety concerns.

In May 2004, the Board issued a statement on the Compassionate Use Act and a physician's role in recommending medical marijuana, which is still the recognized policy. The statement clarifies that physicians who recommend medical marijuana will not be subject to investigation or disciplinary action by the Board if the decision to recommend medical marijuana is made in accordance with accepted standards of medical responsibility, which is not specifically defined. The statement also indicates

that a mere complaint that a physician is recommending medical marijuana will not generate an investigation absent information that a physician is not adhering to accepted medical standards.

According to a Senate Health Committee analysis from 2014 on SB 1262 (Correa), the University of California's (UC) Center for Medicinal Cannabis Research (CMCR) was created pursuant to SB 847 (Vasconcellos, Chapter 750, statutes of 1999). The CMCR is tasked with developing and conducting studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, to develop medical guidelines for the appropriate administration and use of medical marijuana. According to CMCR's web site, CMCR coordinates and supports cannabis research throughout California, which focuses on the potential medical benefits of cannabis, the general medical safety and efficacy of cannabis, and on examining alternative forms of cannabis administration.

**ANALYSIS:**

The language in these bills impacting the Board is almost the same as the language contained in SB 1262 from 2014. AB 266 and SB 643 would require the Board to include, in its investigative priorities, cases involving repeated acts of excessively recommending marijuana to a patient without a good faith examination of the patient and a medical reason for the recommendation.

Both bills would prohibit a physician from recommending medical marijuana to a patient unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code (HSC). The HSC defines an "attending physician" as an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Board or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and the physician also must have conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

Both bills would also subject physicians recommending medical marijuana to the definition of "financial interest" in Business and Professions Code Section (BPC) 650.01 and would not allow a physician to accept, solicit, or offer any form of remuneration from or to a licensed dispenser, producer, or processor of cannabis products in which the licensee or his or her immediate family has a financial interest.

AB 266 would require examinations conducted by physicians involving the use of telehealth to comply with applicable federal and state laws and regulations, including compliance with the Health Insurance Portability and Accountability Act (HIPAA). However, this provision is unnecessary because existing laws already apply to examinations involving the use of telehealth in California.

Lastly, these bills would require the Board to consult with CMCR on developing and adopting medical guidelines for the appropriate administration and use of marijuana.

These bills would both place anti-kick back and advertising restrictions on physicians who recommend medical marijuana, and would include in the Board's priorities cases involving repeated acts of excessively recommending marijuana to a patient without a good faith examination of the patient and a medical reason for the recommendation. However, these bills do not require an appropriate prior examination before recommending marijuana for medical purposes in BPC 2242.

These bills would also require the Board to consult with CMCR when developing guidelines, but they do not expressly require the Board to develop and adopt guidelines for the appropriate administration and use of marijuana. If these bills were to pass, the Board would need to update its current statement and at that time would consult and solicit input from the CMCR.

The Board took a neutral position on a similar version of SB 1262 last year. As such, Board staff is suggesting the Board take a neutral position on both AB 266 and SB 643.

**FISCAL:** Minor and absorbable costs

**SUPPORT:**

**AB 266:** League of California Cities (sponsors); California Police Chiefs Associations (sponsors); United Food and Commercial Workers Union - Western States Council; League of California Cities - Redwood Empire Division; League of California Cities - Los Angeles County Division California Contract Cities Association; California Narcotic Officers Association; California College and University Police Chiefs' Association; California Association of Code Enforcement Officers; Association for Los Angeles Deputy Sheriffs; Los Angeles Police Protective League; Riverside Sheriffs' Association; California Communities United Institute; City of Concord; City of Chino Hills; City of Clayton; City of Downey; City of Encinitas; City of Fountain Valley; City of Garden Grove; City of Indian Wells; City of Lakeport; City of Merced; City of Montclair; City of Ontario; The City of Rancho Cucamonga; City of Torrance; City of Sacramento; Conscious Cannabis Ventures, support as a work in progress; Heritage Associates, support as a work in progress; and International Faith Based Coalition

**SB 643:** None on file

**OPPOSITION:**

**AB 266:** California Medical Association; California NORML; Coalition for Cannabis Policy Reform; Marijuana Policy Project; Law Enforcement Against Prohibition; and Emerald Grower Association

**SB 643:** None on file

**POSITION:** Recommendation: Neutral

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# ASSEMBLY BILL No. 266

**Introduced by Assembly Member Cooley**
**(Coauthor: Assembly Member Lackey)**

February 10, 2015

An act to amend Section 2220.05 of, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Part 5 (commencing with Section 18100) to Division 7 of, the Business and Professions Code, to add Section 23028 to the Government Code, to amend Section 11362.775 of, and to add Article 8 (commencing with Section 111658) to Chapter 6 of Part 5 of Division 104 of, the Health and Safety Code, and to amend Section 1155.7 of, and to add Sections 1158.5 and 3094 to, the Labor Code, relating to medical marijuana, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 266, as amended, Cooley. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law,

provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would establish within the Department of Consumer Affairs a Bureau of Medical Marijuana Regulation, under the supervision and control of the Chief of the Bureau of Medical Marijuana Regulation, and would require the bureau to license and regulate dispensing facilities, cultivation sites, transporters, and manufacturers of medical marijuana and medical marijuana products, subject to local ordinances. The bill would require a background check of applicants for licensure, as defined, to be administered by the Department of Justice, and submission of a statement signed by an applicant, under penalty of perjury, that the information on his or her application is true, thereby creating a crime and imposing a state-mandated local program. Violation of the provisions related to applying for a conditional license would be punishable by a civil fine of up to $35,000 for each individual violation, or as otherwise specified.

The bill would make conditional licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. The bill would set forth provisions related to the transportation, testing, and distribution of medical marijuana. The bill would prohibit the distribution of any form of advertising for physician recommendations for medical marijuana, unless the advertisement bears a specified notice and requires that the advertisement meet specified requirements and not be fraudulent, deceitful, or misleading.

*The bill would require the State Department of Public Health to promulgate standards for the certification of testing laboratories to perform random sample testing of all medical marijuana products, including standards for onsite testing.*

The bill would establish a system, including apprenticeship and certification, for cannabis employees. The bill would require the Division of Labor Standards Enforcement to maintain and enforce minimum standards of competency and training and to certify cannabis employees. The bill would require the division to establish a cannabis curriculum certification committee to establish educational curriculum standards and to oversee educational providers of cannabis curriculum. The bill would require the Division of Occupational Health and Safety to develop industry-specific regulations for facilities issued a conditional license and would specify that those regulations govern agreements between a facility *with more than 20 employees* issued a conditional license and labor.

The bill would establish the Medical Marijuana Regulation Fund and would require the deposit of specified fees collected pursuant to this act into the fund. The bill would continuously appropriate moneys from the fund to the bureau for the purposes of administering this act, thereby making an appropriation. The bill would also establish the Special Account for Environmental Enforcement within the Medical Marijuana Fund. This account would contain money from fees assessed against licensed cultivation facilities and would be continuously appropriated for the enforcement of environmental regulations relating to licensed cultivation sites. The bill would require the deposit of penalty moneys collected pursuant to this bill into the General Fund.

The bill would provide that it shall not supersede provisions of Measure D, as approved by the voters of the City of Los Angeles, as specified.

The bill would authorize a city, county, or city and county to administer and enforce these provisions. The bill would require the bureau to establish quality assurance protocols by July 1, 2017, to ensure uniform testing standards of medical marijuana, and would require licensees to comply with these provisions. The bill would further set forth provisions regulating edible medical marijuana products, as specified. By adding these provisions to the Sherman Food, Drug, and Cosmetic Law, a violation of which is a crime, the bill would impose a state-mandated local program.

(2) Existing law establishes the Division of Apprenticeship Standards, which audits and regulates apprenticeship programs for various trades, including electricians.

This bill would require the division to investigate, approve, or reject applications for apprenticeship employees of a licensed cultivation site or a licensed dispensing facility, as defined.

(3) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to prioritize investigations and prosecutions of physicians and surgeons representing the greatest threat of harm, as specified. Existing law identifies the cases that are to be given priority, which include cases of repeated acts of excessively prescribing, furnishing, or administering controlled substances without a good faith prior examination of the patient. Existing law provides that a violation of the Medical Practice Act is a crime.

This bill would require the board to consult with the Center for Medicinal Cannabis Research on developing and adopting medical guidelines for the appropriate administration and use of marijuana.

The bill would also make it a misdemeanor for a physician and surgeon who recommends marijuana to a patient for a medical purpose to accept, solicit, or offer any remuneration from or to a licensed dispensing facility in which the physician and surgeon or his or her immediate family has a financial interest. By creating a new crime, the bill would impose a state-mandated local program.

The bill would provide that specified acts of recommending marijuana for medical purposes without a good faith examination are among the types of cases that should be given priority for investigation and prosecution by the board, as described above. The bill would further prohibit a physician and surgeon from recommending medical marijuana to a patient unless that person is the patient's attending physician, as defined. Because a violation of that provision would be a crime, the bill would impose a state-mandated local program.

(4) Existing law authorizes the legislative body of a city or county to impose various taxes, including a transactions and use tax at a rate of 0.25%, or a multiple thereof, if approved by the required vote of the legislative body and the required vote of qualified voters, and limits the combined rate of transactions and use taxes within a city or county to 2%.

This bill would authorize the board of supervisors of a county to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana or products containing marijuana. The bill would authorize the tax to be imposed for either general or specific governmental purposes. The bill would require a tax imposed pursuant to this authority to be subject to any applicable voter approval requirement.

(5) Existing law exempts qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards from certain crimes, including possession of concentrated cannabis and marijuana, cultivation of marijuana, and possession of marijuana for sale.

This bill would also exempt from those crimes an employee, officer, or board member of a licensed cultivation site or a licensed dispensing facility, except as specified.

(6) Existing law regulates the labor practices of agricultural employers.

This bill would include licensed cultivation sites and licensed dispensing facilities in the definition of agricultural employer.

(7) This bill would provide that its provisions are severable.

(8) 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.

(9) 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:*

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

(a) In 1996, the people of the State of California enacted the Compassionate Use Act of 1996, codified in Section 11362.5 of the Health and Safety Code. The people of the State of California declared that their purpose in enacting the measure was, among other things, “to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.”

(b) The Compassionate Use Act of 1996 called on state government to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana, while ensuring that nothing in that act would be construed to condone the diversion of marijuana for nonmedical purposes.

(c) In 2003, the Legislature enacted the Medical Marijuana Program Act (MMPA), codified in Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

(d) Greater certainty and minimum statewide standards are urgently needed regarding the obligations of medical marijuana facilities, and for the imposition and enforcement of regulations to prevent unlawful cultivation and the diversion of marijuana to nonmedical use.

(e) Despite the passage of the Compassionate Use Act of 1996 and the MMPA, because of the lack of an effective statewide system for regulating and controlling medical marijuana, cities, counties and local law enforcement officials have been confronted with uncertainty about the legality of some medical marijuana cultivation and distribution activities. The current state of affairs makes law enforcement difficult and endangers patient safety because of an inability to monitor the supply of medical marijuana in the state and the lack of quality control, testing, and labeling requirements.

(f) The California Constitution grants cities and counties the authority to make and enforce, within their borders, "all local police, sanitary, and other ordinances and regulations not in conflict with the general laws." This inherent local police power includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within the local jurisdiction's borders. The police power, therefore, allows each city and county to determine whether or not a medical marijuana dispensary or other facility that makes medical marijuana available may operate within its borders. This authority has been upheld by City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729 and County of Los Angeles v. Hill (2011) 192 Cal.App.4th 861. Nothing in this act shall diminish, erode, or modify that authority.

(g) If a city or county determines that a dispensary or other facility that makes medical marijuana available may operate within its borders, then there is a need for the state to license these dispensaries and other facilities for the purpose of adopting and enforcing protocols for security standards at dispensaries and in the transportation of medical marijuana, as well as health and safety standards to ensure patient safety. This licensing requirement is

not intended in any way nor shall it be construed to preempt local ordinances, regulations, or enforcement actions regarding the sale and use of medical marijuana, including, but not limited to, security, signage, lighting, and inspections.

(h) All of the following are necessary to uphold important state goals:

(1) Strict provisions to prevent the potential diversion of marijuana for recreational use.

(2) Audits to accurately track the volume of both product movement and sales.

(3) An effective means of restricting nonmedical access to medical marijuana by minors.

(i) Nothing in this act shall be construed to promote or facilitate the nonmedical, recreational possession, sale, or use of marijuana.

(j) Nothing in this act shall have a diminishing effect on the rights and protections granted to a patient or primary caregiver pursuant to the Compassionate Use Act of 1996.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances, or recommending marijuana to patients for medical purposes, without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for

intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Marijuana

2525. (a) It is unlawful for a physician and surgeon who recommends marijuana to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, “financial interest” shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical marijuana.

2525.2. A physician and surgeon shall not recommend medical marijuana to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. An examination conducted by the physician and surgeon involving the use of telehealth as defined in Section 2290.5 of the Business and Professions Code, shall comply with applicable federal and state laws and regulations, including compliance with the regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, found ~~at~~ *in* Parts 160 and 164 of Title 45 of the Code of Federal Regulations.

SEC. 4. Part 5 (commencing with Section 18100) is added to Division 7 of the Business and Professions Code, to read:

## PART 5. MEDICAL MARIJUANA

### Chapter 1. General Provisions

18100. For purposes of this part, the following definitions shall apply:

(a) "Bureau" means the Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs.

(b) "Certified testing laboratory" means a laboratory that is certified by the bureau to perform random sample testing of medical marijuana pursuant to the certification standards for these facilities promulgated by the bureau.

(c) "Chief" means the Chief of the Bureau of Medical Marijuana Regulation.

(d) "Department" means the Department of Consumer Affairs.

(e) "Director" means the Director of Consumer Affairs.

(f) "Dispensary" means a distribution operation that provides medical marijuana or medical marijuana derived products to patients and caregivers.

(g) "Fund" means the Medical Marijuana Regulation Fund established pursuant to Section 18118.

(h) "Labor peace agreement" means an agreement between an entity and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the

applicant's business. The agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees.

(i) "Licensed cultivation site" means a facility that plants, grows, cultivates, harvests, dries, or processes medical marijuana, *or that does all or any combination of those activities,* and that is issued a conditional license pursuant to this part.

(j) "Licensed dispensing facility" means a dispensary or other facility that provides medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products, *either individually or in any combination,* that is issued a conditional license pursuant to this part.

(k) "Licensed manufacturer" means a person who extracts, prepares, derives, produces, compounds, or repackages medical marijuana or medical marijuana products into consumable and nonconsumable forms, *or that does all or any combination of those activities,* and that is issued a conditional license pursuant to this part.

(*l*) "Licensed transporter" means an individual or entity issued a conditional license by the bureau to transport medical marijuana to and from facilities that have been issued conditional licenses pursuant to this part.

(m) "Marijuana" means all parts of the plant Cannabis sativa, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" also means marijuana, as defined by Section 11018 of the Health and Safety Code.

18101. (a) There is hereby created in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Chief of the Bureau of Medical Marijuana Regulation.

(b) Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(c) The bureau shall have the authority to issue conditional licenses for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana within the state and to collect fees in connection with these actions. The bureau shall have the authority to create other licenses in order to protect patient health and the public and to facilitate the regulation of medical marijuana.

(d) The Governor shall appoint the chief at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(e) The duty of enforcing and administering this part shall be vested in the chief, who is responsible to the director. The chief may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this part and declaring the policy of the bureau, including a system for the issuance of citations for violations of this part, as specified in Section 18126.

(f) The chief, as necessary to carry out the provisions of this part, and in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), may appoint and fix the compensation of personnel, including, but not limited to, clerical, inspection, investigation, and auditing personnel, as well as an assistant chief. These personnel shall perform their respective duties under the supervision and the direction of the chief.

(g) Every power granted to, or duty imposed upon, the chief under this part may be exercised or performed in the name of the chief by a deputy or assistant chief, subject to conditions and limitations that the chief prescribes.

(h) The bureau shall exercise its authority pursuant to this part consistent with Section 1 of the act that added this section and consistent with the provisions of this part.

18102. Funds for the establishment and support of the bureau shall be advanced as a loan by the department and shall be repaid by the initial proceeds from fees collected pursuant to this part or any rule or regulation adopted pursuant to this part.

18103. The bureau shall have the authority necessary for the implementation of this part, including, but not limited to, all of the following:

(a) Establishing rules or regulations necessary to carry out the purposes and intent of this part and to enable the bureau to exercise the powers and perform the duties conferred upon it by this part and in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. *These rules and regulations shall not limit the authority of a city, county, or city and county specified in Section 18128, or specified in Section 7 of Article XI of the California Constitution, or any other law.* For the performance of its duties, the bureau has the powers as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Issuing conditional licenses to persons for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana within the state.

(c) Setting application, licensing, and renewal fees for conditional licenses issued pursuant to Section 18117.

(d) Establishing standards for the cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale of medical marijuana and medical marijuana products.

(e) Establishing procedures for the issuance, renewal, suspension, denial, and revocation of conditional licenses.

(f) Imposing a penalty authorized by this part or any rule or regulation adopted pursuant to this part.

(g) Taking action with respect to an application for a conditional license in accordance with procedures established pursuant to this part.

(h) Overseeing the operation of the Medical Marijuana Regulation Fund and the Special Account for Environmental Enforcement, established pursuant to Section 18118.

(i) Consulting with other state or local agencies, departments, representatives of the medical marijuana community, or public or

private entities for the purposes of establishing statewide standards and regulations.

(j) Certifying laboratories to perform testing of medical marijuana.

18104. (a) On or before July 1, 2017, the bureau shall promulgate regulations for implementation and enforcement of this part, including, but not limited to, all of the following:

(1) Procedures for the issuance, renewal, suspension, denial, and revocation of conditional licenses.

(2) Procedures for appeal of fines and the appeal of denial, suspension, or revocation of conditional licenses.

(3) Application, licensing, and renewal forms and fees.

(4) A time period in which the bureau shall approve or deny an application for a conditional license pursuant to this part.

(5) Qualifications for licensees.

~~(6) Standards for certification of testing laboratories to perform random sample testing of all medical marijuana products, including standards for onsite testing.~~

~~(A) Certification of testing laboratories shall be consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17025.~~

~~(B) These requirements shall apply to all entities, including third-party laboratories, engaged in the testing of medical marijuana pursuant to this part.~~

~~(7)~~

*(6)* Requirements to ensure ~~conformance with standards analogous~~ *that all licensees and certified testing laboratories conform with standards equivalent* to state statutory environmental, agricultural, consumer protection, and food and product safety requirements. *These standards shall be in addition to, and not limited to, any other state and local requirements.* At a minimum, these standards shall do all of the following:

(A) Prescribe sanitation standards analogous to the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code) for food preparation, storage, handling, and sale of edible medical marijuana products.

(B) Require that edible medical marijuana products produced, distributed, provided, donated, or sold by licensees shall be limited

to nonpotentially hazardous food, as established by the State Department of Public Health pursuant to Section 114365.5.

(C) Require that facilities in which edible medical marijuana products are prepared shall be constructed in accordance with applicable building standards, health and safety standards, and other state laws.

(D) Provide that weighing or measuring devices used in connection with the sale or distribution of medical marijuana are required to meet standards analogous to Division 5 (commencing with Section 12001).

(E) Require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical marijuana shall meet standards analogous to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

*(F) Require that indoor and outdoor marijuana cultivation by licensees is conducted in accordance with state and local laws and best practices related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters.*

*(7) Develop procedures to ensure that testing of marijuana occurs prior to delivery to dispensaries or any other business, and requiring destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the bureau, unless remedial measures can bring the marijuana into compliance with quality assurance standards as promulgated by the bureau.*

*(8) Establish minimum standards for quality assurance protocols implemented by each licensed facility pursuant to Section 18138.*

(b) On or before July 1, 2017, the bureau shall also promulgate regulations for minimum statewide health and safety standards and quality assurance standards associated with the cultivation, transport, storage, manufacture, and sale of all medical marijuana produced in this state. Consistent with Section 18126, local agencies shall have primary responsibility for enforcement of these standards in accordance with bureau regulations.

(c) The bureau shall not issue a conditional license unless the applicant has met all of the requirements of this part, including the requirements of paragraph (4) of subdivision (d) of Section 18110.

*18104.5. (a) The State Department of Public Health shall promulgate standards for certification of testing laboratories to*

*perform random sample testing of all medical marijuana products, including standards for onsite testing.*

*(b) Certification of testing laboratories shall be consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17025.*

*(c) These requirements shall apply to all entities, including third-party laboratories, engaged in the testing of medical marijuana pursuant to this part.*

18105. The chief shall keep a complete record of all facilities issued a conditional license. ~~This record shall be made available on the bureau's Internet Web site.~~ *The bureau shall, upon request, provide summary information on licensees consisting of the name of the licensee, the date the license was issued, the status of the license, and the licensees's mailing address.*

18106. The bureau shall establish procedures to provide state and local law enforcement, upon their request, with 24-hour access to information to verify a conditional license, track transportation manifests, and track the inventories of facilities issued a conditional license.

18107. This part shall in no way supersede the provisions of Measure D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, which granted medical marijuana businesses and dispensaries qualified immunity consistent with the terms of the measure and local ordinances. Notwithstanding the provisions of this part, marijuana businesses and dispensaries subject to the provisions of Measure D and its qualified immunity shall continue to be subject to the ordinances and regulations of the City of Los Angeles.

## Chapter 2. Conditional Licenses

18108. The following persons are exempt from the requirement of licensure under this part:

(a) A patient who cultivates, possesses, stores, manufactures, or transports marijuana exclusively for his or her personal medical use and who does not sell, distribute, donate, or provide marijuana to any other person or entity.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, or provides marijuana exclusively for the personal medical purposes to no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code and who does not receive remuneration for these activities, except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code. Nothing in this section shall permit primary caregivers to organize themselves as cooperatives or collectives of caregivers.

18109. (a) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not sell or provide medical marijuana to a patient or caregiver other than at a licensed dispensing facility or through delivery from a licensed dispensing facility.

(b) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not grow medical marijuana other than at a licensed cultivation site.

(c) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not manufacture medical marijuana or medical marijuana products other than a licensed manufacturer.

(d) A person shall not transport medical marijuana from one facility issued a conditional license to another, other than a licensed transporter.

(e) A licensed manufacturer may obtain medical marijuana from a licensed cultivator and may furnish medical marijuana products to a licensed dispensary.

(f) To meet the requirements of Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, medical marijuana and medical marijuana products shall be tested by a certified testing laboratory.

*(g) This section shall become operative on July 1, 2017.*

18110. (a) Beginning July 1, 2017, the bureau shall provide for and shall issue conditional licenses. Conditional licenses shall be ~~issued~~ *required* for all activity authorized under this chapter, including, but not limited to, cultivation, storage, transport, and

dispensing of medical marijuana. *A license issued pursuant to this chapter is subject to compliance with all local ordinances and regulations determined to be applicable by the local government of the jurisdiction in which the licensee operates.*

(b) The issuance of a conditional license shall not, in and of itself, authorize the recipient to begin business operations. The conditional license shall certify, at a minimum, that the applicant has paid the state conditional licensing fee, successfully passed a criminal background check, and met the state residency requirements.

(c) ~~In order to begin business operations pursuant to this chapter, an applicant shall, in addition to the conditional license, obtain~~ *A licenced facility shall not commence activity under the authority of a conditional license until the applicant has obtained, in addition to the conditional license,* a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinances.

(d) An applicant for a conditional license shall do all following:

(1) Pay the fee or fees required by this part for each license being applied for.

(2) Register with the bureau on forms prescribed by the chief. The forms shall contain sufficient information to identify the licensee, including all of the following:

(A) Name of the owner or owners of a proposed facility, including all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on property that will be used by the applicant.

(B) The name, address, and date of birth of each principal officer and board member.

(C) The address and telephone number of the proposed facility.

(D) In the case of a cultivation site, the GPS coordinates of the site.

*(E) In the case of a dispensary, the name and address of each licensed cultivation site and licensed manufacturer from which the dispensary will acquire or obtain medical marijuana or medical marijuana products.*

(3) Describe, in writing, the scope of business of the proposed facility.

(4) Provide evidence that the applicant and owner have been legal full-time residents of the state for not less than 12 months.

(5) Provide detailed operating procedures, in writing, for the proposed facility, which shall include, but not be limited to, procedures for facility and operational security, prevention of diversion, employee screening, storage of medical marijuana, personnel policies, and recordkeeping procedures.

(6) Provide the applicant's fingerprint images. For purposes of this paragraph, "applicant" means the owner or owners of a proposed facility, including all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility. *If the owner is an entity, fingerprints shall be submitted for each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.*

(A) The applicant shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail, or on his or her own recognizance, pending trial or appeal.

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

(C) The bureau shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subparagraph (A).

(D) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

*(7) Identify all local ordinances applicable to the operation of the proposed facility, and provide evidence that the proposed facility is a permitted use at the proposed location under local zoning and other ordinances.*

~~(7)~~

*(8)* Provide a statement, signed by the applicant under penalty of perjury, that the information provided is true.

~~(8)~~

*(9)* Provide any other information required by the bureau.

(e) Each location and each discrete use of a single location shall require a conditional license. Each application for a conditional license is separate and distinct, and the bureau may charge a separate fee for each.

(f) A conditional license issued pursuant to this section shall be valid for 12 months after the date of issuance. The bureau shall establish procedures for the renewal of a conditional license.

*(g) A conditional license issued pursuant to this section shall be restricted as follows:*

*(1) A single licensee shall not hold both a license for the cultivation of marijuana and a license for the dispensing of marijuana unless the cultivation site is restricted to 1,000 square feet in area.*

*(2) The holder of a license for transport of marijuana may not hold any other category of license.*

*(3) The holder of a certification for a testing laboratory may not combine that certificate with any category of license.*

*(4) Persons or entities that own testing laboratories are prohibited from licensure for any activity authorized under this chapter, and are prohibited from holding an ownership interest in any real property, personal property, or other assets associated or used in any license category.*

18111. (a) Upon receipt of the application materials and fee required in Section 18110, the bureau, provided the applicant has not committed an act or crime constituting grounds for the denial of licensure under Section 18112, may issue the conditional license and send a proof of issuance to the applicant.

(b) The chief shall, by regulation, prescribe conditions upon which a person whose conditional license has previously been denied, suspended, or revoked, may be issued a conditional license.

18112. (a) An application for a conditional license shall be denied and a conditional license shall be suspended or revoked for a past felony conviction for the possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, a felony criminal conviction for drug trafficking, a felony conviction for embezzlement, a felony conviction involving fraud or deceit, or any violent or serious felony conviction pursuant to subdivision (c) of Section 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code. The bureau, at its discretion, may issue a license to an applicant that would be otherwise denied pursuant

to this subdivision if the applicant has obtained a certificate of rehabilitation, pursuant to Section 4852.13 of the Penal Code.

(b) The chief, upon his or her determination, may deny, suspend, or revoke a conditional license when a conditional licensee, applicant, or employee, partner, officer, or member of an entity conditionally licensed does any of the following:

(1) Making or authorizing in any manner or by any means a written or oral statement that is untrue or misleading and that is known, or that by exercise of reasonable care should be known, to be untrue or misleading.

(2) Any other conduct that constitutes fraud.

(3) Conduct constituting gross negligence.

(4) Failure to comply with the provisions of this part, Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, or any rule or regulation adopted pursuant to this part.

(5) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

*(6) Violation of any applicable local ordinance.*

18113. (a) Upon denying, suspending, or revoking a conditional license, the chief shall notify the applicant or licensee, in writing, by personal service or mail addressed to the address of the applicant or licensee set forth in the application. The applicant or licensee shall be given a hearing within 30 days thereafter if he or she files with the bureau a written request for hearing. Otherwise, the denial, suspension, or revocation is deemed affirmed.

(b) All proceedings to deny, suspend, or revoke a conditional license shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

18114. An application for or renewal of a license shall not be approved if the bureau determines any of the following:

(a) The applicant fails to meet the requirements of this part or any regulation adopted pursuant to this part or any applicable city, county, or city and county ordinance or regulation. If a local government adopts an ordinance or resolution authorizing medical marijuana to be cultivated, manufactured, stored, distributed, or sold within its jurisdiction, it shall submit to the bureau documentation detailing their renewal requirements.

(b) The applicant, or any of its officers, directors, owners, members, or shareholders, is a minor.

(c) The applicant has knowingly answered a question or request for information falsely on the application form or failed to provide information requested.

(d) The applicant, or any of its officers, directors, owners, members, or shareholders has been sanctioned by the bureau, a city, county, or city and county, for medical marijuana activities conducted in violation of this part or any applicable local ordinance or has had a license revoked in the previous five years.

(e) The proposed cultivation, processing, possession, storage, manufacturing, testing, transporting, distribution, provision, or sale of medical marijuana will violate any applicable local law or ordinance.

(f) The applicant or the owner is unable to establish that he or she has been a resident of the state for not less than 12 months.

18115. In addition to the provisions of this part, a conditional license shall be subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. Even if a conditional license has been granted pursuant to this part, a facility shall not operate in a local jurisdiction that prohibits the establishment of that type of business.

18116. The bureau may adopt regulations to limit the number of conditional licenses issued pursuant to this part upon a finding that the otherwise unrestricted issuance of conditional licenses is dangerous to the public health and safety.

## Chapter 3. Fees

18117. (a) The conditional licensing fee shall be established by the bureau at a level sufficient to fund the reasonable costs of all of the following:

(1) Administrative costs incurred by the bureau in overseeing the conditional licensing program, establishing health and safety standards, and certifying the required testing laboratories.

(2) Costs incurred by the bureau or the Department of Justice for enforcement of the provisions of this part.

(3) Costs incurred by law enforcement and other public safety entities for enforcing the provisions of this part in their jurisdiction.

(b) In addition to the conditional licensing fee required pursuant to subdivision (a), a cultivation facility shall be assessed a fee in a sufficient amount to cover the reasonable regulatory costs *to the state* of enforcing the environmental impact provisions relating to those cultivation facilities. *This fee shall be paid in addition to any other fees charged by the bureau or any local agency.* This fee shall be distributed, as necessary and in proportion to its regulatory function, between the following agencies responsible for enforcing the regulations relating to the environmental impact of licensed cultivation sites:

(1) The State Water Board.

(2) The Department of Fish and Wildlife.

(3) The Department of Forestry and Fire Protection.

(4) The Department of Pesticide Regulation.

(5) The Department of Food and Agriculture.

*(c) The bureau may establish a separate schedule of licensing fees for application to nonprofit entities if the entity's nonprofit status is verified by an audit.*

18118. (a) The Medical Marijuana Regulation Fund is hereby established within the State Treasury. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the money in the fund.

(b) Except as provided in subdivision (c), all fees collected pursuant to this part shall be deposited into the Medical Marijuana Regulation Fund. Notwithstanding Section 13340 of the Government Code, all moneys within the fund are hereby continuously appropriated, without regard to fiscal year, to the bureau solely for the purposes of fully funding and administering this part, including, but not limited to, the costs incurred by the bureau for its administrative expenses.

(c) The Special Account for Environmental Enforcement is hereby established as an account within the Medical Marijuana Regulation Fund. Notwithstanding Section 16305.7 of the Government Code, the account shall include any interest and dividends earned on the money in the account. All fees collected pursuant to subdivision (b) of Section 18112 shall be deposited in this account. Notwithstanding Section 13340 of the Government Code, all moneys within the fund are hereby continuously appropriated, without regard to fiscal year, to the bureau for distribution to the entities listed in subdivision (b) of Section 18117

to be used to enforce the environmental regulation of licensed cultivation sites.

(d) All moneys collected as a result of penalties imposed under this part shall be deposited directly into the General Fund, to be available upon appropriation.

(e) The bureau may establish and administer a grant program to allocate moneys from the Medical Marijuana Regulation Fund to state and local entities for the purpose of assisting with medical marijuana regulation and the enforcement of this part and other state and local laws applicable to licensees.

18119. (a) A facility issued a conditional license shall not acquire, cultivate, process, possess, store, manufacture, distribute, sell, deliver, transfer, transport, or dispense medical marijuana for any purpose other than those authorized by Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.

(b) A licensed dispensing facility shall not acquire, cultivate, process, possess, store, manufacture, distribute, sell, deliver, transfer, transport, or dispense medical marijuana plants or medical marijuana products except through a licensed cultivation site or a licensed manufacturer.

## Chapter 4. Transportation of Medical Marijuana

18120. (a) A licensed transporter shall ship only to facilities issued a conditional license and only in response to a request for a specific quantity and variety from those facilities.

(b) Prior to transporting medical marijuana products, a licensed transporter shall do both of the following:

(1) Complete a shipping manifest using a form prescribed by the bureau.

(2) Securely transmit a copy of the manifest to the licensee that will receive the medical marijuana product, and to the bureau, prior to transport.

(c) The licensed transporter making the shipment and the licensee receiving the shipment shall maintain each shipping manifest and make it available to local code enforcement officers, any other locally designated enforcement entity, and the bureau upon request.

18121. (a) Transported medical marijuana products shall:

(1) Be transported only in a locked, safe, and secure storage compartment that is securely affixed to the interior of the transporting vehicle.

(2) Not be visible from outside the vehicle.

(b) A vehicle transporting medical marijuana products shall travel directly from one licensed facility to another licensed facility authorized to receive the shipment.

18122. (a) All transport vehicles shall be staffed with a minimum of two employees. At least one transport team member shall remain with the vehicle at all times when the vehicle contains medical marijuana.

(b) Each transport team member shall have access to a secure form of communication by which each member can communicate with personnel at the licensed facility at all times when the vehicle contains medical marijuana.

(c) Each transport team member shall possess documentation of licensing and a government-issued identification card at all times when transporting or delivering medical marijuana and shall produce it to any representative of the bureau or law enforcement upon request.

(d) This part shall not be construed to authorize or permit a licensee to transport, or cause to be transported, medical marijuana or medical marijuana products outside the state.

18123. A local jurisdiction shall not prevent transportation through or to a facility issued a conditional license, by a conditionally licensed transporter who acts in compliance with this part.

## Chapter 5. Enforcement

18124. A state agency is not required by this section to enforce a city, county, city and county, or local law, ordinance, rule, or regulation regarding the site or operation of a facility issued a conditional license.

18125. The bureau may assist state taxation authorities in the development of uniform policies for the state taxation of licensees.

18126. (a) For facilities issued a conditional license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this part and Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of

Division 104 of the Health and Safety Code and the rules, regulations, and standards promulgated by the bureau. The city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, without liability, cost, or expense to the county.

(b) For licensed facilities located within the unincorporated area of a county, the county shall have full power and authority to enforce this part and Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code and the rules, regulations, and standards promulgated by the bureau.

18127. (a) A willful violation of Section 18110, including an attempt to falsify information on an application or to otherwise defraud or mislead a state or local agency in the course of the application process, shall be punishable by a civil fine of up to thirty-five thousand dollars ($35,000) for each individual violation.

(b) A technical violation of Section 18110 shall, at the bureau's discretion, be punishable by a civil fine of up to ten thousand dollars ($10,000) for each individual violation.

18128. A district attorney, county counsel, city attorney, or city prosecutor may bring an action to enjoin a violation or the threatened violation of any provision of this part, including, but not limited to, a licensee's failure to correct objectionable conditions following notice or as a result of a rule promulgated pursuant to this part. The action shall be brought in the county in which the violation occurred or is threatened to occur. A proceeding brought pursuant to this part shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. Nothing in this section shall diminish the authority of a local government to take requisite enforcement actions pertaining to its own ordinances or regulations.

18129. Nothing in this part shall prevent a city or other local governing body from taking action as specified in Section 11362.83 of the Health and Safety Code.

18130. This part shall not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a facility issued a conditional license.

CHAPTER 6. CANNABIS EMPLOYEES

18131. (a) The Division of Labor Standards Enforcement shall do all of the following:

(1) Maintain minimum standards for the competency and training of employees of a licensed cultivation site or a licensed dispensing facility, as defined in subdivisions (i) and (j) of Section 18100, through a system of testing and certification.

(2) Maintain an advisory committee and panels as necessary to carry out its functions under this section. There shall be employer representation on the committee and panels.

(3) Establish and collect certification fees not to exceed the reasonable cost to the division in issuing certifications.

(4) Adopt regulations necessary to implement this chapter.

(5) Issue certification cards to employees who have been certified pursuant to this chapter.

(6) Maintain a cannabis certification curriculum committee made up of representatives of the State Department of Education, the California Community Colleges, and the division. The committee shall do all of the following:

(A) Establish written educational curriculum standards for enrollees in training programs. Curriculum shall include appropriate standards for the sale, processing, and cultivation of medical marijuana including standards for dispensing, growing, harvesting, packaging, labeling, preparing, transporting, delivering, testing, storage, and preventing diversion of medical marijuana and related products, including edible medical marijuana products.

(B) If an educational provider's curriculum meets the written educational curriculum standards established in accordance with subparagraph (A), designate that curriculum as an approved curriculum of classroom instruction.

(C) At the committee's discretion, review the approved curriculum of classroom instruction of any designated educational provider. The committee may withdraw its approval of the curriculum if the educational provider does not continue to meet the established written educational curriculum standards.

(D) Require each designated educational provider to submit an annual notice to the committee stating whether the educational provider is continuing to offer the approved curriculum of

classroom instruction and whether material changes have been made to the curriculum since its approval.

(b) There shall be no discrimination in favor of, or against, a person based on membership or nonmembership in a union.

(c) For purposes of this chapter, the following definitions apply:

(1) "Cannabis employee" means an employee of a licensed cultivation site or a licensed dispensing facility, as defined in subdivisions (i) and (j) of Section 18100.

(2) "Committee" means the cannabis curriculum certification committee established pursuant to paragraph (6) of subdivision (a).

(3) "Division" means the Division of Labor Standards and Enforcement.

18132. (a) Except as provided in subdivision (c), persons who perform work as cannabis employees shall be certified by the division.

(b) Individuals desiring to be certified shall submit an application for certification and examination that includes an employment history report from the Social Security Administration. The individual may redact his or her social security number from the employment history report before it is submitted.

(c) (1) Certification is not required for registered apprentices working as cannabis employees as part of an apprenticeship program approved under a federal Office of Apprenticeship program or a state apprenticeship program authorized by the federal Office of Apprenticeship. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(2) Certification is not required for any person employed pursuant to Section 18134.

(d) The following shall constitute additional grounds for disciplinary proceedings, including suspension or revocation of the conditional license issued pursuant to this part:

(1) The licensed cultivation site or licensed dispensing facility willfully employs one or more uncertified persons to perform work as cannabis employees in violation of this section or Section 18134.

(2) The licensed cultivation site or licensed dispensing facility willfully fails to provide adequate supervision of uncertified

workers required by paragraph (3) of subdivision (a) of Section 18134.

(3) The licensed cultivation site or licensed dispensing facility willfully fails to provide adequate supervision of apprentices performing work pursuant to subdivision (c).

(e) The Labor Commissioner shall maintain a process for referring cases to the bureau when it has been determined that a violation of this section has likely occurred. The Labor Commissioner shall have a memorandum of understanding with the bureau in furtherance of this section.

(f) Upon receipt of a referral by the Labor Commissioner alleging a violation under this section, the bureau shall open an investigation. Disciplinary action against the licensee shall be initiated within 60 days of the receipt of the referral. The bureau may initiate disciplinary action against a licensee upon his or her own investigation, the filing of a complaint, or a finding that results from a referral from the Labor Commissioner alleging a violation under this section. Failure of the employer or employee to provide evidence of certification or apprentice status shall create a rebuttable presumption of violation of this provision.

18133. The division shall do all of the following:

(a) Make information about cannabis employee certification available in languages other than English to the extent the division finds it appropriate.

(b) Provide for the administration of certification tests in Spanish and, to the extent practicable, other languages spoken by a substantial number of applicants, except when the ability to understand warning signs, instructions, and certain other information in English is necessary for safety, cultivation, and dispensing.

(c) Ensure, in conjunction with the California Apprenticeship Council, that all cannabis apprenticeship programs that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.

(d) Ensure, in conjunction with the California Apprenticeship Council, that all cannabis apprenticeship programs have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.

18134. (a) An uncertified person may perform work for which certification is otherwise required in order to acquire the necessary on-the-job experience for certification if all of the following requirements are met:

(1) The person is registered with the division. A list of current registrants shall be maintained by the division and made available to the public upon request.

(2) The person either has completed or is enrolled in an approved curriculum of classroom instruction.

(3) The employer attests that the person shall be under the direct supervision of a cannabis employee certified pursuant to Section 18131 who is responsible for supervising no more than one uncertified person. An employer who is found by the division to have failed to provide adequate supervision may be barred by the division from employing uncertified individuals in the future.

(b) For purposes of this section, "an approved curriculum of classroom instruction" means a curriculum of classroom instruction approved by the committee and provided under the jurisdiction of the State Department of Education, the Board of Governors of the California Community Colleges, or the Bureau for Private Postsecondary and Vocational Education.

(c) The committee may grant approval to an educational provider that presently offers only a partial curriculum if the educational provider intends in the future to offer, or to cooperate with other educational providers to offer, a complete curriculum for the type of certification involved. The committee may require an educational provider receiving approval for a partial curriculum to periodically renew its approval with the committee until a complete curriculum is offered and approved.

(d) An educational provider that receives approval for a partial curriculum shall disclose in all communications to students and to the public that the educational provider has only received approval for a partial curriculum and shall not make any representations that the provider offers a complete approved curriculum of classroom instruction.

(e) For purposes of this section, a person is enrolled in an approved curriculum of classroom instruction if the person is attending classes on a full-time or part-time basis toward the completion of an approved curriculum.

(f) Registration under this section shall be renewed annually and the registrant shall provide to the division certification of the classwork completed and on-the-job experience acquired since the prior registration.

(g) For purposes of verifying the information provided by a person registered with the division, an educational provider shall provide an approved curriculum of classroom instruction, and shall, upon the division's request, provide the division with information regarding the enrollment status and instruction completed by an individual registered. By registering with the division in accordance with this section, the individual consents to the release of this information.

(h) The division shall establish registration fees in an amount reasonably necessary to implement this section, not to exceed twenty-five dollars ($25) for the initial registration. There shall be no fee for annual renewal of registration. Fees shall be placed in the Cannabis Certification Fund, established pursuant to Section 18135.

(i) Notwithstanding any other law, an uncertified person who has completed an approved curriculum of classroom instruction and is currently registered with the division may take the certification examination. The person shall be certified upon passing the examination and satisfactorily completing the requisite number of on-the-job hours required for certification. A person who passes the examination prior to completing the requisite hours of on-the-job experience shall continue to comply with subdivision (f).

18135. The Cannabis Certification Fund is established as a special account in the State Treasury. Proceeds of the fund may be expended by the division, upon appropriation by the Legislature, for the costs of validating and certifying cannabis employees, as provided by this chapter, and shall not be used for any other purpose.

## Chapter 7. Regulation of Medical Marijuana

18136. (a) A person shall not distribute any form of advertising for physician recommendations for medical marijuana in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical marijuana. Physicians are licensed and regulated by the Medical Board of California and arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility.

(b) Advertising for physician recommendations for medical marijuana shall meet all requirements of Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

18137. (a) A ~~facility issued a conditional license~~ *conditionally licensed facility* shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing *medical* marijuana *or medical marijuana products* and theft of *medical* marijuana at those *licensed* facilities. These security measures shall*, in addition to any requirements imposed by local ordinance,* include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the facility if they are not engaging in activity expressly related to the operations of the facility.

(2) Establishing limited access areas accessible only to authorized facility personnel*, in compliance with all local building and fire codes*.

(3) Storing all finished *medical* marijuana in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss.

(b) A ~~facility issued a conditional license~~ *conditionally licensed facility* shall notify appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Discrepancies identified during inventory.

(2) Diversion, theft, loss, or any criminal activity involving the facility or a facility agent.

(3) The loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or facility agents.

(4) Any other breach of security.

(c) A licensed cultivation site shall weigh, inventory, and account for on video, all medical marijuana to be transported prior to its leaving its origination location. Within eight hours after arrival at the destination, the licensed dispensing facility shall reweigh, reinventory, and account for on video, all transported marijuana.

18138. (a) The bureau shall require an annual audit of all ~~facilities issued a conditional license to cultivate, manufacture, process, transport, store, or sell medical marijuana~~ *conditionally licensed facilities*. The reasonable costs of the audit shall be paid for by the licensee.

(b) Completed audit reports shall also be submitted by the licensee to local code enforcement offices, or the appropriate locally designated enforcement entity, within 30 days of the completion of the audit.

(c) It is the responsibility of each ~~facility issued a conditional license~~ *conditionally licensed facility* to develop a robust quality assurance protocol ~~that~~ *in accordance with the regulations issued by the bureau that, at a minimum,* includes all of the provisions of this part.

18139. (a) A laboratory certified by the bureau to perform random sample testing of medical marijuana products shall not acquire, process, possess, store, transfer, transport, or dispense medical marijuana for any purpose other than those authorized by Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A laboratory certified by the bureau to perform random sample testing of medical marijuana products shall not acquire, process, possess, store, transfer, transport, or dispense medical marijuana plants or medical marijuana products except through a patient, primary caregiver, or a facility issued a conditional license. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

18140. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this part are confidential and exempt

from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and are not subject to disclosure to an individual or private entity, except as necessary for authorized employees of the state to perform official duties pursuant to this part.

(b) (1) Nothing in this section shall preclude any of the following:

(A) Bureau employees notifying state or local agencies about information submitted to the bureau that the employee suspects is falsified or fraudulent.

(B) Notifications from the bureau to state or local agencies of apparent violations of this part or an applicable local ordinance.

(C) Verification of requests by state or local agencies to confirm licenses and certificates issued by the bureau or other state agency.

(D) Providing information requested pursuant to a court order or subpoena issued by a court, an administrative agency, or local governing body authorized by law to issue subpoenas.

(2) Information shall not be disclosed beyond what is necessary to achieve the goals of a specific investigation or notification or the parameters of a specific court order or subpoena.

18141. (a) The actions of a licensee, its employees, and its agents, that are permitted pursuant to *both* a conditional license *and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances,* and that are conducted in accordance with the requirements of this part and regulations adopted pursuant to this part, are not unlawful under state law and shall not be an offense subject to arrest or prosecution *under state law*.

(b) The actions of a person who, in good faith and upon investigation, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to *both* a conditional license *and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances*, are not unlawful under state law and shall not be an offense subject to arrest or prosecution *under state law*.

(c) This section shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, without limitation, Section 7 of Article XI of the California Constitution.

18142. (a) A licensee shall not cultivate, process, store, manufacture, transport, or sell medical marijuana in the state unless accurate records are kept at the licensed premises of the growing, processing, storing, manufacturing, transporting, or selling by the licensee in the state. These records shall include the name and address of the supplier of marijuana received or possessed by the licensee, the location at which the marijuana was cultivated, the amount of marijuana received, the form in which it is received, the name of the employee receiving it, and the date of receipt. These records shall also include receipts for all expenditures incurred by the licensee and banking records, if any, for all funds obtained or expended in the performance of any activity under the authority of the conditional license. A licensee who has a conditional license for more than one premises may keep all records at one of the conditionally licensed premises. Required records shall be kept for a period of seven years from the date of the transaction.

(b) The bureau and an appropriate state or local agency may examine the books and records of a conditional licensee and may visit and inspect the premises of a conditional licensee, as the bureau or state or local agency deems necessary to perform its duties under this part.

(c) Books or records requested by the bureau or an appropriate state or local agency shall be provided by the conditional licensee no later than five business days after the request is made.

(d) The bureau or a state or local agency may enter and inspect the premises of a facility issued a conditional license between the hours of 8 a.m. and 8 p.m. on any day that the facility is open, or at any reasonable time, to ensure compliance and enforcement of the provisions of this part or a local ordinance.

(e) If a licensee or an employee of a licensee refuses, impedes, obstructs, or interferes with an inspection pursuant to subdivision (d), the conditional license may be summarily suspended and the bureau shall directly commence proceedings for the revocation of the conditional license.

(f) If a licensee or an employee of a licensee fails to maintain or provide the books and records required pursuant to this section, the licensee shall be subject to a civil fine of fifteen thousand dollars ($15,000) per individual violation.

SEC. 5. Section 23028 is added to the Government Code, to read:

23028. (a) (1) In addition to any authority otherwise provided by law, the board of supervisors of any county may impose, by ordinance, a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana by a licensee operating pursuant to Chapter 18 (commencing with Section 26000) of Division 9 of the Business and Professions Code. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, and the manner of collection of the tax. A tax imposed pursuant to this section is a tax and not a fee or special assessment, and the tax is not required to be apportioned on the basis of benefit to any person or property or be applied uniformly to all taxpayers or all real property.

(3) A tax imposed by a county pursuant to this section by a county may include a transactions and use tax imposed solely for marijuana or marijuana products, which shall otherwise conform to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Notwithstanding Section 7251.1 of the Revenue and Taxation Code, the tax may be imposed at any rate specified by the board of supervisors, and the tax rate authorized by this section shall not be considered for purposes of the combined tax rate limitation established by that section.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitously, as determined by the board of supervisors.

(5) The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(b) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and

subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county.

(c) Any tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by any other law.

(d) For purposes of this section, "marijuana" shall have the *same* meanings set forth in Section 18100 of the Business and Professions Code.

(e) This section does not limit or prohibit the levy or collection or any other fee, charge, or tax, or any license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of any county as provided by other law.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) An individual employee, officer, or board member of a facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall not be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570 and any successor statutes, based solely on holding a conditional license, for the possession, cultivation, processing, packaging, storage, transportation, sale, or distribution of medical marijuana to a facility holding a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code or directly to a qualified patient, a person with a valid identification card, or the designated primary caregiver of a qualified patient or person with a valid identification card, within the state, unless the information contained on the licensing paperwork is false or falsified, the license has been obtained by means of fraud, or the person is otherwise in violation of Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code.

(c) This section shall not diminish the protections of Section 18141 of the Business and Professions Code.

SEC. 7. Article 8 (commencing with Section 111658) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 8. Medical Marijuana

111658. For ~~purpose~~ *purposes* of this article, the following definitions shall apply:

(a) "Bureau" means the Bureau of Medical Marijuana Regulations in the Department of Consumer Affairs.

(b) "Certified testing laboratories" means a laboratory that is certified by the bureau to perform random sample testing of medical marijuana for patients, primary caregivers, and facilities issued conditional licenses pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code, pursuant to the certification standards for those facilities promulgated by the bureau.

(c) "Edible medical marijuana product" means medical marijuana or a medical marijuana-derived product that is ingested or meant to be ingested through the mouth and into the digestive system.

(d) "Marijuana" means all parts of the plant Cannabis sativa L. sativa, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" also means marijuana, as defined by Section 11018.

(e) "Labor peace agreement" means an agreement between an entity and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the

applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees.

(f) "Representative samples" means samples taken from each batch or shipment of medical marijuana received from a licensed cultivation site or any other source if intended for sale.

111659. The bureau, by July 1, 2017, shall accomplish both of the following:

(a) Establish quality assurance protocols to ensure uniform testing standards for all medical marijuana sold via dispensaries or other facilities, or cultivated or manufactured by facilities, that are issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code.

(b) In consultation with outside entities at its discretion, develop a list of certified testing laboratories that can perform uniform testing in compliance with this article, and post that list on its Internet Web site.

111660. (a) A facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall bear the responsibility for contracting with certified testing laboratories for regular, ~~systematic~~ *random sample* testing of representative samples of all medical marijuana cultivated or intended for sale or distribution, and shall bear the cost of that testing.

(b) A facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall maintain records of testing reports for seven years, either on site in a digital format or at a secure off-site location in either digital or paper format. These facilities shall provide results of test reports to local code enforcement officers, any other locally designated enforcement entity, and the bureau upon request.

111661. Quality assurance protocols shall be required between all licensed cultivation sites, licensed manufacturers, and licensed dispensing facilities to guarantee safe and reliable medicinal marijuana delivery to all patients. These quality assurance protocols shall include:

(a) Providing supplier information to dispensaries in order for recall procedures to be implemented, if and when necessary.

(b) Safety testing of all medical marijuana prior to packaging for sale and patient exposure to identify and eliminate microbiological contaminants and chemical residue.

(c) Labeling of all medical marijuana and medical marijuana products that shall, at a minimum, include the following:

(1) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD) content, clear recommended dosage, and the size or volume of the recommended dose.

(2) Clear indication, in bold font, that the product contains medical marijuana.

(3) The statement "FOR MEDICAL USE ONLY. KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(4) Identification of the source and date of cultivation and manufacture.

(5) The name and location of the dispensary providing the product.

(6) The date of sale.

(7) Any other requirements set by the bureau.

111662. For purposes of this article, edible medical marijuana products are deemed to be unadulterated food products. In addition to the quality assurance standards provided in Section 111661, all edible medical marijuana products shall comply with the following requirements:

(a) Baked edible medical marijuana products, including, but not limited to, brownies, bars, cookies, and cakes, tinctures, and other edible medical marijuana products that do not require refrigeration or hot holding may be manufactured, sold, or otherwise distributed at facilities issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code.

(b) A facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall have an owner or employee who has successfully passed an approved and accredited food safety certification examination as specified in Sections 113947.1, 113947.2, and 113947.3 prior to selling, manufacturing, or

distributing edible medical marijuana products requiring refrigeration or hot holding.

(c) Individuals manufacturing or selling edible medical marijuana products shall thoroughly wash their hands before commencing production and before handling finished edible medical marijuana products.

(d) All edible medical marijuana products sold for direct consumption and infused with marijuana concentrate shall be individually wrapped at the original point of preparation. The products shall be packaged in a fashion that does not exceed a single dosage for one individual.

(e) Products containing tetrahydrocannabinol (THC) shall be prepared in compliance with maximum potency standards for THC and THC concentrates set forth in the bureau's regulations.

(f) Prior to sale or distribution at a licensed dispensing facility, edible medical marijuana products shall be labeled and in an opaque and tamper evident package. Labels and packages of edible medical marijuana products shall meet the following requirements:

(1) Edible medical marijuana packages and labels shall not be made to be attractive to children.

(2) All edible medical marijuana product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(C) The statement "FOR MEDICAL USE ONLY."

(D) Net weight of medical marijuana in package.

(E) A warning if nuts or other known allergens are used and shall include the total weight, in ounces or grams, of medical marijuana in the package.

(F) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD) content, clear recommended dosage, and the size or volume of recommended dose.

(G) Any other requirement set by the bureau.

(g) Photos or images of food are not allowed on edible medical marijuana product packages or labels.

(h) Only generic food names may be used to describe edible medical marijuana products.

SEC. 8. Section 1155.7 of the Labor Code is amended to read:

1155.7. (a) Nothing in this chapter shall be construed to apply or be applicable to a labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

(b) To the extent not prohibited by law and for purposes of this chapter, "agricultural employer" includes a licensed cultivation site or a licensed dispensing facility, as defined in subdivisions (i) and (j) of Section 18100 of the Business and Professions Code.

SEC. 9. Section 1158.5 is added to the Labor Code, to read:

1158.5. (a) The Division of Occupational Safety and Health in the Department of Industrial Relations shall develop industry-specific regulations related to the activities of facilities issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code, including provisions for the establishment of labor peace agreements and an apprenticeship program to ensure professional standards among industry employees.

(b) The regulations shall govern agreements between a facility *with more than 20 employees* issued a conditional license and a bona fide labor organization prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and other economic interference with the licensee's business. The regulations shall also govern agreements whereby the licensee *with more than 20 employees* has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the licensee's employees.

SEC. 10. Section 3094 is added to the Labor Code, to read:

3094. The Division of Apprenticeship Standards shall investigate, approve, or reject applications for apprenticeship programs for employees of a licensed cultivation site or a licensed dispensing facility, as defined in subdivisions (i) and (j) of Section 18100 of the Business and Professions Code. The Division of Apprenticeship Standards shall have the authority to issue rules necessary to implement and regulate the establishment of the apprenticeship programs described in this section.

SEC. 11. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity

shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. The Legislature finds and declares that Section 4 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AMENDED IN SENATE APRIL 6, 2015

# SENATE BILL No. 643

**Introduced by Senator McGuire**

February 27, 2015

~~An act relating to medical marijuana.~~ *An act to amend Section 2220.05 of, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Part 5 (commencing with Section 18100) to Division 7 of, the Business and Professions Code, to add Section 23028 to the Government Code, and to amend Section 11362.775 of, and to add Article 8 (commencing with Section 111658) to Chapter 6 of Part 5 of Division 104 of, the Health and Safety Code, relating to medical marijuana, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 643, as amended, McGuire. Medical marijuana.

*(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.*

*This bill would establish within the Department of Consumer Affairs a Bureau of Medical Marijuana Regulation, under the supervision and*

*control of the Chief of the Bureau of Medical Marijuana Regulation, and would require the bureau to license and regulate dispensing facilities, cultivation sites, transporters, and manufacturers of medical marijuana and medical marijuana products, subject to local ordinances. The bill would require a background check of applicants for licensure, as defined, to be administered by the Department of Justice, and submission of a statement signed by an applicant, under penalty of perjury, that the information on his or her application is true, thereby creating a crime and imposing a state-mandated local program. Violation of the provisions related to applying for a conditional license would be punishable by a civil fine of up to $35,000 for each individual violation, or as otherwise specified.*

*The bill would make conditional licenses subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. The bill would authorize a facility or entity that is operating in conformance with local zoning ordinances and other state and local requirements on January 1, 2016, to continue its operations until its application for conditional licensure is approved or denied. The bill would set forth provisions related to the transportation, testing, and distribution of medical marijuana. The bill would prohibit the distribution of any form of advertising for physician recommendations for medical marijuana, unless the advertisement bears a specified notice and requires that the advertisement meet specified requirements and not be fraudulent, deceitful, or misleading.*

*The bill would establish the Medical Marijuana Regulation Fund and would require the deposit of specified fees collected pursuant to this act into the fund. The bill would continuously appropriate moneys from the fund to the bureau for the purposes of administering this act, thereby making an appropriation. The bill would also establish the Special Account for Environmental Enforcement within the Medical Marijuana Fund. This account would contain money from fees assessed against licensed cultivation sites and would be continuously appropriated for the enforcement of environmental regulations relating to licensed cultivation sites. The bill would require the deposit of penalty moneys collected pursuant to this bill into the General Fund.*

*The bill would ban cultivation sites in areas zoned residential and would require, among other things, that all marijuana grown, produced, distributed, and sold in the state meet the certified organic standards by January 1, 2022, and that the bureau establish "appellations of origin" for marijuana grown in the state.*

*The bill would provide that it shall not supersede provisions of Measure D, as approved by the voters of the City of Los Angeles, or other similar measures, as specified.*

*The bill would authorize a city, county, or city and county to administer and enforce these provisions. The bill would require the bureau to establish quality assurance protocols by January 1, 2018, to ensure uniform testing standards of medical marijuana, and would require licensees to comply with these provisions. The bill would further set forth provisions regulating edible medical marijuana products, as specified. By adding these provisions to the Sherman Food, Drug, and Cosmetic Law, a violation of which is a crime, the bill would impose a state-mandated local program.*

*(2) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to prioritize investigations and prosecutions of physicians and surgeons representing the greatest threat of harm, as specified. Existing law identifies the cases that are to be given priority, which include cases of repeated acts of excessively prescribing, furnishing, or administering controlled substances without a good faith prior examination of the patient. Existing law provides that a violation of the Medical Practice Act is a crime.*

*This bill would require the board to consult with the Center for Medicinal Cannabis Research on developing and adopting medical guidelines for the appropriate administration and use of marijuana.*

*The bill would also make it a misdemeanor for a physician and surgeon who recommends marijuana to a patient for a medical purpose to accept, solicit, or offer any remuneration from or to a licensed dispensing facility in which the physician and surgeon or his or her immediate family has a financial interest. By creating a new crime, the bill would impose a state-mandated local program.*

*The bill would provide that specified acts of recommending marijuana for medical purposes without a good faith examination are among the types of cases that should be given priority for investigation and prosecution by the board, as described above. The bill would further prohibit a physician and surgeon from recommending medical marijuana to a patient unless that person is the patient's attending physician, as defined. Because a violation of that provision would be a crime, the bill would impose a state-mandated local program.*

*(3) Existing law authorizes the legislative body of a city or county to impose various taxes, including a transactions and use tax at a rate*

*of 0.25%, or a multiple thereof, if approved by the required vote of the legislative body and the required vote of qualified voters, and limits the combined rate of transactions and use taxes within a city or county to 2%.*

*This bill would authorize the board of supervisors of a county or the city council of a city to impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana or products containing marijuana. The bill would authorize the tax to be imposed for either general or specific governmental purposes. The bill would require a tax imposed pursuant to this authority to be subject to any applicable voter approval requirement.*

*(4) Existing law exempts qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards from certain crimes, including possession of concentrated cannabis and marijuana, cultivation of marijuana, and possession of marijuana for sale.*

*This bill would also exempt from those crimes an employee, officer, or board member of a licensed cultivation site or a licensed dispensing facility, except as specified.*

*(5) Existing law imposes sales and use taxes, as specified, to be collected by the State Board of Equalization.*

*This bill would require the State Board of Equalization, on or before July 1, 2016, to compile a report that includes the actual tax collected on the sale of medical marijuana, using the most current data available, and the expected tax revenues, under the existing tax structure, for the years 2016 to 2021, inclusive, and to submit that report to the Legislature and Governor's Office.*

*(6) This bill would provide that its provisions are severable.*

*(7) 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.*

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

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

~~Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the voters at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature, commonly referred to as the Medical Marijuana Program Act, requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use.~~

~~This bill would express the Legislature's intent to enact legislation that would, among other things, reaffirm and clarify aspects of the Medical Marijuana Program Act, regulate the cultivation of medical marijuana, and authorize and appropriate adequate funding for the Board of Equalization to undertake a study, as specified, in order to make recommendations on the best way to levy and collect fees to regulate the cultivation and sale of medical marijuana.~~

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

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

*SECTION 1. This act shall be known, and may be cited, as the Medical Marijuana Public Safety and Environmental Protection Act.*

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

*(a) In 1996, the people of the State of California enacted the Compassionate Use Act of 1996, codified in Section 11362.5 of the Health and Safety Code. The people of the State of California declared that their purpose in enacting the measure was, among other things, "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief."*

*(b) The Compassionate Use Act of 1996 called on state government to implement a plan for the safe and affordable*

*distribution of marijuana to all patients in medical need of marijuana, while ensuring that nothing in that act would be construed to condone the diversion of marijuana for nonmedical purposes.*

*(c) In 2003, the Legislature enacted the Medical Marijuana Program Act (MMPA), codified in Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.*

*(d) Greater certainty and minimum statewide standards are urgently needed regarding the obligations of medical marijuana facilities, and for the imposition and enforcement of regulations to prevent unlawful cultivation and the diversion of marijuana to nonmedical use.*

*(e) Despite the passage of the Compassionate Use Act of 1996 and the MMPA, because of the lack of an effective statewide system for regulating and controlling medical marijuana, cities, counties, and local law enforcement officials have been confronted with uncertainty about the legality of some medical marijuana cultivation and distribution activities. The current state of affairs makes law enforcement difficult and endangers patient safety because of an inability to monitor the supply of medical marijuana in the state and the lack of quality control, testing, and labeling requirements.*

*(f) The California Constitution grants cities and counties the authority to make and enforce, within their borders, "all local police, sanitary, and other ordinances and regulations not in conflict with the general laws." This inherent local police power includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within the local jurisdiction's borders. The police power, therefore, allows each city and county to determine whether or not a medical marijuana dispensary or other facility that makes medical marijuana available may operate within its borders. This authority has been upheld by City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729 and County of Los Angeles v. Hill (2011) 192 Cal.App.4th 861. Nothing in this act shall diminish, erode, or modify that authority.*

*(g) If a city or county determines that a dispensary or other facility that makes medical marijuana available may operate within its borders, then there is a need for the state to license these*

*dispensaries and other facilities for the purpose of adopting and enforcing protocols for security standards at dispensaries and in the transportation of medical marijuana, as well as health and safety standards to ensure patient safety. This licensing requirement is not intended in any way nor shall it be construed to preempt local ordinances, regulations, or enforcement actions regarding the sale and use of medical marijuana, including, but not limited to, security, signage, lighting, and inspections.*

*(h) Greater oversight, uniformity, and enforcement are urgently needed regarding the obligations and rights of medical marijuana cultivators, transporters, and distribution facilities.*

*(i) Marijuana has widely accepted medical applications that make it inappropriate to be classified as a Schedule I controlled substance in the State of California.*

*(j) For the protection of Californians, the state must act to regulate and control medical marijuana and not preempt local government ordinances. Cities and counties should be allowed to impose local taxes and enact zoning regulations and other restrictions applicable to the cultivation, transportation, and distribution of medical marijuana based on local needs.*

*(k) For the protection of California's environment and its natural resources, all efforts must be made to prevent and mitigate the harmful environmental impacts that can be associated with some marijuana cultivation.*

*(l) The North Coast Regional Water Quality Control Board is currently in the process of promulgating regulations that would create a 3-tiered system for cultivator wastewater discharge permits. A similar permitting system would assist the state in controlling damaging wastewater runoff from cultivation sites, while minimizing the burden on smaller cultivators.*

*(m) Nothing in this act shall have a diminishing effect on the rights and protections granted to a patient or primary caregiver pursuant to the Compassionate Use Act of 1996.*

*(n) Nothing in this act shall be construed to promote or facilitate the nonmedical, recreational possession, sale, or use of marijuana.*

*SEC. 3. Section 2220.05 of the Business and Professions Code is amended to read:*

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to

ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled ~~substances~~ *substances, or recommending marijuana to patients for medical purposes,* without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

*SEC. 4. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:*

*Article 25. Recommending Medical Marijuana*

*2525. (a) It is unlawful for a physician and surgeon who recommends marijuana to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7, if the physician and surgeon or his or her immediate family have a financial interest in that facility.*

*(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.*

*(c) A violation of this section shall be a misdemeanor.*

*2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical marijuana.*

*2525.2. A physician and surgeon shall not recommend medical marijuana to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.*

*SEC. 5. Part 5 (commencing with Section 18100) is added to Division 7 of the Business and Professions Code, to read:*

*PART 5. MEDICAL MARIJUANA*

*Chapter 1. General Provisions*

*18100. For purposes of this part, the following definitions shall apply:*

*(a) "Bureau" means the Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs.*

*(b) "Certified testing laboratory" means a laboratory that is certified by the bureau to perform random sample testing of medical marijuana pursuant to the certification standards for these facilities promulgated by the bureau.*

*(c) "Chief" means the Chief of the Bureau of Medical Marijuana Regulation.*

*(d) "Department" means the Department of Consumer Affairs.*

*(e) "Director" means the Director of Consumer Affairs.*

*(f) "Dispensary" means a distribution operation that provides medical marijuana or medical marijuana derived products to patients and caregivers.*

*(g) "Fund" means the Medical Marijuana Regulation Fund established pursuant to Section 18118.*

*(h) "Licensed cultivation site" means a facility that plants, grows, cultivates, harvests, dries, or processes medical marijuana and that is issued a conditional license pursuant to this part.*

*(i) "Licensed dispensing facility" means a dispensary or other facility that provides medical marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products that is issued a conditional license pursuant to this part.*

*(j) "Licensed manufacturer" means a person who extracts, prepares, derives, produces, compounds, or repackages medical marijuana or medical marijuana products into consumable and nonconsumable forms and that is issued a conditional license pursuant to this part.*

*(k) "Licensed transporter" means an individual or entity issued a conditional license by the bureau to transport medical marijuana to and from facilities that have been issued conditional licenses pursuant to this part.*

*(l) "Marijuana" means all parts of the plant Cannabis sativa, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" also means marijuana, as defined by Section 11018 of the Health and Safety Code.*

*(m) "Trespass grows" means illicit marijuana cultivation on public or private land without the explicit permission of the land owner.*

*18101. (a) There is hereby created in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Chief of the Bureau of Medical Marijuana Regulation.*

*(b) Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

*(c) The bureau shall have the authority to issue, suspend, or revoke conditional licenses for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana within the state and to collect fees in connection with these actions. The bureau shall have the authority to create, issue, suspend, or revoke other licenses in order to protect patient health and the public and to facilitate the regulation of medical marijuana.*

*(d) The Governor shall appoint the chief at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).*

*(e) The duty of enforcing and administering this part shall be vested in the chief, who is responsible to the director. The chief may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this part and declaring the policy of the bureau, including a system for the issuance of citations for violations of this part, as specified in Section 18126.*

*(f) The chief, as necessary to carry out the provisions of this part, and in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), may appoint and fix the compensation of personnel, including, but not limited to, clerical, inspection, investigation, and auditing personnel, as well as an assistant chief. These personnel shall perform their respective duties under the supervision and the direction of the chief.*

*(g) Every power granted to, or duty imposed upon, the chief under this part may be exercised or performed in the name of the chief by a deputy or assistant chief, subject to conditions and limitations that the chief prescribes.*

*(h) The bureau shall exercise its authority pursuant to this part consistent with Section 1 of the act that added this section and consistent with the provisions of this part.*

*18102. Funds for the establishment and support of the bureau shall be advanced as a loan by the department and shall be repaid by the initial proceeds from fees collected pursuant to this part or any rule or regulation adopted pursuant to this part.*

*18103. The bureau shall have the authority necessary for the implementation of this part, including, but not limited to, all of the following:*

*(a) Establishing rules or regulations necessary to carry out the purposes and intent of this part and to enable the bureau to exercise the powers and perform the duties conferred upon it by this part and in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the powers as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.*

*(b) Issuing conditional licenses to persons for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana within the state.*

*(c) Setting application, licensing, and renewal fees for conditional licenses issued pursuant to Section 18117.*

*(d) Establishing standards for the cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale of medical marijuana and medical marijuana products.*

*(e) Establishing procedures for the issuance, renewal, suspension, denial, and revocation of conditional licenses.*

*(f) Imposing a penalty authorized by this part or any rule or regulation adopted pursuant to this part.*

*(g) Taking action with respect to an application for a conditional license in accordance with procedures established pursuant to this part.*

*(h) Overseeing the operation of the Medical Marijuana Regulation Fund and the Special Account for Environmental Enforcement, established pursuant to Section 18118.*

*(i) Consulting with other state or local agencies, departments, representatives of the medical marijuana community, or public or*

*private entities for the purposes of establishing statewide standards and regulations.*

*(j) Certifying laboratories to perform testing of medical marijuana.*

*18104. (a) On or before January 1, 2018, the bureau shall promulgate regulations for implementation and enforcement of this part, including, but not limited to, all of the following:*

*(1) Procedures for the issuance, renewal, suspension, denial, and revocation of conditional licenses.*

*(2) Procedures for appeal of fines and the appeal of denial, suspension, or revocation of conditional licenses.*

*(3) Application, licensing, and renewal forms and fees.*

*(4) A time period in which the bureau shall approve or deny an application for a conditional license pursuant to this part.*

*(5) Qualifications for licensees.*

*(6) Standards for certification of testing laboratories to perform random sample testing of all medical marijuana products, including standards for onsite testing.*

*(A) Certification of testing laboratories shall be consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17025.*

*(B) These requirements shall apply to all entities, including third-party laboratories, engaged in the testing of medical marijuana pursuant to this part.*

*(7) Requirements to ensure conformance with standards analogous to state statutory environmental, agricultural, consumer protection, and food and product safety requirements. At a minimum, these standards shall do all of the following:*

*(A) Prescribe sanitation standards analogous to the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code) for food preparation, storage, handling, and sale of edible medical marijuana products.*

*(B) Require that edible medical marijuana products produced, distributed, provided, donated, or sold by licensees shall be limited to nonpotentially hazardous food, as established by the State Department of Public Health pursuant to Section 114365.5.*

*(C) Require that facilities in which edible medical marijuana products are prepared shall be constructed in accordance with*

*applicable building standards, health and safety standards, and other state laws.*

*(D) Provide that weighing or measuring devices used in connection with the sale or distribution of medical marijuana are required to meet standards analogous to Division 5 (commencing with Section 12001).*

*(E) Require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical marijuana shall meet standards analogous to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.*

*(b) On or before July 1, 2017, the bureau shall also promulgate regulations for minimum statewide health and safety standards and quality assurance standards associated with the cultivation, transport, storage, manufacture, and sale of all medical marijuana produced in this state. Consistent with Section 18126, local agencies shall have primary responsibility for enforcement of these standards in accordance with bureau regulations.*

*(c) The bureau, in consultation with the Division of Labor Standards Enforcement, shall adopt regulations establishing worker safety standards for entities licensed pursuant to this part.*

*(d) The bureau, in consultation with the State Water Resources Control Board, shall adopt regulations to ensure that commercial medical marijuana activity licensed pursuant to this part does not threaten the state's environment and watersheds and is otherwise in conformance with the California Environmental Quality Act.*

*(e) The bureau shall not issue a conditional license unless the applicant has met all of the requirements of this part, including the requirements of paragraph (4) of subdivision (d) of Section 18110.*

*18105. The chief shall keep a complete record of all facilities issued a conditional license. This record shall be made available on the bureau's Internet Web site.*

*18106. The bureau shall establish procedures to provide state and local law enforcement, upon their request, with 24-hour access to information to verify a conditional license, track transportation manifests, and track the inventories of facilities issued a conditional license.*

*18107. This part shall in no way supersede the provisions of Measure D, approved by the voters of the City of Los Angeles on*

*the May 21, 2013, ballot for the city, or any similar measure in other jurisdictions, which grants medical marijuana businesses and dispensaries qualified immunity consistent with the terms of the measure and local ordinances. Notwithstanding the provisions of this part, marijuana businesses and dispensaries subject to the provisions of Measure D or other similar qualified immunity shall continue to be subject to the ordinances and regulations of the relevant local jurisdiction.*

### *Chapter 2. Conditional Licenses*

*18108. The following persons are exempt from the requirement of licensure under this part:*

*(a) A patient who cultivates, possesses, stores, manufactures, or transports marijuana exclusively for his or her personal medical use and who does not sell, distribute, donate, or provide marijuana to any other person or entity.*

*(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, or provides marijuana exclusively for the personal medical purposes to no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code and who does not receive remuneration for these activities, except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code. Nothing in this section shall permit primary caregivers to organize themselves as cooperatives or collectives of caregivers.*

*18109. (a) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not sell or provide medical marijuana to a patient or caregiver other than at a licensed dispensing facility or through delivery from a licensed dispensing facility.*

*(b) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not grow medical marijuana other than at a licensed cultivation site.*

*(c) Except as provided in Section 11362.5 of, and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of, the Health and Safety Code, a person shall not manufacture*

*medical marijuana or medical marijuana products other than a licensed manufacturer.*

*(d) A person shall not transport medical marijuana from one facility issued a conditional license to another, other than a licensed transporter.*

*(e) A licensed manufacturer may obtain medical marijuana from a licensed cultivator and may furnish medical marijuana products to a licensed dispensary.*

*(f) To meet the requirements of Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, medical marijuana and medical marijuana products shall be tested by a certified testing laboratory.*

*18110. (a) Beginning no later than July 1, 2018, the bureau shall provide for and shall issue conditional licenses. Conditional licenses shall be issued for all activity authorized under this chapter, including, but not limited to, cultivation, processing, storage, transport, and dispensing of medical marijuana.*

*(b) The issuance of a conditional license shall not, in and of itself, authorize the recipient to begin business operations. The conditional license shall certify, at a minimum, that the applicant has paid the state conditional licensing fee, successfully passed a criminal background check, and met the state residency requirements.*

*(c) In order to begin business operations pursuant to this chapter, an applicant shall, in addition to the conditional license, obtain a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinances.*

*(d) An applicant for a conditional license shall do all following:*

*(1) Pay the fee or fees required by this part for each license being applied for.*

*(2) Register with the bureau on forms prescribed by the chief. The forms shall contain sufficient information to identify the licensee, including all of the following:*

*(A) Name of the owner or owners of a proposed facility, including all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on property that will be used by the applicant.*

*(B) The name, address, and date of birth of each principal officer and board member.*

*(C) The address and telephone number of the proposed facility.*

*(D) In the case of a cultivation site, the GPS coordinates of the site.*

*(3) Describe, in writing, the scope of business of the proposed facility.*

*(4) Provide evidence that the applicant and owner have been legal full-time residents of the state for not less than 12 months.*

*(5) Provide detailed operating procedures, in writing, for the proposed facility, which shall include, but not be limited to, procedures for facility and operational security, prevention of diversion, employee screening, storage of medical marijuana, personnel policies, and recordkeeping procedures.*

*(6) Provide evidence that the applicant has received all required environmental permits, including compliance with the California Environmental Quality Act, and wastewater discharge permits.*

*(7) Provide the applicant's fingerprint images. For purposes of this paragraph, "applicant" means the owner or owners of a proposed facility, including all persons or entities having an ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.*

*(A) The applicant shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail, or on his or her own recognizance, pending trial or appeal.*

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

*(C) The bureau shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subparagraph (A).*

*(D) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.*

*(8) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is true.*

*(9) Provide any other information required by the bureau.*

*(e) Each location and each discrete use of a single location shall require a conditional license. Each application for a conditional license is separate and distinct, and the bureau may charge a separate fee for each.*

*(f) A conditional license issued pursuant to this section shall be valid for 12 months after the date of issuance. After the initial 12-month period, a conditional license may be renewed for a period of 36 months. The bureau shall establish procedures for the renewal of a conditional license.*

*(g) Notwithstanding any other law, the bureau shall not issue a conditional license to an individual or entity, or for a premise, against whom there is a pending state or local administrative or judicial proceeding, against whom there is an action initiated by a city, county, or city and county under a local ordinance, or who has been determined to have violated an applicable local ordinance.*

*(h) A facility or entity that is operating in conformance with local zoning ordinances and other state and local requirements on January 1, 2016, may continue its operations until its application for conditional licensure is approved or denied pursuant to this part.*

*18111. (a) Upon receipt of the application materials and fee required in Section 18110, the bureau, provided the applicant has not committed an act or crime constituting grounds for the denial of licensure under Section 18112, may issue the conditional license and send a proof of issuance to the applicant.*

*(b) The chief shall, by regulation, prescribe conditions upon which a person whose conditional license has previously been denied, suspended, or revoked, may be issued a conditional license.*

*18112. (a) An application for a conditional license shall be denied and a conditional license shall be suspended or revoked for a past felony conviction for the possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, a felony criminal conviction for drug trafficking, a felony conviction for embezzlement, a felony conviction involving fraud or deceit, or any violent or serious felony conviction pursuant to subdivision (c) of Section 667.5 of, or subdivision (c) of Section 1192.7 of, the Penal Code. The bureau, at its discretion, may issue a license to an applicant that would be otherwise denied pursuant*

*to this subdivision if the applicant has obtained a certificate of rehabilitation, pursuant to Section 4852.13 of the Penal Code.*

*(b) The chief, upon his or her determination, may deny, suspend, or revoke a conditional license when a conditional licensee, applicant, or employee, partner, officer, or member of an entity conditionally licensed does any of the following:*

*(1) Making or authorizing in any manner or by any means a written or oral statement that is untrue or misleading and that is known, or that by exercise of reasonable care should be known, to be untrue or misleading.*

*(2) Any other conduct that constitutes fraud.*

*(3) Conduct constituting gross negligence.*

*(4) Failure to comply with the provisions of this part, Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, or any rule or regulation adopted pursuant to this part.*

*(5) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.*

*18113. (a) Upon denying, suspending, or revoking a conditional license, the chief shall notify the applicant or licensee, in writing, by personal service or mail addressed to the address of the applicant or licensee set forth in the application. The applicant or licensee shall be given a hearing within 30 days thereafter if he or she files with the bureau a written request for hearing. Otherwise, the denial, suspension, or revocation is deemed affirmed.*

*(b) All proceedings to deny, suspend, or revoke a conditional license shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

*18114. An application for or renewal of a conditional license shall not be approved if the bureau determines any of the following:*

*(a) The applicant fails to meet the requirements of this part or any regulation adopted pursuant to this part or any applicable city, county, or city and county ordinance or regulation. If a local government adopts an ordinance or resolution authorizing medical marijuana to be cultivated, manufactured, stored, distributed, or sold within its jurisdiction, it shall submit to the bureau documentation detailing their renewal requirements.*

*(b) The applicant, or any of its officers, directors, owners, members, or shareholders, is a minor.*

*(c) The applicant has knowingly answered a question or request for information falsely on the application form or failed to provide information requested.*

*(d) The applicant, or any of its officers, directors, owners, members, or shareholders has been sanctioned by the bureau, a city, county, or city and county, for medical marijuana activities conducted in violation of this part or any applicable local ordinance or has had a license revoked in the previous five years.*

*(e) The proposed cultivation, processing, possession, storage, manufacturing, testing, transporting, distribution, provision, or sale of medical marijuana will violate any applicable local law or ordinance.*

*(f) The applicant or the owner is unable to establish that he or she has been a resident of the state for not less than 12 months.*

*18115. (a) In addition to the provisions of this part, a conditional license shall be subject to the restrictions of the local jurisdiction in which the facility operates or proposes to operate. Even if a conditional license has been granted pursuant to this part, a facility shall not operate in a local jurisdiction that prohibits the establishment of that type of business.*

*(b) In addition to the provisions of this part, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are conditionally licensed pursuant to this part and the business activities of those licensees.*

*18116. The bureau may adopt regulations to limit the number of conditional licenses issued pursuant to this part upon a finding that the otherwise unrestricted issuance of conditional licenses is dangerous to the public health and safety.*

## *Chapter 3. Fees*

*18117. (a) The conditional licensing fee shall be established by the bureau at a level sufficient to fund the reasonable costs of all of the following:*

*(1) Administrative costs incurred by the bureau in overseeing the conditional licensing program, establishing health and safety standards, and certifying the required testing laboratories.*

*(2) Costs incurred by the bureau or the Department of Justice for enforcement of the provisions of this part.*

*(3) Costs incurred by law enforcement and other public safety entities for enforcing the provisions of this part in their jurisdiction.*

*(b) In addition to the conditional licensing fee required pursuant to subdivision (a), a cultivation facility shall be assessed a fee in a sufficient amount to cover the reasonable regulatory costs of enforcing the environmental impact provisions relating to those cultivation facilities. This fee shall be distributed, as necessary and in proportion to its regulatory function, between the following agencies responsible for enforcing the regulations relating to the environmental impact of licensed cultivation sites:*

*(1) The State Water Board.*

*(2) The Department of Fish and Wildlife.*

*(3) The Department of Forestry and Fire Protection.*

*(4) The Department of Pesticide Regulation.*

*(5) The Department of Food and Agriculture.*

*(6) Local law enforcement.*

*18118. (a) The Medical Marijuana Regulation Fund is hereby established within the State Treasury. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the money in the fund.*

*(b) Except as provided in subdivision (c), all fees collected pursuant to this part shall be deposited into the Medical Marijuana Regulation Fund. Notwithstanding Section 13340 of the Government Code, all moneys within the fund are hereby continuously appropriated, without regard to fiscal year, to the bureau solely for the purposes of fully funding and administering this part, including, but not limited to, the costs incurred by the bureau for its administrative expenses.*

*(c) The Special Account for Environmental Enforcement is hereby established as an account within the Medical Marijuana Regulation Fund. Notwithstanding Section 16305.7 of the Government Code, the account shall include any interest and dividends earned on the money in the account. All fees collected pursuant to subdivision (b) of Section 18112 shall be deposited in this account. Notwithstanding Section 13340 of the Government Code, all moneys within the fund are hereby continuously appropriated, without regard to fiscal year, to the bureau for distribution to the entities listed in subdivision (b) of Section 18117*

*to be used to enforce the environmental regulation of licensed cultivation sites.*

*(d) All moneys collected as a result of penalties imposed under this part shall be deposited directly into the General Fund, to be available upon appropriation.*

*(e) The bureau may establish and administer a grant program to allocate moneys from the Medical Marijuana Regulation Fund to state and local entities for the purpose of assisting with medical marijuana regulation and the enforcement of this part and other state and local laws applicable to licensees.*

*18119. (a) A facility issued a conditional license shall not acquire, cultivate, process, possess, store, manufacture, distribute, sell, deliver, transfer, transport, or dispense medical marijuana for any purpose other than those authorized by Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code.*

*(b) A licensed dispensing facility shall not acquire, cultivate, process, possess, store, manufacture, distribute, sell, deliver, transfer, transport, or dispense medical marijuana plants or medical marijuana products except through a licensed cultivation site or a licensed manufacturer.*

### *Chapter 4. Transportation of Medical Marijuana*

*18120. (a) A licensed transporter shall ship only to facilities issued a conditional license and only in response to a request for a specific quantity and variety from those facilities.*

*(b) Prior to transporting medical marijuana products, a licensed transporter shall do both of the following:*

*(1) Complete a shipping manifest using a form prescribed by the bureau.*

*(2) Securely transmit a copy of the manifest to the licensee that will receive the medical marijuana product, and to the bureau, prior to transport.*

*(c) The licensed transporter making the shipment and the licensee receiving the shipment shall maintain each shipping manifest and make it available to local code enforcement officers, any other locally designated enforcement entity, and the bureau upon request.*

*18121. (a) Transported medical marijuana products shall:*

*(1) Be transported only in a locked, safe, and secure storage compartment that is securely affixed to the interior of the transporting vehicle.*

*(2) Not be visible from outside the vehicle.*

*(b) A vehicle transporting medical marijuana products shall travel directly from one licensed facility to another licensed facility authorized to receive the shipment.*

*18122. (a) All transport vehicles shall be staffed with a minimum of two employees. At least one transport team member shall remain with the vehicle at all times when the vehicle contains medical marijuana.*

*(b) Each transport team member shall have access to a secure form of communication by which each member can communicate with personnel at the licensed facility at all times when the vehicle contains medical marijuana.*

*(c) Each transport team member shall possess documentation of licensing and a government-issued identification card at all times when transporting or delivering medical marijuana and shall produce it to any representative of the bureau or law enforcement upon request.*

*(d) This part shall not be construed to authorize or permit a licensee to transport, or cause to be transported, medical marijuana or medical marijuana products outside the state.*

*18123. A local jurisdiction shall not prevent transportation through or to a facility issued a conditional license, by a conditionally licensed transporter who acts in compliance with this part.*

### *Chapter 5. Enforcement*

*18124. A state agency is not required by this section to enforce a city, county, city and county, or local law, ordinance, rule, or regulation regarding the site or operation of a facility issued a conditional license.*

*18125. The bureau may assist state taxation authorities in the development of uniform policies for the state taxation of licensees.*

*18126. (a) For facilities issued a conditional license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this part and Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of*

*Division 104 of the Health and Safety Code and the rules, regulations, and standards promulgated by the bureau. The city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, without liability, cost, or expense to the county.*

*(b) For licensed facilities located within the unincorporated area of a county, the county shall have full power and authority to enforce this part and Article 8 (commencing with Section 111658) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code and the rules, regulations, and standards promulgated by the bureau.*

*18127. (a) A willful violation of Section 18110, including an attempt to falsify information on an application or to otherwise defraud or mislead a state or local agency in the course of the application process, shall be punishable by a civil fine of up to thirty-five thousand dollars ($35,000) for each individual violation.*

*(b) A technical violation of Section 18110 shall, at the bureau's discretion, be punishable by a civil fine of up to ten thousand dollars ($10,000) for each individual violation.*

*18128. A district attorney, county counsel, city attorney, or city prosecutor may bring an action to enjoin a violation or the threatened violation of any provision of this part, including, but not limited to, a licensee's failure to correct objectionable conditions following notice or as a result of a rule promulgated pursuant to this part. The action shall be brought in the county in which the violation occurred or is threatened to occur. A proceeding brought pursuant to this part shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. Nothing in this section shall diminish the authority of a local government to take requisite enforcement actions pertaining to its own ordinances or regulations.*

*18129. Nothing in this part shall prevent a city or other local governing body from taking action as specified in Section 11362.83 of the Health and Safety Code.*

*18130. This part shall not be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a facility issued a conditional license.*

*CHAPTER 6. CULTIVATION SITES*

*18131. A licensed cultivation site shall not be located in an area zoned residential.*

*18132. (a) The bureau shall notify local law enforcement of all conditional licenses issues for cultivation sites in that jurisdiction.*

*(b) A licensed cultivation site shall display the state license in a manner so as to be available and easily read at the location.*

*(c) The bureau shall work with and assist state and local law enforcement to eliminate trespass grows in the state.*

*18133. (a) No later than January 1, 2022, all medical marijuana grown, produced, distributed, and sold in the state shall meet the certified organic standards.*

*(b) The bureau shall establish appellations of origin for marijuana grown in California.*

*18134. The bureau shall work with county agricultural commissioners, offices to provide all the information and forms required for conditional licensure as a cultivation site in a single location, including state licensure, local requirements in that jurisdiction, and environmental requirements.*

*CHAPTER 7. REGULATION OF MEDICAL MARIJUANA*

*18136. (a) A person shall not distribute any form of advertising for physician recommendations for medical marijuana in California unless the advertisement bears the following notice to consumers:*

*NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical marijuana. Physicians are licensed and regulated by the Medical Board of California and arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility.*

*(b) Advertising for physician recommendations for medical marijuana shall meet all requirements of Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.*

*18137. (a) A facility issued a conditional license shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing marijuana and theft of marijuana at those facilities. These security measures shall include, but not be limited to, all of the following:*

*(1) Preventing individuals from remaining on the premises of the facility if they are not engaging in activity expressly related to the operations of the facility.*

*(2) Establishing limited access areas accessible only to authorized facility personnel.*

*(3) Storing all finished marijuana in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss.*

*(b) A facility issued a conditional license shall notify appropriate law enforcement authorities within 24 hours after discovering any of the following:*

*(1) Discrepancies identified during inventory.*

*(2) Diversion, theft, loss, or any criminal activity involving the facility or a facility agent.*

*(3) The loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or facility agents.*

*(4) Any other breach of security.*

*(c) A licensed cultivation site shall weigh, inventory, and account for on video, all medical marijuana to be transported prior to its leaving its origination location. Within eight hours after arrival at the destination, the licensed dispensing facility shall reweigh, reinventory, and account for on video, all transported marijuana.*

*18138. (a) The bureau shall require an annual audit of all facilities issued a conditional license to cultivate, manufacture, process, transport, store, or sell medical marijuana. The reasonable costs of the audit shall be paid for by the licensee.*

*(b) Completed audit reports shall also be submitted by the licensee to local code enforcement offices, or the appropriate*

*locally designated enforcement entity, within 30 days of the completion of the audit.*

*(c) It is the responsibility of each facility issued a conditional license to develop a robust quality assurance protocol that includes all of the provisions of this part.*

*18139. (a) A laboratory certified by the bureau to perform random sample testing of medical marijuana products shall not acquire, process, possess, store, transfer, transport, or dispense medical marijuana for any purpose other than those authorized by Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.*

*(b) A laboratory certified by the bureau to perform random sample testing of medical marijuana products shall not acquire, process, possess, store, transfer, transport, or dispense medical marijuana plants or medical marijuana products except through a patient, primary caregiver, or a facility issued a conditional license. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.*

*18140. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this part are confidential and exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and are not subject to disclosure to an individual or private entity, except as necessary for authorized employees of the state to perform official duties pursuant to this part.*

*(b) (1) Nothing in this section shall preclude any of the following:*

*(A) Bureau employees notifying state or local agencies about information submitted to the bureau that the employee suspects is falsified or fraudulent.*

*(B) Notifications from the bureau to state or local agencies of apparent violations of this part or an applicable local ordinance.*

*(C) Verification of requests by state or local agencies to confirm licenses and certificates issued by the bureau or other state agency.*

*(D) Providing information requested pursuant to a court order or subpoena issued by a court, an administrative agency, or local governing body authorized by law to issue subpoenas.*

*(2) Information shall not be disclosed beyond what is necessary to achieve the goals of a specific investigation or notification or the parameters of a specific court order or subpoena.*

*18141. (a) The actions of a licensee, its employees, and its agents, that are permitted pursuant to a conditional license and that are conducted in accordance with the requirements of this part and regulations adopted pursuant to this part, are not unlawful under state law and shall not be an offense subject to arrest or prosecution.*

*(b) The actions of a person who, in good faith and upon investigation, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to a conditional license, are not unlawful under state law and shall not be an offense subject to arrest or prosecution.*

*(c) This section shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, without limitation, Section 7 of Article XI of the California Constitution.*

*18142. (a) A licensee shall not cultivate, process, store, manufacture, transport, or sell medical marijuana in the state unless accurate records are kept at the licensed premises of the growing, processing, storing, manufacturing, transporting, or selling by the licensee in the state. These records shall include the name and address of the supplier of marijuana received or possessed by the licensee, the location at which the marijuana was cultivated, the amount of marijuana received, the form in which it is received, the name of the employee receiving it, and the date of receipt. These records shall also include receipts for all expenditures incurred by the licensee and banking records, if any, for all funds obtained or expended in the performance of any activity under the authority of the conditional license. A licensee who has a conditional license for more than one premises may keep all records at one of the conditionally licensed premises. Required records shall be kept for a period of seven years from the date of the transaction.*

*(b) The bureau and an appropriate state or local agency may examine the books and records of a conditional licensee and may*

*visit and inspect the premises of a conditional licensee, as the bureau or state or local agency deems necessary to perform its duties under this part.*

*(c) Books or records requested by the bureau or an appropriate state or local agency shall be provided by the conditional licensee no later than five business days after the request is made.*

*(d) The bureau or a state or local agency may enter and inspect the premises of a facility issued a conditional license between the hours of 8 a.m. and 8 p.m. on any day that the facility is open, or at any reasonable time, to ensure compliance and enforcement of the provisions of this part or a local ordinance.*

*(e) If a licensee or an employee of a licensee refuses, impedes, obstructs, or interferes with an inspection pursuant to subdivision (d), the conditional license may be summarily suspended and the bureau shall directly commence proceedings for the revocation of the conditional license.*

*(f) If a licensee or an employee of a licensee fails to maintain or provide the books and records required pursuant to this section, the licensee shall be subject to a civil fine of fifteen thousand dollars ($15,000) per individual violation.*

*SEC. 6. Section 23028 is added to the Government Code, to read:*

*23028. (a) (1) In addition to any authority otherwise provided by law, the board of supervisors of a county or the city council of a city may impose, by ordinance, a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing marijuana by a licensee operating pursuant to Chapter 18 (commencing with Section 26000) of Division 9 of the Business and Professions Code. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors or city council.*

*(2) The board of supervisors or city council shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, and the manner of collection of the tax. A tax imposed pursuant to this section is a tax and not a fee or special assessment, and the tax is not required to be apportioned on the basis of benefit to any person or property or be applied uniformly to all taxpayers or all real property.*

*(3) A tax imposed by a city or county pursuant to this section may include a transactions and use tax imposed solely for marijuana or marijuana products, which shall otherwise conform to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Notwithstanding Section 7251.1 of the Revenue and Taxation Code, the tax may be imposed at any rate specified by the board of supervisors or city council, and the tax rate authorized by this section shall not be considered for purposes of the combined tax rate limitation established by that section.*

*(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitously, as determined by the board of supervisors or city council.*

*(5) The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.*

*(b) In addition to any other method of collection authorized by law, the board of supervisors or city council may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the city or county.*

*(c) Any tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.*

*(d) For purposes of this section, "marijuana" shall have the meanings set forth in Section 18100 of the Business and Professions Code.*

*(e) This section does not limit or prohibit the levy or collection or any other fee, charge, or tax, or any license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a city or county as provided law.*

*SEC. 7. Section 11362.775 of the Health and Safety Code is amended to read:*

11362.775. *(a)* Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who

~~associate within the State of California in order collectively or cooperatively to~~ cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

*(b) An individual employee, officer, or board member of a facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall not be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570 and any successor statutes, based solely on holding a conditional license, for the possession, cultivation, processing, packaging, storage, transportation, sale, or distribution of medical marijuana to a facility holding a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code or directly to a qualified patient, a person with a valid identification card, or the designated primary caregiver of a qualified patient or person with a valid identification card, within the state, unless the information contained on the licensing paperwork is false or falsified, the license has been obtained by means of fraud, or the person is otherwise in violation of Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code.*

*(c) This section shall not diminish the protections of Section 18141 of the Business and Professions Code.*

*SEC. 8. Article 8 (commencing with Section 111658) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:*

*Article 8. Medical Marijuana*

*111658. For purpose of this article, the following definitions shall apply:*

*(a) "Bureau" means the Bureau of Medical Marijuana Regulations in the Department of Consumer Affairs.*

*(b) "Certified testing laboratories" means a laboratory that is certified by the bureau to perform random sample testing of medical marijuana for patients, primary caregivers, and facilities issued conditional licenses pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code,*

*pursuant to the certification standards for those facilities promulgated by the bureau.*

*(c) "Edible medical marijuana product" means medical marijuana or a medical marijuana-derived product that is ingested or meant to be ingested through the mouth and into the digestive system.*

*(d) "Marijuana" means all parts of the plant Cannabis sativa L. sativa, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" also means marijuana, as defined by Section 11018.*

*(e) "Labor peace agreement" means an agreement between an entity and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees.*

*(f) "Representative samples" means samples taken from each batch or shipment of medical marijuana received from a licensed cultivation site or any other source if intended for sale.*

*111659. The bureau, by July 1, 2017, shall accomplish both of the following:*

*(a) Establish quality assurance protocols to ensure uniform testing standards for all medical marijuana sold via dispensaries or other facilities, or cultivated or manufactured by facilities, that are issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code.*

*(b) In consultation with outside entities at its discretion, develop a list of certified testing laboratories that can perform uniform*

*testing in compliance with this article, and post that list on its Internet Web site.*

*111660. (a) A facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall bear the responsibility for contracting with certified testing laboratories for regular, systematic testing of representative samples of all medical marijuana cultivated or intended for sale or distribution, and shall bear the cost of that testing.*

*(b) A facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall maintain records of testing reports for seven years, either on site in a digital format or at a secure off-site location in either digital or paper format. These facilities shall provide results of test reports to local code enforcement officers, any other locally designated enforcement entity, and the bureau upon request.*

*111661. Quality assurance protocols shall be required between all licensed cultivation sites, licensed manufacturers, and licensed dispensing facilities to guarantee safe and reliable medicinal marijuana delivery to all patients. These quality assurance protocols shall include:*

*(a) Providing supplier information to dispensaries in order for recall procedures to be implemented, if and when necessary.*

*(b) Safety testing of all medical marijuana prior to packaging for sale and patient exposure to identify and eliminate microbiological contaminants and chemical residue.*

*(c) Labeling of all medical marijuana and medical marijuana products that shall, at a minimum, include the following:*

*(1) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD) content, clear recommended dosage, and the size or volume of the recommended dose.*

*(2) Clear indication, in bold font, that the product contains medical marijuana.*

*(3) The statement "FOR MEDICAL USE ONLY. KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.*

*(4) Identification of the source and date of cultivation and manufacture.*

*(5) The name and location of the dispensary providing the product.*

*(6) The date of sale.*

*(7) Any other requirements set by the bureau.*

*111662. For purposes of this article, edible medical marijuana products are deemed to be unadulterated food products. In addition to the quality assurance standards provided in Section 111661, all edible medical marijuana products shall comply with the following requirements:*

*(a) Baked edible medical marijuana products, including, but not limited to, brownies, bars, cookies, and cakes, tinctures, and other edible medical marijuana products that do not require refrigeration or hot holding may be manufactured, sold, or otherwise distributed at facilities issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code.*

*(b) A facility issued a conditional license pursuant to Part 5 (commencing with Section 18100) of Division 7 of the Business and Professions Code shall have an owner or employee who has successfully passed an approved and accredited food safety certification examination as specified in Sections 113947.1, 113947.2, and 113947.3 prior to selling, manufacturing, or distributing edible medical marijuana products requiring refrigeration or hot holding.*

*(c) Individuals manufacturing or selling edible medical marijuana products shall thoroughly wash their hands before commencing production and before handling finished edible medical marijuana products.*

*(d) All edible medical marijuana products sold for direct consumption and infused with marijuana concentrate shall be individually wrapped at the original point of preparation. The products shall be packaged in a fashion that does not exceed a single dosage for one individual.*

*(e) Products containing tetrahydrocannabinol (THC) shall be prepared in compliance with maximum potency standards for THC and THC concentrates set forth in the bureau's regulations.*

*(f) Prior to sale or distribution at a licensed dispensing facility, edible medical marijuana products shall be labeled and in an opaque and tamper evident package. Labels and packages of edible medical marijuana products shall meet the following requirements:*

*(1) Edible medical marijuana packages and labels shall not be made to be attractive to children.*

*(2) All edible medical marijuana product labels shall include the following information, prominently displayed and in a clear and legible font:*

*(A) Manufacture date and source.*

*(B) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.*

*(C) The statement "FOR MEDICAL USE ONLY."*

*(D) Net weight of medical marijuana in package.*

*(E) A warning if nuts or other known allergens are used and shall include the total weight, in ounces or grams, of medical marijuana in the package.*

*(F) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD) content, clear recommended dosage, and the size or volume of recommended dose.*

*(G) Any other requirement set by the bureau.*

*(g) Photos or images of food are not allowed on edible medical marijuana product packages or labels.*

*(h) Only generic food names may be used to describe edible medical marijuana products.*

*SEC. 9. On or before July 1, 2016, the State Board of Equalization shall compile a report on the actual tax collected on the sale of medical marijuana, using the most current data available. The report should also include expected tax revenues, under the existing tax structure, for the years 2016 to 2021, inclusive. This report shall be submitted to the Legislature and the Governor's Office pursuant to Section 9795 of the Government Code.*

*SEC. 10. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

*SEC. 11. The Legislature finds and declares that Section 5 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the*

*interest protected by this limitation and the need for protecting that interest:*

*The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).*

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

~~SECTION 1. It is the intent of the Legislature to enact legislation that would do all of the following:~~

~~(1) Protect the residents of California, private property, public lands, and waterways from trespass cultivation of medical marijuana.~~

~~(2) Reaffirm and clarify aspects of the Medical Marijuana Program Act.~~

~~(3) Regulate the cultivation of medical marijuana and authorize the collection of fees.~~

~~(4) Authorize and appropriate adequate funding for the Board of Equalization to undertake a study of the results of legislation recently passed in Colorado and the State of Washington in order to make recommendations on the best way to levy and collect fees to regulate the cultivation and sale of medical marijuana.~~

~~(5) Authorize the creation of appellations of origin for medical marijuana cultivated in California.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 483
**Author:** Patterson
**Bill Date:** April 9, 2015, Amended
**Subject:** Healing Arts: Initial License Fees: Proration
**Sponsor:** Author

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would require initial licensing fees for physicians and surgeons to be prorated on a monthly basis.

## BACKGROUND

The Medical Board of California (Board) currently utilizes the physician's birth date to calculate license expiration dates. The purpose of the birth date renewal initially was to ensure that the Board did not have to process a large number of applications or renewals during peak times. However, with the intensive licensing outreach performed by the Board's Licensing Outreach Manager to potential licensees, licenses are not issued only during certain months, but are spread out throughout the year.

The Board does give applicants the option of waiting until their birth month for their physician and surgeon license to be issued. However, if an applicant cannot wait until their birth month to receive their application, their initial license won't be valid for a full two years, resulting in overpayment to the Board.

## ANALYSIS

This bill would require the Board to prorate the initial licensing fees for physicians and surgeons to ensure that licensees are not overcharged. Although this bill will accomplish that goal, it will result in delays in issuing licenses for physicians and surgeons and increased workload. Currently, physician and surgeon applicants submit their application and supporting documents. The majority of the time the applications are not complete and the Board sends a deficiency letter to the applicant letting them know what supporting documents are still needed to complete the application. It can take anywhere from a month to a year to obtain the necessary documents to complete the application and issue the license. However, once the Board obtains the needed documentation, the license is issued. If this bill were to pass, it would create new steps in that process. It would require the Board, once all the documents are received, to then calculate the prorated amount, contact the applicant to let them know what the prorated fee is, obtain the prorated fee from the applicant, and cashier this fee. This will result in delays in issuing physicians and surgeons' licenses. It will also result in increased workload for the Board.

Board staff believes that the goal of this bill can be obtained by requiring the Board to issue a straight two-year license. The Board does not have any issues with peak times, so a two-year license will ensure that applicants are not overcharged and will not create any additional steps in the licensure process. Board staff has discussed this with the author's office and the author is willing to remove the Board from this bill if the Board gets added to AB 773 (Baker), which would change the initial license time period from birth date renewal, to a two-year license. As such, Board staff is recommending that the Board take an oppose unless amended position on this bill.

**FISCAL:** This bill will result in additional workload associated with prorating the licensing fee and contacting the applicant for notification of that fee.

**SUPPORT:** California Physical Therapy Association
Fresno Chamber of Commerce
Two Individuals

**OPPOSITION:** None on file

**POSITION:** Recommendation: Neutral if Amended

AMENDED IN ASSEMBLY APRIL 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# ASSEMBLY BILL No. 483

**Introduced by Assembly Member Patterson**
**(Principal coauthor: Assembly Member Gordon)**
**(Coauthors: Assembly Members Chang, Chávez, Grove, Obernolte, Waldron, and Wilk)**
(Coauthor: Senator Anderson)

February 23, 2015

An act to amend Sections 1724, 1944, 2435, *2456.1*, 2538.57, 2570.16, 2688, ~~2987,~~ 4842.5, 4905, 4970, and 5604 of the Business and Professions Code, relating to healing arts.

## LEGISLATIVE COUNSEL'S DIGEST

AB 483, as amended, Patterson. Healing arts: initial license fees: proration.

Existing law provides for the regulation and licensure of various professions and ~~vocations.~~ *vocations by boards within the Department of Consumer Affairs.* Existing law establishes fees for initial licenses, initial temporary and permanent licenses, and original licenses for those various professions and vocations. Existing law requires that licenses issued to certain licensees, including, among others, architects, acupuncturists, dental hygienists, dentists, occupational therapists, *osteopathic physicians and surgeons,* physical therapists, physicians and surgeons, ~~psychologists,~~ and veterinarians, expire at 12 a.m. on either the last day of the birth month of the licensee or at 12 a.m. of the legal birth date of the licensee during the 2nd year of a 2-year term, if not renewed.

This bill would require that the fees imposed by these provisions for an initial license, an initial temporary or permanent license, ~~or~~ an original license, *or a renewal* be prorated on a monthly basis.

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

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

SECTION 1. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

(a) The fee for application for examination shall not exceed five hundred dollars ($500).

(b) The fee for application for reexamination shall not exceed one hundred dollars ($100).

(c) The fee for examination and for reexamination shall not exceed eight hundred dollars ($800). Applicants who are found to be ineligible to take the examination shall be entitled to a refund in an amount fixed by the board.

(d) The fee for an initial license and for the renewal of a license is five hundred twenty-five dollars ($525). The fee for an initial license fee shall be prorated on a monthly basis.

(e) The fee for a special permit shall not exceed three hundred dollars ($300), and the renewal fee for a special permit shall not exceed one hundred dollars ($100).

(f) The delinquency fee shall be the amount prescribed by Section 163.5.

(g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars ($75).

(h) The application fee for permission to conduct an additional place of practice shall not exceed two hundred dollars ($200).

(i) The renewal fee for an additional place of practice shall not exceed one hundred dollars ($100).

(j) The fee for issuance of a substitute certificate shall not exceed one hundred twenty-five dollars ($125).

(k) The fee for a provider of continuing education shall not exceed two hundred fifty dollars ($250) per year.

(*l*) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars ($25).

(m) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars ($25).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 2. Section 1944 of the Business and Professions Code is amended to read:

1944. (a) The committee shall establish by resolution the amount of the fees that relate to the licensing of a registered dental hygienist, a registered dental hygienist in alternative practice, and a registered dental hygienist in extended functions. The fees established by board resolution in effect on June 30, 2009, as they relate to the licensure of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, shall remain in effect until modified by the committee. The fees are subject to the following limitations:

(1) The application fee for an original license and the fee for the issuance of an original license shall not exceed two hundred fifty dollars ($250). The fee for the issuance of an original license shall be prorated on a monthly basis.

(2) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(3) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(4) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.

(5) The fee for examination for licensure as a registered dental hygienist in alternative practice shall not exceed the actual cost of administering the examination.

(6) The biennial renewal fee shall not exceed one hundred sixty dollars ($160).

(7) The delinquency fee shall not exceed one-half of the renewal fee. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee, and compliance with all other applicable requirements of this article.

(8) The fee for issuance of a duplicate license to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater.

(9) The fee for certification of licensure shall not exceed one-half of the renewal fee.

(10) The fee for each curriculum review and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency shall not exceed two thousand one hundred dollars ($2,100).

(11) The fee for each review or approval of course requirements for licensure or procedures that require additional training shall not exceed seven hundred fifty dollars ($750).

(12) The initial application and biennial fee for a provider of continuing education shall not exceed five hundred dollars ($500).

(13) The amount of fees payable in connection with permits issued under Section 1962 is as follows:

(A) The initial permit fee is an amount equal to the renewal fee for the applicant's license to practice dental hygiene in effect on the last regular renewal date before the date on which the permit is issued.

(B) If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued.

(b) The renewal and delinquency fees shall be fixed by the committee by resolution at not more than the current amount of the renewal fee for a license to practice under this article nor less than five dollars ($5).

(c) Fees fixed by the committee by resolution pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(d) Fees collected pursuant to this section shall be collected by the committee and deposited into the State Dental Hygiene Fund, which is hereby created. All money in this fund shall, upon

appropriation by the Legislature in the annual Budget Act, be used to implement this article.

(e) No fees or charges other than those listed in this section shall be levied by the committee in connection with the licensure of registered dental hygienists, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions.

(f) The fee for registration of an extramural dental facility shall not exceed two hundred fifty dollars ($250).

(g) The fee for registration of a mobile dental hygiene unit shall not exceed one hundred fifty dollars ($150).

(h) The biennial renewal fee for a mobile dental hygiene unit shall not exceed two hundred fifty dollars ($250).

(i) The fee for an additional office permit shall not exceed two hundred fifty dollars ($250).

(j) The biennial renewal fee for an additional office as described in Section 1926.4 shall not exceed two hundred fifty dollars ($250).

(k) The initial application and biennial special permit fee is an amount equal to the biennial renewal fee specified in paragraph (6) of subdivision (a).

(*l*) The fees in this section shall not exceed an amount sufficient to cover the reasonable regulatory cost of carrying out this article.

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

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

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

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

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any, in an amount fixed by the

board consistent with this section. The initial license fee shall not exceed seven hundred ninety dollars ($790). The initial license fee shall be prorated on a monthly basis. An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

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

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

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

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

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

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

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

(i) Not later than January 1, 2012, the Office of State Audits and Evaluations within the Department of Finance shall commence a preliminary review of the board's financial status, including, but not limited to, its projections related to expenses, revenues, and reserves, and the impact of the loan from the Contingent Fund of the Medical Board of California to the General Fund made pursuant to the Budget Act of 2008. The office shall make the results of this review available upon request by June 1, 2012. This review shall be funded from the existing resources of the office during the 2011–12 fiscal year.

*SEC. 4. Section 2456.1 of the Business and Professions Code is amended to read:*

2456.1. *(a)* All osteopathic physician's and surgeon's certificates shall expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed on or before that day.

~~The~~

*(b) The* board shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

~~To~~

*(c) To* renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

*(d) The fee assessed pursuant to this section shall be prorated on a monthly basis.*

~~SEC. 4.~~

*SEC. 5.* Section 2538.57 of the Business and Professions Code is amended to read:

2538.57. The amount of fees and penalties prescribed by this article shall be those set forth in this section unless a lower fee is fixed by the board:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars ($75), which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars ($50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the board, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars ($100). The fee for an initial temporary license shall be prorated on a monthly basis. The fee for renewal of a temporary license is one hundred dollars ($100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars ($280). The fee for an initial permanent license shall be prorated on a monthly basis. The fee for renewal of a permanent license is not more than two hundred eighty dollars ($280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars ($25). The fee for renewal of a branch office license is twenty-five dollars ($25) for each renewal.

(f) The delinquency fee is twenty-five dollars ($25).

(g) The fee for issuance of a replacement license is twenty-five dollars ($25).

(h) The continuing education course approval application fee is fifty dollars ($50).

(i) The fee for official certification of licensure is fifteen dollars ($15).

~~SEC. 5.~~

*SEC. 6.* Section 2570.16 of the Business and Professions Code is amended to read:

2570.16. Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars ($150) per year. The initial license fee shall be prorated on a monthly basis. The board shall establish the following additional fees:

(a) An application fee not to exceed fifty dollars ($50).

(b) A late renewal fee as provided for in Section 2570.10.

(c) A limited permit fee.

(d) A fee to collect fingerprints for criminal history record checks.

~~SEC. 6.~~

*SEC. 7.* Section 2688 of the Business and Professions Code is amended to read:

2688. The amount of fees assessed in connection with licenses issued under this chapter is as follows:

(a) (1) The fee for an application for licensure as a physical therapist submitted to the board prior to March 1, 2009, shall be seventy-five dollars ($75). The fee for an application submitted under Section 2653 to the board prior to March 1, 2009, shall be one hundred twenty-five dollars ($125).

(2) The fee for an application for licensure as a physical therapist submitted to the board on or after March 1, 2009, shall be one hundred twenty-five dollars ($125). The fee for an application submitted under Section 2653 to the board on or after March 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of an application fee under this subdivision to an amount that does not exceed the cost of administering the application process, but in no event shall the application fee amount exceed three hundred dollars ($300).

(b) The examination and reexamination fees for the physical therapist examination, physical therapist assistant examination, and the examination to demonstrate knowledge of the California rules and regulations related to the practice of physical therapy shall be the actual cost to the board of the development and writing of, or purchase of the examination, and grading of each written examination, plus the actual cost of administering each examination. The board, at its discretion, may require the licensure applicant to pay the fee for the examinations required by Section 2636 directly to the organization conducting the examination.

(c) (1) The fee for a physical therapist license issued prior to March 1, 2009, shall be seventy-five dollars ($75).

(2) The fee for a physical therapist license issued on or after March 1, 2009, shall be one hundred dollars ($100).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the fee under this subdivision

to an amount that does not exceed the cost of administering the process to issue the license, but in no event shall the fee to issue the license exceed one hundred fifty dollars ($150).

(4) The fee assessed pursuant to this subdivision for an initial physical therapist license issued on or after January 1, 2016, shall be prorated on a monthly basis.

(d) (1) The fee to renew a physical therapist license that expires prior to April 1, 2009, shall be one hundred fifty dollars ($150).

(2) The fee to renew a physical therapist license that expires on or after April 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the renewal fee under this subdivision to an amount that does not exceed the cost of the renewal process, but in no event shall the renewal fee amount exceed three hundred dollars ($300).

(e) (1) The fee for application and for issuance of a physical therapist assistant license shall be seventy-five dollars ($75) for an application submitted to the board prior to March 1, 2009.

(2) The fee for application and for issuance of a physical therapist assistant license shall be one hundred twenty-five dollars ($125) for an application submitted to the board on or after March 1, 2009. The fee for an application submitted under Section 2653 to the board on or after March 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the fee under this subdivision to an amount that does not exceed the cost of administering the application process, but in no event shall the application fee amount exceed three hundred dollars ($300).

(f) (1) The fee to renew a physical therapist assistant license that expires prior to April 1, 2009, shall be one hundred fifty dollars ($150).

(2) The fee to renew a physical therapist assistant license that expires on or after April 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the renewal fee under this subdivision to an amount that does not exceed the cost of the renewal process, but in no event shall the renewal fee amount exceed three hundred dollars ($300).

(g) Notwithstanding Section 163.5, the delinquency fee shall be 50 percent of the renewal fee in effect.

(h) (1) The duplicate wall certificate fee shall be fifty dollars ($50). The duplicate renewal receipt fee amount shall be fifty dollars ($50).

(2) Notwithstanding paragraph (1), the board may decrease or increase the amount of the fee under this subdivision to an amount that does not exceed the cost of issuing duplicates, but in no event shall that fee exceed one hundred dollars ($100).

(i) (1) The endorsement or letter of good standing fee shall be sixty dollars ($60).

(2) Notwithstanding paragraph (1), the board may decrease or increase the amount of the fee under this subdivision to an amount that does not exceed the cost of issuing an endorsement or letter, but in no event shall the fee amount exceed one hundred dollars ($100).

~~SEC. 7. Section 2987 of the Business and Professions Code is amended to read:~~

~~2987. The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:~~

~~(a) The application fee for a psychologist shall not be more than fifty dollars ($50).~~

~~(b) The examination and reexamination fees for the examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.~~

~~(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued. The initial license fee shall be prorated on a monthly basis.~~

~~(d) The biennial renewal fee for a psychologist shall be four hundred dollars ($400). The board may increase the renewal fee to an amount not to exceed five hundred dollars ($500).~~

~~(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by that supervisor, shall not be more than seventy-five dollars ($75).~~

~~(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars ($75).~~

~~(g) The duplicate license or registration fee is five dollars ($5).~~

~~(h) The delinquency fee is twenty-five dollars ($25).~~

~~(i) The endorsement fee is five dollars ($5).~~

~~Notwithstanding any other law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.~~

SEC. 8. Section 4842.5 of the Business and Professions Code is amended to read:

4842.5. The amount of fees prescribed by this article is ~~that~~ fixed by the following schedule:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California registered veterinary technician examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred dollars ($300).

(c) The initial registration fee shall be set by the board at not more than three hundred fifty dollars ($350) and shall be prorated on a monthly basis. The board may adopt regulations to provide for the waiver or refund of the initial registration fee when the registration is issued less than 45 days before the date on which it will expire.

(d) The biennial renewal fee shall be set by the board at not more than three hundred fifty dollars ($350).

(e) The delinquency fee shall be set by the board at not more than fifty dollars ($50).

(f) Any charge made for duplication or other services shall be set at the cost of rendering the services.

(g) The fee for filing an application for approval of a school or institution offering a curriculum for training registered veterinary technicians pursuant to Section 4843 shall be set by the board at an amount not to exceed three hundred dollars ($300). The school or institution shall also pay for the actual costs of an onsite inspection conducted by the board pursuant to Section 2065.6 of Title 16 of the California Code of Regulations, including, but not limited to, the travel, food, and lodging expenses incurred by an inspection team sent by the board.

(h) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

SEC. 9. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(c) The fee for the Veterinary Medicine Practice Act examination shall be set by the board in an amount it determines reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred dollars ($100).

(d) The initial license fee shall be set by the board not to exceed five hundred dollars ($500) and shall be prorated on a monthly basis. The ~~board may,~~ *board*, by appropriate regulation, *may* provide for the waiver or refund of the initial license fee when the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed five hundred dollars ($500).

(f) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be set by the board, not to exceed fifty dollars ($50).

(h) The fee for issuance of a duplicate license is twenty-five dollars ($25).

(i) Any charge made for duplication or other services shall be set at the cost of rendering the service, except as specified in subdivision (h).

(j) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

(k) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed four hundred dollars ($400) annually.

(*l*) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

SEC. 10. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for licensed acupuncturists shall be those set forth in this section unless a lower fee is fixed by the board in accordance with Section ~~4972.~~ *4972*.

(a) The application fee shall be seventy-five dollars ($75).

(b) The examination and reexamination fees shall be the actual cost to the Acupuncture Board for the development and writing of, grading, and administering of each examination.

(c) The initial license fee shall be three hundred twenty-five dollars ($325) and shall be prorated on a monthly basis.

(d) The renewal fee shall be three hundred twenty-five dollars ($325) and in the event a lower fee is fixed by the board, shall be an amount sufficient to support the functions of the board in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the board shall assess the renewal fee biennially.

(e) The delinquency fee shall be set in accordance with Section 163.5.

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars ($3,000). This subdivision shall become inoperative on January 1, 2017.

(g) The duplicate wall license fee is an amount equal to the cost to the board for the issuance of the duplicate license.

(h) The duplicate renewal receipt fee is ten dollars ($10).

(i) The endorsement fee is ten dollars ($10).

(j) The fee for a duplicate license for an additional office location as required under Section 4961 shall be fifteen dollars ($15).

SEC. 11. Section 5604 of the Business and Professions Code is amended to read:

5604. The fees prescribed by this chapter for architect applicants or architect licenseholders shall be fixed by the board as follows:

(a) The application fee for reviewing a candidate's eligibility to take any section of the examination shall not exceed one hundred dollars ($100).

(b) The fee for any section of the examination administered by the board shall not exceed one hundred dollars ($100).

(c) The fee for an original license at an amount equal to the renewal fee in effect at the time the license is issued. The fee for an original license shall be prorated on a monthly basis. The ~~board may,~~ *board*, by appropriate regulation, *may* provide for the waiver or refund of the fee for an original license if the license is issued less than 45 days before the date on which it will expire.

(d) The fee for an application for reciprocity shall not exceed one hundred dollars ($100).

(e) The fee for a duplicate license shall not exceed twenty-five dollars ($25).

(f) The renewal fee shall not exceed four hundred dollars ($400).

(g) The delinquency fee shall not exceed 50 percent of the renewal fee.

(h) The fee for a retired license shall not exceed the fee prescribed in subdivision (c).

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AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# ASSEMBLY BILL No. 595

**Introduced by Assembly Member Alejo**
**(Principal coauthor: Assembly Member Dodd)**
***(Coauthors: Assembly Members Dababneh and Cristina Garcia)***
*(Coauthor: Senator Bates)*

February 24, 2015

An act to amend ~~Section 2555 of~~ *Section 3077 of, to add Sections 3090.1 and 3109.1 to, to repeal Section 2556 of, and to repeal and add Sections 655 and 2555 of,* the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 595, as amended, Alejo. Registered dispensing opticians: ~~certificates.~~ *optometrists: practices.*

*(1) The Optometry Practice Act provides for the licensure and regulation of the practice of optometry by the State Board of Optometry, and makes a violation of the act a crime. Existing law requires individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons and optometrists for prescription lenses and kindred products to register with the Division of Licensing of the Medical Board of California as a registered dispensing optician, and makes a violation of the provisions governing registered dispensing opticians a crime.*

*(2) Existing law prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement, in any form, whether directly or indirectly, with any person licensed as a registered*

*dispensing optician, and prohibits a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form directly or indirectly with a licensed optometrist. Existing law also prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Under existing law, a violation of the above provisions by a licensed optometrist and any person, whether or not licensed, who participates with a licensed optometrist in violating those provisions constitutes a misdemeanor.*

*This bill would delete those provisions. The bill instead would prohibit a licensed registered dispensing optician or a manufacturer or distributor of optical goods that is renting or leasing office space to or from, sharing office space with, or receiving space from an optometrist from engaging in conduct that would influence or interfere with the clinical decisions, as defined, of that optometrist, as specified. The bill would prohibit an optometrist that is using or sharing office space with a registered dispensing optician from giving or receiving, among other things, a fee or thing of material value, to or from any person in return for referral of patients or to secure patients. The bill would make a violation of these provisions punishable as a misdemeanor.*

*(3) Existing law permits a certificate of a registered dispensing optician to be suspended, revoked, or subjected to probation for violation of regulations or laws, as specified, or for incompetence, gross negligence, or repeated similar negligent acts by the registrant or an employee, as provided.*

*This bill would delete those provisions. The bill similarly would permit a certificate of a registered dispensing optician to be suspended, revoked, or subjected to probation for violation of regulations or laws, as specified, or for incompetence, gross negligence, or repeated negligent acts by the registrant or an employee, as provided, and additionally would permit the certificate to be suspended, revoked, or subjected to probation for unprofessional conduct, which includes repeated interference with the optometrist's clinical judgment or compliance with prevailing clinical standards. The bill authorizes*

*assessment of administrative fines for violation of specified provisions of law and requires registered dispensing opticians to cooperate with investigations into a complaint or alleged violation of law.*

*(4) Under existing law, it is unlawful for a registered dispensing optician to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.*

*This bill would delete those prohibitions.*

*(5) The Optometry Practice Act prohibits a person from having an office for the practice of optometry unless he or she is licensed to practice optometry, and requires an optometrist that has more than one office to comply with certain provisions of the act, including, among others, that an optometrist obtain a branch office license for any additional office. The act prohibits more than one branch office license from being issued to an optometrist or any 2 or more optometrists, jointly. The act requires an optometrist that had a branch office prior to January 1, 1957, and who wants to continue that branch office on or after that date to notify the board, as specified.*

*The bill would delete the prohibition of an optometrist or 2 or more optometrists, jointly, from having more than one branch office, and would delete the requirement that an optometrist that had a branch office prior to January 1, 1957, and who wants to continue that branch office to notify the board. The bill would prohibit a person from having any proprietary interest in an office for the practice of optometry unless he or she is licensed to practice optometry. The bill would specify that a branch office is any additional office that is not the principal place of business of an optometrist, as specified.*

*(6) The Optometry Practice Act prohibits an optometrist from directly or indirectly accepting employment from any person not having a valid, unrevoked license as an optometrist, except that the act authorizes an optometrist to be employed by a physician and surgeon who practices in the specialty of ophthalmology or by a health care service plan.*

*This bill would require an optometrist to report to the State Board of Optometry any action or circumstance that the optometrist reasonably and in good faith believes is an attempt by a registered dispensing optician, or an employee or agent thereof, to interfere with the*

*optometrist's independent clinical judgment or compliance with prevailing clinical standards. The bill would require the State Board of Optometry to report these complaints to the Division of Licensing of the Medical Board of California.*

*(7) The bill also would require the State Board of Optometry to receive any complaint made to a state board or department related to care provided to a patient by a licensed optometrist.*

*(8) A violation of the optometry laws and the law governing registered dispensing opticians is a crime. Therefore, by expanding the scope of an existing crime, this bill would impose a state-mandated local program.*

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

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

~~Existing law provides for the issuance of a certificate of dispensing optician upon registration. Existing law permits a certificate to be suspended, revoked, or subjected to probation for violations of regulations or laws, as specified, or for incompetence, gross negligence, or repeated similar negligent acts by the registrant or an employee, as provided.~~

~~This bill additionally would permit a certificate to be suspended, revoked, or subjected to probation for unprofessional conduct, as defined. This bill also would permit a certificate to be suspended, revoked, or subjected to probation for actions by the registrant's agent.~~

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

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

*SECTION 1. Section 655 of the Business and Professions Code is repealed.*

~~655. (a) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with any person licensed under Chapter 5.5 (commencing with Section 2550) of this division.~~

~~(b) No person licensed under Chapter 5.5 (commencing with Section 2550) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form directly or indirectly with any person licensed under Chapter 7 (commencing with Section 3000) of this division.~~

~~(c) No person licensed under Chapter 7 (commencing with Section 3000) of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.~~

~~Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.~~

*SEC. 2. Section 655 is added to the Business and Professions Code, to read:*

*655. (a) A person registered under Chapter 5.5 (commencing with Section 2550), (registered dispensing optician), a person who is engaged in the manufacture, sale or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products that is renting or leasing office space, directly or through an intermediary, to or from or otherwise using or sharing office space with, or receiving space from, any person licensed under Chapter 7 (commencing with Section 3000), (optometrist), shall not engage in conduct that would influence or interfere with the clinical decisions of that optometrist including, but not limited to, the following:*

*(1) Setting quotas for the number of exams or limiting the amount of time that an optometrist can spend with an individual patient.*

*(2) Holding an optometrist responsible for the sale of, or requiring that person to sell, the eyewear of a registered dispensing optician.*

*(3) Providing compensation to an optometrist for the sale of the eyewear of a registered dispensing optician.*

*(b) The optometrist's clinical decisions means the judgment necessary to perform or control any acts as set forth in Section 3041.*

*(c) An optometrist that is renting or leasing space to or from or otherwise using or sharing office space with any registered dispensing optician shall not give or receive a fee, salary, commission, or thing of material value, in any manner or under any pretext, to or from any person, firm, or corporation for either of the following:*

*(1) In return for the referral of optometric patients.*

*(2) In order to secure optometric patients.*

*(d) In connection with the transactions described in (a), all of the following shall be met:*

*(1) Registered dispensing opticians shall ensure signs and displays concerning the optometrist's office shall have the name of the doctor or doctors of optometry and the nature of the relationship between the registered dispensing optician and the optometrist.*

*(2) The optometrist's office shall have a separate telephone listing and number from that of the registered dispensing optician, but may be accessible from a general number that the public associates with the premises.*

*(3) Registered dispensing opticians shall not:*

*(A) Constrain the optometrist in scheduling patients, the fees charged for optometric services, the amount of time spent with a patient, or the number of patients to be seen in a particular time period. The optometrist may contract to provide or arrange for the provision of optometric services during agreed-upon hours and days.*

*(B) Limit the optometrist's participation in managed care or insurance plans.*

*(C) Have an interest in the optometrist's patient records, to which the optometrist shall have 24-hour access, including physical access or electronic access.*

*(D) Advertise that it performs eye examinations or other optometric services that it is not permitted to lawfully perform under state law.*

*(4) The parties shall execute a written agreement, with commercially reasonable terms, providing that rent payments are not affected by either party's referral of any person or sales of product by either party, and a term of at least one year, terminable only for cause as defined under the agreement or at the expiration of the agreement on at least 60 days' written notice.*

*(5) Optometric office space inside an optical dispensary shall be definite and distinct from space occupied by other occupants of the premises and shall include at least one private room for the exclusive use of providing optometric services to patients by the optometrist.*

*(6) Forms used by the optometric office shall be separate from those of the registered dispensing optician.*

*(7) The optometrist shall be free to practice to the full scope of his or her license under law, and shall control the hiring, staffing, training, and office and employment policies of the individuals employed or engaged to assist the optometrist in the management and administrative aspects of his or her practice and in patient care. The optometrist may contract for the provision of technician and administrative services. Nothing herein shall limit the right of the optometrist and the registered dispensing optician to agree to restrict the optometrist from offering or selling spectacles, lenses, frames, contact lenses or other optical goods to the optometrist's patients or to the public in the occupied space during the term of the written agreement.*

*(8) The optometrist shall be responsible for and shall maintain full and independent control of information disseminated to the public through any advertising or other commercial medium when that information relates to optometric services being provided by the optometrist, whether or not that advertising is paid for or sponsored by the optometrist. It is not a violation of this section to include in an advertisement that is not disseminated by the optometrist a statement advertising the availability of optometric services, including eye examinations, by an independent doctor of optometry located adjacent to or in proximity to a registered dispensing optician or a statement containing substantially similar language.*

*(e) A violation of this section is punishable as a misdemeanor.*

*SEC. 3. Section 2555 of the Business and Professions Code is repealed.*

~~2555. Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.~~

*SEC. 4. Section 2555 is added to the Business and Professions Code, to read:*

*2555. (a) Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540), any regulation adopted under this chapter or Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, unprofessional conduct or repeated negligent acts performed by the registrant or by an employee of the registrant. Unprofessional conduct includes, but is not limited to, repeated interference with the independent clinical judgment of an optometrist or the optometrist's compliance with prevailing clinical standards for the practice of optometry and when the registered dispensing optician knows or has reason to know that the repeated interference is impairing the optometrist's ability to provide appropriate health care to his or her patients. Nothing herein shall limit the ability of the optometrist to file a complaint about the registered dispensing optician's interference directly with any state regulatory agency with authority to oversee the practice of optometry or of registered dispensing opticians. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.*

*(b) If the division determines during a proceeding conducted in accordance with subdivision (a) that a registered dispensing optician has violated Section 655, the division may assess an*

*administrative fine of up to five thousand dollars ($5,000) for the first violation and up to twenty-five thousand dollars ($25,000) for any subsequent violation that occurs within three years after the division's finding of a first violation. If a registered dispensing optician's second violation of Section 655 occurs after three years of its first violation, then the division shall assess a fine of up to five thousand dollars ($5,000). This section is not to be construed to limit the division's existing authority to enforce the provisions of subdivision (a) or any other law.*

*(c) Registered dispensing opticians shall comply with all requests for information by the division within 30 days after the request. Failure to provide to the division, as directed, lawfully requested copies of documents relating to a complaint or alleged violation of the law shall constitute unprofessional conduct on the part of the registered dispensing optician, unless the registered dispensing optician is unable to provide the documents within the time period for good cause, including, but not limited to, inability to access the documents in the time allowed.*

*(d) Failure to cooperate and participate in any division investigation pending against a registered dispensing optician relating to a complaint or alleged violation of the law shall also constitute unprofessional conduct by the registered dispensing optician. This subdivision shall not be construed to deprive a registered dispensing optician of any privilege guaranteed by the Constitution of the United States or any other constitutional or statutory privileges. The registered dispensing optician's assertion of any applicable constitutional, statutory, or other privilege, including, but not limited to, attorney-client privilege or attorney work product privilege, is not a violation of this section.*

*(e) If the registered dispensing optician disputes a determination by the division regarding a complaint or violation of the law, the registered dispensing optician may appeal the division's decision to an independent administrative law judge pursuant to Chapter 5 (commencing with Section 1100) of Part 1 of Division 3 of Title 2 of the Government Code. Penalties, if any, shall be paid when all appeals have been exhausted and the division's decision has been upheld. In the event that the division's position has been upheld, after all appeals have been exhausted the registered dispensing optician shall be responsible for payment of all costs associated with the prosecution of the matter.*

*(f) A registered dispensing optician shall not discharge, terminate, suspend, threaten, harass, or retaliate or discriminate against an optometrist because that optometrist files a complaint as set forth in Section 3109.1 or any other complaint against a registered dispensing optician, or for lawful acts done by an optometrist in disclosing information relating to any complaint against a registered dispensing optician. When an optometrist files a complaint against a registered dispensing optician, the optometrist shall have all of the protections provided in Section 1102.5 of the Labor Code.*

*SEC. 5. Section 2556 of the Business and Professions Code is repealed.*

~~2556. It is unlawful to do any of the following: to advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon; to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.~~

*SEC. 6. Section 3077 of the Business and Professions Code is amended to read:*

3077. ~~As~~ *(a) As* used in this section, "office" means any office or other place for the practice of optometry.

~~(a) No~~

*(b) A* person, singly or in combination with others, may ~~have~~ *not have any proprietary interest in* an office unless he or she is licensed to practice optometry under this chapter.

~~(b)~~

*(c)* An optometrist, or two or more optometrists jointly, may have one office without obtaining a branch office license from the board.

~~(c) On and after October 1, 1959, no~~

*(d) An* optometrist, ~~and no~~ *or* two or more optometrists jointly, may *not* have more than one office unless he or she or they comply with the provisions of this chapter as to ~~an additional office. The additional office, for the purposes of this chapter,~~ *additional offices. An additional office that is not the optometrist's principal place*

*of practice, as described by Section 3070,* constitutes a branch ~~office.~~ *office for purposes of this chapter.*

~~(d) Any optometrist who has, or any two or more optometrists, jointly, who have, a branch office prior to January 1, 1957, and who desire to continue the branch office on or after that date shall notify the board in writing of that desire in a manner prescribed by the board.~~

(e) ~~On and after January 1, 1957, any optometrist, or any two or more optometrists, jointly, who desire~~ *Any optometrist who desires* to open a branch office *that is not his or her principal place of business* shall notify the board in writing in a manner prescribed by the board.

(f) ~~On and after January 1, 1957, no~~ *A* branch office may *not* be opened or operated without a branch office license. Branch office licenses shall be valid for the calendar year in or for which they are issued and shall be renewable on January 1 of each year thereafter. Branch office licenses shall be issued or renewed only upon the payment of the fee therefor prescribed by this chapter.

~~On or after October 1, 1959, no more than one branch office license shall be issued to any optometrist or to any two or more optometrists, jointly.~~

(g) Any failure to comply with the provisions of this chapter relating to branch offices or branch office licenses as to any branch office shall work the suspension of the optometrist license of each optometrist who, individually or with others, has a branch office. An optometrist license so suspended shall not be restored except upon compliance with those provisions and the payment of the fee prescribed by this chapter for restoration of a license after suspension for failure to comply with the provisions of this chapter relating to branch offices.

(h) The holder or holders of a branch office license shall pay the ~~annual~~ *biennial* renewal fee therefor in the amount required by this chapter between the first day of January and the first day of February of each ~~year.~~ *renewal period.* The failure to pay the fee in advance on or before February 1 of each year during the time it is in force shall ipso facto work the suspension of the branch office license. The license shall not be restored except upon written application and the payment of the penalty prescribed by this chapter, and, in addition, all delinquent branch office fees.

~~(i) Nothing in this chapter shall limit or authorize the board to limit the number of branch offices that are in operation on October 1, 1959, and that conform to this chapter, nor prevent an optometrist from acquiring any branch office or offices of his or her parent. The sale after October 1, 1959, of any branch office shall terminate the privilege of operating the branch office, and no new branch office license shall be issued in place of the license issued for the branch office, unless the branch office is the only one operated by the optometrist or by two or more optometrists jointly.~~

~~Nothing in this chapter shall prevent an optometrist from owning, maintaining, or operating more than one branch office if he or she is in personal attendance at each of his or her offices 50 percent of the time during which the office is open for the practice of optometry.~~

~~(j)~~

*(i)* The board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this section.

~~(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:~~

~~(1) Complies with the definition of an optometric corporation in Section 3160.~~

~~(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.~~

~~(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.~~

~~Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an~~

~~optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.~~

*SEC. 7. Section 3090.1 is added to the Business and Professions Code, to read:*

*3090.1. The State Board of Optometry shall receive any complaint made to a state board or department related to care provided to a patient by a licensed optometrist under Chapter 7 (commencing with Section 3000).*

*SEC. 8. Section 3109.1 is added to the Business and Professions Code, to read:*

*3109.1. (a) An optometrist shall report to the board any action or circumstance that the optometrist reasonably and in good faith believes constitutes a continued and unresolved attempt to interfere with his or her independent clinical judgment or compliance with prevailing clinical standards for the practice of optometry by a registered dispensing optician or any employee or agent of the registered dispensing optician that violates Section 655.*

*(b) The board shall report the complaint to the Division of Licensing of the Medical Board of California, and the division shall investigate the complaint pursuant to Section 2555.*

*(c) A registered dispensing optician shall not discharge, terminate, suspend, threaten, harass, or in any other manner retaliate or discriminate against an optometrist that files a good faith complaint pursuant to this section or any other law, or for lawful acts done by an optometrist in disclosing information relating to any complaint against a registered dispensing optician. When an optometrist files a good faith complaint against a registered dispensing optician, the optometrist shall have all of the protections provided in Section 1102.5 of the Labor Code.*

*SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within*

*the meaning of Section 6 of Article XIII B of the California Constitution.*

~~SECTION 1. Section 2555 of the Business and Professions Code is amended to read:~~

~~2555. Certificates issued hereunder may in the discretion of the division be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, unprofessional conduct, or repeated negligent acts performed by the registrant or by an employee or agent of the registrant. Unprofessional conduct includes, but is not limited to, repeated interference with the independent clinical judgment of an optometrist or with compliance by an optometrist with prevailing clinical standards for the practice of optometry. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.~~

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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:*

SECTION 1. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 shall, before January 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(ii) A pharmacist shall, before January 1, 2016, or upon licensure, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that pharmacist the electronic history of controlled

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

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

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

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

(i) Materially falsifying an application for a subscriber.

(ii) Failure to maintain effective controls for access to the patient activity report.

(iii) Suspended or revoked federal DEA registration.

(iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.

(v) Any subscriber described in clause (i) or (ii) of subparagraph (A) accessing information for any other reason than caring for his or her patients.

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

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

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

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

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

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

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 637
**Author:** Campos
**Bill Date:** February 24, 2015, Introduced
**Subject:** Physician Orders for Life Sustaining Treatment Forms
**Sponsor:** California Medical Association (CMA)

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow nurse practitioners (NPs) and physician assistants (PAs), under physician supervision, to sign Physician Orders for Life Sustaining Treatment (POLST) forms.

## BACKGROUND

In the early 1990's, Congress passed the federal Patient Self-Determination Act and the POLST program was developed to address challenges related to advance care planning, most commonly used for frail and elderly patients. In 2008, AB 3000 (Wolk) created the California POLST, a standardized form that helps to ensure patient's wishes are honored regarding medical treatment towards the end of life. The POLST form is not an advance directive, it compliments an advance directive by identifying the patient's treatment preferences. Currently, the POLST form is a paper document and must be signed by both the patient and their physician to become actionable.

## ANALYSIS

According to the author's office, there have been reported difficulties by some nursing homes in obtaining a physician's signature on a POLST form in a timely manner. Currently, patients discuss their end-of-life care wishes with all members of their health care team, including NPs and PAs. The author's office believes that expanding the number and type of healthcare providers who can assist patients in establishing their end-of-life care orders will help to ensure that patient's end-of-life care wishes are followed.

Allowing NPs and PAs, who are under the supervision of a physician, seems to be a reasonable expansion and one that will help to improve patient care. NPs and PAs are involved in providing end-of-life care to patients in California, so it makes sense to allow them to sign off on POLST forms to ensure that patients have better access to providers who can assist in establishing end-of-life care orders. This bill will further the Board's mission of promoting access to care, and Board staff recommends that the Board take a support position on this bill.

**FISCAL:** None to the Board

**SUPPORT:** CMA (Sponsor); AARP; American College of Emergency Physicians, California Chapter; Blue Shield of California; California Association for Health Services at Home; California Association of Nurse Practitioners; California Long-Term Ombudsman Association; Leading Age California; and several individuals

**OPPOSITION:** California Right to Life Committee

**POSITION:** Recommendation: Support

# ASSEMBLY BILL No. 637

**Introduced by Assembly Member Campos**

February 24, 2015

An act to amend Section 4780 of the Probate Code, relating to resuscitative measures.

LEGISLATIVE COUNSEL'S DIGEST

AB 637, as introduced, Campos. Physician Orders for Life Sustaining Treatment forms.

Existing law defines a request regarding resuscitative measures to mean a written document, signed by an individual, as specified, and the physician, that directs a health care provider regarding resuscitative measures, and includes a Physician Orders for Life Sustaining Treatment form (POLST form). Existing law requires a physician to treat a patient in accordance with the POLST form and specifies the criteria for creation of a POLST form, including that the form be completed by a health care provider based on patient preferences and medical indications, and signed by a physician and the patient or his or her legally recognized health care decisionmaker.

This bill would authorize the signature of a nurse practitioner or a physician assistant acting under the supervision of the physician and within the scope of practice authorized by law to create a valid POLST form.

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

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

SECTION 1. Section 4780 of the Probate Code is amended to read:

4780. (a) As used in this part:

(1) "Request regarding resuscitative measures" means a written document, signed by (A) an individual with capacity, or a legally recognized health care decisionmaker, and (B) the individual's physician, that directs a health care provider regarding resuscitative measures. A request regarding resuscitative measures is not an advance health care directive.

(2) "Request regarding resuscitative measures" includes one, or both of, the following:

(A) A prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form.

(B) A Physician Orders for Life Sustaining Treatment form, as approved by the Emergency Medical Services Authority.

(3) "Physician Orders for Life Sustaining Treatment form" means a request regarding resuscitative measures that directs a health care provider regarding resuscitative and life-sustaining measures.

(b) A legally recognized health care decisionmaker may execute the Physician Orders for Life Sustaining Treatment form only if the individual lacks capacity, or the individual has designated that the decisionmaker's authority is effective pursuant to Section 4682.

(c) The Physician Orders for Life Sustaining Treatment form and medical intervention and procedures offered by the form shall be explained by a health care provider, as defined in Section 4621. The form shall be completed by a health care provider based on patient preferences and medical indications, and signed by a physician, *or a nurse practitioner or a physician assistant acting under the supervision of the physician and within the scope of practice authorized by law,* and the patient or his or her legally recognized health care decisionmaker. The health care provider, during the process of completing the Physician Orders for Life Sustaining Treatment form, should inform the patient about the difference between an advance health care directive and the Physician Orders for Life Sustaining Treatment form.

(d) An individual having capacity may revoke a Physician Orders for Life Sustaining Treatment form at any time and in any manner that communicates an intent to revoke, consistent with Section 4695.

(e) A request regarding resuscitative measures may also be evidenced by a medallion engraved with the words “do not resuscitate” or the letters “DNR,” a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 684
**Author:** Bonilla
**Bill Date:** April 23, 2015, Amended
**Subject:** Registered Dispensing Opticians: Disciplinary Actions
**Sponsor:** Author

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would place a moratorium on discipline for registered dispensing opticians (RDOs) by the Medical Board of California (Board) or the California Board of Optometry (CBO) for engaging in any business relationship prohibited by Business and Professions Code Section 655. This moratorium would be in effect until January 1, 2017.

## BACKGROUND

Existing law prohibits a licensed optometrist and an RDO from having any membership, proprietary interest, co-ownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with each other. Existing law prohibits a licensed optometrist from having any membership, proprietary interest, co-ownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or RDOs of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

AB 595 (Alejo) was introduced this year and was the result of numerous meetings between the National Association of Optometrists and Opticians, California Optometric Association, and other optical stakeholders, including the Board and CBO. AB 595 would have changed the business model of RDOs in California, would have allowed for occupancy arrangements between an optometrist and RDO, would have allowed for direct employment of an optometrist by an optical company, and would have deleted other advertising prohibitions in existing law, among other business model changes. This bill included protections for an optometrist's clinical judgement to address concerns that an RDO would influence or interfere with the clinical decision of an optometrist.

Although meetings were held on the optical issues before AB 595 was introduced, some stakeholders still have concerns that could not be resolved in time for the bill to be heard in Assembly Business and Professions (B&P) Committee. As such, this bill was held in Assembly B&P Committee and made a two-year bill. The Chair of Assembly B&P Committee, Assembly Member Bonilla, amended this bill to include safe harbor provisions for

the impacted parties, while the RDO business model issue is being worked out in the Legislature.

**ANALYSIS**

This bill will allow time, until January 1, 2017, for the business model arrangement issues to be worked out in AB 595 (Alejo). This bill would not allow the Board or CBO to take any action against an RDO or optometrist for engaging in a business model prohibited by existing law. If AB 595 is passed next year, the language in that bill will take effect; if it does not pass, then after January 1, 2017, existing law will take effect.

The Board is an active stakeholder in this issue and will continue to participate in stakeholder meetings and provide technical input on AB 595 and any proposed language. At this time, putting a moratorium on disciplinary action for RDOs and optometrists makes sense. However, the language in the current moratorium is too broad and needs to be better defined. If changes are made to address this concern, this moratorium will allow the issue of optical business models in California to be thoughtfully addressed and ensure that RDOs and optometrists aren't penalized while AB 595 is being worked through in the Legislature. As such, Board staff suggests that the Board take a neutral position on this bill if it is amended to address the concern raised in this analysis.

**FISCAL:** None

**SUPPORT:** None on file

**OPPOSITION:** None on file

**POSITION:** Recommendation: Neutral if Amended

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# ASSEMBLY BILL No. 684

**Introduced by Assembly Member Bonilla**
***(Coauthor: Assembly Member Alejo)***

February 25, 2015

~~An act to amend Section 4200.3 of the Business and Professions Code, relating to healing arts.~~ *An act to add and repeal Sections 655.1 and 2556.1 of the Business and Professions Code, relating to healing arts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 684, as amended, Bonilla. ~~Pharmacy.~~ *Healing arts: licensees: disciplinary actions.*

*Existing law prohibits a licensed optometrist and a registered dispensing optician from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, with each other. Existing law prohibits a licensed optometrist from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products. Existing law makes a violation of these provisions by a licensed optometrist and any other persons, whether or not a healing arts licensee, who participates with a licensed optometrist subject to a crime.*

*Under existing law, the Medical Board of California is responsible for the registration and regulation of dispensing opticians. Existing law makes the State Board of Optometry responsible for the licensure of optometrists.*

*This bill, until January 1, 2017, would prohibit a registered dispensing optician or optometrist from being subject to discipline by the Medical Board of California, the State Board of Optometry, or other state agency with enforcement authority for engaging in any of the aforementioned business relationships.*

*Existing law makes it unlawful to, among other things, advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon, or to directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, an optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes.*

*This bill, until January 1, 2017, would prohibit a registered dispensing optician from being subject to discipline for engaging in that aforementioned conduct.*

~~Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy within the Department of Consumer Affairs. Existing law authorizes the board to license as a pharmacist an applicant who meets specified requirements, including passage of the North American Pharmacist Licensure Examination. Existing law requires the examination process to meet specified standards and federal guidelines and requires the board to terminate use of that examination if the department determines that the examination fails to meet those standards. Existing law requires the board to report to the now obsolete Joint Committee on Boards, Commissions, and Consumer Protection and the department specified examination pass rate information.~~

~~This bill would instead require the board to report that pass rate information to the appropriate policy committees of the Legislature and the department. The bill would also make nonsubstantive changes to those provisions.~~

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

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

*SECTION 1. Section 655.1 is added to the Business and Professions Code, to read:*

*655.1. (a) Notwithstanding any other law and on and after January 1, 2016, no dispensing optician registered pursuant to Chapter 5.5 (commencing with Section 2550) or optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) shall be subject to discipline by the Medical Board of California, the State Board of Optometry, or other state agency with enforcement authority for engaging in any business relationship prohibited by Section 655.*

*(b) Nothing in this section shall be construed to imply or suggest that a registered dispensing optician or optometrist engaging in any business relationship is in violation of or in compliance with the law.*

*(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.*

*SEC. 2. Section 2556.1 is added to the Business and Professions Code, to read:*

*2556.1. (a) Notwithstanding any other law and on and after January 1, 2016, a person registered under this chapter shall not be subject to discipline for engaging in conduct prohibited by Section 2556, except that, a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.*

*(b) Nothing in this section shall be construed to imply or suggest that a person registered under this chapter is in violation of or in compliance with the law.*

*(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.*

~~SECTION 1. Section 4200.3 of the Business and Professions Code is amended to read:~~

~~4200.3. (a) The examination process shall be regularly reviewed pursuant to Section 139.~~

~~(b) The examination process shall meet the standards and guidelines set forth in the Standards for Educational and Psychological Testing and the federal Uniform Guidelines on~~

~~Employee Selection Procedures. The board shall work with the Office of Professional Examination Services of the department or with an equivalent organization who shall certify at minimum once every five years that the examination process meets these national testing standards. If the department determines that the examination process fails to meet these standards, the board shall terminate its use of the North American Pharmacist Licensure Examination and shall use only the written and practical examination developed by the board.~~

~~(c) The examination shall meet the mandates of subdivision (a) of Section 12944 of the Government Code.~~

~~(d) The board shall work with the Office of Professional Examination Services or with an equivalent organization to develop the state jurisprudence examination to ensure that applicants for licensure are evaluated on their knowledge of applicable state laws and regulations.~~

~~(e) The board shall annually publish the pass and fail rates for the pharmacist's licensure examination administered pursuant to Section 4200, including a comparison of historical pass and fail rates before utilization of the North American Pharmacist Licensure Examination.~~

~~(f) (1) The board shall report to the appropriate policy committees of the Legislature and the department as part of its next scheduled review, the pass rates of applicants who sat for the national examination compared with the pass rates of applicants who sat for the prior state examination. This report shall be a component of the evaluation of the examination process that is based on psychometrically sound principles for establishing minimum qualifications and levels of competency.~~

~~(2) This subdivision shall become inoperative on January 1, 2020, pursuant to Section 10231.5 of the Government Code.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 773
**Author:** Baker
**Bill Date:** February 25, 2015, Introduced
**Subject:** Psychology Licensing
**Sponsor:** California Board of Psychology

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would require licenses issued by the California Board of Psychology to be valid for two years from issuance.

## BACKGROUND

The Medical Board of California (Board) currently utilizes a physician's birth date to calculate license expiration dates. The purpose of the birth date renewal initially was to ensure that the Board did not have to process a large number of applications or renewals during peak times. However, with the intensive licensing outreach performed by the Board's Licensing Outreach Manager to potential licensees, licenses are not issued only during certain months, but are spread out throughout the year.

The Board does give applicants the option of waiting until their birth month for their physician and surgeon license to be issued. However, if an applicant cannot wait until their birth month to receive their application, their initial license will not be valid for a full two years, resulting in overpayment to the Board.

## ANALYSIS

This bill would is attempting to resolve the same overpayment issue that AB 483 (Patterson) would address for licenses issued by the California Board of Psychology. AB 483 would require the Board to prorate the initial licensing fees for physicians and surgeons to ensure that licensees are not overcharged. However, the proration requirement would result in delays in issuing licenses for physicians and surgeons and increased workload. This bill would require the Board of Psychology to issue licenses that are valid for two-years from the time of issuance. This would solve the issue of overpayment, but not result in delays in issuing licenses.

Board staff believes that a two-year license would be a better way to resolve the issue of license fee overpayment. The Board does not have any issues with peak times, so a two-year license will ensure that applicants are not overcharged and will not create any additional steps in the licensure process. Board staff has discussed adding the Board to this bill with the author and her staff, and they are willing to add the Board to this bill. As such, Board staff is

suggesting that the Board support this bill if it is amended to add physician and surgeon licenses issued by the Board.

**FISCAL:** Minimal and absorbable workload to change the Board's licensing process from a birth month expiration to a straight two-year license.

**SUPPORT:** California Board of Psychology (Sponsor)
The California Psychological Association

**OPPOSITION:** None on file

**POSITION:** Recommendation: Support if Amended

# ASSEMBLY BILL No. 773

**Introduced by Assembly Member Baker**

February 25, 2015

An act to amend Section 2982 of the Business and Professions Code, relating to business and professions.

LEGISLATIVE COUNSEL'S DIGEST

AB 773, as introduced, Baker. Psychology licensing.

The Psychology Licensing Law establishes the Board of Psychology to license and regulate the practice of psychology. The law expires the term of a license based on the licensee's birth date.

This bill would instead expire the term of a license at the end of a 2-year period from the date the license was issued.

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

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

SECTION 1. Section 2982 of the Business and Professions Code is amended to read:

2982. All licenses expire and become invalid at 12 midnight on the last day of February, 1980, and thereafter shall expire at 12 midnight of the ~~legal birth date of the licensee during the second year of a two-year term, if not renewed.~~ *last date of the two-year period from the date the license was issued.*

~~The board shall establish by regulation procedures for the administration of the birth date renewal program, including but not limited to, the establishment of a pro rata formula for the~~

~~payments of fees by licentiates affected by the implementation of that program and the establishment of a system of staggered license application dates such that a relatively equal number of licenses expire annually.~~

To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 890
**Author:** Ridley-Thomas
**Bill Date:** As proposed to be amended
**Subject:** Anesthesiologist Assistants
**Sponsor:** California Society of Anesthesiologists

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Anesthesiologist Assistant Practice Act and would make it unlawful for any person to hold himself or herself out as an anesthesiologist assistant (AA) unless he or she meets specified requirements. The AA is required to work under the direction and supervision of an anesthesiologist, and would be allowed to assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient.

## BACKGROUND

According to the sponsor, California is currently experiencing a severe anesthesia provider workforce shortage and California needs a system that extends physician care with appropriately trained AAs to help fill the existing workforce shortage. The AA profession was established in 1971 and is recognized by the AMA, health insurance providers, and the federal government, which reimburses AA services though the Veterans Administration, Medicare, and Tricare. To date, 33 states require physician anesthesiologists supervision of AAs, and AAs work as registered healthcare professionals in 15 states and the District of Columbia. In the past four years, several states have attempted to recognize or license AAs. Bills presented to the New York, Oregon, Texas, Indiana, New Mexico and Utah legislatures have failed. However, in 2014 and 2015, bills were passed in Indiana and New Mexico, which permitted AAs to be recognized as licensed health care practitioners.

AAs are educated and trained by physician anesthesiologists and must complete pre-medical coursework in their undergraduate education and earn a graduate degree in a program recognized by the Commission on Accreditation of Allied Health Education Programs that is affiliated with an anesthesia residency program and includes a minimum of 2,000 clinical hours.

According to the sponsor, AAs may assist the supervising physician anesthesiologist in developing and implementing an anesthesia care plan, which may require the AA to do the following:

- Obtain a comprehensive patient history for the supervising physician anesthesiologist;
- Pretest and calibrate anesthesia delivery systems, and obtain and interpret information from the systems and monitors, in consultation with a physician anesthesiologist;
- Assist the supervising physician anesthesiologist with the implementation of medically

accepted monitoring techniques;

- Establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;
- Administer intermittent vasoactive drugs, and start and adjust vasoactive infusions;
- Administer anesthetic drugs, adjuvant drugs, and accessory drugs;
- Administer blood, blood products, and supportive fluids;
- Establish and maintain with the supervising physician anesthesiologist performance of epidural anesthetic procedures, spinal anesthetic procedures, and other regional anesthetic techniques;
- Provide assistance to a cardiopulmonary resuscitation team in response to a life-threatening situation;
- Participate in administrative, research, and clinical teaching activities as authorized by the supervising physician anesthesiologist;
- Supervise student AAs; and
- Perform other tasks not prohibited by law under the supervision of a licensed physician anesthesiologist that an AA has been trained and is proficient to perform.

**ANALYSIS**

This bill is a title act and would require a person to meet specified requirements in order to hold himself or herself out as an AA. This bill would require an AA to graduate from an AA program recognized by the Commission on Accreditation of Allied Health Education Programs or by its successor agency. An AA would also have to hold an active certification by the National Commission on Certification for Anesthesiologist Assistants. This bill would require an AA to work under the direction and supervision of an anesthesiologist, which must be physically present on the premises and immediately available to the AA when medical services are being rendered. The supervising anesthesiologist must oversee the activities of, and accept responsibility for, the medical services being rendered by the AA. This bill would allow the AA, under the supervision of an anesthesiologist, to assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient.

It appears that AAs are highly educated individuals that receive appropriate clinical education and experience to assist anesthesiologists. However, AAs would not receive a license under this bill, so there is no direct regulatory oversight on the medical care being provided by an AA. If an AA were to provide substandard patient care, there is no license to take disciplinary action against and there is no way to stop the AA from practicing. Although the bill does charge the supervising anesthesiologist with accepting responsibility for the medical services being rendered by an AA, there is not a clear pathway for regulatory oversight other than the normal regulatory oversight provided by the Board for physicians. As such, Board staff is suggesting that the Board take a Neutral position if this bill is amended to include a framework to stop an AA that is providing substandard care from practicing.

**FISCAL:** Minimal and absorbable

**SUPPORT:** California Society of Anesthesiologists (Sponsor); American Academy of Anesthesiologist Assistants; American Society of Anesthesiologists; Anesthesia Consultants of Fresno; California Medical Association; Case Western Reserve University, Anesthesia Program; and 34 individuals

**OPPOSITION:** American Nurses Association California; California Association of Nurse Anesthetists; California Association of Nurse Practitioners; California Labor Federation; California Nurses Association; California Nurse Midwives Association; and over 200 nurse anesthetists

**POSITION:** Recommendation: Neutral if Amended

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 ~~assist the supervising anesthesiologist in~~ *deliver*

*medical services, including, but not limited to,* 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:*

SECTION 1. Chapter 7.75 (commencing with Section 3550) is added to Division 2 of the Business and Professions Code, to read:

## Chapter 7.75. Anesthesiologist Assistant

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

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

(a) "Anesthesiologist" means a physician and surgeon who has ~~completed a residency in anesthesiology approved by the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology~~ *successfully completed a training program in anesthesiology accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or equivalent organizations* and is licensed under Chapter 5 (commencing with Section 2000).

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

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

(1) Has graduated from an anesthesiologist assistant program recognized by the ~~American Medical Association's Committee on Allied Health Education and Accreditation~~ *Commission on Accreditation of Allied Health Education Programs* or by its successor agency.

(2) ~~Has passed the certifying examination and holds~~ *Holds* an active certification by the National Commission on Certification ~~of~~ *for* Anesthesiologist Assistants.

(b) It is an unfair business practice within the meaning of Chapter 5 (commencing with Section 17200) of Part 2 of Division

7 for any person to use the title “anesthesiologist assistant” or any other term, including, but not limited to, “certified,” “licensed,” “registered,” or “AA,” that implies or suggests that the person is certified as an anesthesiologist assistant, if the person does not meet the requirements of subdivision (a).

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

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

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

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** AB 1306
**Author:** Burke
**Bill Date:** February 27, 2015, Introduced
**Subject:** Certified Nurse Midwives: Scope of Practice
**Sponsor:** California Nurse Midwives Association

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would remove the physician supervision requirement for certified nurse midwives (CNMs) allowing CNMs to manage a full range of primary health services, perform peripartum care, provide emergency care when a physician is not present and perform and repair episiotomies in all practice settings.

## BACKGROUND:

CNMs are registered nurses with a certificate to practice midwifery, who have acquired additional training in the field of obstetrics and are certified by the American College of Nurse Midwives. Like licensed midwives (LMs), CNMS can practice in homes, birth centers and clinics; however, CNMs can also practice in hospital settings. In 2012, CNMs attended approximately 8.5 percent of all births in California, the majority of these births took place in a hospital, and the remainder took place in free-standing birthing centers. It is estimated that ninety percent of CNM attended births take place in a hospital setting. CNMs are required to practice under the supervision of a physician; California is one of the six states that require physician supervision of CNMs.

Existing law authorizes a CNM, under physician supervision, 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. Existing law authorizes a CNM to furnish and order drugs or devices incidental to the provision of family planning services, routine health care or perinatal care, and care rendered consistently with the CNM's education, and in accordance with standardized procedures and protocols with the supervising physician. Existing law also authorizes a CNM to perform and repair episiotomies and repair first-degree and second degree lacerations of the perineum in a licensed acute care hospital and licensed alternate birth center, if performed pursuant to protocols developed and approved by the supervising physician.

AB 1308 (Bonilla, Chapter 665) was signed into law in 2013 and removed the physician supervision requirement for LMs. There were specific requirements on what type of patients LMs can accept, those that meet the criteria for normal pregnancy and childbirth, as specified. If a potential client does not meet the criteria for normal pregnancy and childbirth,

then the LM must refer that client to a physician trained in obstetrics and gynecology for examination; the LM can only accept the client if the physician examines the client and determines that the risk factors are not likely to significantly affect the course of pregnancy and childbirth. AB 1308 also allowed LMs to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to the practice of midwifery and consistent with the LMs scope of practice. AB 1308 was very narrow on what services could be provided and what patients an LM could accept. It also included other provisions related to hospital transfers and education program requirements.

**ANALYSIS**

This bill would require a CNM applicant to provide evidence of current advanced level national certification by a certifying body that meets standards established and approved by the Board of Registered Nursing (BRN).

This bill would require the BRN to create and appoint a Nurse-Midwifery Advisory Council (Council), similar to the Medical Board of California's (Board) Midwifery Advisory Council (MAC), which would consist of CNMs in good standing with experience in hospital and non-hospital practice settings, a nurse-midwife educator, as specified, and a consumer of midwifery care. This bill would require the Council to make recommendations to BRN on all matters related to nurse-midwifery practice, education, and other matters specified by BRN, and would require the Council to meet regularly, but at least twice a year.

This bill would authorize a CNM to manage a full range of primary health care services for women from adolescence beyond menopause, including, but not limited to: primary health care; gynecologic and family planning services; preconception care; care during pregnancy, childbirth, and postpartum period; immediate care of the newborn; and treatment of male partners for sexually transmitted infections. This bill would authorize a CNM to practice in all settings, including, but not limited to, private practice, clinics, hospitals, birth centers, and homes. This bill would authorize a CNM 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.

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. This bill would provide that the practice of nurse-midwifery emphasizes informed consent, preventive care and early detection and referral of a complication to a physician. This bill would require CNMs working in a hospital setting to collaboratively care for women with more complex health needs.

This bill would delete the requirement in existing law that drugs or devices must be furnished or ordered by a CNM in accordance with standardized procedures and protocols. This bill would authorize a CMN to: furnish and order drugs or devices in connection with

care rendered in a home; would authorize a CNM 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 CNM and that are consistent with nurse-midwifery education preparation.

This bill would authorize a CNM to perform and repair episiotomies and to repair first degree and second degree lacerations of the perineum in a patient's home, and would delete all requirements that those procedures be performed pursuant to protocols developed and approved by the supervising physician. This bill would require a CNM to provide emergency care to a patient when a physician is not available.

This bill would state that a consultative relationship between a CNM and a physician shall not, by itself, provide the basis for finding a physician liable for any act or omission of the CNM.

This bill removes physician supervision for CNMs and allows CNMs to provide a full range of primary health care services for women; this is a significant expansion of the CNM scope of practice. Although the Board was supportive of the bill in 2013 that removed physician supervisions for LMs, it was because the bill was very restricted and clear on what types of patients LMs could accept, and required physician consultation and approval for patients that did not meet the requirements. High risk patients cannot be accepted by an LM. This bill would allow a CNM to accept all patients, as long as they are low-risk women with uncomplicated singleton-term pregnancies who are expected to have uncomplicated birth. This bill does not define low risk, or uncomplicated birth, so this would be left to the judgement of the CNM. This bill would provide that the practice of nurse-midwifery emphasizes informed consent, preventive care and early detection and referral of complication to a physician, However, this bill does not define informed consent or when a CNM has to refer a patient to a physician and for what types of complications. This bill would require CNMs working in a hospital setting to collaboratively care for women with more complex health needs, but does not define collaborative care or complex health needs. Lastly, this bill does not require the Council to have a physician member, which has been important in the Board's experience with the MAC. In addition, it is also unknown how this bill would affect corporate practice, as the bill does not address this issue.

The Board's primary mission is consumer protection and this bill does not currently include parameters on independent CNM practice that would ensure consumer protection. As such, Board staff is recommending that the Board oppose this unless it is amended to address the Board's concerns.

**FISCAL:** None to the Board

**SUPPORT:** California Nurse Midwives Association (Sponsor); AARP; Access Women's Health Justice; American Association of Birth Centers; American Nurses Association California; Association of California

Healthcare Districts; Beachside Birth Center; Beach Cities Midwifery &Women's Health Care; California Association of Nurse Anesthetists; California Association of Nurse Practitioners; Maternal and Child Health Access; Women's Community Clinic; Yes2Kollege Education Resources Inc.; and over 50 individuals

**OPPOSITION:** California Medical Association and one individual

**POSITION:** Recommendation: Oppose Unless Amended

# ASSEMBLY BILL No. 1306

**Introduced by Assembly Member Burke**

February 27, 2015

An act to amend Sections 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 introduced, 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, a nurse-midwife educator, as specified, and a consumer of midwifery care. This bill would require the council to make recommendations to the board on all matters related

to nurse-midwifery practice, education, and other matters specified by the board, and would require the council to meet regularly, but at least twice a year.

(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 care services for women from adolescence beyond menopause, including, but not limited to, gynecologic and family planning services. The bill would authorize a certified nurse-midwife to practice in all settings, including, but not limited to, a home. 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 patient's 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.

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:*

SECTION 1. Section 2725.1 of the Business and Professions Code is amended to read:

2725.1. (a) Notwithstanding any other ~~provision of~~ law, a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon or an order by a certified

nurse-midwife, nurse practitioner, or physician assistant issued pursuant to Section 2746.51, 2836.1, or 3502.1, respectively, if the registered nurse is functioning within a licensed primary care clinic as defined in subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b), (c), (h), or (j) of Section 1206 of, the Health and Safety Code.

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

(c) ~~Nothing in this~~ *This* section shall *not* be construed to limit any other authority granted to a certified nurse-midwife pursuant to Article 2.5 (commencing with Section 2746), to a nurse practitioner pursuant to Article 8 (commencing with Section 2834), or to a physician assistant pursuant to Chapter 7.7 (commencing with Section 3500).

(d) ~~Nothing in this~~ *This* section shall *not* be construed to affect the sites or types of health care facilities at which drugs or devices are authorized to be dispensed pursuant to Chapter 9 (commencing with Section 4000).

SEC. 2. Section 2746.2 of the Business and Professions Code is amended to read:

2746.2. *(a)* Each applicant shall show by evidence satisfactory to the board that he *or she* has met the educational standards established by the board or has at least the equivalent ~~thereof. The board is authorized to appoint a committee of qualified physicians and nurses, including, but not limited to, obstetricians and nurse-midwives, to develop the necessary standards relating to educational requirements, ratios of nurse-midwives to supervising physicians, and associated matters.~~ *thereof, including evidence of*

*current advanced level national certification by a certifying body that meets standards established and approved by the board.*

*(b) The board shall create and appoint a Nurse-Midwifery Advisory Council consisting of certified nurse-midwives in good standing with experience in hospital and nonhospital practice settings, a nurse-midwife educator who has demonstrated familiarity with consumer needs, collegial practice and accompanied liability, and related educational standards in the delivery of maternal-child health care, and a consumer of midwifery care. The council shall make recommendations to the board on all matters related to nurse-midwifery practice, education, and other matters as specified by the board. The council shall meet regularly, but at least twice a year.*

SEC. 3. Section 2746.5 of the Business and Professions Code is amended to read:

2746.5. (a) The certificate to practice nurse-midwifery authorizes the ~~holder, 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.~~ *holder to manage a full range of primary health care services for women from adolescence to beyond menopause. These services include, but are not limited to, primary health care, gynecologic and family planning services, preconception care, care during pregnancy, childbirth, and the postpartum period, immediate care of the newborn, and treatment of male partners for sexually transmitted infections. A certified nurse-midwife is authorized to practice in all settings, including, but not limited to, private practice, clinics, hospitals, birth centers, and homes.*

(b) As used in this chapter, the practice of nurse-midwifery ~~constitutes the furthering or undertaking by any 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. All complications shall be referred to a physician immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.~~ *within a health care system provides for consultation, collaboration, or referral as indicated by the health status of the patient and the resources and medical*

*personnel available in the setting of care. When providing peripartum care in out-of-hospital settings, the certified nurse-midwife shall only provide care to low-risk women with uncomplicated singleton-term pregnancies who are expected to have an uncomplicated birth. The practice of nurse-midwifery care emphasizes informed consent, preventive care, and early detection and referral of complications to physicians and surgeons. While practicing in a hospital setting, the certified nurse-midwife shall collaboratively care for women with more complex health needs.*

~~(c) As used in this article, "supervision" shall not be construed to require the physical presence of the supervising physician.~~

~~(d)~~

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

~~(e)~~

*(d)* Any regulations promulgated by a state department that affect the scope of practice of a certified nurse-midwife shall be developed in consultation with the board.

SEC. 4. Section 2746.51 of the Business and Professions Code is amended to read:

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

~~(1) The~~ *the* drugs or devices are furnished or ordered ~~incidentally~~ *related* to the provision of any of the following:

~~(A)~~

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

~~(B)~~

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

~~(C)~~

*(3)* Care rendered, consistent with the certified nurse-midwife's educational preparation or for which clinical competency has been established and maintained, to persons within a facility specified in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the

Health and Safety Code, a clinic as specified in Section 1204 of the Health and Safety Code, a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code, a licensed birth center as defined in Section 1204.3 of the Health and Safety Code, or a special hospital specified as a maternity hospital in subdivision (f) of Section 1250 of the Health and Safety Code.

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

~~(2) The drugs or devices are furnished or ordered by a certified nurse-midwife in accordance with standardized procedures or protocols. For purposes of this section, standardized procedure means a document, including protocols, developed and approved by the supervising physician and surgeon, the certified nurse-midwife, and the facility administrator or his or her designee. The standardized procedure covering the furnishing or ordering of drugs or devices shall specify all of the following:~~

~~(A) Which certified nurse-midwife may furnish or order drugs or devices.~~

~~(B) Which drugs or devices may be furnished or ordered and under what circumstances.~~

~~(C) The extent of physician and surgeon supervision.~~

~~(D) The method of periodic review of the certified nurse-midwife's competence, including peer review, and review of the provisions of the standardized procedure.~~

~~(3) If Schedule II or III controlled substances, as defined in Sections 11055 and 11056 of the Health and Safety Code, are furnished or ordered by a certified nurse-midwife, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician and surgeon. For Schedule II controlled substance protocols, the provision for furnishing the Schedule II controlled substance shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.~~

~~(4) The furnishing or ordering of drugs or devices by a certified nurse-midwife occurs under physician and surgeon supervision. For purposes of this section, no physician and surgeon shall supervise more than four certified nurse-midwives at one time. Physician and surgeon supervision shall not be construed to require~~

~~the physical presence of the physician, but does include all of the following:~~

~~(A) Collaboration on the development of the standardized procedure or protocol.~~

~~(B) Approval of the standardized procedure or protocol.~~

~~(C) Availability by telephonic contact at the time of patient examination by the certified nurse-midwife.~~

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

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

~~(3) A physician and surgeon may determine the extent of supervision necessary pursuant to this section in the furnishing or ordering of drugs and devices.~~

~~(4) A copy of the standardized procedure or protocol relating to the furnishing or ordering of controlled substances by a certified nurse-midwife shall be provided upon request to any licensed pharmacist who is uncertain of the authority of the certified nurse-midwife to perform these functions.~~

~~(5)~~

*(3)* Certified nurse-midwives who are certified by the board and hold an active furnishing number, who are currently authorized ~~through standardized procedures or protocols~~ to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration shall provide documentation of continuing education specific to the use of

Schedule II controlled substances in settings other than a hospital based on standards developed by the board.

(c) Drugs or devices furnished or ordered by a certified nurse-midwife may include Schedule II controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) ~~under the following conditions:~~

~~(1) The~~ *when the* drugs and devices are furnished or ordered in accordance with requirements referenced in ~~paragraphs (2) to (4), inclusive, of subdivision (a) and in~~ paragraphs (1) to (3), inclusive, of subdivision (b).

~~(2) When Schedule II controlled substances, as defined in Section 11055 of the Health and Safety Code, are furnished or ordered by a certified nurse-midwife, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician and surgeon.~~

(d) Furnishing of drugs or devices by a certified nurse-midwife means the act of making a pharmaceutical agent or agents available to the ~~patient in strict accordance with a standardized procedure or protocol. Use of the term "furnishing" in this section shall include the following:~~ *patient.*

~~(1) The ordering of a drug or device in accordance with the standardized procedure or protocol.~~

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

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

*(f) A certified nurse-midwife is authorized 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 consistent with nurse-midwifery education preparation.*

SEC. 5. Section 2746.52 of the Business and Professions Code is amended to read:

2746.52. *(a)* Notwithstanding Section 2746.5, the certificate to practice nurse-midwifery authorizes the holder to perform and repair episiotomies, and to repair first-degree and second-degree lacerations of the perineum, in a licensed acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, ~~and~~ *in* a licensed alternate birth center, as defined in paragraph (4) of subdivision (b) of Section 1204 of the Health and Safety Code, ~~but only if all of the following conditions are met:~~ *and in a home pursuant to subdivision (a) of Section 2746.5.*

~~(a) The supervising physician and surgeon and any backup physician and surgeon is credentialed to perform obstetrical care in the facility.~~

~~(b) The episiotomies are performed pursuant to protocols developed and approved by all of the following:~~

~~(1) The supervising physician and surgeon.~~

~~(2) The certified nurse-midwife.~~

~~(3) The director of the obstetrics department or the director of the family practice department, or both, if a physician and surgeon in the obstetrics department or the family practice department is a supervising physician and surgeon, or an equivalent person if there is no specifically identified obstetrics department or family practice department.~~

~~(4) The interdisciplinary practices committee, if applicable.~~

~~(5) The facility administrator or his or her designee.~~

~~(c)~~

*(b)* The ~~protocols, and the procedures which shall be developed pursuant to the protocols, shall relate to the performance and repair of episiotomies and the repair of~~ *certified nurse-midwife performing and repairing* first-degree and second-degree lacerations of the ~~perineum, and~~ *perineum* shall do ~~all~~ *both* of the following:

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

(2) Ensure immediate care of patients who are in need of care beyond the scope of practice of the certified nurse midwife, or *provide* emergency care for times when ~~the supervising~~ *a* physician and surgeon is not ~~on the premises.~~ *available.*

~~(3) Establish the number of certified nurse–midwives that a supervising physician and surgeon may supervise.~~

SEC. 6. Section 2746.6 is added to the Business and Professions Code, to read:

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

SEC. 7. Section 4061 of the Business and Professions Code is amended to read:

4061. (a) ~~No~~ *A* manufacturer's sales representative shall *not* distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. However, a certified nurse-midwife who functions pursuant to ~~a standardized procedure or protocol described in~~ Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to a protocol described in Section 3502.1, or a naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, may sign for the request and receipt of complimentary samples of a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician. A review process, consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the complimentary samples requested and received by a nurse practitioner, certified nurse-midwife, physician assistant, or naturopathic doctor, shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor, if applicable, receiving the samples pursuant

to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

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

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

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

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

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

(3) The name of the patient or patients.

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

(5) The date of issue.

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

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

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

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

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

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

(i) Prescriptions dispensed by a veterinarian.

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

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

(B) This paragraph applies to outpatient pharmacies only.

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

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

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

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

pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to Section 4052.1, 4052.2, or 4052.6.

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

SEC. 9. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) ~~No~~ *A* prescriber shall *not* dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

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

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

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

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

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

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

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

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

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

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

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** ACR 29
**Author:** Frazier
**Bill Date:** April 20, 2015, Amended
**Subject:** Donate Life California Day: Driver's License
**Sponsor:** Donate Life California

## DESCRIPTION OF CURRENT LEGISLATION:

This resolution would make findings and declarations regarding the importance of organ donation. This resolution would proclaim April 20, 2015, as Department of Motor Vehicles (DMV)/Donate Life California Day and the month of April 2015 as DMV/Donate Life California Month in California. This resolution would encourage all Californians to register with the Donate Life California Registry when applying for or renewing a driver's license or identification card.

## ANALYSIS:

This resolution makes the following findings and declarations:

- Organ, tissue, eye, and blood donation are compassionate and life-giving acts looked upon and recognized in the highest regard. A single individual's donation of heart, lungs, liver, kidneys, pancreas, and small intestine can save up to eight lives, the donation of tissue can save and enhance lives of up to 50 others, and a single blood donation can help save three people in need.
- There are currently more than 123,000 individuals nationwide and over 22,000 Californians currently on the national organ transplant wait list. While about one-third of these patients receive a transplant each year, another one-third die while waiting due to a shortage of donated organs.
- A California resident can register with the Donate Life California Registry when applying for or renewing his or her driver's license or identification card at the DMV, which is on its tenth year as the official partner of Donate Life California.
- Nearly 12 million Californians have joined together to save lives by signing up with the state-authorized Donate Life California Organ and Tissue Donor Registry to ensure their wishes of donating their organs are recognized and honored.
- Minorities are more likely to need a life-saving transplant due to higher incidences of hypertension, diabetes, and hepatitis, which are conditions that can potentially lead to organ failure. In California, Latinos make up 39% of those waiting for life-saving transplants, Pacific Islanders make up 20%, and African Americans another 12%.

This resolution would proclaim April 20, 2015, as DMV/Donate Life California Day and April 2015 as DMV/Donate Life California Month in California. This resolution would encourage all Californian to register with the Donate Life California Registry when applying for or renewing a driver's license or identification card.

The Board voted to be the honorary state sponsor of Donate Life California's specialized license plate in 2013, because the license plate helped to increase awareness and raise money for organ and tissue donation, education and outreach. The Board has also supported similar resolutions in the past for the same reasons. This resolution will also help to raise awareness by proclaiming April 20, 2015 as DMV/Donate Life California Day and April 2015 as DMV/Donate Life California Month. Board staff suggests that the Board support this bill.

**FISCAL:** None

**SUPPORT:** Donate Life California (Sponsor)

**OPPOSITION**: None on file

**POSITION:** Recommendation: Support

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

# Assembly Concurrent Resolution No. 29

**Introduced by Assembly Member Frazier**

(Principal coauthor: Senator Runner)

***(Coauthors: Assembly Members Achadjian, Alejo, Travis Allen, Atkins, Baker, Bigelow, Bloom, Bonta, Brown, Burke, Calderon, Campos, Chang, Chau, Chávez, Chiu, Chu, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Beth Gaines, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Grove, Hadley, Harper, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Perea, Quirk, Rendon, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, and Wood)***

(Coauthor: Senator Berryhill)

February 23, 2015

Assembly Concurrent Resolution No. 29—Relative to organ donation.

LEGISLATIVE COUNSEL'S DIGEST

ACR 29, as amended, Frazier. Donate Life California Day: driver's license.

This measure would designate April 20, 2015, as DMV/Donate Life California Day in the State of California and the month of April 2015, as DMV/Donate Life California Month in the State of California, and

would encourage all Californians to sign up with the Donate Life California Organ and Tissue Donor Registry.

Fiscal committee: no.

WHEREAS, Organ, tissue, eye, and blood donation are compassionate and life-giving acts looked upon and recognized in the highest regard; and

WHEREAS, More than 123,000 individuals nationwide and over 22,000 Californians are currently on the national organ transplant wait list. While about one-third of these patients receive a transplant each year, another one-third die while waiting due to a shortage of donated organs; and

WHEREAS, A single individual's donation of heart, lungs, liver, kidneys, pancreas, and small intestine can save up to eight lives, the donation of tissue can save and enhance the lives of up to 50 others, and a single blood donation can help three people in need; and

WHEREAS, Millions of lives each year are saved and enhanced by donors of organs, tissue, eyes, and blood; and

WHEREAS, The California Department of Motor Vehicles is celebrating 100 years of service to the State of California and ten years as the official partner of Donate Life California; and

WHEREAS, A California resident can register with the Donate Life California Registry when applying for or renewing his or her driver's license or identification card at the Department of Motor Vehicles; and

WHEREAS, Nearly twelve million Californians have joined together to save lives by signing up with the state-authorized Donate Life California Organ and Tissue Donor Registry to ensure that their wishes to be an organ, eye, and tissue donor are recognized and honored; and

WHEREAS, Minorities are more likely to need a life-saving transplant due to higher incidences of hypertension, diabetes, and hepatitis, conditions that can potentially lead to organ failure and placement on the national organ transplant waiting list; and

WHEREAS, Nationwide, minorities make up 58 percent of organ transplant candidates and 64 percent of those awaiting kidney transplants. In California, Latinos make up 39 percent of those waiting for life-saving transplants, Asians and Pacific Islanders 20 percent, and African Americans another 12 percent; and

WHEREAS, Minorities make up more than one-half of the population of high school students in California, according to the State Department of Education. These high school students will have the opportunity to make a decision about saving lives and joining the state-authorized Donate Life California Registry to ensure that their wishes to be organ, eye, and tissue donors are recognized and honored; and

WHEREAS, Donate Life California has developed a comprehensive Educator Resource Guide that includes many of the health education content standards for California public schools. This Educator Resource Guide includes lesson plans and educational DVDs about organ, eye, and tissue donation, and the Donate Life California Registry created specifically for the youth population; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That in recognition of April as National Donate Life Month, the Legislature proclaims April 20, 2015, as DMV/Donate Life California Day in the State of California, and April 2015 as DMV/Donate Life California Month in the State of California. In doing so, the Legislature encourages all Californians to check "YES" when applying for or renewing a driver's license or identification card, or by signing up at www.donatelifecalifornia.org or www.donevidacalifornia.org; and be it further

*Resolved,* that the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 19
**Author:** Wolk
**Bill Date:** March 25, 2015, Amended
**Subject:** Physician Orders for Life Sustaining Treatment Form: Statewide Registry
**Sponsor:** Author
**Position:** Support in Concept

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the California Physician Orders for Life Sustaining Treatment (POLST) statewide registry by January 1, 2016.

## BACKGROUND

In the early 1990's, Congress passed the federal Patient Self-Determination Act and the POLST program was developed to address challenges related to advance care planning, most commonly used for frail and elderly patients. In 2008, AB 3000 (Wolk) created the California POLST, a standardized form that helps to ensure patient's wishes are honored regarding medical treatment towards the end of life. The POLST form is not an advance directive, it compliments an advance directive by identifying the patient's treatment preferences. Currently, the POLST form is a paper document.

## ANALYSIS

This bill would enact the California POLST Registry Act. This bill would require the California Health and Human Services Agency (CHHS) to establish and operate the California POLST statewide registry (Registry), for the purpose of collecting a POLST form received from a health care provider or their designee and disseminating the information in the form to an authorized user. CHHS would be allowed to utilize a contractor to operate and maintain the Registry. CHHS would be required to adopt all rules necessary for the operation of the Registry, which shall include, but not be limited to, the following:

- The means by which an initial or subsequent POLST form may be submitted to, or withdrawn from, the Registry, which shall include a method for electronic delivery of this information and the use of legally sufficient electronic signatures.
- Appropriate and timely methods by which the information in the Registry may be disseminated to an authorized user.
- Procedures for verifying the identity of an authorized user.
- Procedures to ensure the accuracy of, and to appropriately protect the confidentiality of, POLST forms submitted to the Registry.
- The requirement that a patient, or when appropriate, his or her legally recognized health care decision maker, receive confirmation or receipt that the patient's POLST form has

been received by the Registry.

- The ability of the physician who signed the POLST form, or his or her designee, and of a patient, or, when appropriate, his or her legally recognized health care decision maker, to review the information in the POLST form for accuracy.
- The ability of a patient, or, when appropriate, his or her legally recognized health care decision maker, to withdraw a POLST form from the Registry.

This bill would require the operation of the Registry to comply with state and federal privacy and security laws and regulations.

This bill would require a physician or physician designee who completes a POLST form with a patient or his or her legally recognized health care decision maker to include the POLST form in the patient's official medical record. The physician or physician designee is also required to submit a copy of the POLST form to the Registry, unless the patient chooses not to participate in the Registry. This bill includes liability protections for authorized users acting upon information obtained from the Registry.

According to the author's office, the POLST form is currently a paper document and a key barrier to the effectiveness of the POLST is inaccessibility of the document, which is intended to guide care. This bill would allow medical personnel to access a patient's POLST form in a timely manner in emergency medical situations, when they are most needed.

Although the idea of making the POLST form available electronically is a good one, many of the details on how this will happen are not included in this bill. This bill does not currently address funding, who will have access to the POLST forms as authorized users, and how the electronic registry will operate. This bill tasks CHHS with establishing, operating, and maintaining the registry, and also deciding who will become authorized users. Because the details on how this Registry will operate are not included in the bill, the Board took a support in concept position on this bill. The Board will review this bill again once the details are included in the bill regarding how the Registry will work for physicians who will be required to enter POLST information into the Registry, how the Registry will be funded, and who will have access to the Registry.

**FISCAL:** None to the Board

**SUPPORT:** Coalition for Compassionate Care of California (Sponsor); AARP; Alliance of Catholic Health Care: Blue Shield of California; California Assisted Living Association; California Association of Physician Groups; American College of Emergency Physicians, California Chapter; California Commission on Aging; California Hospital Association; California Long-Term Care Ombudsman Association; Long Term Ombudsman Services of San Luis Obispo County; Medical Board of California (in concept); Petaluma Valley Hospital; Providence Health and Services Southern California; Queen of the Valley Medical

Center; Riverside Family Physicians; Santa Rosa Memorial Hospital; St. Joseph Hospital, Orange; St. Jude Medical Center, Fullerton; and Numerous Individuals

**OPPOSITION:** California Advocates for Nursing Home Reform (unless amended)
California Right to Life Committee
Numerous Individuals

AMENDED IN SENATE MARCH 25, 2015

# SENATE BILL No. 19

**Introduced by Senator Wolk**
**(Coauthors: Senators ~~Monning~~ *Hancock, Monning,* and Vidak)**
(Coauthors: Assembly Members ~~Bonilla~~ *Bonilla, Dababneh,* and Eggman)

December 1, 2014

An act to add Section 4788 to the Probate Code, relating to resuscitative measures.

LEGISLATIVE COUNSEL'S DIGEST

SB 19, as amended, Wolk. Physician Orders for Life Sustaining Treatment form: statewide registry.

Existing law defines a request regarding resuscitative measures as a written document, signed by an individual with capacity, or a legally recognized health care decisionmaker, and the individual's physician, directing a health care provider regarding resuscitative measures. Existing law defines a Physician Orders for Life Sustaining Treatment form, which is commonly referred to as a POLST form, and provides that a request regarding resuscitative measures includes a POLST form. Existing law requires that a POLST form and the medical intervention and procedures offered by the form be explained by a health care provider. Existing law distinguishes a request regarding resuscitative measures from an advance health care directive.

This bill would enact the California POLST Registry Act. The bill would require the California Health and Human Services Agency to establish and operate a statewide registry system, to be known as the California POLST Registry, for the purpose of collecting POLST forms received from ~~health care providers. Health care providers~~ *a physician*

*or physician designee. A physician or physician designee* who ~~complete~~ *completes* a POLST form would be required to include the POLST form in the patient's medical record and would be required to submit the form to the registry, unless a patient or his or her health care decisionmaker chooses not to participate in the registry. The bill would require the agency to disseminate the information in the POLST form to an authorized user. The bill defines "authorized user" to include a health care provider. The bill would require the agency to adopt rules for, among other things, the operation of the registry, including the means by which POLST forms would be submitted electronically, revised, and revoked, the capability to check the POLST form for accuracy prior to it being made available, the appropriate and timely methods for dissemination of POLST form information, the procedures for verifying the identity of an authorized user, and rules for maintaining the confidentiality of a POLST form received by the registry. The bill would require that any disclosure of POLST form information in the registry be made in accordance with applicable *state and* federal privacy *and security* laws *and regulations*. The bill would provide immunity for an authorized user who acts upon information obtained from the registry and acts in good faith.

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

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

SECTION 1. This act shall be known, and may be cited, as the California POLST Registry Act.

SEC. 2. Section 4788 is added to the Probate Code, to read:

4788. (a) For purposes of this section:

(1) "Agency" means the California Health and Human Services Agency.

(2) "Authorized user" means a person authorized by the agency to submit information to, or to receive information from, the POLST registry, including health care ~~providers.~~ *providers and their designees.*

(3) "Health care provider" has the meaning provided in Section 4621.

(4) "POLST form" means a Physician Orders for Life Sustaining Treatment form that fulfills the requirements of Section 4780.

(5) "Registry" means the California POLST Registry established by the agency pursuant to this section.

(b) The agency shall establish and operate a statewide registry system, to be known as the California POLST Registry, for the purpose of collecting a POLST form received from a ~~health care provider~~ *physician or physician designee* and disseminating the information in the form to an authorized user. The registry may be operated and maintained by a contractor of the agency. The agency shall adopt all rules necessary for the operation of the registry, which shall include, but not be limited to, the following:

(1) The means by which ~~a~~ *an initial or subsequent* POLST form may be submitted to, *or withdrawn from,* the registry, ~~may be revised, and may be revoked,~~ which shall include a method for electronic delivery of this information and the use of legally sufficient electronic signatures.

(2) Appropriate and timely methods by which the information in the registry may be disseminated to an authorized user.

(3) Procedures for verifying the identity of an authorized user.

(4) Procedures to ensure the accuracy of, and to appropriately protect the confidentiality of, POLST forms submitted to the registry.

(5) The requirement that a patient, ~~or~~ *or, when appropriate,* his or her legally recognized health care decisionmaker, receive a confirmation or a receipt that the patient's POLST form has been received by the registry.

(6) The ability of *the physician who signed the POLST form, or his or her designee, and of* a patient, ~~or~~ *or, when appropriate,* his or her legally recognized health care decisionmaker, to review the information in the patient's POLST form after it has been entered into the registry, and to confirm that it is accurate, prior to the information being available to an authorized user.

(7) The ability of a patient, ~~or~~ *or, when appropriate,* his or her legally recognized health care decisionmaker, to ~~amend or~~ withdraw a POLST form from the registry.

~~(c) The registry and the information it contains shall be the property of the state and any disclosure of information in a POLST form received by the registry shall be made in a manner consistent with the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).~~

*(c) The operation of the registry shall comply with state and federal privacy and security laws and regulations, including, but not limited to, compliance with the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) and the regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996, found at parts 160 and 164 of Title 45 of the Code of Federal Regulations.*

(d) A ~~health care provider~~ *physician or physician designee* who completes a POLST form with a patient or his or her legally recognized health care decisionmaker shall include the POLST form in the patient's official medical record. The ~~health care provider~~ *physician or physician designee* shall submit a copy of the POLST form to the registry unless the patient or the legally recognized health care decisionmaker chooses not to participate in the registry.

(e) An authorized user acting upon information obtained from the registry is not subject to criminal prosecution, civil liability, discipline for unprofessional conduct, administrative sanction, or any other sanction, if the person acted in good faith and had no knowledge that the action or decision would be inconsistent with a health care decision that the individual signing the POLST form would have made on his or her own behalf, or on behalf of the patient, under the circumstances.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 22
**Author:** Roth
**Bill Date:** April 21, 2015, Amended
**Subject:** Residency Training
**Sponsor:** Author

## DESCRIPTION OF CURRENT LEGISLATION:

This bill was substantially amended since the last Board Meeting. This bill would now establish a nonprofit public benefit corporation, the California Medical Residency Training Foundation, and would create the California Medical Residency Training Fund (Fund) to establish and fund residency positions.

## BACKGROUND

Graduate medical education (GME) or residency training, is the second phase of the educational process that prepares physicians for independent practice. Resident physicians typically spend three to seven years in GME training. Medicare has been the largest single funder of GME, but in 1997 Congress capped the number of residency slots for which hospitals could receive Medicare GME funding and has not increased this cap. In California, there are many more individuals that would like a residency slot in California, than there are residency positions available.

## ANALYSIS

This bill would require the Office of Statewide Health Planning and Development (OSHPD) to establish a nonprofit public benefit corporation, the California Medical Residency Training Foundation (Foundation). The Foundation is required to be governed by a board of trustees (BOT) consisting of a total of 13 members. Nine members would be appointed by the Governor, one would be appointed by the Speaker of the Assembly, one would be appointed by the Senate Committee on Rules, and two members would be members of the Medical Board of California (Board), appointed by the Board. All members considered for appointment must have an interest in increasing the number of medical residencies in California, an interest in increasing access to health care in underserved areas of California, and the ability and desire to solicit funds for the purposes of this bill. The Governor shall appoint the president of the BOT and the members appointed by the Board shall serve a four-year term. The Director of OSHPD, after consultation with the president of the BOT, may appoint a council of advisors (Council) comprised of up to nine members. The Council will advise the Director and the BOT on technical matters and programmatic issues related to the Foundation. Members of the BOT and the Council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred. The members appointed by the Board shall be reimbursed by

the Board for any actual and necessary expenses incurred. No member of the Foundation BOT shall be considered to be engaged in activities inconsistent and incompatible with his or her duties solely as a result of membership on the Board.

The Foundation shall do the following:

- Solicit and accept funds from business, industry, foundations, and other private or public sources for the purpose of establishing and funding new residency positions in medically underserved areas of California.
- Encourage public and private sector institutions, including hospitals, colleges, universities, community clinics, and other health agencies and organizations to identify and provide locations for the establishment of new residency positions in the medically underserved areas of California.
- Make recommendations to the Director of OSHPD on the establishment of new residency positions, including the locations, fields of practice, and levels of funding in order to fulfill the goals of this bill.
- Recommend to the Director of OSHPD the disbursement of moneys deposited in the Fund to establish and fund residency positions.
- Recommend to the Director of OSHPD that a portion of the funds solicited form the private sector be used for the administrative requirements of the Foundation.
- Prepare and submit an annual report to the Legislature documenting the amount of money solicited from the private sector, the amount of money deposited from the Foundation into the Fund, the recommendations for the location and fields of practice of future residency positions, and prospective fundraising goals.

OSHPD shall do all of the following:

- Provide technical expertise and staff support to the Foundation in meeting its responsibilities.
- Provide financial management for the Foundation.
- Establish, with the recommendation of the BOT, criteria for ranking the geographical areas in California that have the highest need for primary care residencies, and give preference to proposals that would establish residency positions in these areas. The criteria shall be based on the size of an area's population that is enrolled in, or eligible for, Medi-Cal and the shortage of primary care physicians in the area.
- Solicit proposals for new residency positions from public and private sector institutions. OSHPD shall establish a uniform process that requires that the proposals contain all necessary and pertinent information, including location, medical practice area, demonstration of need, and amount of funding needed.
- Enter into contracts with public and private sector institutions in order to fund and establish residency positions at, or in association with, these institutions. The Director of OSHPD shall seek the recommendations of the Council and Foundation as to which proposals best fulfill the objective of this bill.
- Prior to the first distribution of funds for any new residency position, ensure that the residency position has been, or will be, approved by the Accreditation Council for Graduate Medical Education (ACGME).

- Provide all of the following information to the BOT:
    - The areas of California that are deficient in primary care services.
    - The areas of California that have the highest number of Medi-Cal enrollees and persons eligible to enroll in Medi-Cal, by proportion of population.
    - The proposals received from public and private sector institutions that train primary care physicians.
    - Other information that OSHPD or BOT finds relevant to assist the BOT in making its recommendations on possible locations for new residency positions.
- Monitor the residencies established pursuant to this bill. OSHPD must prepare and submit an annual report to the Foundation and the Legislature documenting the amount of money contributed to the Fund by the Foundation, the amount of money expended from the Fund, the purposes of those expenditures, the number and location of residency positions established and funded, and the recommendations for the location of future residency positions.

This bill would set forth a framework that would allow OSHPD to establish a nonprofit public benefit corporation, the Foundation, which would solicit funding for new residency positions, and that Foundation to be governed by the BOT, which would include two members appointed by the Board, and the members would be members of the Medical Board. This bill sets forth criteria for soliciting funding, and criteria for establishing new residency positions. This bill would also require public reporting on the funding received, and how it is used. This bill will increase funding for residency programs in California, which will help promote the Board's mission of increasing access to care for consumers. This bill would also allow more physicians to receive residency training and potentially end up practicing in California. As such, Board staff is suggesting that the Board change its position from support in concept, to support.

**FISCAL:** Minimal and absorbable fiscal impact to reimburse the two Board Members for actual and necessary expenses incurred for participating in the BOT.

**SUPPORT:** None on file

**OPPOSITION:** None on file

**POSITION:** Recommendation: Support

AMENDED IN SENATE APRIL 21, 2015

# SENATE BILL No. 22

**Introduced by Senator Roth**

December 1, 2014

An act to add ~~Article 4~~ *Chapter 6* (commencing with Section ~~128310)~~ *128590)* to ~~Chapter 4 of~~ Part 3 of Division 107 of the Health and Safety Code, relating to health ~~care.~~ *care, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 22, as amended, Roth. ~~Medical residency training program grants.~~ *Residency training.*

Existing law, the Song-Brown Family Physician 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 the Office 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, 9 members appointed by the Governor, one member appointed by the Speaker of the Assembly, one member appointed by the Senate Committee on Rules, and 2 members of the Medical Board of California appointed by the Medical Board of California.*

The bill would create the ~~Graduate~~ *California* Medical ~~Education Trust~~ *Residency Training* Fund in the State Treasury, ~~to consist of funds from public-private partnerships created to fund grants to~~ *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 ~~and any interest that accrues on those moneys, and would require that moneys in the fund be used, upon appropriation by the Legislature, for those purposes, as specified.~~ *in medically underserved areas of the state, as specified. By creating a continuously appropriated fund, the bill would make an appropriation.* The bill would require the Office of Statewide Health Planning and ~~Development, in consultation with the California Healthcare Workforce Policy Commission, to develop criteria, upon receipt of private donations of sufficient moneys to develop the criteria, for distribution of available funds.~~ *Development to, among other things, provide technical support and financial management for the foundation, establish criteria for ranking geographical areas with the highest need for primary care residencies, and give preference to funding residencies in those areas, as specified.*

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

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

*SECTION 1. Chapter 6 (commencing with Section 128590) is added to Part 3 of Division 107 of the Health and Safety Code, to read:*

*CHAPTER 6. CALIFORNIA MEDICAL RESIDENCY TRAINING FOUNDATION*

*128590. As used in this chapter:*

*(a) "Board" means the Board of Trustees of the California Medical Residency Training Foundation.*

*(b) "Commission" means the California Healthcare Workforce Policy Commission.*

*(c) "Director" means the Director of the Office of Statewide Health Planning and Development.*

*(d) "Foundation" means the California Medical Residency Training Foundation.*

*(e) "Fund" means the Medical Residency Training Fund.*

*(f) "Office" means the Office of Statewide Health Planning and Development.*

*(g) "Primary care" means the medical practice areas of family medicine, general surgery, internal medicine, obstetrics and gynecology, pediatrics, and psychiatry.*

*(h) "Residency position" means a graduate medical education residency position in the field of primary care.*

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

*(2) The foundation shall be governed by a board of trustees consisting of a total of 13 members. Nine members shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, one member shall be appointed by the Senate Committee on Rules, and two members of the Medical Board of California shall be appointed by the Medical Board of California.*

*(3) The members of the foundation board appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules may include representatives of public and private hospitals, community clinics, public and private health insurance providers, the pharmaceutical industry, associations of health care practitioners, and other appropriate members of health or related professions.*

*(4) All persons considered for appointment shall have an interest in increasing the number of medical residencies in the state, an*

*interest in increasing access to health care in underserved areas of California, and the ability and desire to solicit funds for the purposes of this chapter, as determined by the appointing power.*

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

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

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

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

*(e) The members appointed by the Medical Board of California shall be appointed to serve a four-year term.*

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

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

*(h) (1) Members of the board and members of the council shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with his or her duties as a member of the board or the council.*

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

*(i) Notwithstanding any law relating to incompatible activities, no member of the foundation board shall be considered to be engaged in activities inconsistent and incompatible with his or her*

*duties solely as a result of membership on the Medical Board of California.*

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

*128592. The foundation shall do the following:*

*(a) Solicit and accept funds from business, industry, foundations, and other private or public sources for the purpose of establishing and funding new residency positions in medically underserved areas of the state.*

*(b) Encourage public and private sector institutions, including hospitals, colleges, universities, community clinics, and other health agencies and organizations to identify and provide locations for the establishment of new residency positions in the medically underserved areas of the state.*

*(c) Make recommendations to the director on the establishment of new residency positions, including the locations, fields of practice, and levels of funding in order to fulfill the goals of this chapter.*

*(d) Recommend to the director the disbursement of moneys deposited in the California Medical Residency Training Fund to establish and fund residency positions.*

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

*(f) Prepare and submit an annual report to the Legislature documenting the amount of money solicited from the private sector, the amount of money deposited from the foundation into the fund, the recommendations for the location and fields of practice of future residency positions, and the prospective fundraising goals.*

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

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

*(b) Provide financial management for the foundation.*

*(c) Establish, with the recommendation of the board, criteria for ranking the geographical areas of the state that have the highest*

*need for primary care residencies, and give preference to proposals that would establish residency positions in these areas. These criteria shall be based on both of the following:*

*(1) The size of an area's population that is enrolled in, or eligible for, Medi-Cal.*

*(2) The shortage of primary care physicians in the area.*

*(d) Solicit proposals for new residency positions from public and private sector institutions, including hospitals, colleges, universities, community clinics, and other health agencies and organizations that train primary care residents. The office shall establish a uniform process that requires that these proposals contain all necessary and pertinent information, including, but not limited to, all of the following:*

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

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

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

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

*(e) Enter into contracts with public and private sector institutions, including hospitals, colleges, universities, community clinics, and other health agencies and organizations in order to fund and establish residency positions at, or in association with, these institutions. The director shall seek the recommendations of the commission and foundation as to which proposals best fulfill this chapter's objective.*

*(f) Prior to the first distribution of funds for any new residency position, ensure that the residency position has been, or will be, approved by the Accreditation Council for Graduate Medical Education.*

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

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

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

*(3) The proposals received from institutions that train primary care physicians pursuant to subdivision (d).*

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

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

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

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

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

*(b) The primary purpose of the fund is to allocate funding for new residency positions throughout the state. Money in the fund shall also be used to pay for the cost of administering the goals of the foundation, and for any other purpose authorized by this chapter.*

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

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

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

~~SECTION 1. Article 4 (commencing with Section 128310) is added to Chapter 4 of Part 3 of Division 107 of the Health and Safety Code, to read:~~

~~Article 4. Medical Residency Training Program Grants~~

~~128310. (a) The Graduate Medical Education Trust Fund is hereby created in the State Treasury.~~

~~(b) Moneys in the fund, upon appropriation by the Legislature, shall be used solely for the purpose of funding grants to graduate medical education residency programs in California.~~

~~(c) Notwithstanding Section 16305.7 of the Government Code, all interest earned on the moneys that have been deposited into the fund shall be retained in the fund and used for purposes consistent with the fund.~~

~~(d) The fund shall consist of all of the following:~~

~~(1) Funds from public-private partnerships created for the purpose of funding grants to graduate medical education residency programs in California.~~

~~(2) Any interest that accrues on amounts in the fund.~~

~~(e) (1) The Office of Statewide Health Planning and Development, in consultation with the California Healthcare Workforce Policy Commission, shall develop criteria for distribution of available moneys in the fund.~~

~~(2) The office shall develop criteria only upon receipt of donations sufficient to cover the costs of developing the criteria.~~

~~(f) In developing the criteria, the office shall give priority to programs that meet the following specifications:~~

~~(1) Are located in medically underserved areas, as defined in Section 128552.~~

~~(2) Have a proven record of placing graduates in those medically underserved areas.~~

~~(3) Place an emphasis on training primary care providers.~~

~~(4) Place an emphasis on training physician specialties that are most needed in the community in which the program is located.~~

~~(g) Moneys appropriated from the fund may also be used to fund existing graduate medical education residency slots as well as new graduate medical education residency slots.~~

~~(h) Whenever applicable, the office shall utilize moneys appropriated from the fund to provide a match for available federal funds for graduate medical education.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 128
**Author:** Wolk and Monning
**Bill Date:** April 14, 2015, Amended
**Subject:** End of Life
**Sponsor:** Author
**Position:** No Position

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the End of Life Option Act in California, which would give a mentally competent, adult California resident who has a terminal disease the legal right to ask for and receive a prescription from his or her physician to hasten death, as long as required criteria is met.

## BACKGROUND

The End of Life Option Act is modeled after Oregon law that was enacted in 1997. This medical practice is also recognized in Washington, Vermont, and Montana under the State Supreme Court's 2010 decision in the *Baxter* case. The data collected in Oregon shows that the end of life option is used in fewer than 1 in 500 deaths (60 to 70 a year out of a total of over 30,000 deaths). Comparable numbers are seen in the State of Washington.

## ANALYSIS

This bill would allow a competent, qualified individual, who is an adult with a terminal disease, to make a request to receive a prescription for aid-in-dying medication, if all of the following conditions are satisfied:

- The qualified individual's attending physician has determined the individual to be suffering from a terminal disease. Terminal disease is defined as an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.
- The qualified individual has voluntarily expressed the wish to receive a prescription for aid-in-dying medication.
- The qualified individual is a resident of California and is able to establish residency through either possession of a California driver's license or other identification issued by the State of California, being registered to vote in California, evidence that the person owns or leases property in California, or the filing of a California tax return for the most recent tax year.
- The qualified individual documents his or her request.

This bill would specify that a person may not be considered a qualified individual

solely because of age or disability. This bill would specify that a request for a prescription for aid-in-dying medication can only be made by the qualified individual, not through a power of attorney, advance health care directive, or a conservator.

This bill would require a qualified individual to submit two oral requests, a minimum of 15 days apart, and a written request for aid-in-dying medication to his or her attending physician. The attending physician must receive all three requests required. A valid written request must meet all of the following conditions:

- Shall be in the form specified in this bill;
- Shall be signed and dated, in the presence of two witnesses, by the qualified individual;
- Shall be witnessed by at least two other adult persons who, in the presence of the qualified individual, shall attest that to the best of their knowledge and belief, the qualified individual is competent, acting voluntarily, and not being coerced to sign the request. This bill would specify that one of the two witnesses may be related to the qualified individual, or may own, operate, or be employed at a health care facility where the qualified individual is receiving medical treatment or resides. The attending physician cannot be one of the witnesses.

This bill would specify that a qualified individual may rescind his or her request for aid-in-dying medication and the attending physician is required to offer the qualified individual an opportunity to rescind the request.

This bill defines an attending physician as the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease. Before prescribing aid-in-dying medication, the attending physician must do all of the following:

- Make the initial determination whether the requesting adult is competent, whether the requesting adult has a terminal disease, whether the requesting adult has voluntarily made the request for aid-in-dying medication, and whether the requesting adult is a qualified individual, defined as a competent adult who resides in California.
- Ensure the qualified individual is making an informed decision by discussing his or her medical diagnosis and prognosis; the potential risks and probable result associated with taking the aid-in-dying medication; the possibility that he or she may choose to obtain the aid-in-dying medication but not take it; and the feasible alternatives or additional treatment opportunities, including comfort care, hospice care, palliative care, and pain control.
- Refer the qualified individual to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the qualified individual is competent and has complied with the requirements of this bill. The consulting physician must be qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease. The consulting physician must examine the qualified individual and his or her relevant medical records, confirm in writing the attending physician's diagnosis and prognosis, and verify that the qualified individual is competent, acting voluntarily, and has made an informed decision. The consulting physician must fulfill the record documentation required by

this bill.

- Refer the qualified individual for counseling, if appropriate. No aid-in-dying medication shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgement.
- Ensure that the qualified individual's request does not arise from coercion or undue influence from another person by discussing with the qualified individual, outside of the presence of any other persons, whether or not the qualified individual is feeling coerced or unduly influenced by another person.
- Counsel the qualified individual about the importance of having another person present when he or she takes the aid-in-dying medication, the importance of not taking the aid-in-dying medication in a public place, the importance of notifying the next of kin of his or her request for aid-in-dying medication, and the importance of participating in a hospice program.
- Inform the qualified individual that he or she may rescind the request for aid-in-dying medication at any time and in any manner.
- Offer the qualified individual the opportunity to rescind the request for aid-in-dying medication before prescribing the aid-in-dying medication.
- Verify, immediately prior to writing the prescription for aid-in-dying medication, that the qualified individual is making an informed decision.
- Ensure that all appropriate steps are carried out in accordance with this bill before writing a prescription.
- Fulfill the required record documentation pursuant to this bill.

If the requirements are met, the attending physician may deliver the aid-in-dying medication in any of the following ways:

- Dispense aid-in-dying medication directly if the physician is authorized to dispense medicine under California law and has a current United States Drug Enforcement Administration certificate.
- With the qualified individual's written consent, the attending physician may contact a pharmacist and deliver the prescription to the pharmacist, who shall dispense the medications to the qualified individual, the attending physician, or a person expressly designated by the qualified individual.

This bill contains liability protections for health care service plans, life insurance policies, and individuals requesting aid-in-dying medications. This bill would specify that a health care provider or professional organization or association may not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this bill.

This bill would also specify that if a health care provider is unwilling or unable to carry out an individual's request for aid-in-dying medication and the individual transfers care to a new health care provide, the prior health care provider shall transfer a copy of the individual's relevant medical records to the new provider, upon request. This bill also includes provision on

the rights of a health care provider to prohibit its employees, independent contractors, or other entities from participating in the provision of this bill and sets forth the notification requirements that must be met for this prohibition

This bill would not allow a health care provider to be sanctioned for making an initial determination that an individual has a terminal disease and informing him or her of the medical prognosis; providing information about the End of Life Option Act to a patient upon request; and providing an individual, upon request, with a referral to another physician. This bill would specify that the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions taken pursuant to these provisions and health care providers may be sanctioned for conduct and actions not included and provided for if the conduct and actions do not comply with the standards and practices set forth by the Board.

This bill would require the State Public Health Officer to annually review a sample of records maintained pursuant to this bill and must adopt regulations establishing additional reporting requirements for physicians and pharmacists, in order to collect information to determine utilization and compliance. The information shall be confidential and the department shall provide an annual statistical report with aggregate data, which shall be made available to the public.

This bill would require a person who has custody or control of any unused aid-in-dying medication prescribed, after the death of the patient, to personally deliver the unused medication for disposal by delivering it to the nearest qualified facility that properly disposes controlled substances, or if none available, must dispose of it by lawful means.

This bill would require the following to be documented in the individual's medical record:

- All oral requests for aid-in-dying medication
- All written requests for aid-in-dying medication
- The attending physician's diagnosis and prognosis, determination that a qualified individual is competent, acting voluntarily, and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified individual.
- A report of the outcome and determinations made during counseling, if performed.
- The attending physician's offer to the qualified individual to rescind his or her request at the time of the qualified individual's second oral request.
- A note by the attending physician indicating that the requirements in this bill have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying medication prescribed.

The Board, as a regulatory agency, historically has not taken positions on policy bills that affect an individual's rights in end-of-life health care choices. Per the Board's direction, Board staff have met with the author's office and provided technical concerns and amendments have been made to address the Board's technical concerns. The Board will not be taking a policy position on this bill.

**FISCAL:** None to the Board

**SUPPORT:** AIDS Healthcare Foundation; AIDS Project Los Angeles (APLA); Alameda County Board of Supervisors; American Civil Liberties Union of California (ACLU); American Federation of State, County and Municipal Employees (AFSCME) AFL-CIO; American Medical Student Association (AMSA); American Medical Women's Association (AMWA); California Church IMPACT; California Primary Care Association (CPCA); California Senior Legislature (CSL); Cardinal Point at Mariner Square Residents' Association; City Council of Cathedral City; Civil Rights For Seniors; Compassion & Choices; Conference of California Bar Associations (CCBA); Congress of California Seniors (CCS); County of Santa Cruz, Board of Supervisors; Dave Jones, Insurance Commissioner; Death with Dignity National Center; Democrats of the Napa Valley Club; Democratic Party of Orange County; Democratic Party of Santa Barbara County; Democratic Women of Santa Barbara; Desert Stonewall Democrats; Diane Feinstein, United States Senator; Equality California; GLMA: Health Professionals Advancing LGBT Equality; Hemlock Society of San Diego; Gray Panthers of Long Beach; Laguna Woods Democratic Club; Lampoc Valley Democratic Club; Libertarian Party of Orange County; Los Angeles LGBT Center; Napa County Democratic Central Committee (NCDCC); National Association of Social Workers, California Chapter (NASW-CA); National Center for Lesbian Rights (NCLR); National Council of Jewish Women California (NCJW CA); Older Women's League-SF; Progressive Democrats of America (PDA) California; San Francisco AIDS Foundation; San Francisco for Democracy; San Mateo Democracy for America; Secular Coalition for California; Sierra County Democratic Party; Shared Crossing Project; Social Action and Missions Team of Bloom in the Desert Ministries United Church of Christ, Palm Springs, California; Sonoma County Democratic Party; South Orange County Democratic Club (SOCDC); I Care For Your Loved One: Compassionate Senior Services; Trinity County Progressives; and thousands of individuals

**OPPOSITION:** Agudath Israel of California; Alliance of Catholic Health Care; ARC and United Cerebral Palsy California Collaboration; Arroyo Grande Community Hospital; Association of Northern California Oncologists (ANCO); Autistic Self Advocacy Network (ASAN); California Catholic Conference, Inc.; California Disability Alliance (CDA); California Family Alliance; California Foundation for Independent Living Centers (CFILC); California Hospital Association (CHA); California Nurses for

Ethical Standards; California ProLife Council; California Right to Life Committee, Inc.; Calvary Chapel Golden Springs; Capitol Resource Institute; Concerned Women for America; Dignity Health; Disability Rights Education & Defense Fund (DREDF); Faith & Public Policy (ministry of Calvary Chapel Chino Hills; Life Legal Defense Foundation; Life Priority Network; International Life Services; Medical Oncology Association of Southern California (MOASC); Mission Hospital; Mission Hospital Laguna Beach; National Right to Life Committee; North Orange County ProLife Chapter; Pajaro Valley Senior Coalition; Petaluma Valley Hospital; Providence Health & Services; Queen of the Valley Medical Center; Redwood Memorial Hospital, Fortuna; San Joaquin ProLife Council; Santa Rosa Memorial Hospital; Scholl Institute of Bioethics; Silicon Valley Independent Living Center; Sisters of Social Service of Los Angeles; St. Joseph Hospital, Eureka; St. Joseph Hospital, Orange; St. Jude Medical Center; St. Mary Medical Center; and thousands of individuals

AMENDED IN SENATE APRIL 14, 2015

AMENDED IN SENATE MARCH 17, 2015

# SENATE BILL No. 128

**Introduced by Senators Wolk and Monning**
**(Principal coauthors: Senators Jackson and Leno)**
(Principal ~~coauthor: Assembly Member Eggman~~ *coauthors: Assembly Members Alejo and Eggman*)
**(Coauthors: Senators Block, Hall, Hancock, Hernandez, Hill, McGuire, and Wieckowski)**
(Coauthors: Assembly Members Chu, Cooper, Frazier, Cristina Garcia, Quirk, Rendon, and Mark Stone)

January 20, 2015

An act to add Part 1.85 (commencing with Section 443) to Division 1 of the Health and Safety Code, relating to end of life.

LEGISLATIVE COUNSEL'S DIGEST

SB 128, as amended, Wolk. End of life.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal ~~illness,~~ *disease,* as defined, to make a request for medication prescribed pursuant to these provisions for the purpose of ending his or her life. The bill would establish the procedures for making these requests. The bill would also establish the forms to request aid-in-dying medication ~~and~~ *and,* under specified ~~circumstances~~ *circumstances,* an interpreter declaration

to be signed subject to penalty of perjury, thereby imposing a crime and state-mandated local program.

This bill would prohibit a provision in a contract, will, or other ~~agreement, or in a health care service plan contract, or health benefit plan contract,~~ *agreement* from being conditioned upon or affected by a person making or rescinding a request for the above-described medication. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, *health care service plan, contract, or health benefit plan,* or the rate charged for any ~~policy,~~ *policy or plan contract,* from being conditioned upon or affected by the request. *The bill would prohibit an insurance carrier from providing any information in communications made to an individual about the availability of aid-in-dying medication absent a request by the individual, his or her attending physician at the behest of the individual, or the individual's designee. The bill would also prohibit any communication from containing both the denial of treatment and information as to the availability of aid-in-dying medication coverage.*

This bill would provide immunity from civil or criminal liability or professional disciplinary action for participating in good faith compliance with the act, and would specify that the immunities and prohibitions on sanctions of a health care provider are solely reserved for conduct provided for by the bill. The bill would provide that participation in activities authorized pursuant to this bill shall be voluntary. *The bill would authorize a health care provider to prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this act while on the premises owned or under the management or direct control of that prohibiting health care provider, or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.*

This bill would make it a felony to knowingly alter or forge a request for medication to end an individual's life without his or her authorization or to conceal or destroy a rescission of a request for medication, if it is done with the intent or effect of causing the individual's death. The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request medication for the purpose of ending his or her life or to destroy a rescission of a request. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that nothing in its provisions be construed to authorize ending

a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute, among others, suicide or homicide.

This bill would require the State ~~Department of~~ Public Health *Officer* to adopt regulations ~~regarding the collection of information~~ *establishing additional reporting requirements for physicians and pharmacists* to determine the use ~~of~~ *of,* and compliance ~~with~~ *with,* the act, and would require the ~~department~~ *state Public Health Officer* to annually review a sample of certain records and *the State Department of Public Health to* make a statistical report of the information collected.

*This bill would require specified information to be documented in the individual's medical record, including, among other things, all oral and written requests for aid-in-dying medication.*

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.

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:*

SECTION 1. Part 1.85 (commencing with Section 443) is added to Division 1 of the Health and Safety Code, to read:

PART 1.85. END OF LIFE OPTION ACT

443. This part shall be known and may be cited as the End of Life Option Act.

443.1. As used in this part, the following definitions shall apply:

(a) "Adult" means an individual 18 years of age or older.

(b) "Aid-in-dying medication" means medication determined and prescribed by a physician for a qualified individual, which the

qualified individual may choose to self-administer to bring about his or her death due to a terminal ~~illness.~~ *disease.*

(c) "Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal ~~illness.~~ *disease.*

(d) "Competent" means that, in the opinion of a court or in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, the individual has the ability to make and communicate an informed decision to health care providers, including communication through a person familiar with the individual's manner of communicating, if that person is available.

(e) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's ~~illness.~~ *terminal disease.*

(f) "Counseling" means one or more consultations, as necessary, between an individual and a psychiatrist or psychologist licensed in this state for the purpose of determining that the individual is competent and is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

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

(h) "Health care provider" or "provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, including, but not limited to, physicians, doctors of osteopathy, and pharmacists. "Health care provider" or "provider" includes a health care facility as identified in Section 1250.

(i) "Informed decision" means a decision by ~~a terminally ill individual~~ *an individual with a terminal disease* to request and obtain a prescription for medication that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:

(1) The individual's medical diagnosis and prognosis.

(2) The potential risks associated with taking the medication to be prescribed.

(3) The probable result of taking the medication to be prescribed.

(4) The possibility that the individual may choose not to obtain the medication or may obtain the medication but may decide not to take it.

(5) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(j) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

(k) "Physician" means a doctor of medicine or osteopathy currently licensed to practice medicine in this state.

(*l*) "Public place" means any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access.

(m) "Qualified individual" means a competent adult who is a resident of California and has satisfied the requirements of this part in order to obtain a prescription for medication to end his or her life.

(n) "Self-administer" means a qualified individual's affirmative, conscious, and physical act of using the medication to bring about his or her own death.

(o) "Terminal ~~illness"~~ *disease"* means an incurable and irreversible ~~illness~~ *disease* that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

443.2. (a) A competent, qualified individual who is ~~a terminally ill adult~~ *an adult with a terminal disease* may make a request to receive a prescription for aid-in-dying medication if all of the following conditions are satisfied:

(1) The qualified individual's attending physician has determined the individual to be suffering from a terminal ~~illness.~~ *disease.*

(2) The qualified individual has voluntarily expressed the wish to receive a prescription for aid-in-dying medication.

(3) The qualified individual is a resident of California and is able to establish residency through any of the following means:

(A) Possession of a California driver license or other identification issued by the State of California.

(B) Registration to vote in California.

(C) Evidence that the person owns or leases property in California.

(D) Filing of a California tax return for the most recent tax year.

(4) The qualified individual documents his or her request pursuant to the requirements set forth in Section 443.3.

(b) A person may not qualify under the provisions of this part solely because of age or disability.

(c) A request for a prescription for aid-in-dying medication under this part shall not be made on behalf of the patient through a power of attorney, an advance health care directive, or a conservator.

443.3. (a) A qualified individual wishing to receive a prescription for aid-in-dying medication pursuant to this part shall submit two oral requests, a minimum of 15 days apart, and a written request to his or her attending physician. *The attending physician must receive all three requests required pursuant to this section.*

(b) A valid written request for aid-in-dying medication under subdivision (a) shall meet all of the following conditions:

(1) The request shall be in substantially the form described in Section 443.9.

(2) The request shall be signed and ~~dated~~ *dated, in the presence of two witnesses in accordance with paragraph (3),* by the qualified individual seeking the medication.

(3) The request shall be witnessed by at least two other adult persons who, in the presence of the qualified individual, shall attest that to the best of their knowledge and belief the qualified individual is all of the following:

(A) Competent.

(B) Acting voluntarily.

(C) Not being coerced to sign the request.

(c) Only one of the two witnesses at the time the written request is signed may:

(1) Be related to the qualified individual by blood, marriage, or adoption or be entitled to a portion of the person’s estate upon death.

(2) Own, operate, or be employed at a health care facility where the qualified individual is receiving medical treatment or resides.

(d) The attending physician of the qualified individual shall not be one of the witnesses required pursuant to paragraph (3) of subdivision (b).

443.4. (a) A qualified individual may at any time rescind his or her request for aid-in-dying medication without regard to the qualified individual's mental state.

(b) A prescription for aid-in-dying medication provided under this part may not be written without the attending physician offering the qualified individual an opportunity to rescind the request.

443.5. (a) Before prescribing aid-in-dying medication, the attending physician shall do all of the following:

(1) Make the initial determination of all of the following:

(A) Whether the requesting adult is competent.

(B) Whether the requesting adult has a terminal ~~illness.~~ *disease.*

(C) Whether the requesting adult has voluntarily made the request for aid-in-dying medication pursuant to Sections 443.2 and 443.3.

(D) Whether the requesting adult is a qualified individual pursuant to subdivision (m) of Section 443.1.

(2) Ensure the qualified individual is making an informed decision by discussing with him or her all of the following:

(A) His or her medical diagnosis and prognosis.

(B) The potential risks associated with taking the aid-in-dying medication to be prescribed.

(C) The probable result of taking the aid-in-dying medication to be prescribed.

(D) The possibility that he or she may choose to obtain the *aid-in-dying* medication but not take it.

(E) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(3) Refer the qualified individual to a consulting physician for medical confirmation of the ~~diagnosis,~~ *diagnosis and* prognosis, and for a determination that the qualified individual is competent and has complied with the provisions of this part.

(4) Refer the qualified individual for counseling if appropriate. *No aid-in-dying medication shall be prescribed until the person performing the counseling determines that the patient is not*

*suffering from a psychiatric or psychological disorder or depression causing impaired judgment.*

(5) Ensure that the qualified individual's request does not arise from coercion or undue influence by another ~~person.~~ *person by discussing with the qualified individual, outside of the presence of any other persons, whether or not the qualified individual is feeling coerced or unduly influenced by another person.*

(6) Counsel the qualified individual about the importance of all of the following:

(A) Having another person present when he or she takes the aid-in-dying medication prescribed pursuant to this part.

(B) Not taking the aid-in-dying medication in a public place.

*(C) Notifying the next of kin of his or her request for aid-in-dying medication. A qualified individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason.*

*(D) Participating in a hospice program.*

(7) Inform the qualified individual that he or she may rescind the request for aid-in-dying medication at any time and in any manner.

(8) Offer the qualified individual an opportunity to rescind the request for *aid-in-dying* medication before prescribing the aid-in-dying medication.

(9) Verify, immediately prior to writing the prescription for *aid-in-dying* medication, that the qualified individual is making an informed decision.

(10) Ensure that all appropriate steps are carried out in accordance with this part before writing a prescription for aid-in-dying medication.

(11) Fulfill the record documentation ~~that may be~~ required under ~~Section 443.16.~~ *Sections 443.16 and 443.19.*

(b) If the conditions set forth in subdivision (a) are satisfied, the attending physician may deliver the aid-in-dying medication in any of the following ways:

(1) Dispense aid-in-dying medications directly, including ancillary medication intended to minimize the qualified individual's discomfort, if the attending physician meets all of the following criteria:

(A) Is authorized to dispense medicine under California law.

(B) Has a current United States Drug Enforcement Administration (USDEA) certificate.

(C) Complies with any applicable administrative rule or regulation.

(2) With the qualified individual's written consent, the attending physician may contact a pharmacist, inform the pharmacist of the prescriptions, and deliver the written prescriptions personally, by mail, or electronically to the pharmacist, who may dispense the medications to the qualified individual, the attending physician, or a person expressly designated by the qualified individual and with the designation delivered to the pharmacist in writing or verbally.

(c) Delivery of the dispensed medication to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by: personal delivery, United Parcel Service, United States Postal Service, Federal Express, or by messenger ~~service.~~ *service with a signature required at delivery.*

443.6. Prior to a qualified individual obtaining aid-in-dying medication from the attending physician, the consulting physician shall perform all of the following:

(a) Examine the qualified individual and his or her relevant medical records.

(b) Confirm in writing the attending physician's diagnosis and prognosis.

(c) Verify, in the opinion of the consulting physician, that the qualified individual is competent, acting voluntarily, and has made an informed decision.

(d) Fulfill the record documentation ~~that may be~~ required under ~~Section 443.16.~~ *Sections 443.16 and 443.19.*

443.7. (a) Unless otherwise prohibited by law, the attending physician may sign the qualified individual's death certificate.

(b) The cause of death listed on ~~an individual's death certificate who uses aid-in-dying medication~~ *the death certificate of an individual who uses aid-in-dying medication* shall be the underlying terminal ~~illness.~~ *disease.*

443.8. A qualified individual may not receive a prescription for aid-in-dying medication pursuant to this part, unless he or she has made an informed decision. Immediately before writing a prescription for aid-in-dying medication under this part, the

attending physician shall verify that the individual is making an informed decision.

443.9. (a) A request for aid-in-dying medication as authorized by this part shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I, ....., am an adult of sound mind and a resident of the State of California.

I am suffering from ....., which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment opportunities, including comfort care, hospice care, palliative care, and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner if I choose to take it, and I authorize my attending physician to contact any pharmacist about my request.

INITIAL ONE:

..... I have informed one or more members of my family of my decision and taken their opinions into consideration.

..... I have decided not to inform my family of my decision.

..... I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying medication to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the medication.

I make this request voluntarily, without reservation, and without being coerced.

Signed:.....

Dated:.....

DECLARATION OF WITNESSES

We declare that the person signing this request:

(a) is personally known to us or has provided proof of identity;

(b) signed this request in our presence;

(c) is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and

(d) is not an individual for whom either of us is the attending physician.

.....Witness 1/Date

.....Witness 2/Date

NOTE: Only one of the two witnesses may be a relative (by blood, marriage, or adoption) of the person signing this request or be entitled to a portion of the person's estate upon death. Only one of the two witnesses may own, operate or be employed at a health care facility where the person is a patient or resident.

(b) (1) The written language of the request shall be written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and his or her attending or consulting physicians.

(2) Notwithstanding paragraph (1), the written request may be prepared in English even where the conversations or consultations or interpreted conversations or consultations where conducted in a language other than English if the English language form includes an attached interpreter's declaration that is signed under penalty of perjury. The interpreter's declaration shall state words to the effect that:

I (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT TARGET LANGUAGE).

On (insert date) at approximately (insert time), I read the "Request for Medication to End My Life" to (insert name of individual/patient) in (insert target language).

Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form under his/her own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

I declare that I am fluent in English and (insert target language) and further declare under penalty of perjury that the foregoing is true and correct.

Executed at (insert city, county, and state) on this (insert day of month) of (insert month), (insert year).

X_____Interpreter signature

X_____Interpreter printed name

X_____Interpreter address

(3) An interpreter provided by paragraph (2) shall not be related to the qualified individual by blood, marriage, or adoption or be entitled to a portion of the person's estate upon death. An

interpreter provided by paragraph (2) shall ~~be qualified as described in subparagraph (H) of paragraph (2) of subdivision (c) of Section 1300.67.04 of Title 28 of the California Code of Regulations.~~ *meet the standards promulgated by the California Healthcare Interpreters Association or the National Council on Interpreting in Healthcare or other standards deemed acceptable for health care providers in California.*

443.10. (a) A provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for aid-in-dying medication, is not valid.

(b) An obligation owing under any contract in effect on *or after* January 1, 2016, may not be conditioned or affected by a qualified individual making or rescinding a request for aid-in-dying medication.

443.11. (a) The sale, procurement, or issuance of a life, health, accident insurance or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for aid-in-dying medication.

(b) Notwithstanding any other law, a qualified individual's act of self-administering aid-in-dying medication may not have an effect upon a life, health, or accident insurance or annuity policy other than that of a natural death from the underlying ~~illness.~~ *disease.*

*(c) An insurance carrier shall not provide any information in communications made to an individual about the availability of aid-in-dying medication absent a request by the individual, his or her attending physician at the behest of the individual, or the individual's designee. Any communication shall not include both the denial of treatment and information as to the availability of aid-in-dying medication coverage. For the purposes of this subdivision, "insurance carrier" means a health care service plan pursuant to Section 1345 or a health insurer pursuant to Section 106 of the Insurance Code.*

443.12. (a) Notwithstanding any other law, a person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this part, including an individual who is present when a qualified individual self-administers the prescribed aid-in-dying medication.

(b) A health care provider or professional organization or association ~~may~~ *shall* not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty ~~for participating or refusing to participate in good faith compliance with this part.~~ *for participating in good faith compliance with this part or for refusing to participate in accordance with subdivision (d).*

~~(c) A request by an individual to an attending physician or to a pharmacist to dispense aid-in-dying medication or provide aid-in-dying medication in good faith compliance with the provisions of this part does not constitute neglect or elder abuse for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.~~

*(c) (1) A request by a qualified individual to an attending physician to provide aid-in-dying medication in good faith compliance with the provisions of this part shall not provide the sole basis for the appointment of a guardian or conservator.*

*(2) A request by an individual to a pharmacist to dispense aid-in-dying medication in good faith compliance with the provisions of this part shall not constitute neglect or elder abuse for any purpose of law.*

(d) (1) Participation in activities authorized pursuant to this part shall be voluntary. A person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of a patient's decision under this part, except as ~~otherwise required by law.~~ *required by Sections 442 through 442.7, inclusive.*

(2) If a health care provider is unable or unwilling to carry out ~~an~~ *a qualified* individual's request under this part and the *qualified* individual transfers care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the *qualified* individual's relevant medical records to the new health care provider.

*(e) (1) Subject to paragraph (2), notwithstanding any other law, a health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this part while on premises owned or under the management or direct control of that prohibiting health care provider or while*

*acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.*

*(2) A health care provider that elects to prohibit its employees, independent contractors, or other persons or entities, including health care providers, from participating in activities under this part, as described in paragraph (1), shall first give notice of the policy prohibiting participation in this part to the individual or entity. A health care provider that fails to provide notice to an individual or entity in compliance with this paragraph shall not be entitled to enforce such a policy against that individual or entity.*

*(3) Subject to compliance with paragraph (2), the prohibiting health care provider may take action, including, but not limited to, the following, as applicable, against any individual or entity that violates this policy:*

*(A) Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff.*

*(B) Suspension, loss of employment, or other action authorized by the policies and practices of the prohibiting health care provider.*

*(C) Termination of any lease or other contract between the prohibiting health care provider and the individual or entity that violates the policy.*

*(D) Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting health care provider and the individual or entity in violation of the policy.*

*(4) Nothing in this subdivision shall be construed to prevent, or to allow a prohibiting health care provider to prohibit any other health care provider, employee, independent contractor, or other person or entity from any of the following:*

*(A) Participating, or entering into an agreement to participate, in activities under this part, while on premises that are not owned or under the management or direct control of the prohibiting provider or while acting outside the course and scope of the participant's duties as an employee of, or an independent contractor for, the prohibiting health care provider.*

*(B) Participating, or entering into an agreement to participate, in activities under this part as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the prohibiting provider.*

*(5) In taking actions pursuant to paragraph (3), a health care provider shall comply with all procedures required by law, its own policies or procedures, and any contract with the individual or entity in violation of the policy, as applicable.*

*(6) For purposes of this subdivision:*

*(A) "Notice" means a separate statement in writing advising of the prohibiting health care provider policy with respect to participating in activities under this part.*

*(B) "Participating, or entering into an agreement to participate, in activities under this part" means doing or entering into an agreement to do any one or more of the following:*

*(i) Performing the duties of an attending physician specified in Section 443.5.*

*(ii) Performing the duties of a consulting physician specified in Section 443.6.*

*(iii) Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying medication pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 443.5.*

*(iv) Being present when the qualified individual takes the aid-in-dying medication prescribed pursuant to this part.*

*(C) "Participating, or entering into an agreement to participate, in activities under this part" does not include doing, or entering into an agreement to do, any of the following:*

*(i) Making an initial determination that a patient has a terminal illness and informing the patient of the medical prognosis.*

*(ii) Providing information to a patient about the End of Life Option Act.*

*(iii) Providing a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating in the activities authorized by the End of Life Option Act.*

*(7) Any action taken by a prohibiting provider pursuant to this subdivision shall not be reportable under Sections 800 through 809.9, inclusive, of the Business and Professions Code. The fact that a health care provider participates in activities under this part shall not be the sole basis for a complaint or report by another health care provider of unprofessional or dishonorable conduct under Sections 800 through 809.9, inclusive, of the Business and Professions Code.*

~~(e)~~

*(f)* Nothing in this part shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

443.13. *(a)* A health care provider may not be sanctioned for any of the following:

~~(a)~~

*(1)* Making an initial determination pursuant to the standard of care that an individual has a terminal ~~illness~~ *disease* and informing him or her of the medical prognosis.

~~(b)~~

*(2)* Providing information about the End of Life Option Act to a patient upon the request of the individual.

~~(c)~~

*(3)* Providing an individual, upon request, with a referral to another physician.

~~(d) Contracting with an individual to act outside the course and scope of the provider's capacity as an employee or independent contractor of a health care provider that prohibits activities under this part.~~

*(b) A health care provider that prohibits activities under this part in accordance with subdivision (e) of Section 443.12 shall not sanction an individual health care provider for contracting with a qualified individual to engage in activities authorized by this part if the individual health care provider is acting outside of the course and scope of his or her capacity as an employee or independent contractor of the prohibiting health care provider.*

~~(e)~~

*(c)* Notwithstanding any contrary provision in this section, the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions taken pursuant to this part and those health care providers may be sanctioned for conduct and actions not included and provided for in this part if the conduct and actions do not comply with the standards and practices set forth by the Medical Board of California.

443.14. (a) Knowingly altering or forging a request for *aid-in-dying* medication to end an individual's life without his or her authorization or concealing or destroying a rescission of a request for *aid-in-dying* medication is punishable as a felony if the act is done with the intent or effect of causing the individual's death.

(b) Knowingly coercing or exerting undue influence on an individual to request *aid-in-dying* medication for the purpose of ending his or her life or to destroy a rescission of a request is punishable as a felony.

(c) For purposes of this section, "knowingly" has the meaning provided in Section 7 of the Penal Code.

(d) Nothing in this section ~~limits further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.~~ *shall be construed to limit civil liability.*

(e) The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this part.

443.15. Nothing in this part may be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purposes, constitute suicide, assisted suicide, mercy killing, homicide, or elder abuse under the law.

443.16. (a) The State Public Health ~~Officer, in consultation with the State Department of Social Services,~~ *Officer shall annually review a sample of records maintained pursuant to Section 443.19 and* shall adopt regulations establishing *additional* reporting requirements for physicians and pharmacists pursuant to this part.

(b) The reporting requirements shall be designed to collect information to determine utilization and compliance with this part. The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient's family, and any medical provider or pharmacist involved with the patient under the provisions of this part.

(c) Based on the information collected, the department shall provide an annual compliance and utilization statistical report aggregated by age, gender, race, ethnicity, and primary language spoken at home and other data the department may determine relevant. The department shall make the report public within 30 days of completion of each annual report.

443.17. A person who has custody or control of any unused aid-in-dying medication prescribed pursuant to this part after the death of the patient shall personally deliver the unused aid-in-dying medication for disposal by delivering it to the nearest qualified

facility that properly disposes of controlled substances, or if none is available, shall dispose of it by lawful means.

443.18. Any governmental entity that incurs costs resulting from a qualified individual terminating his or her life pursuant to the provisions of this part in a public place shall have a claim against the estate of the qualified individual to recover those costs and reasonable attorney fees related to enforcing the claim.

*443.19. All of the following shall be documented in the individual's medical record:*

*(a) All oral requests for aid-in-dying medication.*

*(b) All written requests for aid-in-dying medication.*

*(c) The attending physician's diagnosis and prognosis, determination that a qualified individual is competent, acting voluntarily, and has made an informed decision, or that the attending physician has determined that the individual is not a qualified individual.*

*(d) The consulting physician's diagnosis and prognosis, and verification that the qualified individual is competent, acting voluntarily, and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified individual.*

*(e) A report of the outcome and determinations made during counseling, if performed.*

*(f) The attending physician's offer to the qualified individual to rescind his or her request at the time of the qualified individual's second oral request.*

*(g) A note by the attending physician indicating that all requirements under Sections 443.5 and 443.6 have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying medication prescribed.*

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 443.16 to the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) Any limitation to public access to personally identifiable patient data collected pursuant to Section 443.16 of the Health and

Safety Code as proposed to be added by this act is necessary to protect the privacy rights of the patient and his or her family.

(b) The interests in protecting the privacy rights of the patient and his or her family in this situation strongly outweigh the public interest in having access to personally identifiable data relating to services.

(c) The statistical report to be made available to the public pursuant to subdivision (c) of Section 443.16 of the Health and Safety Code is sufficient to satisfy the public's right to access.

SEC. 3. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 277
**Author:** Pan and Allen
**Bill Date:** April 22, 2015, Amended
**Subject:** Pupil Health: Vaccinations
**Sponsor:** Authors

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would eliminate the personal belief exemption from the requirement that children receive specified vaccines for certain infectious diseases prior to being admitted to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center.

## BACKGROUND

According to the authors, in early 2015, California became the epicenter of a measles outbreak which was the result of unvaccinated individuals infecting vulnerable individuals including children who are unable to receive vaccinations due to health conditions or age requirements. According to the Centers for Disease Control and Prevention, there were more cases of measles in January 2015 in the United States than in any one month in the past 20 years. Measles has spread through California and the United States, in large part, because of communities with large numbers of unvaccinated people. Between 2000 and 2012, the number of Personal Belief Exemptions (PBE) from vaccinations required for school entry that were filed rose by 337%. In 2000, the PBE rate for Kindergartners entering California schools was under 1%. However, as of 2012, that number rose to 2.6%. From 2012 to 2014, the number of children entering Kindergarten without receiving some or all of their required vaccinations due to their parent's personal beliefs increased to 3.15%. In certain pockets of California, exemption rates are as high as 21% which places our communities at risk for preventable diseases. Given the highly contagious nature of diseases such as measles, vaccination rates of up to 95% are necessary to preserve herd immunity and prevent future outbreaks.

According to the United States Department of Health and Human Services, when a critical portion of a community is immunized against a contagious disease, most members of the community are protected against that disease because there is little opportunity for an outbreak. Even those who are not eligible for certain vaccines, such as infants, pregnant women, or immunocompromised individuals, get some protection because the spread of contagious disease is contained. This is known as community immunity.

Existing law provides that each child between the ages of 6 and 18 years is subject to compulsory full-time education, and requires attendance at the public full-time day school or

continuation school or classes for the full school day. Existing law requires parents and guardians to send the student to school for the full school day. Currently, the admission of a student to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center is prohibited, unless, prior to the child's first admission to that institution, the child has been fully immunized. Immunizations are currently required for Diphtheria, Haemophilus influenzae type b, Measles, Mumps, Pertussis (whooping cough), Poliomyelitis, Rubella, Tetanus, Hepatitis B, Varicella (chickenpox), and any other disease deemed appropriate by the California Department of Public Health (CDPH), taking into consideration the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

Existing law provides that immunization is not required for admission to a school or other institution if the parent or guardian files with the school a letter or affidavit that documents which immunizations have been given and which immunizations have not been given on the basis that they are contrary to his or her beliefs (personal belief exemption). The personal belief exemption letter or affidavit must be accompanied by a form prescribed by CDPH that must include specified information, including a signed attestation from the health care practitioner that indicates that the health care practitioner provided the parent or guardian with information regarding the benefits and risks of the immunization and the health risks of the communicable diseases to the child and the community, and a written statement signed by the parent or guardian that indicates that the signer has received the information provided by the health care practitioner.

Existing law also provides that a child is exempt from immunization requirements if the parent or guardian files with the school or other institution a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization (medical exemption).

**ANALYSIS**

This bill would delete the personal belief exemption from the immunization requirements. This bill would exempt a pupil in a home-based private school or a pupil who is enrolled in independent study from the immunization requirements. This bill would expand existing annual notification requirements for school districts to include notification to parents or guardians of the immunization rates for each of the required immunizations for the school in which a student is enrolled.

Vaccines have been scientifically proven to be effective in preventing illnesses. Ensuring that children receive the ACIP recommended vaccination schedule is the standard of care, unless there is a medical reason that the child should not receive the vaccine; this bill

would still allow for a medical exemption to address these circumstances. As such, Board staff is suggesting that the Board support this bill.

**FISCAL:** None to the Board

**SUPPORT:** California Association for Nurse Practitioners; California Chapter of the American College of Emergency Physicians; California Coverage & Health Initiatives; California Medical Association; California Primary Care Association; California School Boards Association; California School Nurses Organization; CAPG; Children Now; Children's Defense Fund-California; County Health Executives Association of California; Health Officers Association of California; Kaiser Permanente; Los Angeles County Board of Supervisors; Reed Union School District; The Children's Partnership; Vaccinate California; and numerous individuals

**OPPOSITION:** Association of American Physicians and Surgeons; AWAKE California; California Chiropractic Association; California Coalition for Health Choice; Californians for Freedom of Choice; California Nurses for Ethical Standards; Educate. Advocate.; Homeschool Association of California; National Autism Association of California; Pacific Justice Institute; ParentalRights.Org; Plumas Charter School; Safe Minds; Standing Tall Chiropractic; The Canary Party; Unblind My Mind; and numerous individuals

**POSITION:** Recommendation: Support

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE APRIL 9, 2015

# SENATE BILL No. 277

**Introduced by Senators Pan and Allen**
(Principal coauthor: Assembly Member Gonzalez)
**(Coauthors: Senators Beall, Block, De León, Hall, Hertzberg, Hill, Jackson, Leno, McGuire, Mitchell, Stone, Wieckowski, and Wolk)**
(Coauthors: Assembly Members Baker, Chiu, Cooper, Low, McCarty, Nazarian, Rendon, Mark Stone, and Wood)

February 19, 2015

An act to add Section 48980.5 to the Education Code, and to amend Sections 120325, 120335, and 120370 of, and to repeal Section 120365 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 277, as amended, Pan. Public health: vaccinations.

(1) Existing law prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her admission to that institution he or she has been fully immunized against various diseases, including measles, mumps, and pertussis, subject to any specific age criteria. Existing law authorizes an exemption from those provisions for medical reasons or because of personal beliefs, if specified forms are submitted to the governing authority. Existing law requires the governing authority of a school or other institution to require documentary proof of each entrant's immunization status. Existing law authorizes the governing authority of a school or other institution to temporarily exclude a child from the

school or institution if the authority has good cause to believe that the child has been exposed to one of those diseases, as specified.

This bill would eliminate the exemption from immunization based upon personal beliefs. This bill would except *pupils in* a home-based private school *and students enrolled in an independent study pursuant to specified law* from the prohibition described ~~above of all of the school's pupils are residents of the household or are members of a single family.~~ *above.* The bill would narrow the authorization for temporary exclusion to make it applicable only to a child whose documentary proof of immunization status does not show proof of immunization against one of the diseases described above. The bill would make conforming changes to related provisions.

(2) Existing law requires the governing board of a school district, at the beginning of the first semester or quarter of the regular school term, to make certain notifications to parents or guardians of minor pupils including, among others, specified rights and responsibilities of a parent or guardian and specified school district policies and procedures.

This bill would require the governing board of a school district to also include in the notifications provided to parents or guardians of minor pupils at the beginning of the regular school term the immunization rates for the school in which a pupil is enrolled for each required immunization. By requiring school districts to notify parents or guardians of school immunization rates, the bill would impose a state-mandated local program.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

SECTION 1. Section 48980.5 is added to the Education Code, to read:

48980.5. The notification required pursuant to Section 48980 shall also include the immunization rates for the school in which

a pupil is enrolled for each of the immunizations required pursuant to Section 120335 of the Health and Safety Code.

SEC. 2. Section 120325 of the Health and Safety Code is amended to read:

120325. In enacting this chapter, but excluding Section 120380, and in enacting Sections 120400, 120405, 120410, and 120415, it is the intent of the Legislature to provide:

(a) A means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases:

(1) Diphtheria.

(2) Hepatitis B.

(3) Haemophilus influenzae type b.

(4) Measles.

(5) Mumps.

(6) Pertussis (whooping cough).

(7) Poliomyelitis.

(8) Rubella.

(9) Tetanus.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

(c) Exemptions from immunization for medical reasons.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

(e) Incentives to public health authorities to design innovative and creative programs that will promote and achieve full and timely immunization of children.

SEC. 3. Section 120335 of the Health and Safety Code is amended to read:

120335. (a) As used in this chapter, "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized. This subdivision does not apply to *a pupil in* a home-based private school ~~if all of the pupils are residents of the household or are members of a single family.~~ *or a pupil who is enrolled in an independent study pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code.* The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) Haemophilus influenzae type b.

(3) Measles.

(4) Mumps.

(5) Pertussis (whooping cough).

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing

authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.

~~(f) This section shall become operative on July 1, 2012.~~

SEC. 4. Section 120365 of the Health and Safety Code is repealed.

SEC. 5. Section 120370 of the Health and Safety Code is amended to read:

120370. (a) If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement.

(b) When there is good cause to believe that a child whose documentary proof of immunization status does not show proof of immunization against a communicable disease listed in subdivision (b) of Section 120335 has been exposed to one of those diseases, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 323
**Author:** Hernandez
**Bill Date:** April 22, 2015, Amended
**Subject:** Nurse Practitioners: Scope of Practice
**Sponsor:** Author

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize a nurse practitioner (NP) who holds a national certification to practice without physician supervision in specified settings.

## ANALYSIS:

This bill is very similar to SB 491 (Hernandez) in 2013, which was part of a package of bills intended to expand the scope of NPs, pharmacists, and optometrists. Currently, NPs operate under standardized procedures, that are overseen by a supervising physician. NPs are advanced practice registered nurses (RNs) who have pursued higher education and certification as a NP. There are approximately 17,000 NPs licensed by the Board of Registered Nursing (BRN) in California.

This bill makes findings and declarations regarding the importance of NPs providing safe and accessible primary care. This bill would authorize an NP who holds national certification from a national certifying body recognized by the Board of Registered Nursing (BRN) "certified NP" to practice without the supervision of a physician if the NP practices in one of the following settings:

- Clinic
- Specified health facility, including, a general acute care hospital, acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, correctional treatment center, and hospice facility
- Group practice, including, a professional medical corporation, another form of corporation controlled by physicians, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians that delivers, furnishes, or otherwise arranges for or provides health care services
- Medical group, independent practice association, or any similar association

This bill would allow a certified NP practicing in any of the specified settings to do the following without physician supervision, unless collaboration is specified:

- Order durable medical equipment.
- Certify disability for purposes of unemployment after performance of a physical exam by the certified NP and collaboration with a physician, if necessary.

- Approve, sign, modify, or add to a plan of treatment or plan of care for individuals receiving home health services or personal care services after consultation with the treating physician and surgeon, if necessary.
- Assess patients, synthesize and analyze data, and apply principles of health care
- Manage the physical and psychosocial health status of patients.
- Analyze multiple sources of data, identify a differential diagnosis, and select, implement, and evaluate appropriate treatment.
- Establish a diagnosis by client history, physical examination, and other criteria, consistent with this bill, for a plan of care.
- Order, furnish, prescribe, or procure drugs or devices.
- Delegate tasks to a medical assistant (MA) pursuant to standardized procedures and protocols developed by the NP and MA, that are within the MAs scope of practice.
- Order hospice care as appropriate.
- Order and interpret diagnostic procedures.
- Perform additional acts that require education and training and that are recognized by the nursing profession as appropriate to be performed by an NP.

This bill would require a certified NP to refer a patient to a physician or other licensed health care provider if a situation or condition of the patient is beyond the scope of the education and training of the NP. This bill would require a certified NP to maintain professional liability insurance appropriate for the practice setting.

According to the author, this bill will establish independent practice for certified NPs if they work in specified settings. This will enable them to perform all tasks and functions consistent with their education and training. According to the author, the Institutes of Medicine and the National Council of State Boards of Nursing have recommended full practice for NPs.

This bill significantly expands the scope of practice of a certified NP by establishing independent practice for those certified NPs that work in specified settings. NPs are well qualified to provide medical care when practicing under standardized procedures and physician supervision. The standardized procedures and physician supervision, collaboration, and consultation are in existing law to ensure that the patient care provided by a NP includes physician involvement and oversight, as physicians should be participating in the patient's care in order to ensure consumer protection. In the latest policy committee hearing, the opposition brought up potential oversight of certified NPs by the Medical Board of California (Board), but it is unclear how the Board could have regulatory authority over a licensee of another regulatory board, the BRN. It is also unknown how this bill would affect corporate practice, as the bill does not address this issue.

This bill is very similar to SB 491 from 2013, which the Board opposed. However, this bill would limit independent certified NP practice to specified settings which may involve other health care providers, including physicians. However, in most circumstances, this bill does not require certified NPs to collaborate, consult or work with these other health care providers.

The Board's primary mission is consumer protection and by expanding the scope of practice for a certified NP, patient care and consumer protection could be compromised; as such, Board staff is recommending that the Board take an oppose position on this bill.

**FISCAL:** None

**SUPPORT:** AARP; AltaMed Health Services Corporation; Alzheimer's Association; American Nurses Association/California; Anthem Blue Cross; Association of California Nurse Leaders; Bay Area Council; Blue Shield of California; California Association for Nurse Practitioners; California Association of Nurse Anesthetists; California Association of Physician Groups; California Association of Public Hospitals and Health Systems; California Council of Community Mental Health Agencies; California Family Health Council; California Health and Wellness; California Hospital Association; California Naturopathic Doctors Association; California Pharmacists Association; California Primary Care Association; California Senior Legislature; California Society of Health-System Pharmacists; Congress of California Seniors; Johns Hopkins University Division of Occupational and Environment Medicine; Maxim Healthcare Services, Inc.; Memorial Care Health System; Pacific Clinics; Private Essential Access Community Hospitals; Providence Health and Services; Sharp Healthcare; Small Business Majority; Stanford Health Care; St. Joseph Health; United Nurses Associations of California/Union of Health Care Professionals; University of California; Western University of Health Sciences; and several individuals

**OPPOSITION:** California Chapter of the American College of Cardiology; California Chapter of the American College of Emergency Physicians; California Medical Association; California Society of Plastic Surgeons; California Academy of Family Physicians; and numerous individuals

**POSITION:** Recommendation: Oppose

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)

February 23, 2015

An act to amend *and renumber* Section ~~2835.7 of~~ *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.~~ *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

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.

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:*

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

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

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

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

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

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

~~SEC. 2. Section 2835.7 of the Business and Professions Code is amended to read:~~

~~2835.7. (a) Notwithstanding any other law, a nurse practitioner who holds a national certification from a national certifying body recognized by the board may practice under this section without supervision of a physician and surgeon, if the nurse practitioner meets all the requirements of this article and practices in one of the following:~~

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

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

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

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

~~(5) A group practice, including a professional medical corporation, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians that delivers, furnishes, or otherwise arranges for or provides health care services.~~

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

~~(b) Notwithstanding any other law, in addition to any other practice authorized in statute or regulation, a nurse practitioner may do any of the following:~~

~~(1) Order durable medical equipment. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.~~

~~(2) After performance of a physical examination by the nurse practitioner and collaboration, if necessary, with a physician and surgeon, certify disability pursuant to Section 2708 of the Unemployment Insurance Code.~~

~~(3) For individuals receiving home health services or personal care services, after consultation, if necessary, with the treating physician and surgeon, approve, sign, modify, or add to a plan of treatment or plan of care.~~

~~(4) Assess patients, synthesize and analyze data, and apply principles of health care.~~

~~(5) Manage the physical and psychosocial health status of patients.~~

~~(6) Analyze multiple sources of data, identify a differential diagnosis, and select, implement, and evaluate appropriate treatment.~~

~~(7) Establish a diagnosis by client history, physical examination, and other criteria, consistent with this section, for a plan of care.~~

~~(8) Order, furnish, prescribe, or procure drugs or devices.~~

~~(9) Delegate tasks to a medical assistant pursuant to standardized procedures and protocols developed by the nurse practitioner and medical assistant, that are within the medical assistant's scope of practice.~~

~~(10) Order hospice care, as appropriate.~~

~~(11) Order and interpret diagnostic procedures.~~

~~(12) Perform additional acts that require education and training and that are recognized by the nursing profession as appropriate to be performed by a nurse practitioner.~~

~~(c) A nurse practitioner shall 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 education and training of the nurse practitioner.~~

~~(d) A nurse practitioner practicing under this section shall maintain professional liability insurance appropriate for the practice setting.~~

*SEC. 2. Section 2837 of the Business and Professions Code is amended and renumbered to read:*

~~2837.~~

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

*SEC. 3. Section 2837 is added to the Business and Professions Code, to read:*

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

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

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

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

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

*(5) A group practice, including a professional medical corporation, another form of corporation controlled by physicians and surgeons, a medical partnership, a medical foundation exempt from licensure, or another lawfully organized group of physicians that delivers, furnishes, or otherwise arranges for or provides health care services.*

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

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

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

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

*(3) For individuals receiving home health services or personal care services, after consultation, if necessary, with the treating physician and surgeon, approve, sign, modify, or add to a plan of treatment or plan of care.*

*(4) Assess patients, synthesize and analyze data, and apply principles of health care.*

*(5) Manage the physical and psychosocial health status of patients.*

*(6) Analyze multiple sources of data, identify a differential diagnosis, and select, implement, and evaluate appropriate treatment.*

*(7) Establish a diagnosis by client history, physical examination, and other criteria, consistent with this section, for a plan of care.*

*(8) Order, furnish, prescribe, or procure drugs or devices.*

*(9) Delegate tasks to a medical assistant pursuant to standardized procedures and protocols, developed by the nurse practitioner and medical assistant, that are within the medical assistant's scope of practice.*

*(10) Order hospice care, as appropriate.*

*(11) Order and interpret diagnostic procedures.*

*(12) Perform additional acts that require education and training and that are recognized by the nursing profession as appropriate to be performed by a nurse practitioner.*

*(c) A nurse practitioner shall 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 education and training of the nurse practitioner.*

*(d) A nurse practitioner practicing under this section shall maintain professional liability insurance appropriate for the practice setting.*

~~SEC. 3.~~

*SEC. 4.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 337
**Author:** Pavley
**Bill Date:** April 13, 2015, Amended
**Subject:** Physician Assistants
**Sponsor:** California Academy of Physician Assistants (CAPA)

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish alternative means for a supervising physician to ensure adequate supervision of a physician assistant (PA) for routine care and the administration, provision, or issuance of a Schedule II drug.

## BACKGROUND:

The Physician Assistant Practice Act (Act) was established to encourage the utilization of (PAs) by physicians, and by physicians and podiatrists practicing in the same medical group, and to provide that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. It is also the purpose of the Act to allow for innovative development of programs for the education, training, and utilization of PAs. There are approximately 10,000 PAs practicing in California.

Existing law requires a supervising physician to review, countersign, and date a sample consisting of, at a minimum, five percent of the medical records of patients treated by a PA within 30 days of the date of treatment. Existing law requires the supervising physician to select for review those cases that by diagnosis, problem, treatment, or procedure represent the most significant risk to the patient.

Existing law requires a supervising physician who delegates the authority to issue a drug order to a PA to prepare and adopt a formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. Existing law requires a supervising physician to review and countersign, within seven days, the record of any patient cared for by a PA for whom the PA's Schedule II drug order has been issued or carried out.

In October 2014, hydrocodone combination products (HCPs) were re-scheduled from a Schedule III medication to a Schedule II medication, which, according to the sponsor, significantly increased administrative responsibilities related to documentation in various practice types.

According to the sponsor, this bill recognizes the need to streamline patient care performed by PAs under the supervision of physician and surgeons. The sponsor believes this bill provides greater flexibility to medical practices by offering physicians several options to ensure adequate supervision of PA medical visits.

**ANALYSIS:**

This bill would define a medical records review meeting as a meeting between the supervising physician and the PA during which a sample of medical records is reviewed to ensure adequate supervision of the PA functioning under protocols. The number of medical records and the specific issues to be reviewed shall be established in the delegation of services agreement.

This bill would require the medical record to identify the physician who is responsible for the supervision of the PA for each episode of care for a patient. When a PA transmits an oral order, the PA shall identify the name of the supervising physician responsible for the patient.

This bill would add two additional mechanisms, in addition to the existing five percent medical record countersign requirement, for a supervising physician to choose from to ensure adequate PA supervision. For all mechanisms, the supervising physician shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient. The two additional mechanisms are as follows:

- The supervising physician and the PA shall conduct and document a medical records review meeting at least 10 times annually, which may occur in person or by electronic communication; or
- The supervising physician shall supervise the care provided by the PA through a review of those cases or patients deemed appropriate by the supervising physician. The review methods used shall be identified in the delegation of services agreement, and may occur in person or by electronic communication.

Existing law requires all medical charts for Schedule II drug orders to be countersigned with seven days by the supervising physician. This bill would create an additional mechanism for a supervising physician to ensure adequate supervision of the administration, provision, or issuance by a PA of a Schedule II drug order. The additional mechanism is only allowed if the PA has documentation evidencing the successful completion of an education course that covers controlled substances and meets specified standards. The mechanism would only require the supervising physician to review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the PA for whom the PA's Schedule II drug order has been issued or carried out.

While the intent of this bill is to provide flexibility and allow for a more team-based approach in PA supervision, which is a laudable goal, the option that allows a physician to review cases as the physician deems appropriate is too broad and does not ensure adequate supervision of PAs. There needs to be a base included in the language in this bill related to the required physician review, similar to the medical records review meeting requirement (at least 10 times annually). With the language currently in the bill, a physician could decide that a review of two cases a year would be appropriate, and comply with the statute; however, this would not ensure adequate supervision. In addition, this bill would significantly reduce the physician review of medical records for schedule II drug orders from 100 percent to 20 percent. This is a significant reduction of supervising physician review for types of opioid medications that are prevalent for abuse. Although this bill would require the PA to receive controlled substances training, this reduction in physician review is substantial. For these reasons, Board staff is suggesting that the Board oppose this bill unless it is amended to address these concerns.

**FISCAL:** None

**SUPPORT:** CAPA (sponsor) and numerous individuals

**OPPOSITION:** None on file

**POSITION:** Recommendation: Oppose Unless Amended

AMENDED IN SENATE APRIL 13, 2015

# SENATE BILL No. 337

**Introduced by Senator Pavley**

February 23, 2015

An act to amend Sections 3501, 3502, and 3502.1 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 337, as amended, Pavley. Physician assistants.

Existing law, the Physician Assistant Practice Act, provides for regulation of physician assistants and authorizes a physician assistant to perform medical services as set forth by regulations when those services are rendered under the supervision of a licensed physician and surgeon, as specified. The act requires the supervising physician and surgeon to review, countersign, and date a sample consisting of, at a minimum, ~~5 percent~~ *5%* of the medical records of patients treated by the physician assistant functioning under adopted protocols within 30 days of the date of treatment by the physician assistant. The act requires the supervising physician and surgeon to select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient. A violation of those supervision requirements is a misdemeanor.

This bill would require that the medical record for each episode of care for a ~~patient,~~ *patient* identify the physician and surgeon who is responsible for the supervision of the physician assistant. The bill would require a physician assistant who transmits an oral order to identify the name of the supervising physician and surgeon responsible for the patient. The bill would delete those medical record review provisions, and, instead, require the supervising physician and surgeon to use one

or more of described review mechanisms. By adding these new requirements, the violation of which would be a crime, this bill would impose a state-mandated local program by changing the definition of a crime.

The act authorizes a physician assistant, while under prescribed supervision of a physician and surgeon, to administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device. The act prohibits a physician assistant from administering, providing, or issuing a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets approved standards. The act requires that the medical record of any patient cared for by a physician assistant for whom a physician assistant's Schedule II drug order has been issued or carried out to be reviewed, countersigned, and dated by a supervising physician and surgeon within 7 days.

This bill would delete that review and countersignature requirement for a physician assistant's Schedule II drug order, and, instead, require that the supervising physician and surgeon use one of 2 described mechanisms to ensure adequate supervision of the administration, provision, or issuance by a physician assistant of a drug order to a patient for Schedule II controlled substances.

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:*

SECTION 1. Section 3501 of the Business and Professions Code is amended to read:

3501. (a) As used in this chapter:

(1) "Board" means the Physician Assistant Board.

(2) "Approved program" means a program for the education of physician assistants that has been formally approved by the board.

(3) “Trainee” means a person who is currently enrolled in an approved program.

(4) “Physician assistant” means a person who meets the requirements of this chapter and is licensed by the board.

(5) “Supervising physician” *or “supervising physician and surgeon”* means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(6) “Supervision” means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(7) “Regulations” means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(8) “Routine visual screening” means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(9) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

(10) “Delegation of services agreement” means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

(11) “Other specified medical services” means tests or examinations performed or ordered by a physician assistant practicing in compliance with this chapter or regulations of the Medical Board of California promulgated under this chapter.

(12) “Medical records review meeting” means a meeting between the supervising physician and the physician assistant during which a sample of medical records is reviewed to ensure adequate supervision of the physician assistant functioning under protocols. The number of medical records and the specific issues to be reviewed shall be established in the delegation of services agreement.

(b) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations adopted under this chapter.

SEC. 2. Section 3502 of the Business and Professions Code is amended to read:

3502. (a) Notwithstanding any other law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant. The medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant. When a physician assistant transmits an oral order, he or she shall also identify the name of the supervising physician and surgeon responsible for the patient.

(b) (1) Notwithstanding any other law, a physician assistant performing medical services under the supervision of a physician and surgeon may assist a doctor of podiatric medicine who is a partner, shareholder, or employee in the same medical group as the supervising physician and surgeon. A physician assistant who assists a doctor of podiatric medicine pursuant to this subdivision shall do so only according to patient-specific orders from the supervising physician and surgeon.

(2) The supervising physician and surgeon shall be physically available to the physician assistant for consultation when that assistance is rendered. A physician assistant assisting a doctor of podiatric medicine shall be limited to performing those duties included within the scope of practice of a doctor of podiatric medicine.

(c) (1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs,

and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.

(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the followup care.

(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.

(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

(2) (A) The supervising physician and surgeon shall use one or more of the following mechanisms to ensure adequate supervision of the physician assistant functioning under the protocols:

(i) The supervising physician and surgeon ~~reviews, countersigns, and dates~~ *shall review, countersign, and date* a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant.

(ii) The supervising physician and surgeon and physician assistant *shall* conduct ~~and document~~ *at least 10 times annually* a medical records review ~~meeting at least once each quarter during the calendar year.~~ *meeting, which may occur in person or by electronic communication.*

(iii) The supervising physician and surgeon ~~supervises~~ *shall supervise* the care provided by the physician assistant through a review of those cases or patients deemed appropriate by the supervising ~~physician.~~ *physician and surgeon.* The review methods used shall be identified in the delegation of services agreement, and *review* may occur in ~~person, by telephone~~, *person or* by electronic ~~messaging, or using video conferencing technology.~~ *communication.*

(B) In complying with subparagraph (A), the supervising physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

(3) Notwithstanding any other law, the Medical Board of California or the board may establish other alternative mechanisms for the adequate supervision of the physician assistant.

(d) No medical services may be performed under this chapter in any of the following areas:

(1) The determination of the refractive states of the human eye, or the fitting or adaptation of lenses or frames for the aid thereof.

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

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) The practice of dentistry or dental hygiene or the work of a dental auxiliary as defined in Chapter 4 (commencing with Section 1600).

(e) This section shall not be construed in a manner that shall preclude the performance of routine visual screening as defined in Section 3501.

(f) Compliance by a physician assistant and supervising physician and surgeon with this section shall be deemed compliance with Section 1399.546 of Title 16 of the California Code of Regulations.

SEC. 3. Section 3502.1 of the Business and Professions Code is amended to read:

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

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

(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary

and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

(b) "Drug order," for purposes of this section, means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians and surgeons, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

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

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

(2) A physician assistant shall not administer, provide, or issue a drug order to a patient for Schedule II through Schedule V

controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

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

(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and telephone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant and shall otherwise comply with Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, the requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances registration number of the physician assistant, and shall be signed by the physician

assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

(e) The supervising physician and surgeon shall use either of the following mechanisms to ensure adequate supervision of the administration, provision, or issuance by a physician assistant of a drug order to a patient for Schedule II controlled substances:

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

(2) If the physician assistant has documentation evidencing the successful completion of an education course that covers controlled substances, and that controlled substance education course (A) meets the standards, including pharmacological content, approved by the board, (B) is provided either by an accredited continuing education provider or by an approved physician assistant training program, and (C) satisfies Sections 1399.610 and 1399.612 of Title 16 of the California Code of Regulations, the supervising physician and surgeon shall review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established in Section 1399.612 of Title 16 of the California Code of Regulations. Physician assistants who have a certificate of completion of the course described in paragraph (2) of subdivision (c) shall be deemed to have met the education course requirement of this subdivision.

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

(g) The board shall consult with the Medical Board of California and report during its sunset review required by Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code the impacts of exempting Schedule III and Schedule IV drug orders from the

requirement for a physician and surgeon to review and countersign the affected medical record of a patient.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 396
**Author:** Hill
**Bill Date:** April 22, 2015, Amended
**Subject:** Outpatient Setting and Surgical Clinics
**Sponsor:** Author
**Position:** Support provisions related to the Medical Board of California (Board)

## DESCRIPTION OF CURRENT LEGISLATION:

SB 396 would make consumer protection enhancements that the Board already voted to sponsor/support for accredited outpatient settings. This bill would require data reporting for accredited outpatient settings and certified ambulatory surgery centers to the Office of Statewide Health Planning and Development (OSHPD); it would require peer review evaluations for physicians and surgeons working in Ambulatory Surgery Centers (ASCs); and it would require that accredited outpatient setting facility inspections performed by Accreditation Agencies be unannounced (after the initial inspection).

This bill would also delay the report from the Board on the vertical enforcement and prosecution model from March 1, 2015, to March 1, 2016.

There are other provisions in this bill that would clarify that a "surgical clinic" that has met federal certification standards and requirements for an ASC, is authorized to apply for state licensure by the California Department of Public Health (CDPH). The bill would allow an accredited outpatient setting or "Medicare certified ambulatory surgical center" (i.e. ASC) to access 805 reports from the Board when credentialing, granting or renewing staff privileges for providers at that facility.

## BACKGROUND

Existing law defines an ASC as a specialty clinic that is essentially not part of a hospital and is eligible for state licensure. AB 595 (Chapter 1276) of 1994 required that certain outpatient settings (including ASCs) to either be licensed by the state, Medicare certified, or accredited by an agency approved by the Division of Licensing within the Board. The intent was to "ensure that health care services are safely and effectively performed in these settings." In 2007, a September court ruling (Capen v. Shewry: 155 Cal.App.4th 378) prohibited CDPH from issuing state licenses to physician-owned ASCs. As a result, the vast majority of ASCs are now accredited by Accreditation Agencies approved by the Board.

Accredited outpatient settings and Medicare certified ASCs are currently not on the list of eligible facilities that can obtain 805 reports from the Board, so these facilities are unable to ensure that physician and surgeons and others providing care in those facilities have not been

denied staff privileges, been removed from a medical staff, or have had his or her staff privileges restricted.

Also as a result of the 2007 court ruling, the vast majority of ASCs are no longer required to report aggregate data to OSHPD. Existing law requires licensed surgical clinics to report aggregate utilization and patient encounter data to OSHPD. However, when these physician-owned ASCs were required to be accredited instead of licensed, there was no requirement to report data to OSHPD. This resulted in a serious deficiency of ASC data for accredited outpatient settings. In addition, existing law allows a physician who owns his or her own outpatient setting to choose not to have peer review of his or her practice, which means that procedures performed in ASCs are not subject to peer review. Lastly, inspections currently performed by Accreditation Agencies for outpatient setting accreditation are announced, unless they are deemed status surveys, and renew every three years. The Board believes consumer protection could be enhanced in this area.

**ANALYSIS**

The Board believes it is very important to require both accredited and licensed ASCs to report the same aggregate data to OSHPD, as this data will provide important information on procedures being done in ASCs and will make the Board and other regulatory agencies aware of any issues of concern so that consumer protection enhancements can be addressed if they are needed. This bill would require accredited, certified, and licensed ASCs to report this data to OSHPD.

In addition, the Board believes that peer review is important to ensure consumer protection, and that procedures that are being done in ASCs should be subject to peer review evaluations. This bill would require physicians working in accredited outpatient settings to be subjected to the peer review process at least every two years. The findings would be reported to the accrediting bodies, who would use the information as a tool to ensure compliance with existing accreditation requirements.

This bill would also require subsequent inspections to be unannounced, which will help to ensure that facilities do not have time to prepare for an inspection and will be in line with inspections on other types of ASCs.

This bill would allow an accredited outpatient setting or "Medicare certified ambulatory surgical center" to access 805 reports from the Board to ensure patient protection when credentialing, granting or renewing staff privileges for providers at that facility. The Board already voted to support and/or sponsor these provisions.

This bill would also allow ASCs the option to be licensed by CDPH as a surgical clinic if they meet the Medicare certification requirements. Licensure was previously an option before the 2007 court decision. The goal of this bill is to ensure that the standards are the same for all patients in California, regardless of the pathway the facility chooses (licensure,

accreditation, certification) to become compliant with the law.

Unrelated to ASCs, this bill would extend the deadline for the Board's legislative report on the vertical enforcement (VE) and prosecution model by one year, to March 1, 2016. This will give the Board adequate time to assess how the VE model is working with the transfer of the investigators to the Department of Consumer Affairs, Division of Investigation. This change is needed as the report due date has passed and the Board currently has insufficient information to complete the VE report.

**FISCAL:** None

**SUPPORT:** The Board
California Ambulatory Surgery Association
California Hospital Association

**OPPOSITION:** California Medical Association (unless amended)
California Society of Plastic Surgeons

AMENDED IN SENATE APRIL 22, 2015

AMENDED IN SENATE APRIL 14, 2015

# SENATE BILL No. 396

**Introduced by Senator Hill**

February 25, 2015

An act to amend ~~Sections 805 and~~ *Section* 805.5 of, and to add Section 2216.5 to, the Business and Professions Code, to amend Section 12529.7 of the Government Code, and to amend Sections 1204, 1248.15, ~~1248.3,~~ and 1248.35 of the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Hill. Health care: outpatient settings and surgical clinics: facilities: licensure and enforcement.

Existing law provides for the licensure and regulation of clinics by the State Department of Public Health. A violation of those provisions is a misdemeanor. Existing law provides that certain types of specialty clinics, including surgical clinics, as defined, are eligible for licensure. Existing law excludes from the definition of surgical clinic any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice. Existing law requires a surgical clinic that is licensed or seeking licensure to comply with federal certification standards for an ambulatory surgical clinic until the department adopts regulations relating to the provision of services by a surgical clinic.

This bill would provide that a surgical clinic that has met the federal certification standards and requirements for an ambulatory surgical clinic is eligible for licensure by the department regardless of physician, podiatrist, or dentist ownership. The bill would provide that a surgical

clinic is deemed to have met the licensure requirements under the chapter upon presenting documentation, within a 3-year period, that the surgical clinic has met the federal certification requirements for an ambulatory surgical clinic.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law provides that it is unprofessional conduct for a physician and surgeon to perform procedures in any outpatient setting except in compliance with specified provisions. Existing law prohibits an association, corporation, firm, partnership, or person from operating, managing, conducting, or maintaining an outpatient setting in the state unless the setting is one of the specified settings, which includes, among others, an ambulatory surgical clinic that is certified to participate in the Medicare program, a surgical clinic licensed by the State Department of Public Health, or an outpatient setting accredited by an accreditation agency approved by the Division of Licensing of the Medical Board of California.

Existing law provides that an outpatient setting that is accredited shall be inspected by the accreditation agency and may be inspected by the Medical Board of California. Existing law requires that the inspections be conducted no less often than once every 3 years by the accreditation agency and as often as necessary by the Medical Board of California to ensure quality of care provided. ~~Existing law requires that certificates for accreditation issued to outpatient settings by an accreditation agency shall be valid for not more than 3 years.~~

This bill would require that all subsequent inspections after the initial inspection for accreditation be unannounced. This bill would require an outpatient setting accredited by the division and a facility certified to participate in the federal Medicare program as an ambulatory surgical center to pay certain fees and to comply with certain data submission requirements. ~~The bill would also instead require that an initial certificate of accreditation by an accreditation agency be valid for not more than 2 years and that a renewal certificate be valid for not more than 3 years.~~

Existing law requires members of the medical staff and other practitioners who are granted clinical privileges in an outpatient setting to be professionally qualified and appropriately credentialed for the performance of privileges granted and requires the outpatient setting to grant privileges in accordance with recommendations from qualified

health professionals, and credentialing standards established by the outpatient setting.

This bill would additionally require that each licensee who performs procedures in an outpatient setting that requires the outpatient setting to be accredited be peer reviewed, *as specified*, at least every 2 years, by licensees who are qualified by education and experience to perform the same types of, or ~~similar~~ *similar,* procedures. The bill would require the findings of the peer review to be reported to the accrediting body who shall determine if the licensee continues to be professionally qualified and appropriately credentialed for the performance of privileges granted. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law requires specified entities, including any health care service plan or medical care foundation, to request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California, prior to granting or renewing staff privileges, to determine if a certain report has been made indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted.

This bill would also require an outpatient setting and a facility certified to participate in the federal Medicare program as an ambulatory surgical center to request that report. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law establishes a vertical enforcement and prosecution model for cases before the Medical Board of California, and requires the board to report to the Governor and the Legislature on that model by March 1, 2015.

This bill would extend the date that report is due to March 1, 2016.

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:*

~~SECTION 1. Section 805 of the Business and Professions Code is amended to read:~~

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

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

~~(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:~~

~~(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.~~

~~(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.~~

~~(ii) Any other activities of a peer review body as specified in subparagraph (B).~~

~~(B) "Peer review body" includes:~~

~~(i) A medical or professional staff of any health care facility, of a clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, of a facility certified to participate in the federal Medicare program as an ambulatory surgical center, or of an outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code.~~

~~(ii) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.~~

~~(iii) Any medical, psychological, marriage and family therapy, social work, professional clinical counselor, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.~~

(iv) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, professional clinical counselor, dentist, or physician assistant. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113 or 2168.

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

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

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

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

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

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

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

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

~~(c) If a licentiate takes any action listed in paragraph (1), (2), or (3) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership or staff privileges is denied or will be denied for a medical disciplinary cause or reason, the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic where the licentiate is employed or has staff privileges or membership or where the licentiate applied for staff privileges or membership, or sought the renewal thereof, shall file an 805 report with the relevant agency within 15 days after the licentiate takes the action.~~

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

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

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

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

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

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

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

~~A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.~~

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

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

~~(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.~~

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

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

~~(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any~~

~~agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.~~

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

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

~~SEC. 2.~~

*SECTION 1.* Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, any health care service plan or medical care foundation, the medical staff of the institution, a facility certified to participate in the federal Medicare program as an ambulatory surgical center, or an outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff the board shall furnish a copy of any report made pursuant to Section 805 as well as any additional exculpatory or explanatory information submitted electronically to the board by the licensee pursuant to subdivision (f) of that section. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds, in a final judgment, that the peer review, as defined in

Section 805, resulting in the report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, or (4) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. If a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

If the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

~~SEC. 3.~~

*SEC. 2.* Section 2216.5 is added to the Business and Professions Code, to read:

2216.5. An outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code and a facility certified to participate in the federal Medicare program as an ambulatory surgical center are subject to the requirements of ~~Section 1216 of, subdivision (f) of Section 127280 of, Section 127285 of, and Section 128737 of, the Health and Safety Code.~~ *the following provisions: Section 1216, subdivision (f) of Section 127280, Section 127285, and Section 128737 of the Health and Safety Code.* Any fees collected pursuant to subdivision (f) of Section 127280 of the Health and Safety Code shall not exceed the reasonable costs incurred by the Office of Statewide Health Planning and Development in regulating the outpatient setting and the facility.

~~SEC. 4.~~

*SEC. 3.* Section 12529.7 of the Government Code is amended to read:

12529.7. By March 1, 2016, the Medical Board of California, in consultation with the Department of Justice and the Department of Consumer Affairs, shall report and make recommendations to

the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.

~~SEC. 5.~~

*SEC. 4.* Section 1204 of the Health and Safety Code is amended to read:

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

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

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

(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

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

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

(1) (A) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians, podiatrists, or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment.

(B) A physician, podiatrist, or dentist may, at his or her option, apply for licensure. A surgical clinic shall be eligible for licensure by the department regardless of physician, podiatrist, or dentist ownership. A surgical clinic that has met the federal certification standards and requirements for an ambulatory surgical clinic, as specified in Part 416 of Title 42 of the Code of Federal Regulations, shall be eligible for licensure by the department pursuant to this chapter.

(C) Until the department adopts regulations relating to the provision of services by a surgical clinic pursuant to Section 1225, a surgical clinic is deemed to have met the licensure requirements under this chapter upon presenting documentation, within a three-year period, that the surgical clinic has met the federal certification standards for an ambulatory surgical clinic.

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

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

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

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

~~SEC. 6.~~

*SEC. 5.* Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The board shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

(iii) Submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be

reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(D) The outpatient setting shall submit for approval by an accreditation agency at the time of accreditation a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan shall include, at a minimum, that if a patient is being transferred to a local accredited or licensed acute care hospital, the outpatient setting shall do all of the following:

(i) Notify the individual designated by the patient to be notified in case of an emergency.

(ii) Ensure that the mode of transfer is consistent with the patient's medical condition.

(iii) Ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer.

(iv) Continue to provide appropriate care to the patient until the transfer is effectuated.

(E) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body or in accordance with existing law.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) (i) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(ii) Each licensee who performs procedures in an outpatient setting that requires the outpatient setting to be accredited shall be, at least every two years, peer reviewed, ~~as described in subparagraph (A) of paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code~~, *which shall be a process in which the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of a licensee is reviewed to make recommendations for quality improvement and education, if necessary,* including when the outpatient setting has only one licensee. The peer review shall be performed by licensees who are qualified by education and experience to perform the same types of, or ~~similar~~ *similar,* procedures. The findings of the peer review shall be reported to the accrediting body who shall determine if the licensee continues to meet the requirements described in clause (i).

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations shall have all of the sites inspected.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the board to protect the public health and safety.

(d) No accreditation standard adopted or approved by the board, and no standard included in any certification program of any accreditation agency approved by the board, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.

(f) The board may adopt regulations it deems necessary to specify procedures that should be performed in an accredited outpatient setting for facilities or clinics that are outside the definition of outpatient setting as specified in Section 1248.

(g) As part of the accreditation process, the accrediting agency shall conduct a reasonable investigation of the prior history of the outpatient setting, including all licensed physicians and surgeons who have an ownership interest therein, to determine whether there have been any adverse accreditation decisions rendered against them. For the purposes of this section, “conducting a reasonable investigation” means querying the Medical Board of California and the Osteopathic Medical Board of California to ascertain if either the outpatient setting has, or, if its owners are licensed physicians and surgeons, if those physicians and surgeons have, been subject to an adverse accreditation decision.

~~SEC. 7. Section 1248.3 of the Health and Safety Code is amended to read:~~

~~1248.3. (a) An initial certificate of accreditation issued to an outpatient setting by an accreditation agency shall be valid for not more than two years, and a renewal certificate shall be valid for not more than three years.~~

~~(b) The outpatient setting shall notify the accreditation agency within 30 days of any significant change in ownership, including, but not limited to, a merger, change in majority interest, consolidation, name change, change in scope of services, additional services, or change in locations.~~

~~(c) Except for disclosures to the division or to the Division of Medical Quality under this chapter, an accreditation agency shall not disclose information obtained in the performance of accreditation activities under this chapter that individually identifies patients, individual medical practitioners, or outpatient settings. Neither the proceedings nor the records of an accreditation agency or the proceedings and records of an outpatient setting related to performance of quality assurance or accreditation activities under this chapter shall be subject to discovery, nor shall the records or proceedings be admissible in a court of law. The prohibition relating to discovery and admissibility of records and proceedings does not apply to any outpatient setting requesting accreditation in the event that denial or revocation of that outpatient setting's accreditation is being contested. Nothing in this section shall prohibit the accreditation agency from making discretionary disclosures of information to an outpatient setting pertaining to the accreditation of that outpatient setting.~~

~~SEC. 8.~~

*SEC. 6.* Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. (a) Every outpatient setting that is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided. After the initial inspection for accreditation, all subsequent inspections shall be unannounced.

(3) The Medical Board of California or the accreditation agency may enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Require correction of any identified deficiencies within a set timeframe. Failure to comply shall result in the accrediting agency issuing a reprimand or suspending or revoking the outpatient setting's accreditation.

(2) Issue a reprimand.

(3) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the board or the accreditation agency, to correct the deficiencies.

(4) Suspend or revoke the outpatient setting's certification of accreditation.

(d) (1) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient setting. During the allotted time to correct the deficiencies, the plan of correction, which includes the deficiencies, shall be conspicuously posted by the outpatient setting in a location accessible to public view. Within 10 days after the adoption of the plan of correction, the accrediting agency shall send a list of

deficiencies and the corrective action to be taken to the board and to the California State Board of Pharmacy if an outpatient setting is licensed pursuant to Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of the Business and Professions Code. The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

(2) If an outpatient setting does not comply with a corrective action within a timeframe specified by the accrediting agency, the accrediting agency shall issue a reprimand, and may either place the outpatient setting on probation or suspend or revoke the accreditation of the outpatient setting, and shall notify the board of its action. This section shall not be deemed to prohibit an outpatient setting that is unable to correct the deficiencies, as specified in the plan of correction, for reasons beyond its control, from voluntarily surrendering its accreditation prior to initiation of any suspension or revocation proceeding.

(e) The accreditation agency shall, within 24 hours, report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation. If an outpatient setting has been issued a license by the California State Board of Pharmacy pursuant to Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of the Business and Professions Code, the accreditation agency shall also send this report to the California State Board of Pharmacy within 24 hours.

(f) The accreditation agency, upon receipt of a complaint from the board that an outpatient setting poses an immediate risk to public safety, shall inspect the outpatient setting and report its findings of inspection to the board within five business days. If an accreditation agency receives any other complaint from the board, it shall investigate the outpatient setting and report its findings of investigation to the board within 30 days.

(g) Reports on the results of any inspection shall be kept on file with the board and the accreditation agency along with the plan of correction and the comments of the outpatient setting. The

inspection report may include a recommendation for reinspection. All final inspection reports, which include the lists of deficiencies, plans of correction or requirements for improvements and correction, and corrective action completed, shall be public records open to public inspection.

(h) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies. An outpatient setting that is denied accreditation is permitted to reapply for accreditation with the same accrediting agency. The outpatient setting also may apply for accreditation from another accrediting agency, but only if it discloses the full accreditation report of the accrediting agency that denied accreditation. Any outpatient setting that has been denied accreditation shall disclose the accreditation report to any other accrediting agency to which it submits an application. The new accrediting agency shall ensure that all deficiencies have been corrected and conduct a new onsite inspection consistent with the standards specified in this chapter.

(i) If an outpatient setting's certification of accreditation has been suspended or revoked, or if the accreditation has been denied, the accreditation agency shall do all of the following:

(1) Notify the board of the action.

(2) Send a notification letter to the outpatient setting of the action. The notification letter shall state that the setting is no longer allowed to perform procedures that require outpatient setting accreditation.

(3) Require the outpatient setting to remove its accreditation certification and to post the notification letter in a conspicuous location, accessible to public view.

(j) The board may take any appropriate action it deems necessary pursuant to Section 1248.7 if an outpatient setting's certification of accreditation has been suspended or revoked, or if accreditation has been denied.

~~SEC. 9.~~

*SEC. 7.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 408
**Author:** Morrell
**Bill Date:** April 6, 2015, Amended (and as proposed to be amended to add CNMs)
**Subject:** Midwife Assistants
**Sponsor:** Medical Board of California (Board)
**Position:** Sponsor/Support

## DESCRIPTION OF CURRENT LEGISLATION:

SB 408 would ensure that midwife assistants meet minimum training requirements and set forth the duties that a midwife assistant could perform, which should be at the same level as duties that a medical assistant can perform; technical support services only. This bill would allow the Board to adopt regulations and standards for any additional midwife technical support services.

## BACKGROUND

The Board licenses Licensed Midwives (LMs). It has been brought to the attention of the Board that LMs need to use assistants. As such, this issue was raised in the Board's 2012 Sunset Review Report. Currently, there is no definition for a midwife assistant in statute, nor are there specific training requirements or duties that a midwife assistant may perform. Some LMs use other LMs as assistants, while some use a midwife student who is enrolled in a recognized midwifery school and who has an official agreement with the student and midwifery school to provide clinical training to the student midwife. Other LMs use someone who may or may not have formal midwifery training and/or someone that the LM has trained. The duties that a midwife assistant performs also varies greatly from LM to LM. This unregulated practice is a serious consumer protection issue and this bill would define midwife assistants and define the services they can provide. This bill is modeled after existing law related to medical assistants, which are under the supervision of a physician and surgeon (Business and Professions Code Section 2069 - 2071).

## ANALYSIS

SB 408 would define a "midwife assistant" as a person, who may be unlicensed, who performs basic administrative, clerical, and midwife technical support services in accordance with existing law for a LM, is at least 18 years of age, and has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Board for a medical assistant. This bill would define "midwife technical support services" as simple routine medical tasks and procedures that may be safely performed by a midwife assistant who has limited training and who functions under the supervision of a LM or a certified nurse midwife (CNM).

This bill would allow a midwife assistant to do the following:

- Administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical support services upon the specific authorization and supervision of a LM or CNM.
- Perform venipuncture or skin puncture for the purposes of withdrawing blood upon specific authorization and under supervision of a LM or CNM if the educational and training requirements have been met.
- Perform the following midwife technical support services:
    - Administer medications orally, sublingually, topically, or rectally, or by providing a single dose to a patient for immediate self-administration, and administer oxygen at the direction of a supervising LM or CNM. The LM or CNM must verify the correct medication and dosage before the midwife assistant administers the medication.
    - Assist in immediate newborn care when a LM or CNM is engaged in a concurrent activity that precludes the LM or CNM from doing so.
    - Assist in placement of the device used for auscultation of fetal heart tones when a LM or CNM is engaged in concurrent activity that precludes the LM or CNM from doing so.
    - Collect, by noninvasive techniques, and preserve specimens for testing, including, but not limited to, urine.
    - Assist patients to and from a patient examination room, bed, or bathroom.
    - Assist patient in activities of daily living, such as assisting with bathing or clothing.
    - As authorized by the LM or CNM, provide patient information and instructions.
    - Collect and record patient data, including height, weight, temperature, pulse, respiration rate, blood pressure, and basic information about the presenting and previous conditions.
    - Perform simple laboratory and screening tests customarily performed in a medical or midwife office.
    - Perform additional midwife technical support services under regulations established by the Board.

This bill would establish training requirements in statute for midwife assistants and parameters on what services can be provided by midwife assistants, which furthers the Board's mission of consumer protection. For this reason, the Board voted to sponsor this important legislation. Amendments were taken in committee to address concerns raised by the California Medical Association and the American College of Obstetricians and Gynecologists and to add CNMs as supervisors, as requested by the CNM Association.

**FISCAL:** Minimal and absorbable to update regulations related to training requirements

**SUPPORT:** The Board (Sponsor), California Association of Midwives; Monterey

County Board Supervisor Jane Parker

**OPPOSITION:** None on File

AMENDED IN SENATE APRIL 6, 2015

# SENATE BILL No. 408

**Introduced by Senator Morrell**

February 25, 2015

An act to add Section 2516.5 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 408, as amended, Morrell. Midwife assistants.

The Licensed Midwifery Practice Act of 1993 provides for the licensing and regulation of midwives by ~~the Board of Licensing of~~ the Medical Board of California. The license to practice midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, as specified, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including ~~family-planning~~ *family planning* care, for the mother, and immediate care for the newborn. The act requires a midwife to immediately refer all complications to a physician and surgeon. A violation of the act is a crime.

This bill would authorize a midwife assistant to perform certain assistive activities under the supervision of a licensed midwife, including the administration of medicine, the withdrawing of blood, and midwife technical support services. The bill would define terms for these purposes. The bill would prohibit a midwife assistant from being employed for inpatient care in a licensed general acute care hospital. By adding new requirements and prohibitions to the act, the violation of which would be a crime, the bill would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 2516.5 is added to the Business and Professions Code, to read:

2516.5. (a) As used in this section, the following ~~definition~~ *definitions* apply:

(1) "Midwife assistant" means a person, who may be unlicensed, who performs basic administrative, clerical, and midwife technical supportive services in accordance with this chapter for a licensed midwife, is at least 18 years of age, and has had at least the minimum amount of hours of appropriate training pursuant to standards established by the board for a medical assistant pursuant to Section 2069. The midwife assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training. Each employer of the midwife assistant or the midwife assistant shall retain a copy of the certificate as a record.

(2) "Midwife technical supportive services" means simple routine medical tasks and procedures that may be safely performed by a midwife assistant who has limited training and who functions under the supervision of a licensed midwife.

(3) "Specific authorization" means a specific written order prepared by the supervising midwife authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record, or a standing order prepared by the supervising midwife authorizing the procedures to be performed. A notation of the standing order shall be placed in the patient's medical record.

(4) "Supervision" means the supervision of procedures authorized by this section by a licensed midwife, within his or her scope of practice, who is physically present on the premises during the performance of those procedures.

(b) Notwithstanding any other provision of law, a midwife assistant may do all of the following:

(1) Administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical support services upon the specific authorization and supervision of a licensed midwife. A midwife assistant may also perform all these tasks and services in a clinic licensed in accordance with subdivision (a) of Section 1204 of the Health and Safety Code upon the specific authorization of a licensed midwife.

(2) Perform venipuncture or skin puncture for the purposes of withdrawing blood upon specific authorization and under the supervision of a licensed midwife if the midwife assistant has met the educational and training requirements for medical assistants as established in Section 2070. Each employer of the assistant shall retain a copy of any related certificates as a record.

(3) Perform the following midwife technical support services:

(A) Administer medications orally, sublingually, topically, ~~vaginally,~~ or rectally, or by providing a single dose to a patient for immediate self-administration, and administer oxygen at the direction of the supervising licensed midwife. The licensed midwife shall verify the correct medication and dosage before the midwife assistant administers medication.

(B) Assist in ~~performing neonatal resuscitation.~~ *immediate newborn care when the licensed midwife is engaged in a concurrent activity that precludes the licensed midwife from doing so.*

(C) Assist in *placement of the device used for* auscultation of fetal heart tones when a licensed midwife is engaged in a concurrent activity that precludes the licensed midwife from doing so.

(D) Collect by noninvasive techniques and preserve specimens for testing, including, but not limited to, urine.

(E) Assist patients to and from a patient examination room, bed, or bathroom.

(F) Assist ~~patient~~ *patients* in activities of daily living, such as assisting with bathing or clothing.

(G) As authorized by the licensed midwife, provide patient information and instructions.

(H) Collect and record patient data, including height, weight, temperature, pulse, respiration rate, blood pressure, and basic information about the presenting and previous conditions.

(I) Perform simple laboratory and screening tests customarily performed in a medical or midwife office.

(4) Perform additional midwife technical support services under regulations and standards established by the board.

(c) (1) Nothing in this section shall be construed as authorizing the licensure of midwife assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a midwife assistant. Nothing in this section shall be construed as authorizing the board to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

(2) Nothing in this section shall be construed as authorizing a midwife assistant to perform any clinical laboratory test or examination for which he or she is not authorized under Chapter 3 (commencing with Section 1200).

(d) Notwithstanding any other law, a midwife assistant shall not be employed for inpatient care in a licensed general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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| **Bill Number:** | SB 482 |
| **Author:** | Lara |
| **Bill Date:** | As proposed to be amended |
| **Subject:** | Controlled Substances: CURES Database |
| **Sponsor:** | Consumer Attorneys of California and California Narcotics Officers |

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would require all prescribers issuing Schedule II and III drugs to access and consult the CURES database before prescribing or dispensing.

## BACKGROUND:

The CURES Program is currently housed in the Department of Justice (DOJ) and is a state database of dispensed prescription drugs that have a high potential for misuse and abuse. CURES provides for electronic transmission of specified prescription data to DOJ. In September 2009, DOJ launched the CURES Prescription Drug Monitoring Program (PDMP) system allowing pre-registered users, including licensed health care prescribers eligible to prescribe controlled substances, pharmacists authorized to dispense controlled substances, law enforcement, and regulatory boards, to access patient controlled substance history information through a secure website. Since 2009, more than 8,000 doctors and pharmacists have signed up to use CURES, which has more than 100 million prescriptions. SB 809 (DeSaulnier, Chapter 400) was signed into law in 2013 and included a provision to collect funds from boards that license prescribers and dispensers, for purposes of funding and upgrading the CURES system. Pursuant to this bill, DOJ is currently in the process of modernizing CURES to more efficiently serve prescribers, pharmacists and entities that may utilize the data contained within the system and expects the new CURES system to be operational on July 1, 2015.

According to the Centers for Disease Control and Prevention, drug overdoses are the top cause of accidental death in the United States and nearly 23,000 people died from an overdose of pharmaceuticals in 2013, more than 70% of them from opiate prescription painkillers. According to the California Attorney General's Office, if doctors and pharmacies have access to controlled substance history information at the point of care, it will help them make better prescribing decisions and cut down on prescription drug abuse in California.

According to the author's office, other states that have required prescribers to check their drug monitoring systems have seen significantly improved public health outcomes. In 2012, Tennessee required prescribers to check the state's PDMP before prescribing painkillers and within one year, they saw a 36% drop in patients who were seeing multiple prescribers to obtain the same drugs. In Virginia, the number of doctor-shoppers fell by 73% after use of the database became mandatory. In Oklahoma, which requires mandatory checks for methadone, overdoses fell about 21% in one year. New

York also requires prescribers to check their state drug monitoring systems and has seen dramatic decreases in drug overdoses and deaths.

**ANALYSIS**

This bill would require a prescriber to access and consult the CURES database for the electronic history of controlled substances dispensed to a patient under his or her care before prescribing a Schedule II or III controlled substance for the first time to that patient and at least annually when that prescribed controlled substance remains part of his or her treatment. If the patient has an existing prescription for a Schedule II or III controlled substance, the prescriber shall not prescribe an additional controlled substance until the prescriber determines that there is a legitimate need for that controlled substance.

This bill would specify that failure by a prescriber to consult a patient's electronic history as required by this bill would be cause for disciplinary action by the respective licensing board of the prescriber. The licensing boards of all prescribers authorized to write prescriptions for controlled substances shall notify licensees of the requirements of this bill.

This bill would specify that a prescriber is not in violation of this bill during any period of time in which the CURES database is suspended or not accessible or any period of time in which the Internet is not operational. This bill would further specify that the requirements in this bill are not operative until DOJ certifies that the CURES database is ready for statewide use.

The Board believes CURES is a very important enforcement tool and an effective aid for physicians to use to prevent "doctor shopping". Requiring all prescribers to consult the CURES system will allow prescribers to make informed decisions about their patient's care. This bill only requires the CURES database to be checked for an initial prescription of a Schedule II or III controlled substance, on an annual basis if that controlled substance is still being prescribed, or if the same controlled substance has already been prescribed. This bill would also ensure that the CURES system will have the capacity to handle this workload before the bill becomes operative.

This bill would further the Board's goal of consumer protection and take steps forward in addressing the issue of doctor shopping and opioid abuse. For these reasons, Board staff is suggesting that the Board support this bill.

**FISCAL:** Minimal and absorbable fiscal impact

**SUPPORT:** Consumer Attorneys of California (Sponsor); California Narcotics Officers (Sponsor); California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Conference Board of the Amalgamated Transit Union; California Conference of Machinists; California Correctional Supervisors Organization; California Teamsters

Public Affairs Council; Consumer Federation of California; Consumer Watchdog; Engineers and Scientists of California; IFPTE Local 20, AFL-CIO; International Faith Based Coalition; International Longshore and Warehouse Union; Los Angeles Police Protective League; Professional and Technical Engineers, IFPTE Local 21, AFL-CIO; Riverside Sheriffs Organization; UNITE-HERE, AFL-CIO; and Utility Workers Union of America

**OPPOSITION:** California Medical Association and The Doctor's Company

**POSITION:** Recommendation: Support

AMENDED IN SENATE APRIL 16, 2015

# SENATE BILL No. 482

**Introduced by Senator Lara**

February 26, 2015

An act to ~~amend Section 11165 of~~ *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: reporting.~~ *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 to notify all licensees 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.*

~~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, no more than 7 days after the controlled substance was dispensed.~~

~~This bill would specify that the dispensing pharmacies and clinics are required to report the specified information to the department no more than 7 business days after the controlled substance was dispensed.~~

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

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

*SECTION 1. Section 11165.4 is added to the Health and Safety Code, to read:*

*11165.4. (a) A prescriber shall access and consult the CURES database for the electronic history of controlled substances dispensed to a patient under his or her care before prescribing a Schedule II or Schedule III controlled substance for the first time to that patient and at least annually when that prescribed controlled substance remains part of his or her treatment. If the patient has an existing prescription for a Schedule II or Schedule*

*III controlled substance, the prescriber shall not prescribe an additional controlled substance until the prescriber determines that there is a legitimate need for that controlled substance.*

*(b) A dispenser shall access and consult the CURES database for the electronic history of controlled substances dispensed to a patient under his or her care before dispensing a Schedule II or Schedule III controlled substance for the first time to that patient. If the patient has an existing prescription for a Schedule II or Schedule III controlled substance, the dispenser shall not dispense an additional controlled substance until the dispenser checks the CURES database.*

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

*(d) Notwithstanding any other law, a prescriber or dispenser is not in violation of this section during any period of time in which the CURES database is suspended or not accessible or any period of time in which the Internet is not operational.*

*(e) This section shall not become operative until the Department of Justice certifies that the CURES database is ready for statewide use.*

*(f) For purposes of this section, the following terms shall have the following meanings:*

*(1) "Dispenser" means a person who is authorized to dispense a controlled substance under Section 11011.*

*(2) "Prescriber" means a health care practitioner who is authorized to write or issue prescriptions under Section 11150, excluding veterinarians.*

*(g) A violation of this section shall not be subject to the provisions of Section 11374.*

~~SECTION 1. Section 11165 of the Health and Safety Code is amended to read:~~

~~11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and~~

~~Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.~~

~~(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.~~

~~(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.~~

~~(2) CURES shall operate under existing law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to an individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to a third party. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.~~

~~(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to~~

~~the Department of Justice as soon as reasonably possible, but not more than seven business days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:~~

~~(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.~~

~~(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.~~

~~(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.~~

~~(4) National Drug Code (NDC) number of the controlled substance dispensed.~~

~~(5) Quantity of the controlled substance dispensed.~~

~~(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.~~

~~(7) Number of refills ordered.~~

~~(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.~~

~~(9) Date of origin of the prescription.~~

~~(10) Date of dispensing of the prescription.~~

~~(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.~~

~~(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying~~

~~desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).~~

~~(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 538
**Author:** Block
**Bill Date:** April 16, 2015, Amended
**Subject:** Naturopathic Doctors
**Sponsor:** California Naturopathic Doctor Association

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would expand the scope of practice for a naturopathic doctor (ND) and would allow an ND to prescribe certain drugs without physician supervision and perform minor procedures.

## BACKGROUND:

According to the Naturopathic Medicine Committee (Committee), naturopathic medicine is a distinct and comprehensive system of primary health care that uses natural methods and substances to support and stimulate the body's self-healing process. Naturopathic medicine includes a combination of a variety of natural medicines and treatments.

NDs are clinically trained in natural and conventional approaches to medicine and can currently prescribe natural and synthetic hormones, epinephrine, vitamins, minerals, and amino acids, independent of physician supervision. California NDs complete 72 pharmacology course hours as part of their schooling and are required to complete a minimum of 20 hours of pharmacotherapeutic training every two years as part of their 60 hour continuing education requirement. NDs attend four year, graduate-level accredited naturopathic medical schools and take a national, standardized licensing examination. NDs perform at least 1500 hours of clinical rotations at mostly clinics and private doctors' offices during their education program. There are over 500 ND licenses that have been issued to date in California.

Current law allows an ND to furnish or order legend drugs and Schedule III-V drugs in accordance with standardized procedures or protocols developed by the ND and his or her supervising physician. Current law authorizes an ND to provide repair and care incidental to superficial lacerations and abrasions, except suturing, and permits an ND to remove foreign bodies located in the superficial tissues. A physician may supervise up to four NDs at a time.

## ANALYSIS:

This bill would expand the scope of an ND, as follows:

- Authorize an ND to order diagnostic imaging studies consistent with the practice of naturopathic medicine (instead of only those determined appropriate by the

Committee).

- Clarify that an ND may order, provide, or furnish devices consistent with the naturopathic training, as determined by the Committee.
- Authorize an ND to utilize the cervix as a route of administration.
- Authorize an ND to perform operative procedures relative to superficial lacerations, superficial clinically benign lesions less than one centimeter and not located on the face, and superficial abrasions.
- Authorize an ND to use topical and parenteral use of substances consistent with the practice of naturopathic medicine in accordance with rules established by the Committee. This bill would define "parenteral therapy" as the administration of substances by means other than through the gastrointestinal tract, including intravenous, subcutaneous, intramuscular, and other areas of the body, excluding the ventral and dorsal body cavities.
- Authorize an ND to obtain samples of superficial human tissue by means of shave, punch, or excisional biopsy consistent with the practice of naturopathic medicine.
- Prohibit an ND from any procedures using general or spinal anesthesia, sclerotherapy, or procedures involving the eye.
- Authorize an ND to prescribe, administer, or order Schedule IV, V, and unclassified drugs labeled "for prescription only", except chemotherapeutics, without physician supervision.
- Require an ND to be subject to peer review reporting provisions.

This bill expands the scope of practice of an ND and would allow an ND to prescribe specified drugs without physicians supervision and perform minor procedures. Although NDs may be well qualified to practice naturopathic medicine that utilizes natural medicine and treatments in a natural approach, NDs do not receive the education and training in naturopathic education programs to safely perform minor procedures and prescribe without physician supervision. Physician supervision helps to ensure that the patient care provided by an ND includes physician involvement and oversight.

The Board's primary mission is consumer protection and by expanding the scope of practice for an ND, patient care and consumer protection could be compromised; as such, Board staff is recommending that the Board take an oppose position on this bill.

**FISCAL:** None

**SUPPORT:** California Naturopathic Doctor Association (Sponsor); AARP; Akasha Center for Integrative Medicine; American Association of Naturopathic Physicians; Arizona Naturopathic Medical Association; Bastyr University; California Chiropractic Association; California Naturopathic Clinic; California Naturopathic Medicine Committee; Center for Health Santa Cruz; Endocrinology Association of Naturopathic Physicians; Integrative Medicine for the Underserved; National College of Natural Medicine; Naturopathic Academy of Primary Care Physicians;

Paracelsus Natural Family Health Center; Pediatric Association of Naturopathic Physicians; Santa Cruz Naturopathic Medical Center; Southwest College of Naturopathic Medicine and Health Statistics; Stengler Center for Integrative Medicine; The Oncology Association of Naturopathic Physicians; Washington Association of Naturopathic Physicians; Women's View Medical Group, Inc.; and 1,155 individuals

**OPPOSITION:** American Academy of Pediatrics; American Congress of Obstetricians and Gynecologists; California Academy of Family Physicians; California Chapter of the American College of Cardiology; California Chapter of the American College of Emergency Physicians; California Medical Association; California Orthopaedic Association; California Radiological Society; California Society of Anesthesiologists; California Society of Dermatology and Dermatologic Surgery; California Society of Plastic Surgeons; Kaiser Permanente; and Osteopathic Physicians and Surgeons of California

**POSITION:** Recommendation: Oppose

AMENDED IN SENATE APRIL 16, 2015

AMENDED IN SENATE APRIL 6, 2015

# SENATE BILL No. 538

**Introduced by Senator Block**
***(Coauthor: Senator Hueso)***

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, as specified. *Under the act, a naturopathic doctor is authorized to dispense, administer, order, prescribe, furnish, or perform certain things, including health education and health counseling. The act also authorizes a naturopathic doctor to utilize routes of administration that include, among others, intramuscular.*

This bill would revise and recast those provisions and would expressly authorize a naturopathic doctor ~~to order, perform, review, and interpret the results of diagnostic procedures commonly used by physicians and surgeons in general practice and~~ to dispense, administer, order, prescribe, provide, furnish, or perform parenteral therapy and minor ~~procedures, among other duties.~~ *procedures.* ~~The bill would include cervical routes of administration among the authorized routes of administration.~~ The

bill would define terms for those purposes. *The bill would authorize a naturopathic doctor to use a cervical route of administration only for the purpose of administering barrier contraception.*

(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 ~~furnishing, prescribing, administering, or ordering~~ *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.~~ *surgeon for Schedule IV through 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:*

*SECTION 1. Section 3640 of the Business and Professions Code is amended to read:*

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

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

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

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

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

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

(4) Health education and health counseling.

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

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

*(5) Parenteral therapy.*

*(6) Minor procedures.*

(d) A naturopathic doctor may utilize routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular. *A naturopathic doctor may utilize a cervical route of administration only for the purpose of administering barrier contraception.*

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

(f) Nothing in this section shall exempt a naturopathic doctor from meeting applicable licensure requirements for the performance of clinical laboratory tests, including the requirements imposed under Chapter 3 (commencing with Section 1200).

*(g) For purposes of this section, the following terms have the following meanings:*

*(1) "Minor procedures" means care and operative procedures relative to superficial lacerations, superficial clinically benign lesions less than one centimeter and not located on the face, and superficial abrasions, and the removal of foreign bodies located in superficial structures and the topical and parenteral use of substances consistent with the practice of naturopathic medicine, in accordance with rules established by the Naturopathic Medicine Committee. A naturopathic doctor may obtain samples of superficial human tissue by means of shave, punch, or excisional biopsy consistent with the practice of naturopathic medicine. "Minor procedures" does not include general or spinal anesthesia, sclerotherapy, or procedures involving the eye.*

*(2) "Parenteral therapy" means the administration of substances by means other than through the gastrointestinal tract, including intravenous, subcutaneous, intramuscular, and other areas of the body, excluding the ventral and dorsal body cavities.*

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

3640.5. ~~Nothing~~ *(a) Except as set forth in this section, nothing* in this chapter or any other provision of law shall be construed to prohibit a naturopathic doctor from~~ furnishing or ordering~~ *administering, furnishing, ordering, or prescribing* drugs when ~~all of the following apply:~~ *functioning pursuant to this section.*

~~(a) The drugs are furnihsed or ordered~~

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

~~(b)~~

*(c)* The naturopathic doctor ~~is functioning~~ *shall function* pursuant to *a* standardized procedure, as defined by ~~subdivisions (a), (b), (d), (e), (h), and (i) of Section 2836.1 and paragraph (1) of subdivision (c) of Section 2836.1,~~ *paragraphs (1) and (2) of subdivision (c) of Section 2725,* or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the naturopathic doctor, and, where applicable, the facility administrator or his or her designee.

~~(c)~~

*(d)* The standardized procedure or protocol covering the ~~furnishing~~ *administering, furnishing, ordering, or prescribing* of *Schedule III* drugs shall specify which naturopathic doctors may ~~furnish or order~~ *administer, furnish, order, or prescribe Schedule III* drugs, which *Schedule III* drugs may be ~~furnished or ordered~~ *administered, furnished, ordered, or prescribed and* under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the naturopathic doctor's competence, including peer review, *which shall be subject to the reporting requirement in Section 805,* and review of the provisions of the standardized procedure.

~~(d)~~

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

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

(2) Approval of the standardized procedure.

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

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

~~(e)~~

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

~~(f) Drugs furnished or ordered~~

*(h) Notwithstanding subdivision (c), drugs administered, furnished, ordered, or prescribed* by a naturopathic doctor ~~may~~ *without the supervision of a physician and surgeon shall* include Schedule ~~III~~ *IV* through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and ~~shall be further limited to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a naturopathic doctor, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the naturopathic doctor's standardized procedure relating to controlled substances shall be provided upon request, to a licensed pharmacist who dispenses drugs, when there is uncertainty about the naturopathic doctor furnishing the order.~~ *any drug approved by the federal Food and Drug Administration and labeled "for prescription only" or words of similar import, except chemotherapeutics, that is not classified.*

~~(g)~~

*(i)* The committee ~~has certified~~ *shall certify* that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be ~~furnished or ordered~~ *administered, furnished, ordered, or prescribed* under this section.

The committee shall establish the requirements for satisfactory completion of this subdivision.

~~(h)~~

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

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

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

~~(i)~~

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

~~(j)~~

*(l)* Notwithstanding any other ~~provision of~~ law, *all of* the following *shall* apply:

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

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

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

~~SECTION 1. Section 3640 of the Business and Professions Code is amended to read:~~

~~3640. (a) A naturopathic doctor may order, perform, review, and interpret the results of diagnostic procedures commonly used by physicians and surgeons in general practice, including:~~

~~(1) Venipuncture.~~

~~(2) Physical and orificial examinations.~~

~~(3) Electrocardiograms.~~

~~(4) Diagnostic imaging technique consistent with the practice of naturopathic medicine.~~

~~(5) Phlebotomy.~~

~~(6) Clinical laboratory test and examinations, as described in subdivision (e).~~

~~(7) Obtaining samples of human tissue, consistent with the practice of naturopathic medicine.~~

~~(b) A naturopathic doctor may dispense, administer, order, prescribe, provide, furnish, or perform the following:~~

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

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

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

~~(4) Health education and health counseling.~~

~~(5) Parenteral therapy.~~

~~(6) Minor procedures.~~

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

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

~~(e) Nothing in this section shall exempt a naturopathic doctor from meeting applicable licensure requirements for the performance of clinical laboratory tests, including the requirements imposed under Chapter 3 (commencing with Section 1200).~~

~~(f) For purposes of this section:~~

~~(1) "Minor procedures" means care and operative procedures relative to superficial laceration, lesions, and abrasions, and the removal of foreign bodies located in superficial structures and aspiration of joints, and the topical and parenteral use of substances~~

~~consistent with the practice of naturopathic medicine, in accordance with rules established by the Naturopathic Medicine Committee.~~

~~(2) "Parenteral therapy" means the administration of substances by means other than through the gastrointestinal tract, including intravenous, subcutaneous, intramuscular, and other areas of the body excluding the ventral and dorsal body cavities.~~

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

~~3640.5. (a) Except as set forth in this section, nothing in this chapter or any other law shall be construed to prohibit a naturopathic doctor from furnishing, prescribing, administering, or ordering drugs.~~

~~(b) Drugs furnished or ordered by a naturopathic doctor may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), and any drug approved by the federal Food and Drug Administration that is not classified and labeled "for prescription only" or words of similar import.~~

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

~~(d) Use of the term "furnishing" in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include ordering and furnishing a drug.~~

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

~~(f) Notwithstanding any other provision of law, both of the following shall apply:~~

~~(1) All references to prescription in this code and the Health and Safety Code shall include drug orders issued by naturopathic doctors.~~

~~(2) The signature of a naturopathic doctor on a drug order issued in accordance with this section shall be deemed to be the signature~~

~~of a prescriber for purposes of this code and the Health and Safety Code.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** SB 622
**Author:** Hernandez
**Bill Date:** As proposed to be amended
**Subject:** Optometry
**Sponsor:** California Optometric Association

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would expand the scope of practice for optometrists to include the ability to order specified tests, perform laser and minor procedures, and administer vaccines.

## BACKGROUND:

Per the committee analysis, an optometrist is an independent primary health care professional for the eye. Optometrists examine, diagnose, treat, and manage diseases, injuries, and disorders of the visual system, the eye, and associated structures, as well as identify related systemic conditions affecting the eye. Optometrists prescribe medications, low vision rehabilitation, vision therapy, spectacle lenses, contact lenses, and perform certain surgical procedures. An optometrist degree requires both an undergraduate education in a college or university and four years of professional education at a college of optometry. In order to be licensed to practice by the California Board of Optometry (CBO), an individual must obtain an O.D. degree, pass the three part National Board of Examiners in Optometry examination, and the California Optometric State Law Examination. There are currently 9,100 optometrists in practice in California.

## ANALYSIS:

Following lengthy negotiations with stakeholders, the author proposed amendments to address concerns raised by the opposition. These amendments would authorize the CBO to establish educational and examination requirements by regulation for licensure, except as specified in the sections related to certification for minor procedures and lasers. This bill would also authorize the CBO to develop regulations authorizing optometrists to use noninvasive, nonsurgical technology to treat a condition authorized by law. In order to qualify to use each new technology authorized, the CBO shall require a licensee to take a minimum of four hours of education and perform an appropriate number of complete clinical procedures on live human patients. This bill would restore current law related to the use of drugs, but this bill would remove referral protocols for the use of certain drugs.

This bill would allow an optometrist to do the following:

- Treat hypotrichosis and blephartis.

- Expand the ability of an optometrist to order tests, to include CLIA waived tests.
- Administer injections for the diagnosis or treatment of conditions of the eye and adnexa, as part of additional "minor procedures", excluding intraorbital injections and injections administered for cosmetic effect.
- Expand the definition of glaucoma by including glaucoma that was caused by an "increase in intraocular pressure caused by steroid medication". This bill would specify that an optometrist may only treat this type of glaucoma if the optometrist has prescribed the steroid, or has consulted with and received approval from the prescriber.
- Allow an optometrist to perform laser procedures for the treatment of glaucoma, and for posterior capsulotomy secondary to cataract surgery, if the optometrist receives the required certification, which includes 25 hours of education and 24 complete clinical procedures on live human patients. An optometrist would also have to complete continuing education if certified to perform laser procedures.
- Allow an optometrist to perform minor procedures, defined as removal, destruction, or drainage of lesions of the eyelid and adnexa clinically evaluated by the optometrist to be noncancerous, not involving the eyelid margin, lacrimal supply or drainage systems, no deeper than the orbicularis muscle, and smaller than five millimeters in diameter, and closure of a wound, as specified. An optometrist would have to receive required certification to perform minor procedures, which would require 25 hours of education and 32 complete clinical procedures on live human patients. This bill would specify that minor procedures do not include blepharoplasty or other cosmetic surgery procedures that reshape normal structures of the body in order to improve appearance and self-esteem. An optometrist would also have to complete continuing education if certified to perform minor procedures.
- Authorize an optometrist to earn a certificate to administer immunizations for influenza, herpes zoster, and pneumococcus, if the optometrist does the following:
    - Completes an immunization training program endorsed by the Centers for Disease Control, or the Accreditation Council for Pharmacy Education, that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and the training must be maintained.
    - Is certified in basic life support for health care professionals.
    - Complies with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the Immunization Branch of the California Department of Public Health.

This bill would specify optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held. This bill would require an optometrist to consult with, and if necessary, refer a patient to that physician and surgeon or other appropriate health care provider when a situation or condition occurs that is beyond the optometrist's scope of practice.

Lastly, this bill would state legislative intent that the Office of Statewide Health Planning and Development, under the Health Workforce Pilot Projects Program, designate a pilot projects to test, demonstrate, and evaluate expanded roles for optometrists in the performance of management and treatment of diabetes, mellitus, hypertension, and hypercholesterolemia.

Per the Assembly Business, Professions, and Consumer Protection Committee analysis from 2013: "In response to the author's request, the Committee convened six separate meetings during 2013 to hear expert testimony and discuss key components of advanced practice: laser procedures, surgical procedures, immunizations, and injections. The Committee also conducted a tour of the UC Berkeley School of Optometry. Formal discussions concluded in January without consensus, although the working group had significantly reduced the range of open issues. Additional discussions between optometry and medicine continued from January 2014 through June 2014, often, but not always, with the Committee's involvement. By June, the parties had largely narrowed down the range of procedures under discussion, and were primarily concerned with the minimum number of supervised procedures required to perform the procedures safely and achieve certification. Unfortunately, the parties were unable to find a mutually-agreeable objective standard to bridge the remaining distance. Having failed to reach consensus, this bill was amended on June 16, 2014 to reflect the preferred position of the author and the sponsor, the California Optometric Association." Since this time, more stakeholder meetings have been held, resulting in the recent amends to address concerns raised by the opposition.

This bill has been significantly amended and narrowed, compared to SB 492 from last year. It creates certification programs for optometrists to perform laser procedures, minor procedures, and specified immunizations. At issue with the opposition is the length of additional training and the number of procedures required. This bill would now require certified optometrists to perform procedures on live patients as part of the required clinical training, which is a step in the right direction. However, this may not be enough training and education to ensure consumer protection. Although this bill is taking steps to ensure that certified optometrists receive additional education and training, the 25 hours of training and the number of procedures required by this bill likely are not be enough to ensure that consumers are protected and that certified optometrists are properly trained. As such, Board staff suggests that the Board oppose this bill unless it is amended to require additional hours of education and training in the various laser and minor procedures.

**FISCAL:** None

**SUPPORT:** California Optometric Association (Sponsor) and Western University of Health Sciences

**OPPOSITION:** American Federation of State, County and Municipal Employees; Blind Children's Center; California Academy of Eye Physicians & Surgeons; California Academy of Family Physicians; California Medical

Association; California Society of Plastic Surgeons; Latino Physicians of California; Ventura County American Chinese Medical Dental Association; and numerous individuals

**POSITION:** Recommendation: Oppose Unless Amended

AMENDED IN SENATE APRIL 9, 2015

# SENATE BILL No. 622

**Introduced by Senator Hernandez**

February 27, 2015

~~An act to amend Section 2842 of the Business and Professions Code, relating to vocational nursing.~~ *An act to amend Section 3041 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. ~~Vocational nursing.~~ *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 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 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 authorize an optometrist to use diagnostic pharmaceutical agents, as specified, including, but not limited to, oral and topical diagnostic pharmaceutical agents that are not controlled substances. 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, that he or she is certified in basic life support for health care professionals. 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. Because this bill would increase those moneys deposited in a continuously appropriated fund, it would make an appropriation.*

*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.*

~~The Vocational Nursing Practice Act provides for the licensure and regulation of the practice of vocational nursing by the Board of Vocational Nursing and Psychiatric Technicians within the Department of Consumer Affairs. The act requires the board to consist of 11 members, including one member that is a licensed vocational nurse or registered nurse who has had no less than 5 years' experience as a teacher or administrator in an accredited school of vocational nursing.~~

~~This bill would require that the vocational nurse or registered nurse's experience be in an accredited school of vocational nursing approved by the board.~~

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

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

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

3041. (a) The practice of optometry includes 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 *habilitative or* rehabilitative optometric services, and is the doing of any or all of the following:

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

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

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

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

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

~~(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:~~

~~(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.~~

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

~~(C) Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.~~

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

~~(E) Corneal surface disease and dry eyes.~~

~~(F) Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.~~

~~(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).~~

~~(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).~~

~~(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:~~

~~(1) Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.~~

~~(2) Topical lubricants.~~

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

~~(4) Topical and oral anti-inflammatories. In using steroid medication for:~~

~~(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.~~

~~(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.~~

~~(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.~~

~~(5) Topical antibiotic agents.~~

~~(6) Topical hyperosmotics.~~

~~(7) Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).~~

~~(A) The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.~~

~~(B) If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.~~

~~(8) Nonprescription medications used for the rational treatment of an ocular disorder.~~

~~(9) Oral antihistamines.~~

~~(10) Prescription oral nonsteroidal anti-inflammatory agents.~~

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

~~(A) If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

~~(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after~~

~~diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

~~(12) Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.~~

~~(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

~~(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.~~

~~(13) Oral analgesics that are not controlled substances.~~

~~(14) Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.~~

~~(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.~~

~~(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:~~

~~(1) Corneal scraping with cultures.~~

~~(2) Debridement of corneal epithelia.~~

~~(3) Mechanical epilation.~~

~~(4) Venipuncture for testing patients suspected of having diabetes.~~

~~(5) Suture removal, with prior consultation with the treating physician and surgeon.~~

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

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

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

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

~~(10) A clinical laboratory test or examination classified as waived under CLIA and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.~~

~~(11) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.~~

~~(12) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.~~

~~(13) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.~~

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

~~(f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:~~

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

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

~~(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:~~

~~(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.~~

~~(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.~~

~~(4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.~~

~~(5) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3041.10.~~

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

~~(h) The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist's~~

~~authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.~~

~~(i) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.~~

~~(j) For purposes of this chapter, "glaucoma" means either of the following:~~

~~(1) All primary open-angle glaucoma.~~

~~(2) Exfoliation and pigmentary glaucoma.~~

~~(k) For purposes of this chapter, "adnexa" means ocular adnexa.~~

~~(*l*) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.~~

*(b) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to this chapter. Satisfactory completion of the required educational and examination requirements shall be a condition for the issuance of an original optometrist license or required certifications pursuant to this chapter.*

*(c) The board may authorize optometrists to use nonsurgical technology to treat a condition authorized by this chapter.*

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

~~3041.1. With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.~~

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

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

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

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

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

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

*(E) Corneal and conjunctival surface disease and dry eyes disease.*

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

*(G) Eyelid disorders, including, but not limited to, hypotrichosis and blepharitis.*

*(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (b), and the procedures described in subdivision (c).*

*(3) For purposes of this chapter, "adnexa" means ocular adnexa.*

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

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

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

*(A) The drug is approved by the FDA.*

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

*(i) The American Hospital Formulary Service's Drug Information.*

*(ii) Two articles from major peer reviewed medical journals that present data supporting the proposed off-label use or uses as generally safe and effective, unless there is clear and convincing contradictory evidence presented in a major peer reviewed medical journal.*

*(3) Notwithstanding paragraph (1), codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the federal*

*Controlled Substances Act (21 U.S.C. Sec. 801, et seq.) may be used. The use of these controlled substances shall be limited to five days.*

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

*(1) Corneal scraping with cultures.*

*(2) Debridement of corneal epithelia.*

*(3) Mechanical epilation.*

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

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

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

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

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

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

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

*(11) Skin test to diagnose ocular allergies. Skin tests shall be limited to the superficial lawyer of the skin.*

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

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

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

*(15) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion and confirmation of 10 procedures under the supervision of an ophthalmologist or optometrist who is certified in lacrimal irrigation and dilation.*

*Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.*

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

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

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

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

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

*(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total*

*number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.*

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

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

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

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

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

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

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

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

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

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

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

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

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

*completed requirement was equivalent to that required in California, the requirement shall be waived.*

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

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

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

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

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

~~3041.2. (a) The State Board of Optometry shall, by regulation, establish educational and examination requirements for licensure to ensure the competence of optometrists to practice pursuant to subdivision (a) of Section 3041. Satisfactory completion of the educational and examination requirements shall be a condition for the issuance of an original optometrist license under this chapter, on and after January 1, 1980. Only those optometrists who have successfully completed educational and examination requirements as determined by the State Board of Optometry shall be permitted the use of pharmaceutical agents specified by subdivision (a) of Section 3041.~~

~~(b) Nothing in this section shall authorize an optometrist issued an original optometrist license under this chapter before January 1, 1996, to use or prescribe therapeutic pharmaceutical agents specified in subdivision (d) of Section 3041 without otherwise meeting the requirements of Section 3041.3.~~

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

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

*(1) All primary open-angle glaucoma.*

*(2) Exfoliation and pigmentary glaucoma.*

*(3) Increase in intraocular pressure caused by steroid medication.*

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

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

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

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

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

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

~~3041.3. (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*3041.3. (a) For the purposes of this chapter, "anterior segment laser" means any of the following:*

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

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

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

*(b) An optometrist certified to treat glaucoma pursuant to Section 3041.2 shall be additionally certified for the use of anterior segment lasers after submitting proof of satisfactory completion of a course that is approved by the board, provided by an accredited school of optometry, and developed in consultation with an ophthalmologist who has experience educating optometric students.*

*(1) The board-approved course shall be a minimum of 16 hours in length, and include a test for competency of the following:*

*(A) Laser physics, hazards, and safety.*

*(B) Biophysics of laser.*

*(C) Laser application in clinical optometry.*

*(D) Laser tissue interactions.*

*(E) Laser indications, contraindications, and potential complications.*

*(F) Gonioscopy.*

*(G) Laser therapy for open-angle glaucoma.*

*(H) Laser therapy for angle closure glaucoma.*

*(I) Posterior capsulotomy.*

*(J) Common complications of the lids, lashes, and lacrimal system.*

*(K) Medicolegal aspects of anterior segment procedures.*

*(L) Peripheral iridotomy.*

*(M) Laser trabeculoplasty.*

*(2) The school of optometry shall require each applicant for certification to perform a sufficient number of anterior segment laser procedures to verify that the applicant has demonstrated competency to practice independently. At a minimum, each applicant shall complete 14 anterior segment laser procedures on live humans.*

*(c) The board, by regulation, shall set the fee for issuance and renewal of a certificate authorizing the use of anterior segment lasers at an amount no higher than the reasonable cost of regulating anterior segment laser certified optometrists pursuant to this section. The fee shall not exceed one hundred fifty dollars ($150).*

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

*3041.4. (a) For the purposes of this chapter, "minor procedure" means either of the following:*

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

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

*(b) An optometrist certified to treat glaucoma pursuant to Section 3041.2 shall be additionally certified to perform minor procedures after submitting proof of satisfactory completion of a*

*course that is approved by the board, provided by an accredited school of optometry, and developed in consultation with an ophthalmologist who has experience teaching optometric students.*

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

*(A) Minor surgical procedures.*

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

*(C) Surgical anatomy of the eyelids.*

*(D) Emergency surgical procedures.*

*(E) Chalazion management.*

*(F) Epilumeninesence microscopy.*

*(G) Suture techniques.*

*(H) Local anesthesia techniques and complications.*

*(I) Anaphylaxsis and other office emergencies.*

*(J) Radiofrequency surgery.*

*(K) Postoperative wound care.*

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

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

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

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

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

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

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

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

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

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

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

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

*3041.8. It is the intent of the Legislature that the Office of Statewide Health Planning and Development, under the Health Workforce Pilot Projects Program, 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.*

*SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~SECTION 1. Section 2842 of the Business and Professions Code is amended to read:~~

~~2842. (a) Each member of the board shall be a citizen of the United States and a resident of the State of California. The board shall have the following composition:~~

~~(1) Two members shall be duly licensed vocational nurses who have been licensed for a period of not less than three years prior to appointment.~~

~~(2) Two members shall be licensed psychiatric technicians, each of whom shall have had not less than five years' experience in a psychiatric hospital, or in a psychiatric unit of a hospital licensed by the State Department of Health Services, or a private institution licensed by the State Department of Health Services.~~

~~(3) One member shall be a licensed vocational nurse or registered nurse who shall have had not less than five years' experience as a teacher or administrator in an accredited school of vocational nursing approved by the board.~~

~~(4) Six members shall be public members who are not licentiates of the board or any other board under this division or of any board referred to in Sections 1000 and 3600.~~

~~(b) No person may serve as a member of the board for more than two consecutive terms.~~

~~(c) Per diem and expenses of members of the board who are licensed psychiatric technicians shall be paid solely from revenues received pursuant to Chapter 10 (commencing with Section 4500) of Division 2.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

**Bill Number:** **S**B 738
**Author:** Huff
**Bill Date:** April 15, 2015, Amended
**Subject:** Pupil Health: Epinephrine Auto-Injectors: Liability Limitation
**Sponsor:** California Society for Allergy, Asthma and Immunology (CSAAI)

## DESCRIPTION OF CURRENT LEGISLATION:

This bill would provide liability protection for physicians writing standing order prescriptions for epinephrine auto-injectors for school districts, county offices of education, and charter schools.

## BACKGROUND

SB 1266 (Huff, Chapter 321, Statutes of 2014) was signed into law last year. This bill requires school districts, county offices of education (COE), and charter schools to provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered, as specified. This bill authorizes school nurses or trained personnel to use the epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Epinephrine is the first line of treatment for someone who is experiencing anaphylaxis, a potential lethal allergic reaction. Epinephrine is easily administered and has very little side effect.

According to the author's office, once SB 1266 took effect, many physicians began raising questions about issuing the prescription due to liability concerns. Physicians have concerns with issuing standing orders to the school, and have requested liability coverage in law, similar to what is in place for Automated External Defibrillators (AEDs) and opioid antagonists (Naloxone). In addition, recent data from the California School Nurse Organization shows that many schools cannot implement SB 1266 because they cannot obtain the necessary prescription.

## ANALYSIS

This bill would state that an authorizing physician and surgeon shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for the issuance of a prescription or order pursuant to existing law related to epinephrine auto injectors, unless the physician and surgeon's issuance constitutes gross negligence or willful or malicious conduct.

The Board has supported bills in the past that provide this type of liability protection for physicians, including AB 635 (Ammiano) in 2013. As such, Board staff is suggesting that the

Board support this bill, as it will help school districts obtain standing order prescriptions so they can benefit from SB 1266 from last year.

**FISCAL:** None to the Board

**SUPPORT:** CSAAI (Sponsor)

**OPPOSITION:** None on file

**POSITION:** Recommendation: Support

AMENDED IN SENATE APRIL 15, 2015

# SENATE BILL No. 738

**Introduced by Senator Huff**

February 27, 2015

An act to amend Section 49414 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 738, as amended, Huff. Pupil health: epinephrine auto-injectors: liability limitation.

Existing law requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses and trained personnel who have volunteered, as specified, and authorizes school nurses and trained personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Existing law requires a qualified supervisor of health or administrator at a school district, county office of education, or charter school to obtain the prescription for epinephrine auto-injectors from an authorizing physician and surgeon, as defined, and authorizes the prescription to be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

This bill would prohibit an authorizing physician and surgeon from being subject to professional review, being liable in a civil action, or being subject to criminal prosecution for ~~any act in~~ the ~~issuing~~ *issuance* of a prescription or order, pursuant to these provisions, unless the ~~act~~ *physician and surgeon's issuance* constitutes gross negligence or willful or malicious conduct.

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

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

SECTION 1. Section 49414 of the Education Code is amended to read:

49414. (a) School districts, county offices of education, and charter schools shall provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered pursuant to subdivision (d), and school nurses or trained personnel may use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.

(A) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(B) Causes of anaphylaxis may include, but are not limited to, an insect sting, food allergy, drug reaction, and exercise.

(2) "Authorizing physician and surgeon" may include, but is not limited to, a physician and surgeon employed by, or contracting with, a local educational agency, a medical director of the local health department, or a local emergency medical services director.

(3) "Epinephrine auto-injector" means a disposable drug delivery system with a spring-activated needle that is designed for emergency administration of epinephrine to provide rapid, convenient first aid for persons suffering a potentially fatal reaction to anaphylaxis.

(4) "Qualified supervisor of health" may include, but is not limited to, a school nurse.

(5) "Volunteer" or "trained personnel" means an employee who has volunteered to administer epinephrine auto-injectors to a person if the person is suffering, or reasonably believed to be suffering, from anaphylaxis, has been designated by a school, and has received training pursuant to subdivision (d).

(c) Each private elementary and secondary school in the state may voluntarily determine whether or not to make emergency epinephrine auto-injectors and trained personnel available at its school. In making this determination, a school shall evaluate the emergency medical response time to the school and determine whether initiating emergency medical services is an acceptable alternative to epinephrine auto-injectors and trained personnel. A private elementary or secondary school choosing to exercise the authority provided under this subdivision shall not receive state funds specifically for purposes of this subdivision.

(d) Each public and private elementary and secondary school in the state may designate one or more volunteers to receive initial and annual refresher training, based on the standards developed pursuant to subdivision (e), regarding the storage and emergency use of an epinephrine auto-injector from the school nurse or other qualified person designated by an authorizing physician and surgeon.

(e) (1) Every five years, or sooner as deemed necessary by the Superintendent, the Superintendent shall review minimum standards of training for the administration of epinephrine auto-injectors that satisfy the requirements of paragraph (2). For purposes of this subdivision, the Superintendent shall consult with organizations and providers with expertise in administering epinephrine auto-injectors and administering medication in a school environment, including, but not limited to, the State Department of Public Health, the Emergency Medical Services Authority, the American Academy of Allergy, Asthma and Immunology, the California School Nurses Organization, the California Medical Association, the American Academy of Pediatrics, Food Allergy Research and Education, the California Society of Allergy, Asthma and Immunology, the American College of Allergy, Asthma and Immunology, the Stanford Allergy Center, and others.

(2) Training established pursuant to this subdivision shall include all of the following:

(A) Techniques for recognizing symptoms of anaphylaxis.

(B) Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.

(C) Emergency followup procedures, including calling the emergency 911 telephone number and contacting, if possible, the pupil’s parent and physician.

(D) Recommendations on the necessity of instruction and certification in cardiopulmonary resuscitation.

(E) Instruction on how to determine whether to use an adult epinephrine auto-injector or a junior epinephrine auto-injector, which shall include consideration of a pupil's grade level or age as a guideline of equivalency for the appropriate pupil weight determination.

(F) Written materials covering the information required under this subdivision.

(3) Training established pursuant to this subdivision shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies In Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention and the most recent guidelines for medication administration issued by the department.

(4) A school shall retain for reference the written materials prepared under subparagraph (F) of paragraph (2).

(f) A school district, county office of education, or charter school shall distribute a notice at least once per school year to all staff that contains the following information:

(1) A description of the volunteer request stating that the request is for volunteers to be trained to administer an epinephrine auto-injector to a person if the person is suffering, or reasonably believed to be suffering, from anaphylaxis, as specified in subdivision (b).

(2) A description of the training that the volunteer will receive pursuant to subdivision (d).

(g) (1) A qualified supervisor of health at a school district, county office of education, or charter school shall obtain from an authorizing physician and surgeon a prescription for each school for epinephrine auto-injectors that, at a minimum, includes, for elementary schools, one regular epinephrine auto-injector and one junior epinephrine auto-injector, and for junior high schools, middle schools, and high schools, if there are no pupils who require a junior epinephrine auto-injector, one regular epinephrine auto-injector. A qualified supervisor of health at a school district, county office of education, or charter school shall be responsible for stocking the epinephrine auto-injector and restocking it if it is used.

(2) If a school district, county office of education, or charter school does not have a qualified supervisor of health, an administrator at the school district, county office of education, or charter school shall carry out the duties specified in paragraph (1).

(3) A prescription pursuant to this subdivision may be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

(4) An authorizing physician and surgeon shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for ~~any act in~~ the ~~issuing~~ *issuance* of a prescription or order pursuant to this section, unless the ~~act~~ *physician and surgeon's issuance* constitutes gross negligence or willful or malicious conduct.

(h) A school nurse or, if the school does not have a school nurse or the school nurse is not onsite or available, a volunteer may administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis at school or a school activity when a physician is not immediately available. If the epinephrine auto-injector is used it shall be restocked as soon as reasonably possible, but no later than two weeks after it is used. Epinephrine auto-injectors shall be restocked before their expiration date.

(i) A volunteer shall initiate emergency medical services or other appropriate medical followup in accordance with the training materials retained pursuant to paragraph (4) of subdivision (e).

(j) A school district, county office of education, or charter school shall ensure that each employee who volunteers under this section will be provided defense and indemnification by the school district, county office of education, or charter school for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

(k) A state agency, the department, or a public school may accept gifts, grants, and donations from any source for the support of the public school carrying out the provisions of this section,

including, but not limited to, the acceptance of epinephrine auto-injectors from a manufacturer or wholesaler.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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| **Bill Number:** | SB 800 |
| **Author:** | Committee on Business, Professions, and Economic Development |
| **Bill Date:** | April 20, 2015, Amended |
| **Subject:** | Omnibus |
| **Sponsor:** | Committee, Medical Board of California (Board) and other affected regulatory health boards |
| **Position:** | Support provisions related to the Board |

## DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business, Professions and Economic Development Committee. This analysis will only include the relevant sections of the bill in the Business and Professions Code (BPC) that are sponsored by and impact the Board. The omnibus language would clarify that registration is required to practice as a polysomnographic technologist, technician, or trainee in California. This bill would also make other technical, clarifying changes to fix an incorrect code section reference in existing law, delete an outdated section of statute related to a pilot project that no longer exists, and clarify that a licensee cannot call themselves "doctor", "physician", "Dr.", or "M.D.", if their license to practice medicine has been suspended or revoked.

## ANALYSIS:

### BPC Section 146 – Polysomnography

Existing statute does not specifically state that registration is required to practice as a polysomnographic technologist, technician, or trainee in California. Due to this ambiguity, the Board has encountered issues with pursuing action against individuals who are practicing polysomnography without being registered with the Board. This bill would add the code section related to polysomnographic technologists, technicians, and trainees to Business and Professions Code Section 146, which requires registration to engage in businesses and professions that are regulated by the code sections listed.

This bill would ensure that individuals practicing as polysomnographic technologists, technicians, and trainees in California are registered and subject to appropriate regulation by the Board. This will further the Board's mission of consumer protection.

### BPC Section 2054 – Jurisdiction Language

This bill would make a technical, clarifying change in the section of law that regulates when individuals can use the words "doctor", "physician", "Dr", or the initials "M.D." Current law does not allow use if an individual has been issued a license to practice medicine in another jurisdiction and has had that license suspended or revoked.

The word “another jurisdiction” in existing law leads to the interpretation that this provision may not apply to California licensees, although it should. It does not protect consumers to allow licensees in California that have had their license suspended or revoked to be able to use “doctor”, “physician”, “Dr.”, or “M.D.”, when licensees in other states are not allowed to do so.

This bill would clarify that any licensee (including those licensed in California), cannot call themselves “doctor”, “physician”, “Dr.”, or use the initials “M.D.”, if their license to practice medicine has been suspended or revoked. This will help to further the Board’s mission of consumer protection.

**BPC 2221 – Postgraduate Training Authorization Letter (PTAL) Denial**

A PTAL allows international medical graduates to seek and commence accredited post graduate training in California. The Board can only approve or deny a PTAL. The Board has been using the same reasons for denying a license application, unprofessional conduct or any cause that would subject a licensee to revocation or suspension of his or her license, as the reasons it denies a PTAL. This bill would clarify that the reasons the Board can deny a license application are the same reasons the Board can deny a PTAL.

**BPC 2401 – Sunsetted Pilot Program**

BPC Section 2401 specifies exemptions to the ban on the corporate practice of medicine. One of these exemptions included a pilot program in 2401.1, that has since been sunsetted and repealed. This change would simply clean-up the code section.

**BPC 2529 – Incorrect Code Section Reference**

A registered Research Psychoanalyst is an individual who has graduated from an approved psychoanalytic institution and is registered with the Board. Research Psychoanalysts may engage in psychoanalysis as an adjunct to teaching, training or research. Additionally, students who are currently enrolled in an approved psychoanalytic institution and are registered with the Board as a Student Research Psychoanalyst, may engage in psychoanalysis under supervision. B&P Code Section 2529 references code sections that define unprofessional conduct for Research Psychoanalysts, one of the code sections referenced is 725, which is the wrong code section, as Research Psychoanalysts cannot prescribe.

This bill would correct an incorrect code reference, as excessive prescribing does not apply to Research Psychoanalysts, however sexual misconduct could apply and is the correct code section that should be referred to in this section, BPC Section 726, not 725.

**Probation Language**

The Board is responsible for licensing/registering licensed midwives, non-resident contact lens sellers, spectacle lens dispensers, contact lens dispensers, registered dispensing opticians, and polysomnographic technologists, technicians, and trainees. The Board does put these licensees/registrants on probation currently. However, there is not specific authority in the practice acts for the Board to do this, as there is for physicians and surgeons.

This bill would specifically authorize probation and the payment of probation monitoring fees for licensed midwives, non-resident contact lens sellers, spectacle lens dispensers, contact lens dispensers, registered dispensing opticians, and polysomnographic technologists, technicians, and trainees.

**Reinstatement or Modification/Termination of Probation Language**

The Board is responsible for licensing/registering licensed midwives, non-resident contact lens sellers, spectacle lens dispensers, contact lens dispensers, registered dispensing opticians, and polysomnographic technologists, technicians, and trainees. The Board allows these licensees/registrants to petition the Board for reinstatement of their license/registration or for termination/modification of probation after their license has been revoked, surrendered, or placed on probation. However, there is no specific authority in statute for the Board to allow for this, as there is for physicians and surgeons.

This bill would specifically authorize licensed midwives, non-resident contact lens sellers, spectacle lens dispensers, contact lens dispensers, registered dispensing opticians, and polysomnographic technologists, technicians, and trainees to petition the Board for reinstatement or termination/modification of probation.

These statute changes have already been approved by the Board to be included in the omnibus bill.

**FISCAL:** None to the Board

**SUPPORT:** Medical Board of California and other affected regulatory health boards.

**OPPOSITION:** None on file

AMENDED IN SENATE APRIL 20, 2015

# SENATE BILL No. 800

**Introduced by Committee on Business, Professions and Economic Development (Senators Hill (Chair), Bates, Berryhill, Block, Galgiani, Hernandez, Jackson, Mendoza, and Wieckowski)**

March 18, 2015

An act to amend Sections 28, 146, 500, 650.2, 800, 1603a, 1618.5, 1640.1, 1648.10, 1650, 1695, 1695.1, 1905.1, 1944, 2054, *2221,* 2401, 2428, *2519*, *2520,* 2529, *2546.7*, *2546.9*, *2559.3*, *2563*, *2565*, *2566*, *2566.1*, 2650, 2770, 2770.1, 2770.2, 2770.7, 2770.8, 2770.10, 2770.11, 2770.12, 2770.13, 2835.5, 2914, 3057, 3509.5, *3576*, *3577*, 4836.2, *4887,* 4938, 4939, 4980.399, 4980.43, 4980.54, 4984.01, 4989.34, 4992.09, 4996.2, 4996.22, 4996.28, *4999.1, 4999.2, 4999.3, 4999.4, 4999.5, 4999.7,* 4999.45, 4999.46, 4999.55, 4999.76, and 4999.100 of, to amend the heading of Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2 of, *to add Sections 2519.5, 2546.11, 2555.5, 2559.7, 2563.5, and 3576.5 to,* and to repeal Section 1917.2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Committee on Business, Professions and Economic Development. Healing arts.

Under existing law, the Department of Consumer Affairs is comprised of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations, including those relating to the healing arts:

(1) Existing law requires persons applying for initial licensure or renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist to have

completed prescribed coursework or training in child abuse assessment and reporting. Existing law requires the training to have been obtained from an accredited or approved educational institution, a continuing education provider approved by the responsible board, or a course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.

This bill would require the responsible board to specify a continuing education provider for child abuse assessment and reporting coursework by regulation, and would permit the responsible board to approve or accept a sponsored or offered course.

(2) Existing law relating to unlicensed activity enforcement lists specified provisions that require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by the department ~~and~~ *and, notwithstanding any other law,* makes a violation of a listed provision *punishable as* an infraction ~~punishable as prescribed.~~ *under specified circumstances.*

This bill would include in those listed provisions an existing requirement for the registration of individuals as certified polysomnographic technologists, polysomnographic technicians, and polysomnographic trainees. ~~By creating a new infraction, this bill would impose a state-mandated local program.~~

*The bill would also include in those listed provisions a provision of the Educational Psychologist Practice Act that makes it unlawful for any person to practice educational psychology or use any title or letters that imply that he or she is a licensed educational psychologist unless, at the time of so doing, he or she holds a valid, unexpired, and unrevoked license under that act, the violation of which is a misdemeanor. The bill would further include in those listed provisions existing requirements of the Licensed Professional Clinical Counselor Act that a person not practice or advertise the performance of professional clinical counseling services without a license issued by the board, and pay the license fee, as required by that act, the violation of which is a misdemeanor.*

*By creating new infractions, this bill would impose a state-mandated local program.*

(3) The Dental Practice Act provides for the licensure and regulation of dentists by the Dental Board of California. For purposes of the act, any reference to the Board of Dental Examiners is deemed a reference to the Dental Board of California.

This bill would delete certain existing references to the Board of Dental Examiners and, instead, refer to the Dental Board of California.

(4) Existing law provides for the regulation of dental hygienists by the Dental Hygiene Committee of California, within the jurisdiction of the Dental Board of California. Existing law authorizes the committee, until January 1, 2010, to contract with the dental board to carry out any of specified provisions relating to the regulation of dental hygienists, and, on and after January 1, 2010, to contract with the dental board to perform investigations of applicants and licensees under those provisions. Existing law requires the committee to establish fees that relate to the licensing of a registered dental hygienist, subject to specified limitations, including fees for curriculum review and site evaluation for accreditation of educational programs.

This bill would require the Dental Hygiene Committee of California to create and maintain a central file of the names of licensees, to provide an individual historical record with information on acts of licensee misconduct and discipline. The bill would remove the limiting dates from the contracting provisions, thereby authorizing the committee to contract with the dental board to carry out any of specified provisions relating to the regulation of dental hygienists, including performing investigations of applicants and licensees. This bill, with regard to fees for accreditation of educational programs, would add a maximum fee for feasibility study review.

(5) The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the board issues a physician and surgeon's certificate to a licensed physician and ~~surgeon.~~ *surgeon, and authorizes the board to deny a certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license.* The act prohibits a person who fails to renew his or her license within 5 years after its expiration from renewing it, and prohibits the license from being reissued, reinstated, or restored thereafter, although the act authorizes a person to apply for and obtain a new license under specified circumstances.

This bill would *additionally authorize the board to deny a postgraduate training authorization letter to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license. The bill would* recast that *renewal* provision to prohibit renewal by a person who voluntarily cancels his or her license or who fails to renew it as described, and

would authorize that person to apply for and obtain a license under those specified circumstances, without regard to reissuance, reinstatement, or restoration.

(6) Existing law relating to research psychoanalysts authorizes certain students and graduates in psychoanalysis to engage in psychoanalysis under prescribed circumstances if they register with the Medical Board of California and present evidence of their student or graduate status. Existing law authorizes that board to suspend or revoke the exemption of those persons from licensure for unprofessional conduct for, among other things, repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, use of diagnostic procedures, or use of diagnostic or treatment facilities.

This bill would substitute, for those described bases for suspension or revocation of the exemption, the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer.

(7) The Physical Therapy Practice Act provides for the licensure, approval, and regulation of physical therapists and physical therapist assistants by the Physical Therapy Board of California. The act establishes education requirements for a physical therapist assistant, including subject matter instruction through a combination of didactic and clinical experiences, and requires the clinical experience to include at least 18 weeks of full-time experience with a variety of patients.

This bill would delete that 18-week full-time experience requirement for physical therapist assistant education.

(8) The Nursing Practice Act provides for the licensure and regulation of nurse practitioners by the Board of Registered Nursing. The act, on and after January 1, 2008, requires an applicant for initial qualification or certification as a nurse practitioner under the act who has not been qualified or certified as a nurse practitioner to meet specified requirements. Certain provisions allow the board to find other persons in practice qualified to use the title of “nurse practitioner.”

This bill would delete those title provisions.

(9) The Nursing Practice Act provides for a diversion program to identify and rehabilitate registered nurses whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness.

This bill would instead refer to the program as an intervention program.

(10) The Optometry Practice Act provides for the licensure and regulation of optometrists by the State Board of Optometry. The act

prescribes license eligibility requirements, including, but not limited to, submitting proof that the person is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements, submitting proof that the person has been in active practice in a state in which he or she is licensed for a total of at least 5,000 hours in 5 of the 7 consecutive years immediately preceding the date of his or her application, and has never had his or her license to practice optometry revoked or suspended. For purposes of those provisions, "in good standing" includes the requirement that the person have not been found mentally incompetent by a physician so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

This bill would delete that active practice requirement and would require that the license never have been revoked or suspended in any state where the person holds a license. The bill, with regard to making such a finding of mental incompetence, would replace a finding by a physician with a finding by a licensed psychologist or licensed psychiatrist.

(11) The Physician Assistant Practice Act requires the Physician Assistant Board to annually elect a chairperson and vice chairperson from among its members.

This bill would require the annual election of a president and vice president.

(12) Existing law relating to veterinary medicine requires a veterinary assistant to obtain a controlled substance permit from the Veterinary Medical Board in order to administer a controlled substance, and authorizes the board to deny, revoke, or suspend the permit, after notice and hearing, for any of specified causes. Existing law authorizes the board to revoke or suspend a permit for the same.

This bill would, instead, authorize the board to suspend or revoke the controlled substance permit of a veterinary assistant, after notice and hearing, for any of specified causes, and to deny, revoke, or suspend a permit for the same.

(13) The Acupuncture Licensure Act provides for the licensure and regulation of the practice of acupuncture by the Acupuncture Board. The act requires the board to issue a license to practice acupuncture to a person who meets prescribed requirements. The act requires, in the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and

clinical experience that meets certain standards established by the board. Existing law, commencing January 1, 2017, specifically requires the board to establish standards for the approval of educational training and clinical experience received outside the United States and Canada.

This bill would remove Canada from those provisions, thereby applying the same standards to all training and clinical experience completed outside the United States.

(14) The Licensed Marriage and Family Therapist Act provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences. The act sets forth the educational and training requirements for licensure as a marriage and family therapist, including certain supervised-experience requirements whereby a prospective licensee is required to work a specified number of hours in a clinical setting under the supervision of experienced professionals. The act requires all persons to register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure. The act, with regard to interns, requires all postdegree hours of experience to be credited toward licensure, except when employed in a private practice setting, if certain conditions are met.

This bill would require postdegree hours of experience to be credited toward licensure if certain conditions are met. The bill would prohibit an applicant for licensure as a marriage and family therapist from being employed or volunteering in a private practice until registered as an intern by the board. This bill would similarly prohibit an applicant for professional clinical counselor under the Licensed Professional Clinical Counselor Act from being employed or volunteering in a private practice until registered as an intern by the board.

(15) The Licensed Marriage and Family Therapist Act, the Educational Psychologist Practice Act, the Clinical Social Worker Practice Act, and the Licensed Professional Clinical Counselor Act require the Board of Behavioral Sciences to approve continuing education providers for specified educational courses relating to licensure for marriage and family therapists, educational psychologists, clinical social workers, and professional clinical counselors.

The bill would modify those acts to require the Board of Behavioral Sciences to identify, by regulation, acceptable continuing education providers.

(16) The Licensed Marriage and Family Therapist Act and the Licensed Professional Clinical Counselor Act provide for the registration

of interns and allow a maximum of possible renewals after initial registration, after which a new registration number is required to be obtained. The Clinical Social Worker Practice Act provides similarly for the registration and renewal of registration of associate clinical social workers. An applicant who is issued a subsequent number is barred from employment or volunteering in a private practice.

This bill would revise those provisions to refer throughout to subsequent registration numbers.

*(17) Existing law authorizes the Medical Board of California to take specific actions with regard to the licences of licensed midwives, and the registration of nonresident contact lens sellers, spectacle lens dispensers, contact lens dispensers, dispensing opticians, and polysomnographic technologists.*

*This bill would authorize the board to place on probation for specified grounds a midwife license or the registration certificate of a nonresident contact lens seller, spectacle lens dispenser, contact lens dispenser, or polysomnographic technologist. The bill would require such a licensee or registrant to pay probation monitoring fees upon order of the board. The bill would authorize a person whose license or certificate has been surrendered while under investigation or while charges are pending, or whose license or certificate has been revoked or suspended or placed on probation, to petition the board for reinstatement or modification of penalty, as prescribed.*

*(18) Existing law provides for the registration of telephone medical advice services. Existing law imposes requirements for obtaining and maintaining registration, including a requirement that the provision of medical advice services are provided by specified licensed, registered, or certified health care professionals.*

*This bill would expand the specified health care professionals to include naturopathic doctors and licensed professional clinical counselors. The bill would require a service to notify the department of certain business changes, and to submit quarterly reports.*

~~(17)~~

*(19)* This bill would additionally delete or update obsolete provisions and make conforming or nonsubstantive changes.

~~(18)~~

*(20)*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:*

SECTION 1. Section 28 of the Business and Professions Code is amended to read:

28. (a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with victims and potential victims of child, elder, and dependent adult abuse, and abusers and potential abusers of children, elders, and dependent adults are provided with adequate and appropriate training regarding the assessment and reporting of child, elder, and dependent adult abuse that will ameliorate, reduce, and eliminate the trauma of abuse and neglect and ensure the reporting of abuse in a timely manner to prevent additional occurrences.

(b) The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal.

(c) All persons applying for initial licensure or renewal of a license as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting that meets the requirements of this section, including detailed knowledge of the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code). The training shall meet all of the following requirements:

(1) Be obtained from one of the following sources:

(A) An accredited or approved educational institution, as defined in Sections 2902, 4980.36, 4980.37, 4996.18, and 4999.12, including extension courses offered by those institutions.

(B) A continuing education provider as specified by the responsible board by regulation.

(C) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved or accepted by the responsible board.

(2) Have a minimum of seven contact hours.

(3) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(4) An applicant shall provide the appropriate board with documentation of completion of the required child abuse training.

(d) The Board of Psychology and the Board of Behavioral Sciences shall exempt an applicant who applies for an exemption from this section and who shows to the satisfaction of the board that there would be no need for the training in his or her practice because of the nature of that practice.

(e) It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist have minimal but appropriate training in the areas of child, elder, and dependent adult abuse assessment and reporting. It is not intended that, by solely complying with this section, a practitioner is fully trained in the subject of treatment of child, elder, and dependent adult abuse victims and abusers.

(f) The Board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal.

SEC. 2. Section 146 of the Business and Professions Code is amended to read:

146. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following applies:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

(1) Sections 2052 and 2054.
(2) Section 2630.
(3) Section 2903.
(4) Section 3575.
(5) Section 3660.
(6) Sections 3760 and 3761.
(7) Section 4080.
(8) Section 4825.
(9) Section 4935.
(10) Section 4980.
*(11) Section 4989.50.*
~~(11)~~
*(12)* Section 4996.
*(13) Section 4999.30.*
~~(12)~~
*(14)* Section 5536.
~~(13)~~
*(15)* Section 6704.
~~(14)~~

*(16)* Section 6980.10.
~~(15)~~
*(17)* Section 7317.
~~(16)~~
*(18)* Section 7502 or 7592.
~~(17)~~
*(19)* Section 7520.
~~(18)~~
*(20)* Section 7617 or 7641.
~~(19)~~
*(21)* Subdivision (a) of Section 7872.
~~(20)~~
*(22)* Section 8016.
~~(21)~~
*(23)* Section 8505.
~~(22)~~
*(24)* Section 8725.
~~(23)~~
*(25)* Section 9681.
~~(24)~~
*(26)* Section 9840.
~~(25)~~
*(27)* Subdivision (c) of Section 9891.24.
~~(26)~~
*(28)* Section 19049.

(d) Notwithstanding any other law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation that was the basis for his or her conviction.

SEC. 3. Section 500 of the Business and Professions Code is amended to read:

500. If the register or book of registration of the Medical Board of California, the Dental Board of California, or the Board of Pharmacy is destroyed by fire or other public calamity, the board, whose duty it is to keep the register or book, may reproduce it so

that there may be shown as nearly as possible the record existing in the original at the time of destruction.

SEC. 4. Section 650.2 of the Business and Professions Code is amended to read:

650.2. Notwithstanding Section 650 or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 or any other person, to participate in or operate a group advertising and referral service for dentists if all of the following conditions are met:

(a) The patient referrals by the service result from patient-initiated responses to service advertising.

(b) The service advertises, if at all, in conformity with Section 651 and subdivisions (i) and (*l*) of Section 1680.

(c) The service does not employ a solicitor within the meaning of subdivision (j) of Section 1680.

(d) The service does not impose a fee on the member dentists dependent upon the number of referrals or amount of professional fees paid by the patient to the dentist.

(e) Participating dentists charge no more than their usual and customary fees to any patient referred.

(f) The service registers with the Dental Board ~~of California~~ of California, providing its name and address.

(g) The service files with the Dental Board ~~of California~~ of California a copy of the standard form contract that regulates its relationship with member dentists, which contract shall be confidential and not open to public inspection.

(h) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more dentists, the service discloses that fact in all public communications, including, but not limited to, communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

(i) When member dentists pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: “Paid for by participating dentists.” In print advertisements, the required statement shall be in at least 9-point type. In radio advertisements, the required statement shall be articulated so as to be clearly audible and understandable by the radio audience. In television

advertisements, the required statement shall be either clearly audible and understandable to the television audience, or displayed in a written form that remains clearly visible for at least five seconds to the television audience. This subdivision shall be operative on and after July 1, 1994.

The Dental Board ~~of California~~ of California may adopt regulations necessary to enforce and administer this section.

The Dental Board of California may suspend or revoke the registration of any service that fails to comply with subdivision (i). No service may reregister with the board if it has a registration that is currently under suspension for a violation of subdivision (i), nor may a service reregister with the board if it had a registration revoked by the board for a violation of subdivision (i) less than one year after that revocation.

The Dental Board ~~of California~~ of California may petition the superior court of any county for the issuance of an injunction restraining any conduct that constitutes a violation of this section.

It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for dentists without providing its name and address to the Dental Board ~~of California~~ of California.

It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions provided in Section 650. The Legislature intends to allow the pooling of resources by dentists for the purposes of advertising.

This section shall not be construed to authorize a referral service to engage in the practice of dentistry.

SEC. 5. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Dental Hygiene Committee of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, and the Physician

Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licentiate pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

(2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board

of California shall maintain complaints or reports as long as each board deems necessary.

(c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

(2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

(3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

(4) These disclosures shall effect no change in the confidential status of these records.

SEC. 6. Section 1603a of the Business and Professions Code is amended to read:

1603a. A member of the Dental Board of California who has served two terms shall not be eligible for reappointment to the board. In computing two terms hereunder, that portion of an unexpired term that a member fills as a result of a vacancy shall be excluded.

SEC. 7. Section 1618.5 of the Business and Professions Code is amended to read:

1618.5. (a) The board shall provide to the Director of the Department of Managed Health Care a copy of any accusation filed with the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when the accusation is filed, for a violation of this chapter relating to the quality of care of any dental provider of a health care service plan, as defined in Section 1345 of the Health and Safety Code. There shall be no liability on the part of, and no cause of action shall arise against, the State of California, the Dental Board of California, the Department of Managed Health Care, the director of that department, or any officer, agent, employee, consultant, or contractor of the state or the board or the department for the release of any false or unauthorized information pursuant to this section, unless the release is made with knowledge and malice.

(b) The board and its executive officer and staff shall maintain the confidentiality of any nonpublic reports provided by the Director of the Department of Managed Health Care pursuant to subdivision (i) of Section 1380 of the Health and Safety Code.

SEC. 8. Section 1640.1 of the Business and Professions Code is amended to read:

1640.1. As used in this article, the following definitions shall apply:

(a) "Specialty" means an area of dental practice approved by the American Dental Association and recognized by the board.

(b) "Discipline" means an advanced dental educational program in an area of dental practice not approved as a specialty by the American Dental Association; but offered from a dental college approved by the board.

(c) "Dental college approved by the board" means a dental school or college that is approved by the Commission on Dental Accreditation of the American Dental Association, that is accredited by a body that has a reciprocal accreditation agreement with that commission, or that has been approved by the Dental Board of California through its own approval process.

SEC. 9. Section 1648.10 of the Business and Professions Code is amended to read:

1648.10. (a) The Dental Board of California shall develop and distribute a fact sheet describing and comparing the risks and efficacy of the various types of dental restorative materials that

may be used to repair a dental patient's oral condition or defect. The fact sheet shall include:

(1) A description of the groups of materials that are available to the profession for restoration of an oral condition or defect.

(2) A comparison of the relative benefits and detriments of each group of materials.

(3) A comparison of the cost considerations associated with each group of materials.

(4) A reference to encourage discussion between patient and dentist regarding materials and to inform the patient of his or her options.

(b) The fact sheet shall be made available by the Dental Board of California to all licensed dentists.

(c) The Dental Board of California shall update the fact sheet described in subdivision (a) as determined necessary by the board.

SEC. 10. Section 1650 of the Business and Professions Code is amended to read:

1650. Every person who is now or hereafter licensed to practice dentistry in this state shall register on forms prescribed by the board, his or her place of practice with the executive officer of the Dental Board, or, if he or she has more than one place of practice, all of the places of practice, or, if he or she has no place of practice, to so notify the executive officer of the board. A person licensed by the board shall register with the executive officer within 30 days after the date of his or her license.

SEC. 11. Section 1695 of the Business and Professions Code is amended to read:

1695. It is the intent of the Legislature that the Dental Board of California seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates so afflicted may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. It is also the intent of the Legislature that the Dental Board of California shall implement this legislation in part by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

SEC. 12. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Dental Board of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 13. Section 1905.1 of the Business and Professions Code is amended to read:

1905.1. The committee may contract with the dental board to carry out this article. The committee may contract with the dental board to perform investigations of applicants and licensees under this article.

SEC. 14. Section 1917.2 of the Business and Professions Code is repealed.

SEC. 15. Section 1944 of the Business and Professions Code is amended to read:

1944. (a) The committee shall establish by resolution the amount of the fees that relate to the licensing of a registered dental hygienist, a registered dental hygienist in alternative practice, and a registered dental hygienist in extended functions. The fees established by board resolution in effect on June 30, 2009, as they relate to the licensure of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, shall remain in effect until modified by the committee. The fees are subject to the following limitations:

(1) The application fee for an original license and the fee for issuance of an original license shall not exceed two hundred fifty dollars ($250).

(2) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(3) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.

(4) The fee for examination for licensure as a registered dental hygienist in alternative practice shall not exceed the actual cost of administering the examination.

(5) The biennial renewal fee shall not exceed one hundred sixty dollars ($160).

(6) The delinquency fee shall not exceed one-half of the renewal fee. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee, and compliance with all other applicable requirements of this article.

(7) The fee for issuance of a duplicate license to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater.

(8) The fee for certification of licensure shall not exceed one-half of the renewal fee.

(9) The fee for each curriculum review, feasibility study review, and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency shall not exceed two thousand one hundred dollars ($2,100).

(10) The fee for each review or approval of course requirements for licensure or procedures that require additional training shall not exceed seven hundred fifty dollars ($750).

(11) The initial application and biennial fee for a provider of continuing education shall not exceed five hundred dollars ($500).

(12) The amount of fees payable in connection with permits issued under Section 1962 is as follows:

(A) The initial permit fee is an amount equal to the renewal fee for the applicant's license to practice dental hygiene in effect on the last regular renewal date before the date on which the permit is issued.

(B) If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued.

(b) The renewal and delinquency fees shall be fixed by the committee by resolution at not more than the current amount of the renewal fee for a license to practice under this article nor less than five dollars ($5).

(c) Fees fixed by the committee by resolution pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(d) Fees collected pursuant to this section shall be collected by the committee and deposited into the State Dental Hygiene Fund, which is hereby created. All money in this fund shall, upon

appropriation by the Legislature in the annual Budget Act, be used to implement this article.

(e) No fees or charges other than those listed in this section shall be levied by the committee in connection with the licensure of registered dental hygienists, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions.

(f) The fee for registration of an extramural dental facility shall not exceed two hundred fifty dollars ($250).

(g) The fee for registration of a mobile dental hygiene unit shall not exceed one hundred fifty dollars ($150).

(h) The biennial renewal fee for a mobile dental hygiene unit shall not exceed two hundred fifty dollars ($250).

(i) The fee for an additional office permit shall not exceed two hundred fifty dollars ($250).

(j) The biennial renewal fee for an additional office as described in Section 1926.4 shall not exceed two hundred fifty dollars ($250).

(k) The initial application and biennial special permit fee is an amount equal to the biennial renewal fee specified in paragraph (6) of subdivision (a).

(*l*) The fees in this section shall not exceed an amount sufficient to cover the reasonable regulatory cost of carrying out this article.

SEC. 16. Section 2054 of the Business and Professions Code is amended to read:

2054. (a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words “doctor” or “physician,” the letters or prefix “Dr.,” the initials “M.D.,” or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric medicine may use the phrases “doctor of podiatric medicine,” “doctor of podiatry,” and “podiatric doctor,”

or the initials "D.P.M.," and shall not be in violation of subdivision (a).

(c) Notwithstanding subdivision (a), any of the following persons may use the words "doctor" or "physician," the letters or prefix "Dr.," or the initials "M.D.":

(1) A graduate of a medical school approved or recognized by the board while enrolled in a postgraduate training program approved by the board.

(2) A graduate of a medical school who does not have a certificate as a physician and surgeon under this chapter if he or she meets all of the following requirements:

(A) If issued a license to practice medicine in any jurisdiction, has not had that license revoked or suspended by that jurisdiction.

(B) Does not otherwise hold himself or herself out as a physician and surgeon entitled to practice medicine in this state except to the extent authorized by this chapter.

(C) Does not engage in any of the acts prohibited by Section 2060.

(3) A person authorized to practice medicine under Section 2111 or 2113 subject to the limitations set forth in those sections.

*SEC. 17. Section 2221 of the Business and Professions Code is amended to read:*

2221. (a) The board may deny a physician's and surgeon's certificate *or postgraduate training authorization letter* to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her ~~license; or, the board~~ *license. The board,* in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

(b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the ~~board may,~~ *board,* in its discretion and for good cause demonstrated, *may* permit reapplication after not less than one year has elapsed from the effective date of the denial.

~~SEC. 17.~~

*SEC. 18.* Section 2401 of the Business and Professions Code is amended to read:

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the board or the Osteopathic Medical Board of California, may charge for professional services rendered to teaching patients by licensees who hold academic appointments on the faculty of the university, if the charges are approved by the physician and surgeon in whose name the charges are made.

(b) Notwithstanding Section 2400, a clinic operated under subdivision (p) of Section 1206 of the Health and Safety Code may employ licensees and charge for professional services rendered by those licensees. However, the clinic shall not interfere with, control, or otherwise direct the professional judgment of a

physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

(c) Notwithstanding Section 2400, a narcotic treatment program operated under Section 11876 of the Health and Safety Code and regulated by the State Department of Health Care Services, may employ licensees and charge for professional services rendered by those licensees. However, the narcotic treatment program shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

(d) Notwithstanding Section 2400, a hospital that is owned and operated by a licensed charitable organization, that offers only pediatric subspecialty care, that, prior to January 1, 2013, employed licensees on a salary basis, and that has not charged for professional services rendered to patients may, commencing January 1, 2013, charge for professional services rendered to patients, provided the following conditions are met:

(1) The hospital does not increase the number of salaried licensees by more than five licensees each year.

(2) The hospital does not expand its scope of services beyond pediatric subspecialty care.

(3) The hospital accepts each patient needing its scope of services regardless of his or her ability to pay, including whether the patient has any form of health care coverage.

(4) The medical staff concur by an affirmative vote that the licensee's employment is in the best interest of the communities served by the hospital.

(5) The hospital does not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

~~SEC. 18.~~

*SEC. 19.* Section 2428 of the Business and Professions Code is amended to read:

2428. (a) A person who voluntarily cancels his or her license or who fails to renew his or her license within five years after its expiration shall not renew it, but that person may apply for and obtain a new license if he or she:

(1) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(2) Takes and passes the examination, if any, which would be required of him or her if application for licensure was being made for the first time, or otherwise establishes to the satisfaction of the licensing authority that passes on the qualifications of applicants for the license that, with due regard for the public interest, he or she is qualified to practice the profession or activity for which the applicant was originally licensed.

(3) Pays all of the fees that would be required if application for licensure was being made for the first time.

The licensing authority may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without an examination pursuant to this section.

Nothing in this section shall be construed to authorize the issuance of a license for a professional activity or system or mode of healing for which licenses are no longer required.

(b) In addition to the requirements set forth in subdivision (a), an applicant shall establish that he or she meets one of the following requirements: (1) satisfactory completion of at least two years of approved postgraduate training; (2) certification by a specialty board approved by the American Board of Medical Specialties or approved by the board pursuant to subdivision (h) of Section 651; or (3) passing of the clinical competency written examination.

(c) Subdivision (a) shall apply to persons who held licenses to practice podiatric medicine except that those persons who failed to renew their licenses within three years after its expiration may not renew it, and it may not be reissued, reinstated, or restored, except in accordance with subdivision (a).

*SEC. 20. Section 2519 of the Business and Professions Code is amended to read:*

2519. The board may ~~suspend or revoke~~ *suspend, revoke, or place on probation* the license of a midwife for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, all of the following:

(1) Incompetence or gross negligence in carrying out the usual functions of a licensed midwife.

(2) Conviction of a violation of Section 2052, in which event, the record of the conviction shall be conclusive evidence thereof.

(3) The use of advertising that is fraudulent or misleading.

(4) Obtaining or possessing in violation of law, or prescribing, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administering to himself or herself, or furnishing or administering to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of the Business and Professions Code.

(5) The use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Conviction of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in paragraphs (4) and (5), or the possession of, or falsification of, a record pertaining to, the substances described in paragraph (4), in which event the record of the conviction is conclusive evidence thereof.

(7) Commitment or confinement by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in paragraphs (4) and (5), in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement.

(8) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

(b) Procuring a license by fraud or misrepresentation.

(c) Conviction of a crime substantially related to the qualifications, functions, and duties of a midwife, as determined by the board.

(d) Procuring, aiding, abetting, attempting, agreeing to procure, offering to procure, or assisting at, a criminal abortion.

(e) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter.

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

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license or a certificate.

(h) Impersonating another licensed practitioner, or permitting or allowing another person to use his or her license or certificate for the purpose of providing midwifery services.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of ~~any of the provisions of~~ Article 12 (commencing with Section 2221) of Chapter 5.

(j) Failing to do any of the following when required pursuant to Section 2507:

(1) Consult with a physician and surgeon.

(2) Refer a client to a physician and surgeon.

(3) Transfer a client to a hospital.

*SEC. 21. Section 2519.5 is added to the Business and Professions Code, to read:*

*2519.5. (a) A person whose license has been surrendered while under investigation or while charges are pending or whose license has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.*

*(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the license or the decision ordering that disciplinary action:*

*(1) At least three years for reinstatement of a license or registration surrendered or revoked for unprofessional conduct, except that the board, for good cause shown, may specify in a revocation order that a petition for reinstatement may be filed after two years.*

*(2) At least two years for early termination of probation of three years or more.*

*(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.*

*(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensees licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.*

*(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board, which shall be acted upon in accordance with Section 2335.*

*(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.*

*(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a license or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.*

*(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.*

*SEC. 22. Section 2520 of the Business and Professions Code is amended to read:*

2520. (a) (1) The fee to be paid upon the filing of a license application shall be fixed by the board at not less than seventy-five dollars ($75) nor more than three hundred dollars ($300).

(2) The fee for renewal of the midwife license shall be fixed by the board at not less than fifty dollars ($50) nor more than two hundred dollars ($200).

(3) The delinquency fee for renewal of the midwife license shall be 50 percent of the renewal fee in effect on the date of the renewal of the license, but not less than twenty-five dollars ($25) nor more than fifty dollars ($50).

(4) The fee for the examination shall be the cost of administering the examination to the applicant, as determined by the organization that has entered into a contract with the ~~Division of Licensing~~ *board* for the purposes set forth in subdivision (a) of Section 2512.5. Notwithstanding subdivision (b), that fee may be collected and retained by that organization.

*(b) A licensee placed on probation shall be required to pay probation monitoring fees upon order of the board.*

~~(b)~~

*(c)* The fees prescribed by this article shall be deposited in the Licensed Midwifery Fund, which is hereby established, and shall be available, upon appropriation, to the board for the purposes of this article.

~~SEC. 19.~~

*SEC. 23.* Section 2529 of the Business and Professions Code is amended to read:

2529. (a) Graduates of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Institute, or institutes deemed equivalent by the Medical Board of California who have completed clinical training in psychoanalysis may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts, and students in those institutes may engage in psychoanalysis under supervision, if the students and graduates do not hold themselves out to the public by any title or description of services incorporating the words "psychological," "psychologist," "psychology," "psychometrists," "psychometrics," or "psychometry," or that they do not state or imply that they are licensed to practice psychology.

(b) Those students and graduates seeking to engage in psychoanalysis under this chapter shall register with the Medical Board of California, presenting evidence of their student or graduate status. The board may suspend or revoke the exemption of those persons for unprofessional conduct as defined in Sections 726, 2234, and 2235.

*SEC. 24. Section 2546.7 of the Business and Professions Code is amended to read:*

2546.7. (a) A certificate may be denied, suspended, revoked, *placed on probation,* or otherwise subjected to discipline for any of the following:

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

(2) An act of dishonesty or fraud.

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

(4) Any violation of Section 2546.5 or 2546.6.

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

*SEC. 25. Section 2546.9 of the Business and Professions Code is amended to read:*

2546.9. The amount of fees prescribed in connection with the registration of nonresident contact lens sellers is that established by the following schedule:

(a) The initial registration fee shall be one hundred dollars ($100).

(b) The renewal fee shall be one hundred dollars ($100).

(c) The delinquency fee shall be twenty-five dollars ($25).

(d) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars ($25).

*(e) A registrant placed on probation shall be required to pay probation monitoring fees upon order of the board.*

~~(e)~~

*(f)* The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the Medical Board of California for the purposes of this chapter.

*SEC. 26. Section 2546.11 is added to the Business and Professions Code, to read:*

*2546.11. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation,*

*may petition the board for reinstatement or modification of penalty, including modification or termination of probation.*

*(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:*

*(1) At least three years for reinstatement of a license or registration surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.*

*(2) At least two years for early termination of probation of three years or more.*

*(3) At least one year for modification of a condition, or reinstatement of a license or registration surrendered or revoked for mental or physical illness, or termination of probation of less than three years.*

*(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensees or registrants licensed or registered in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.*

*(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board, which shall be acted upon in accordance with Section 2335.*

*(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.*

*(f) The administrative law judge, designated in Section 11371 of the Government Code, reinstating a certificate or modifying a*

*penalty may recommend the imposition of any terms and conditions deemed necessary.*

*(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.*

*SEC. 27. Section 2555.5 is added to the Business and Professions Code, to read:*

*2555.5. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.*

*(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:*

*(1) At least three years for reinstatement of a license or registration surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.*

*(2) At least two years for early termination of probation of three years or more.*

*(3) At least one year for modification of a condition, or reinstatement of a license or registration surrendered or revoked for mental or physical illness, or termination of probation of less than three years.*

*(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensees or registrants licensed or registered in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.*

*(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated*

*in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board, which shall be acted upon in accordance with Section 2335.*

*(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.*

*(f) The administrative law judge, designated in Section 11371 of the Government Code, reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.*

*(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.*

*SEC. 28. Section 2559.3 of the Business and Professions Code is amended to read:*

2559.3. *(a)* A certificate issued to a registered spectacle lens dispenser may, in the discretion of the ~~division,~~ *board,* be ~~suspended or revoked~~ *suspended, revoked, or placed on probation* for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be ~~suspended or revoked~~ *suspended, revoked, or placed on probation* if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

~~Any~~

*(b) Any* proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of

Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all the powers granted therein.

*SEC. 29. Section 2559.7 is added to the Business and Professions Code, to read:*

*2559.7. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.*

*(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:*

*(1) At least three years for reinstatement of certificate surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.*

*(2) At least two years for early termination of probation of three years or more.*

*(3) At least one year for modification of a condition, or reinstatement of a certificate surrendered or revoked for mental or physical illness, or termination of probation of less than three years.*

*(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from certificants licensed or registered in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.*

*(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board, which shall be acted upon in accordance with Section 2335.*

*(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional*

*ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.*

*(f) The administrative law judge, designated in Section 11371 of the Government Code, reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.*

*(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.*

*SEC. 30. Section 2563 of the Business and Professions Code is amended to read:*

2563. A certificate issued to a registered contact lens dispenser may in the discretion of the ~~division~~ *board* be ~~suspended or revoked~~ *suspended, revoked, or placed on probation* for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be ~~suspended or revoked~~ *suspended, revoked, or placed on probation* if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

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

*SEC. 31. Section 2563.5 is added to the Business and Professions Code, to read:*

*2563.5. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.*

*(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective*

*date of the surrender of the certificate or the decision ordering that disciplinary action:*

*(1) At least three years for reinstatement of certificate surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.*

*(2) At least two years for early termination of probation of three years or more.*

*(3) At least one year for modification of a condition, or reinstatement of a certificate surrendered or revoked for mental or physical illness, or termination of probation of less than three years.*

*(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from certificants licensed or registered in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.*

*(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board, which shall be acted upon in accordance with Section 2335.*

*(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.*

*(f) The administrative law judge, designated in Section 11371 of the Government Code, reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.*

*(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition*

*to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.*

*SEC. 32. Section 2565 of the Business and Professions Code is amended to read:*

2565. The amount of fees prescribed in connection with the registration of dispensing opticians shall be as set forth in this section unless a lower fee is fixed by the ~~division:~~ *board:*

(a) The initial registration fee is one hundred dollars ($100).

(b) The renewal fee is one hundred dollars ($100).

(c) The delinquency fee is twenty-five dollars ($25).

(d) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars ($25).

~~This section shall become operative on January 1, 1988.~~

*(e) A registrant placed on probation shall be required to pay probation monitoring fees upon order of the board.*

*SEC. 33. Section 2566 of the Business and Professions Code is amended to read:*

2566. The amount of fees prescribed in connection with certificates for contact lens dispensers, unless a lower fee is fixed by the ~~division,~~ *board*, is as follows:

(a) The application fee for a registered contact lens dispenser shall be one hundred dollars ($100).

(b) The biennial fee for the renewal of certificates shall be fixed by the ~~division~~ *board* in an amount not to exceed one hundred dollars ($100).

(c) The delinquency fee is twenty-five dollars ($25).

(d) The ~~division~~ *board* may by regulation provide for a refund of a portion of the application fee to applicants who do not meet the requirements for registration.

(e) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars ($25).

~~This section shall become operative on January 1, 1988.~~

*(f) A registrant placed on probation shall be required to pay probation monitoring fees upon order of the board.*

*SEC. 34. Section 2566.1 of the Business and Professions Code is amended to read:*

2566.1. The amount of fees prescribed in connection with certificates for spectacle lens dispensers shall be as set forth in this section unless a lower fee is fixed by the ~~division:~~ *board:*

(a) The initial registration fee is one hundred dollars ($100).

(b) The renewal fee shall be one hundred dollars ($100).

(c) The delinquency fee is twenty-five dollars ($25).

(d) The fee for replacement of a lost, stolen or destroyed certificate is twenty-five dollars ($25).

*(e) A registrant placed on probation shall be required to pay probation monitoring fees upon order of the board.*

~~SEC. 20.~~

*SEC. 35.* Section 2650 of the Business and Professions Code is amended to read:

2650. (a) The physical therapist education requirements are as follows:

(1) Except as otherwise provided in this chapter, each applicant for a license as a physical therapist shall be a graduate of a professional degree program of an accredited postsecondary institution or institutions approved by the board and shall have completed a professional education program including academic course work and clinical internship in physical therapy.

(2) Unless otherwise specified by the board by regulation, the educational requirements shall include instruction in the subjects prescribed by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association or Physiotherapy Education Accreditation Canada and shall include a combination of didactic and clinical experiences. The clinical experience shall include at least 18 weeks of full-time experience with a variety of patients.

(b) The physical therapist assistant educational requirements are as follows:

(1) Except as otherwise provided in this chapter, each applicant for a license as a physical therapist assistant shall be a graduate of a physical therapist assistant program of an accredited postsecondary institution or institutions approved by the board, and shall have completed both the academic and clinical experience required by the physical therapist assistant program, and have been awarded an associate degree.

(2) Unless otherwise specified by the board by regulation, the educational requirements shall include instruction in the subjects

prescribed by the CAPTE of the American Physical Therapy Association or Physiotherapy Education Accreditation Canada or another body as may be approved by the board by regulation and shall include a combination of didactic and clinical experiences.

~~SEC. 21.~~

*SEC. 36.* The heading of Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2 of the Business and Professions Code is amended to read:

Article 3.1. Intervention Program

~~SEC. 22.~~

*SEC. 37.* Section 2770 of the Business and Professions Code is amended to read:

2770. It is the intent of the Legislature that the Board of Registered Nursing seek ways and means to identify and rehabilitate registered nurses whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness so that registered nurses so afflicted may be rehabilitated and returned to the practice of nursing in a manner that will not endanger the public health and safety. It is also the intent of the Legislature that the Board of Registered Nursing shall implement this legislation by establishing an intervention program as a voluntary alternative to traditional disciplinary actions.

~~SEC. 23.~~

*SEC. 38.* Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) "Board" means the Board of Registered Nursing.

(b) "Committee" means a an intervention evaluation committee created by this article.

(c) "Program manager" means the staff manager of the intervention program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

~~SEC. 24.~~

*SEC. 39.* Section 2770.2 of the Business and Professions Code is amended to read:

2770.2. One or more intervention evaluation committees is hereby created in the state to be established by the board. Each

committee shall be composed of five persons appointed by the board. No board member shall serve on any committee.

Each committee shall have the following composition:

(a) Three registered nurses, holding active California licenses, who have demonstrated expertise in the field of chemical dependency or psychiatric nursing.

(b) One physician, holding an active California license, who specializes in the diagnosis and treatment of addictive diseases or mental illness.

(c) One public member who is knowledgeable in the field of chemical dependency or mental illness.

It shall require a majority vote of the board to appoint a person to a committee. Each appointment shall be at the pleasure of the board for a term not to exceed four years. In its discretion the board may stagger the terms of the initial members appointed.

~~SEC. 25.~~

*SEC. 40.* Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the intervention program. Only those registered nurses who have voluntarily requested to participate in the intervention program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the intervention program by contacting the board. Prior to authorizing a registered nurse to enter into the intervention program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse

is accepted into the board's intervention program and successfully completes the program. If the registered nurse withdraws or is terminated from the program by a intervention evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the intervention program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the intervention program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the intervention program at a time when the program manager or intervention evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of intervention program treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the intervention program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the intervention program. A registered nurse who has been under investigation by the board and has been terminated from the intervention program by a intervention evaluation committee shall be reported by the intervention evaluation committee to the board.

~~SEC. 26.~~

*SEC. 41.* Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the intervention program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in an intervention program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in an intervention program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the intervention agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

~~SEC. 27.~~

*SEC. 42.* Section 2770.10 of the Business and Professions Code is amended to read:

2770.10. Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a committee may convene in closed session to consider reports pertaining to any registered nurse requesting or participating in an intervention program. A committee shall only convene in closed session to the extent that it is necessary to protect the privacy of such a licentiate.

~~SEC. 28.~~

*SEC. 43.* Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in an intervention program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all intervention program records for

that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

~~SEC. 29.~~

*SEC. 44.* Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the intervention program, all records pertaining to the registered nurse's participation in the intervention program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the intervention program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the intervention program, if he or she does any of the following:

(1) Presents information relating to any aspect of the intervention program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the intervention program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the intervention program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the intervention program.

~~SEC. 30.~~

*SEC. 45.* Section 2770.13 of the Business and Professions Code is amended to read:

2770.13. The board shall provide for the legal representation of any person making reports under this article to a committee or

the board in any action for defamation directly resulting from those reports regarding a registered nurse's participation in a intervention program.

~~SEC. 31.~~

*SEC. 46.* Section 2835.5 of the Business and Professions Code is amended to read:

2835.5. On and after January 1, 2008, an applicant for initial qualification or certification as a nurse practitioner under this article who has not been qualified or certified as a nurse practitioner in California or any other state shall meet the following requirements:

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

(b) Possess a master's degree in nursing, a master's degree in a clinical field related to nursing, or a graduate degree in nursing.

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

~~SEC. 32.~~

*SEC. 47.* Section 2914 of the Business and Professions Code is amended to read:

2914. Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5 (commencing with Section 475).

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree

in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(f) (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if both of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94823.5 of the Education Code.

~~SEC. 33.~~

*SEC. 48.* Section 3057 of the Business and Professions Code is amended to read:

3057. (a) The board may issue a license to practice optometry to a person who meets all of the following requirements:

(1) Has a degree as a doctor of optometry issued by an accredited school or college of optometry.

(2) Has successfully passed the licensing examination for an optometric license in another state.

(3) Submits proof that he or she is licensed in good standing as of the date of application in every state where he or she holds a license, including compliance with continuing education requirements.

(4) Is not subject to disciplinary action as set forth in subdivision (h) of Section 3110. If the person has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(5) Has furnished a signed release allowing the disclosure of information from the Healthcare Integrity and Protection Data Bank and, if applicable, the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of this chapter to warrant the submission of additional information from the person or the denial of the application for licensure.

(6) Has never had his or her license to practice optometry revoked or suspended in any state where the person holds a license.

(7) (A) Is not subject to denial of an application for licensure based on any of the grounds listed in Section 480.

(B) Is not currently required to register as a sex offender pursuant to Section 290 of the Penal Code.

(8) Has met the minimum continuing education requirements set forth in Section 3059 for the current and preceding year.

(9) Has met the certification requirements of Section 3041.3 to use therapeutic pharmaceutical agents under subdivision (e) of Section 3041.

(10) Submits any other information as specified by the board to the extent it is required for licensure by examination under this chapter.

(11) Files an application on a form prescribed by the board, with an acknowledgment by the person executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the person to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the person has not been convicted of an offense involving conduct that would violate Section 810.

(12) Pays an application fee in an amount equal to the application fee prescribed pursuant to subdivision (a) of Section 3152.

(13) Has successfully passed the board's jurisprudence examination.

(b) If the board finds that the competency of a candidate for licensure pursuant to this section is in question, the board may require the passage of a written, practical, or clinical exam or completion of additional continuing education or coursework.

(c) In cases where the person establishes, to the board's satisfaction, that he or she has been displaced by a federally declared emergency and cannot relocate to his or her state of practice within a reasonable time without economic hardship, the board may reduce or waive the fees required by paragraph (12) of subdivision (a).

(d) Any license issued pursuant to this section shall expire as provided in Section 3146, and may be renewed as provided in this chapter, subject to the same conditions as other licenses issued under this chapter.

(e) The term "in good standing," as used in this section, means that a person under this section:

(1) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of optometry by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon a person's professional conduct or practice, including any voluntary surrender of license,

nor been the subject of an adverse judgment resulting from the practice of optometry that the board determines constitutes evidence of a pattern of incompetence or negligence.

(2) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a licensed psychologist or licensed psychiatrist so that the person is unable to undertake the practice of optometry in a manner consistent with the safety of a patient or the public.

~~SEC. 34.~~

*SEC. 49.* Section 3509.5 of the Business and Professions Code is amended to read:

3509.5. The board shall elect annually a president and a vice president from among its members.

*SEC. 50. Section 3576 of the Business and Professions Code is amended to read:*

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

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

(2) An act of dishonesty or fraud.

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

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

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

*SEC. 51. Section 3576.5 is added to the Business and Professions Code, to read:*

*3576.5. (a) A person whose registration has been surrendered while under investigation or while charges are pending or whose registration has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.*

*(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective*

*date of the surrender of the registration or the decision ordering that disciplinary action:*

*(1) At least three years for reinstatement of a registration surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.*

*(2) At least two years for early termination of probation of three years or more.*

*(3) At least one year for modification of a condition, or reinstatement of a registration surrendered or revoked for mental or physical illness, or termination of probation of less than three years.*

*(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from registrants registered in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.*

*(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board, which shall be acted upon in accordance with Section 2335.*

*(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.*

*(f) The administrative law judge, designated in Section 11371 of the Government Code, reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.*

*(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition*

*to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.*

*SEC. 52. Section 3577 of the Business and Professions Code is amended to read:*

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

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

(c) The registration shall expire after two years. The registration may be renewed biennially at a fee which shall be paid into the Contingent Fund of the Medical Board of California to be fixed by the board at a sum not in excess of one hundred fifty dollars ($150).

*(d) A registrant placed on probation shall be required to pay probation monitoring fees upon order of the board.*

~~(d)~~

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

~~SEC. 35.~~

*SEC. 53.* Section 4836.2 of the Business and Professions Code is amended to read:

4836.2. (a) Applications for a veterinary assistant controlled substance permit shall be upon a form furnished by the board.

(b) The fee for filing an application for a veterinary assistant controlled substance permit shall be set by the board in an amount the board determines is reasonably necessary to provide sufficient funds to carry out the purposes of this section, not to exceed one hundred dollars ($100).

(c) The board may suspend or revoke the controlled substance permit of a veterinary assistant after notice and hearing for any cause provided in this subdivision. The proceedings under this section shall be conducted in accordance with the provisions for administrative adjudication in Chapter 5 (commencing with Section

11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The board may deny, revoke, or suspend a veterinary assistant controlled substance permit for any of the following reasons:

(1) The employment of fraud, misrepresentation, or deception in obtaining a veterinary assistant controlled substance permit.

(2) Chronic inebriety or habitual use of controlled substances.

(3) The veterinary assistant to whom the permit is issued has been convicted of a state or federal felony controlled substance violation.

(4) Violating or attempts to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter, or of the regulations adopted under this chapter.

(d) The board shall not issue a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction.

(e) (1) As part of the application for a veterinary assistant controlled substance permit, the applicant shall submit to the Department of Justice fingerprint images and related information, as required by the Department of Justice for all veterinary assistant applicants, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

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

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

(4) The Department of Justice shall charge a reasonable fee sufficient to cover the cost of processing the request described in this subdivision.

(f) The board shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in paragraph (1) of subdivision (e).

(g) This section shall become operative on July 1, 2015.

*SEC. 54. Section 4887 of the Business and Professions Code is amended to read:*

4887. *(a)* A person whose license or registration has been revoked or who has been placed on probation may petition the board for reinstatement or modification of penalty including modification or termination of probation after a period of not less than one year has elapsed from the effective date of the decision ordering the disciplinary action. The petition shall state such facts as may be required by the board.

~~The~~

*(b) The* petition shall be accompanied by at least two verified recommendations from veterinarians licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed. The petition shall be heard by the board. The board may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities since the license or registration was in good standing, and the petitioner's rehabilitation efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board finds necessary.

~~The~~

*(c) The* board reinstating the license or registration or modifying a penalty may impose ~~such~~ terms and conditions as it determines necessary. To reinstate a revoked license or registration or to otherwise reduce a penalty or modify probation shall require a vote of five of the members of the board.

~~The~~

*(d) The* petition shall *not* be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

~~SEC. 36.~~

*SEC. 55.* Section 4938 of the Business and Professions Code is amended to read:

4938. The board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

(a) Is at least 18 years of age.

(b) Furnishes satisfactory evidence of completion of one of the following:

(1) (A) An approved educational and training program.

(B) If an applicant began his or her educational and training program at a school or college that submitted a letter of intent to pursue accreditation to, or attained candidacy status from, the Accreditation Commission for Acupuncture and Oriental Medicine, but the commission subsequently denied the school or college candidacy status or accreditation, respectively, the board may review and evaluate the educational training and clinical experience to determine whether to waive the requirements set forth in this subdivision with respect to that applicant.

(2) Satisfactory completion of a tutorial program in the practice of an acupuncturist that is approved by the board.

(3) In the case of an applicant who has completed education and training outside the United States, documented educational training and clinical experience that meets the standards established pursuant to Sections 4939 and 4941.

(c) Passes a written examination administered by the board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Professional Examination Services of the Department of Consumer Affairs.

(d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(e) Completes a clinical internship training program approved by the board. The clinical internship training program shall not exceed nine months in duration and shall be located in a clinic in this state that is an approved educational and training program. The length of the clinical internship shall depend upon the grades received in the examination and the clinical training already satisfactorily completed by the individual prior to taking the examination. On and after January 1, 1987, individuals with 800

or more hours of documented clinical training shall be deemed to have met this requirement. The purpose of the clinical internship training program shall be to ensure a minimum level of clinical competence.

Each applicant who qualifies for a license shall pay, as a condition precedent to its issuance and in addition to other fees required, the initial licensure fee.

~~SEC. 37.~~

*SEC. 56.* Section 4939 of the Business and Professions Code, as added by Section 9 of Chapter 397 of the Statutes of 2014, is amended to read:

4939. (a) The board shall establish standards for the approval of educational training and clinical experience received outside the United States.

(b) This section shall become operative on January 1, 2017.

~~SEC. 38.~~

*SEC. 57.* Section 4980.399 of the Business and Professions Code is amended to read:

4980.399. (a) Except as provided in subdivision (a) of Section 4980.398, each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) Notwithstanding subdivision (b), an applicant who holds a registration eligible for renewal, with an expiration date no later than June 30, 2016, and who applies for renewal of that registration between January 1, 2016, and June 30, 2016, shall, if eligible, be allowed to renew the registration without first participating in the California law and ethics examination. These applicants shall participate in the California law and ethics examination in the next renewal cycle, and shall pass the examination prior to licensure or issuance of a subsequent registration number, as specified in this section.

(d) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except as provided in subdivision (e).

(e) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a continuing education provider as specified by the board by regulation, a county, state or governmental entity, or a college or university.

(f) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(g) Notwithstanding subdivision (f), an applicant who holds or has held a registration, with an expiration date no later than January 1, 2017, and who applies for a subsequent registration number between January 1, 2016, and January 1, 2017, shall, if eligible, be allowed to obtain the subsequent registration number without first passing the California law and ethics examination. These applicants shall pass the California law and ethics examination during the next renewal period or prior to licensure, whichever occurs first.

(h) This section shall become operative on January 1, 2016.

~~SEC. 39.~~

*SEC. 58.* Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctoral degree.

(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctoral degree.

The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master's or doctoral degree.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience may be gained more than six years prior to the date the application for examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of 1,000 hours of experience in the following:

(A) Direct supervisor contact.

(B) Professional enrichment activities. For purposes of this chapter, "professional enrichment activities" include the following:

(i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) For all hours gained on or after January 1, 2012, not more than 500 hours of experience in the following:

(A) Experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(B) Client centered advocacy.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For up to 150 hours of treating couples and families in conjoint therapy, the applicant

shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

This subdivision shall only apply to hours gained on and after January 1, 2010.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees only as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

(c) Except for experience gained pursuant to subparagraph (B) of paragraph (7) of subdivision (a), supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. No more than six hours of supervision, whether individual or group, shall be credited during any single week.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client

contact is gained in each setting. No more than six hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(8) The six hours of supervision that may be credited during any single week pursuant to paragraphs (1) and (2) shall apply to supervision hours gained on or after January 1, 2009.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed professional clinical counselor, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctoral degree and is thereafter granted the intern registration by the board. An applicant shall not be employed or volunteer in a private practice until registered as an intern by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws

and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment, or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

~~SEC. 40.~~

*SEC. 59.* Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to ensure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (d) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) Except as provided in subdivision (e), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

(1) An accredited school or state-approved school that meets the requirements set forth in Section 4980.36 or 4980.37. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, as specified by the board by regulation.

(g) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (f), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(h) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(i) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (f) shall be deemed to be an approved provider.

(k) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

~~SEC. 41.~~

*SEC. 60.* Section 4984.01 of the Business and Professions Code, as amended by Section 31 of Chapter 473 of the Statutes of 2013, is amended to read:

4984.01. (a) The marriage and family therapist intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew the registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Participate in the California law and ethics examination pursuant to Section 4980.399 each year until successful completion of this examination.

(4) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken against him or her by a regulatory or licensing board in this or any other state subsequent to the last renewal of the registration.

(c) The registration may be renewed a maximum of five times. No registration shall be renewed or reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further

renewals are possible, an applicant may apply for and obtain a subsequent intern registration number if the applicant meets the educational requirements for registration in effect at the time of the application for a subsequent intern registration number and has passed the California law and ethics examination described in Section 4980.399. An applicant who is issued a subsequent intern registration number pursuant to this subdivision shall not be employed or volunteer in a private practice.

(d) This section shall become operative on January 1, 2016.

~~SEC. 42.~~

*SEC. 61.* Section 4989.34 of the Business and Professions Code is amended to read:

4989.34. (a) To renew his or her license, a licensee shall certify to the board, on a form prescribed by the board, completion in the preceding two years of not less than 36 hours of approved continuing education in, or relevant to, educational psychology.

(b) (1) The continuing education shall be obtained from either an accredited university or a continuing education provider as specified by the board by regulation.

(2) The board shall establish, by regulation, a procedure identifying acceptable providers of continuing education courses, and all providers of continuing education shall comply with procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(c) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of educational psychology.

(2) Aspects of the discipline of educational psychology in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of educational psychology.

(d) The board may audit the records of a licensee to verify completion of the continuing education requirement. A licensee shall maintain records of the completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon its request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as determined by the board.

(f) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The amount of the fees shall be sufficient to meet, but shall not exceed, the costs of administering this section.

(g) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

~~SEC. 43.~~

*SEC. 62.* Section 4992.09 of the Business and Professions Code is amended to read:

4992.09. (a) Except as provided in subdivision (a) of Section 4992.07, an applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) Notwithstanding subdivision (b), an applicant who holds a registration eligible for renewal, with an expiration date no later than June 30, 2016, and who applies for renewal of that registration between January 1, 2016, and June 30, 2016, shall, if eligible, be allowed to renew the registration without first participating in the California law and ethics examination. These applicants shall participate in the California law and ethics examination in the next renewal cycle, and shall pass the examination prior to licensure or issuance of a subsequent registration number, as specified in this section.

(d) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application except for as provided in subdivision (e).

(e) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her renewal period on or after the operative date of this section, he or she shall complete, at a minimum, a 12-hour course in

California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a continuing education provider, as specified by the board by regulation, a county, state or governmental entity, or a college or university.

(f) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(g) Notwithstanding subdivision (f), an applicant who holds or has held a registration, with an expiration date no later than January 1, 2017, and who applies for a subsequent registration number between January 1, 2016, and January 1, 2017, shall, if eligible, be allowed to obtain the subsequent registration number without first passing the California law and ethics examination. These applicants shall pass the California law and ethics examination during the next renewal period or prior to licensure, whichever occurs first.

(h) This section shall become operative on January 1, 2016.

~~SEC. 44.~~

*SEC. 63.* Section 4996.2 of the Business and Professions Code is amended to read:

4996.2. Each applicant for a license shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.23.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency.

This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training in spousal or partner abuse assessment, detection, and intervention. This requirement applies to an applicant who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003. An applicant who began graduate training on or after January 1, 2004, shall complete a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

~~SEC. 45.~~

*SEC. 64.* Section 4996.22 of the Business and Professions Code is amended to read:

4996.22. (a) (1) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.

(2) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention

strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, as specified by the board by regulation.

(e) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to the procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

(g) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(i) The board may adopt regulations as necessary to implement this section.

(j) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Science Examiners Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

~~SEC. 46.~~

*SEC. 65.* Section 4996.28 of the Business and Professions Code is amended to read:

4996.28. (a) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. To renew a registration, the registrant shall, on or before the expiration date of the registration, complete all of the following actions:

(1) Apply for renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state, subsequent to the last renewal of the registration.

(4) On and after January 1, 2016, obtain a passing score on the California law and ethics examination pursuant to Section 4992.09.

(b) A registration as an associate clinical social worker may be renewed a maximum of five times. When no further renewals are possible, an applicant may apply for and obtain a subsequent associate clinical social worker registration number if the applicant meets all requirements for registration in effect at the time of his or her application for a subsequent associate clinical social worker registration number. An applicant issued a subsequent associate registration number pursuant to this subdivision shall not be employed or volunteer in a private practice.

*SEC. 66. Section 4999.1 of the Business and Professions Code is amended to read:*

4999.1. Application for registration as ~~an in-state or out-of-state~~ *a* telephone medical advice service shall be made on a form prescribed by the department, accompanied by the fee prescribed pursuant to Section 4999.5. The department shall make application forms available. Applications shall contain all of the following:

(a) The signature of the individual owner of the ~~in-state or out-of-state~~ telephone medical advice service, or of all of the partners if the service is a partnership, or of the president or secretary if the service is a corporation. The signature shall be accompanied by a resolution or other written communication identifying the individual whose signature is on the form as owner, partner, president, or secretary.

(b) The name under which the person applying for the in-state or out-of-state telephone medical advice service proposes to do business.

(c) The physical address, mailing address, and telephone number of the business entity.

(d) The designation, including the name and physical address, of an agent for service of process in California.

(e) A list of all ~~in-state or out-of-state staff~~ *health care professionals* providing ~~telephone~~ medical advice services that are required to be licensed, registered, or certified pursuant to this chapter. This list shall be submitted to the department ~~on a quarterly basis~~ on a form to be prescribed by the department and shall include, but not be limited to, the name, ~~address,~~ state of licensure, ~~category~~ *type* of license, and license number.

(f) The department shall be notified within 30 days of any change of name, physical location, mailing address, or telephone number of any business, owner, partner, corporate officer, or agent for service of process in California, together with copies of all resolutions or other written communications that substantiate these changes.

*SEC. 67. Section 4999.2 of the Business and Professions Code is amended to read:*

4999.2. (a) In order to obtain and maintain a registration, ~~in-state or out-of-state~~ *a* telephone medical advice ~~services~~ *service* shall comply with the requirements established by the department. Those requirements shall include, but shall not be limited to, all of the following:

(1) (A) Ensuring that all ~~staff~~ *health care professionals* who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600), as an occupational therapist pursuant to Chapter 5.6 (commencing with Section 2570), as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), *as a naturopathic doctor pursuant to Chapter 8.2 (commencing with Section 3610),* as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4991), *as a licensed professional clinical counselor pursuant to Chapter 16 (commencing with Section 4999.10),* as an optometrist pursuant to Chapter 7 (commencing with Section 3000), or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all ~~staff~~ *health care professionals* who provide telephone medical advice services from an out-of-state ~~location are health care professionals,~~ *location,* as identified in subparagraph (A), ~~who~~ are licensed, registered, or certified in the state within which they are providing the telephone medical advice services

and are operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that the telephone medical advice provided is consistent with good professional practice.

(3) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(4) Ensuring that no staff member uses a title or designation when speaking to an ~~enrollee or subscriber~~ *enrollee, subscriber, or consumer* that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered *health care* professional described in subparagraph (A) of paragraph (1), unless the staff member is a licensed, certified, or registered professional.

(5) Complying with all directions and requests for information made by the department.

*(6) Notifying the department within 30 days of any change of name, physical location, mailing address, or telephone number of any business, owner, partner, corporate officer, or agent for service of process in California, together with copies of all resolutions or other written communications that substantiate these changes.*

*(7) Submitting quarterly reports, on a form prescribed by the department, to the department within 30 days of the end of each calendar quarter.*

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter and to make recommendations to the department.

*SEC. 68. Section 4999.3 of the Business and Professions Code is amended to read:*

4999.3. (a) The department may suspend, revoke, or otherwise discipline a registrant or deny an application for registration as ~~an in-state or out-of-state~~ *a* telephone medical advice service based on any of the following:

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

(2) An act of dishonesty or fraud by the registrant or any employee of the registrant.

(3) The commission of any act, or being convicted of a crime, that constitutes grounds for denial or revocation of licensure pursuant to any provision of this division.

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

(c) Copies of any complaint against ~~an in-state or out-of-state~~ *a* telephone medical advice service shall be forwarded to the Department of Managed *Health* Care.

(d) The department shall forward a copy of any complaint submitted to the department pursuant to this chapter to the entity that issued the license to the licensee involved in the advice provided to the patient.

*SEC. 69. Section 4999.4 of the Business and Professions Code is amended to read:*

4999.4. (a) Every registration issued to a telephone medical advice service shall expire 24 months after the initial date of issuance.

(b) To renew an unexpired registration, the registrant shall, before the time at which the ~~license~~ registration would otherwise expire, ~~apply for renewal on a form prescribed by the bureau, and~~ pay the renewal fee authorized by Section 4999.5.

(c) ~~A registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.~~ An expired registration may be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the bureau and the payment of all fees authorized by Section 4999.5. *A registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.*

*SEC. 70. Section 4999.5 of the Business and Professions Code is amended to read:*

4999.5. The department may set fees for ~~registration,~~ *registration and renewal* as ~~an in-state or out-of-state~~ *a* telephone

medical advice service sufficient to pay the costs of administration of this chapter.

*SEC. 71. Section 4999.7 of the Business and Professions Code is amended to read:*

4999.7. (a) This section does not limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(b) For purposes of this chapter, "telephone medical advice" means a telephonic communication between a patient and a health care professional in which the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment. "Telephone medical advice" includes assessment, evaluation, or advice provided to patients or their family members.

(c) For purposes of this chapter, "health care professional" is ~~a staff person~~ *an employee or independent contractor* described in Section 4999.2 who provides medical advice services and is appropriately licensed, certified, or registered as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600), as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), *as a naturopathic doctor pursuant to Chapter 8.2 (commencing with Section 3610),* as an optometrist pursuant to Chapter 7 (commencing with Section 3000), as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4991), *as a licensed professional clinical counselor pursuant to Chapter 16 (commencing with Section 4999.10),* or as a chiropractor pursuant to the Chiropractic Initiative Act, and who is operating consistent with the laws governing his or her respective scopes of

practice in the state in which he or she provides telephone medical advice services.

~~SEC. 47.~~

*SEC. 72.* Section 4999.45 of the Business and Professions Code, as amended by Section 54 of Chapter 473 of the Statutes of 2013, is amended to read:

4999.45. (a) An intern employed under this chapter shall:

(1) Not perform any duties, except for those services provided as a clinical counselor trainee, until registered as an intern.

(2) Not be employed or volunteer in a private practice until registered as an intern.

(3) Inform each client prior to performing any professional services that he or she is unlicensed and under supervision.

(4) Renew annually for a maximum of five years after initial registration with the board.

(b) When no further renewals are possible, an applicant may apply for and obtain a subsequent intern registration number if the applicant meets the educational requirements for registration in effect at the time of the application for a subsequent intern registration number and has passed the California law and ethics examination described in Section 4999.53. An applicant issued a subsequent intern registration number pursuant to this subdivision shall not be employed or volunteer in a private practice.

(c) This section shall become operative on January 1, 2016.

~~SEC. 48.~~

*SEC. 73.* Section 4999.46 of the Business and Professions Code, as amended by Section 3 of Chapter 435 of the Statutes of 2014, is amended to read:

4999.46. (a) To qualify for the licensure examination specified by paragraph (2) of subdivision (a) of Section 4999.53, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks), which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals, groups, couples, or families in a setting described in

Section 4999.44 using a variety of psychotherapeutic techniques and recognized counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telehealth in accordance with Section 2290.5.

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting, as defined in Section 1820 of Title 16 of the California Code of Regulations.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, seminars, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is thereafter granted the intern registration by the board. An applicant shall not be employed or volunteer in a private practice until registered as an intern by the board.

(e) All applicants and interns shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Except for experience gained pursuant to subparagraph (D) of paragraph (6) of subdivision (b), supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than six hours of supervision, whether individual or group, shall be credited during any single week. This paragraph shall apply to supervision hours gained on or after January 1, 2009.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

(4) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(h) This section shall become operative on January 1, 2016.

~~SEC. 49.~~

*SEC. 74.* Section 4999.55 of the Business and Professions Code is amended to read:

4999.55. (a) Each applicant and registrant shall obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure.

(b) A registrant shall participate in a board-administered California law and ethics examination prior to his or her registration renewal.

(c) Notwithstanding subdivision (b), an applicant who holds a registration eligible for renewal, with an expiration date no later than June 30, 2016, and who applies for renewal of that registration between January 1, 2016, and June 30, 2016, shall, if eligible, be allowed to renew the registration without first participating in the California law and ethics examination. These applicants shall participate in the California law and ethics examination in the next renewal cycle, and shall pass the examination prior to licensure or issuance of a subsequent registration number, as specified in this section.

(d) If an applicant fails the California law and ethics examination, he or she may retake the examination, upon payment of the required fees, without further application, except as provided in subdivision (e).

(e) If a registrant fails to obtain a passing score on the California law and ethics examination described in subdivision (a) within his or her renewal period on or after the operative date of this section, he or she shall complete, at minimum, a 12-hour course in California law and ethics in order to be eligible to participate in the California law and ethics examination. Registrants shall only take the 12-hour California law and ethics course once during a renewal period. The 12-hour law and ethics course required by this section shall be taken through a continuing education provider as specified by the board by regulation, a county, state, or governmental entity, or a college or university.

(f) The board shall not issue a subsequent registration number unless the registrant has passed the California law and ethics examination.

(g) Notwithstanding subdivision (f), an applicant who holds or has held a registration, with an expiration date no later than January 1, 2017, and who applies for a subsequent registration number between January 1, 2016, and January 1, 2017, shall, if eligible, be allowed to obtain the subsequent registration number without first passing the California law and ethics examination. These applicants shall pass the California law and ethics examination during the next renewal period or prior to licensure, whichever occurs first.

(h) This section shall become operative January 1, 2016.

~~SEC. 50.~~

*SEC. 75.* Section 4999.76 of the Business and Professions Code is amended to read:

4999.76. (a) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of professional clinical counseling in the preceding two years, as determined by the board.

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completed continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause, as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) A school, college, or university that is accredited or approved, as defined in Section 4999.12. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers as specified by the board by regulation.

(e) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of professional clinical counseling.

(2) Significant recent developments in the discipline of professional clinical counseling.

(3) Aspects of other disciplines that enhance the understanding or the practice of professional clinical counseling.

(g) A system of continuing education for licensed professional clinical counselors shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For the purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

(i) The continuing education requirements of this section shall fully comply with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

~~SEC. 51.~~

*SEC. 76.* Section 4999.100 of the Business and Professions Code, as amended by Section 66 of Chapter 473 of the Statutes of 2013, is amended to read:

4999.100. (a) An intern registration shall expire one year from the last day of the month in which it was issued.

(b) To renew a registration, the registrant on or before the expiration date of the registration, shall do the following:

(1) Apply for a renewal on a form prescribed by the board.

(2) Pay a renewal fee prescribed by the board.

(3) Notify the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.

(4) Participate in the California law and ethics examination pursuant to Section 4999.53 each year until successful completion of this examination.

(c) The intern registration may be renewed a maximum of five times. ~~No registration~~ *Registration* shall *not* be renewed or

reinstated beyond six years from the last day of the month during which it was issued, regardless of whether it has been revoked. When no further renewals are possible, an applicant may apply for and obtain a subsequent intern registration number if the applicant meets the educational requirements for registration in effect at the time of the application for a subsequent intern registration number and has passed the California law and ethics examination described in Section 4999.53. An applicant who is issued a subsequent intern registration number pursuant to this subdivision shall not be employed or volunteer in a private practice.

(d) This section shall become operative on January 1, 2016.

~~SEC. 52.~~

*SEC. 77.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

| | |
|---|---|
| **Bill Number:** | SJR 7 |
| **Author:** | Pan |
| **Bill Date:** | April 6, 2015, Amended |
| **Subject:** | Medical Residency Training Programs |
| **Sponsor:** | California Academy of Family Physicians<br>California Medical Association |

## DESCRIPTION OF CURRENT LEGISLATION:

This resolution urges the Congress and the President of the United States to renew funding for the Health Resources and Services Administration's Teaching Health Center and Primary Care Residency Expansion Graduate Medical Education Programs, and to lift the freeze on residency positions funded by Medicare to expand physicians supply and improve access to care.

## BACKGROUND

Graduate medical education (GME) or residency training, is the second phase of the educational process that prepares physicians for independent practice. Resident physicians typically spend three to seven years in GME training. Medicare has been the largest single funder of GME, but in 1997 Congress capped the number of residency slots for which hospitals could receive Medicare GME funding and has not increased this cap. In California, there are many more individuals that would like a residency slot in California, than there are residency positions available.

## ANALYSIS

This resolution makes the following legislative findings:

- According to a 2014 report by the California Healthcare Foundation, although California has more than 105,000 licensed physicians, only 71,000 are actively involved in providing patient care.

- Federal funding levels for residency training programs have been frozen since 1997, while California's population has increased by more than 10% since that time.

- Medicare's rigid payment formulas for GME do not allow for the innovation needed to improve medical education to produce physicians with the appropriate training needed to meet the nation's current and future health care needs.

- Many primary care physicians, including those who have graduated from California

medical schools, want to train in California, but are forced to leave the state because of the shortage in training slots at residency programs. California has been able to address only a minimal portion of primary care residency programs' funding shortfall with state funds.

- Increasing funding for primary care medical residency training programs is a critical step in addressing the physician shortage problem and improving access to medical care.

This resolution urges the Congress and the President of the United States to renew funding for the Health Resources and Services Administration's Teaching Health Center and Primary Care Residency Expansion Graduate Medical Education Programs that are set to expire this year; to lift the freeze on residency positions funded by Medicare to expand physician supply and improve access to care; and to encourage the development of primary care physician training programs in ambulatory, community, and medically underserved sites through new funding methodologies and incentives.

This resolution would encourage increased funding and residency programs in California and would promote more residency positions in California. This resolution may help more physicians to receive residency training and potentially end up practicing in California. This resolution is in line with the Board's adopted policy compendium and Board staff is suggesting that the Board take a support position on this resolution.

**FISCAL:** None

**SUPPORT:** None on file

**OPPOSITION:** None on file

**POSITION:** Recommendation: Support

AMENDED IN SENATE APRIL 6, 2015

# Senate Joint Resolution No. 7

**Introduced by Senator Pan**

March 19, 2015

Senate Joint Resolution No. 7—Relative to physicians.

LEGISLATIVE COUNSEL'S DIGEST

SJR 7, as amended, Pan. Medical residency programs.

This measure would urge the Congress and the President of the United States to renew funding for the Health Resources and Services Administration's Teaching Health Center and Primary Care Residency Expansion Graduate Medical Education Programs, and to lift the freeze on residency positions funded by Medicare to expand physician supply and improve access to health care.

Fiscal committee: no.

WHEREAS, According to a 2014 report by the California Healthcare Foundation, although California has more than 105,000 licensed physicians, only 71,000 are actively involved in providing patient care; and

WHEREAS, Certain regions of the state, such as the San Joaquin Valley and the Inland Empire, lack the recommended supply of primary care and specialty physicians and, as a result, those areas have higher populations in poor health; and

WHEREAS, California's shortage and poor distribution of physicians is likely to be exacerbated by increased levels of insured patients and projected increases in the number of physicians planning to retire; and

WHEREAS, Federal funding levels for residency training programs have been frozen since 1997, while California's population has increased by more than 10 percent since that time; and

WHEREAS, Medicare's rigid payment formulas for graduate medical education do not allow for the innovation needed to improve medical education to produce physicians with the appropriate training needed to meet the nation's current and future health care needs; and

WHEREAS, California has been able to address only a minimal portion of primary care residency programs' funding shortfall with state funds; and

~~WHEREAS, in 2014, more than 400 California medical school graduates went "unmatched," meaning they were unable to find a residency program in our state to complete their training; and~~

WHEREAS, Many primary care physicians, including those who have graduated from California medical schools, want to train in California, but are forced to leave the state because of the shortage in training slots at residency programs; and

WHEREAS, California has the highest retention rate of physicians who complete their residency training in-state; and

WHEREAS, Increasing funding for primary care medical residency training programs is a critical step in addressing the physician shortage problem and improving access to medical care; now, therefore, be it

*Resolved by the Senate and the Assembly of the State of California, jointly,* That the Legislature calls upon Congress and the President of the United States to renew funding for the Health Resources and Services Administration's Teaching Health Center and Primary Care Residency Expansion Graduate Medical Education Programs that are set to expire this year; and be it further

*Resolved,* That the Legislature calls upon Congress and the President to lift the freeze on residency positions funded by Medicare to expand physician supply and improve access to care; and be it further

*Resolved,* That the Legislature calls upon Congress and the President to encourage the development of primary care physician training programs in ambulatory, community, and medically underserved sites through new funding methodologies and incentives; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

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**MBC TRACKER II BILLS**
**4/30/2015**

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| AB 11 | Gonzalez | Employment: Paid Sick Days: In-Home Supportive Services | Asm. Approps | 03/11/15 |
| AB 12 | Cooley | State Government: Administrative Regulations: Review | Asm. Approps | 04/22/15 |
| AB 19 | Chang | GO BIZ: Small Business: Regulations | Asm. Approps | 04/23/15 |
| AB 41 | Chau | Health Care Coverage: Discrimination | Asm. Approps | |
| AB 50 | Mullin | Nurse-Family Partnership | Asm. Approps | 04/21/15 |
| AB 59 | Waldron | Mental Health Services: Assisted Outpatient Treatment | Asm. Judiciary | 04/20/15 |
| AB 68 | Waldron | Medi-Cal | Asm. Approps | 03/26/15 |
| AB 70 | Waldron | Emergency Medical Services: Reporting | Asm. Health | 03/26/15 |
| AB 72 | Bonta | Medi-Cal: Demonstration Project | Senate | |
| AB 73 | Waldron | Prescriber Prevails Act | Asm. Approps | 03/16/15 |
| AB 83 | Gatto | Information Practices Act of 1977 | Asm. Privacy | 04/27/15 |
| AB 85 | Wilk | Open Meetings | Asm. Approps | 04/15/15 |
| AB 170 | Gatto | Newborn Screening: Genetic Diseases: Blood Samples | Asm. Approps | 04/21/15 |
| AB 174 | Gray | UC: Medical Education | Asm. Approps | 02/09/15 |
| AB 193 | Maienschein | Mental Health: Conservatorship Hearings | Asm. Approps | 04/14/15 |
| AB 243 | Wood | Medical Marijuana Cultivation | Asm. Approps | 04/22/15 |
| AB 258 | Levine | Organ Transplants: Medical Marijuana: Qualified Patients | Asm. 3rd Reading | 03/25/15 |
| AB 304 | Gonzalez | Sick Leave: Accrual Limitations | Asm. Approps | 04/27/15 |
| AB 322 | Waldron | Privacy: Social Security Numbers | Asm. Privacy | 03/26/15 |
| AB 330 | Chang | State Government | Assembly | |
| AB 333 | Melendez | Healing Arts: Continuing Education | Asm. Approps | 03/26/15 |
| AB 339 | Gordon | Health Care Coverage: Outpatient Prescription Drugs | Asm. Approps | 04/07/15 |
| AB 344 | Chavez | Medi-Cal | Asm. Approps | |
| AB 351 | Jones-Sawyer | Public Contracts: Small Business Participation | Asm. Approps | |
| AB 366 | Bonta | Medi-Cal: Reimbursement: Provider Rates | Asm. Approps | 04/07/15 |

**MBC TRACKER II BILLS**
**4/30/2015**

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| AB 374 | Nazarian | Health Care Coverage: Prescription Drugs | Asm. Approps | 03/02/15 |
| AB 383 | Gipson | Public Health: Hepatitis C | Asm. Approps | 03/26/15 |
| AB 389 | Chau | Hospitals: Language Assistance Services | Asm. Consent | 04/09/15 |
| AB 403 | Stone, M | Public Social Services: Foster Care Placement | Asm. Approps | 04/21/15 |
| AB 410 | Obernolte | Reports Submitted to Legislative Committees | Asm. Approps | 04/27/15 |
| AB 411 | Lackey | Public Contracts | Assembly | |
| AB 413 | Chavez | California Disabled Veteran Business Enterprise Program | Asm. Approps | 03/16/15 |
| AB 419 | Kim | Go BIZ: Regulations | Asm. Approps | 03/26/15 |
| AB 444 | Gipson | Health Facilities: Epidural Connecters | Senate | |
| AB 463 | Chiu | Pharmaceutical Cost Transparency Act of 2015 | Asm. Health | |
| AB 486 | Bonilla | Centralized Hospital Packaging Pharmacies: Medication Labels | Asm. Approps | |
| AB 503 | Rodriguez | Emergency Medical Service | Senate | 03/23/15 |
| AB 507 | Olsen | DCA: BreEZe System: Annual Report | Asm. Approps | 03/26/15 |
| AB 508 | Garcia, C. | Public Health: Prenatal Care | Asm. Health | |
| AB 513 | Jones-Sawyer | Professions and Vocations | Assembly | 02/23/15 |
| AB 521 | Nazarian | HIV Testing | Asm. Approps | 04/23/15 |
| AB 532 | McCarty | State Agencies: Collection of Data: Race or Ethnic Origin | Asm. Approps | 04/20/15 |
| AB 533 | Bonta | Health Care Coverage: Out-of-Network Coverage | Asm. Approps | 04/23/15 |
| AB 537 | Allen, T. | Public Employees' Benefits | Asm. Pub. Emp. | |
| AB 546 | Gonzalez | Peace Officers: Basic Training Requirements | Senate | |
| AB 570 | Allen, T. | Cardiovascular Disease: High Blood Pressure | Assembly | |
| AB 572 | Gaines | California Diabetes Program | Asm. Approps | 04/16/15 |
| AB 574 | Patterson | General Acute Care Hospitals: Cardiovascular Surgical Teams | Asm. Health | 03/26/15 |
| AB 584 | Cooley | Public Employee Retirement Systems | Assembly | 04/06/15 |
| AB 614 | Brown | Health Care Standards of Practice | Assembly | 04/16/15 |

**MBC TRACKER II BILLS**
**4/30/2015**

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| AB 618 | Maienschein | Parole: Primary Mental Health Clinicians | Asm. Approps | |
| AB 623 | Wood | Abuse-Deterrent Opioid Analgesic Drug Products | Asm. Approps | 03/26/15 |
| AB 635 | Atkins | Medical Interpretation Services | Asm. Approps | |
| AB 649 | Patterson | Medical Waste: Law Enforcement Drug Take back Programs | Assembly | 04/16/15 |
| AB 664 | Dodd | Medi-Cal: Universal Assessment Tool Report | Asm. Approps | |
| AB 676 | Calderon | Employment: Discrimination | Asm. Approps | |
| AB 714 | Melendez | State Employees: Health Benefits | Asm. Pub. Emp. | |
| AB 728 | Hadley | State Government: Financial Reporting | Assembly | 04/08/15 |
| AB 741 | Williams | Comprehensive Mental Health Crisis Services | Asm. Approps | 04/15/15 |
| AB 750 | Low | Business and Professions: Retired License Category | Asm. Approps | 04/16/15 |
| AB 757 | Gomez | Healing Arts: Clinical Laboratories | Asm. Approps | 03/26/15 |
| AB 766 | Ridley-Thomas | Public School Health Center Support Program | Asm. Approps | 04/27/15 |
| AB 769 | Jones-Sawyer | State Employees: Disciplinary Action | Asm. Approps | |
| AB 775 | Chiu | Reproductive FACT Act | Asm. Approps | 04/16/15 |
| AB 788 | Chu | Prescriptions | Asm. Health | 03/26/15 |
| AB 789 | Calderon | Contact Lens Sellers: Prohibited Practices: Fines | Asm. B&P | 04/22/15 |
| AB 791 | Cooley | Electronic Health Records | Asm. Health | |
| AB 796 | Nazarian | Health Care Coverage: Autism and Pervasive Dev. Disorders | Asm. B&P | |
| AB 797 | Steinorth | Regulations: Effective Dates and Legislative Review | Assembly | 04/06/15 |
| AB 840 | Ridley-Thomas | Nurses and Certified Nurse Assistants | Asm. Approps | |
| AB 845 | Cooley | Health Care Coverage: Vision Care | Asm. Approps | 04/21/15 |
| AB 848 | Stone, M | Alcoholism and Drug Abuse Treatment Facilities | Asm. Approps | 04/06/15 |
| AB 859 | Medina | Medi-Cal: Obesity Treatment Plans | Asm. Approps | 03/26/15 |
| AB 918 | Stone, M | Health and Care Facilities: Seclusion and Behavior Restraints | Asm. Approps | 04/06/15 |
| AB 972 | Jones | Ken Maddy California Cancer Registry | Asm. Health | |

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| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| AB 981 | Mayes | Eyeglasses | Assembly | |
| AB 990 | Bonilla | Women's Health | Asm. Approps | 04/20/15 |
| AB 1001 | Gatto | Child Abuse: Reporting | Asm. Pub. Safety | |
| AB 1027 | Gatto | Health Care Coverage: Contracted Rates | Asm. Health | 03/26/15 |
| AB 1046 | Dababneh | Hospitals: Community Benefits | Asm. Health | 04/07/15 |
| AB 1060 | Bonilla | Professions and Vocations: Licensure | Asm. Consent | 03/26/15 |
| AB 1067 | Gipson | Foster Children: Psychotropic Medication | Asm. Human Svcs. | 03/26/15 |
| AB 1069 | Gordon | Prescription Drugs: Collection and Distribution Program | Asm. Health | 03/26/15 |
| AB 1073 | Ting | Pharmacy: Prescription Drug Labels | Asm. Approps | 04/28/15 |
| AB 1092 | Mullin | Magnetic Resonance Imaging Technologists | Asm. Approps | 04/20/15 |
| AB 1102 | Santiago | Health Care Coverage: Special Enrollment Periods | Asm. Approps | 03/26/15 |
| AB 1104 | Rodriguez | Search Warrants | Asm. 3rd Reading | 04/23/15 |
| AB 1117 | Garcia, C. | Medi-Cal: Vaccination Rates | Asm. Approps | 03/26/15 |
| AB 1124 | Perea | Workers Compensation: Medication Formulary | Asm. Approps | 04/14/15 |
| AB 1125 | Weber | State Agency Contracts: Small Business | Asm. Approps | |
| AB 1129 | Burke | Emergency Medical Services: Data and Information System | Asm. 3rd Reading | 04/06/15 |
| AB 1133 | Achadjian | School-Based Early Mental Health Intervention and Prevention | Asm. Approps | 04/15/15 |
| AB 1174 | Bonilla | Health Research: Women's Health | Assembly | 04/20/15 |
| AB 1215 | Ting | California Open Data Standard | Asm. Approps | 03/26/15 |
| AB 1219 | Baker | California Cancer Task Force | Asm. Health | |
| AB 1223 | O'Donnell | Emergency Medical Services: Noncritical Cases | Asm. Health | 04/14/15 |
| AB 1231 | Wood | Medi-Cal: Non-Medical Transport | Asm. Approps | |
| AB 1254 | Grove | Health Care Service Plans: Abortion Coverage | Asm. Approps | 04/06/15 |
| AB 1281 | Wilk | Regulations: Legislative Review | Asm. Account. | 03/26/15 |
| AB 1294 | Holden | State Government: Prompt Payment of Claims | Asm. Account. | 03/26/15 |

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| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| AB 1299 | Ridley-Thomas | Medi-Cal: Specialty Mental Health Services: Foster Children | Asm. Approps | 04/21/15 |
| AB 1302 | Brown | Public Contracts: Disabled Veterans | Asm. Jobs, Ec. Dev. | |
| AB 1337 | Linder | Medical Records: Electronic Delivery | Asm. Health | 04/21/15 |
| AB 1351 | Eggman | Deferred Entry of Judgment: Pretrial Diversion | Asm. Approps | 04/16/15 |
| AB 1352 | Eggman | Deferred Entry of Judgment: Withdrawal of Plea | Asm. 3rd Reading | 04/27/15 |
| AB 1357 | Bloom | Children and Family Health Promotion Program | Asm. Health | 04/29/15 |
| AB 1359 | Nazarian | Optometry: Therapeutic Pharmaceutical Agents Certification | Asm. Approps | |
| AB 1386 | Low | Emergency Medical Care: Epinephrine Auto-Injectors | Asm. B&P | 04/16/15 |
| AB 1396 | Bonta | Public Health Finance | Asm. Approps | 04/16/15 |
| AB 1423 | Stone, M | Prisoners: Medical Treatment | Asm. Approps | 04/20/15 |
| AB 1432 | Bonta | Drug and Alcohol Abuse Programs | Senate | 03/26/15 |
| AB 1434 | McCarty | Health Insurance: Prohibition on Health Insurance Sales | Asm. Rev. & Tax | 04/20/15 |
| AB 1445 | Brown | Public Contracts: Small Business Contracts | Asm. Approps | |
| AB 1460 | Thurmond | Hospitals: Community Benefit Plans | Assembly | |
| AB 1485 | Patterson | Medi-Cal: Radiology | Asm. Approps | 04/21/15 |
| ACA 3 | Gallagher | Public Employees' Retirement | Asm. Pub. Emp. | |
| ACR 38 | Brown | California Task Force on Family Caregiving | Asm. Aging | 04/27/15 |
| SB 3 | Leno | Minimum Wage: Adjustment | Asm. Approps | 03/11/15 |
| SB 4 | Lara | Health Care Coverage: Immigration Status | Asm. Approps | 04/28/15 |
| SB 10 | Lara | Immigration: Governor's Office of New Americans | Sen. Approps | |
| SB 11 | Beall | Peace Officer Training: Mental Health | Sen. Approps | 04/15/15 |
| SB 24 | Hill | Electronic Cigarettes: Licensing and Restrictions | Sen. Approps | 04/21/15 |
| SB 26 | Hernandez | California Health Care Cost and Quality Database | Sen. Approps | |
| SB 29 | Beall | Peace Officer Training: Mental Health | Sen. Approps | 4/1515 |
| SB 36 | Hernandez | Medi-Cal: Demonstration Project | Assembly | |

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| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| SB 43 | Hernandez | Health Care Coverage: Essential Health Benefits | Sen. Approps | 04/20/15 |
| SB 52 | Walters | Regulatory Boards: Healing Arts | Senate | |
| SB 58 | Knight | Public Employees' Retirement System | Senate | |
| SB 131 | Cannella | UC: Medical Education | Sen. Approps | 04/29/15 |
| SB 137 | Hernandez | Health Care Coverage: Provider Directories | Sen. Approps | 04/21/15 |
| SB 139 | Galgiani | Controlled Substances | Sen. Pub. Safety | |
| SB 145 | Pan | Health Facilities: Patient Transporting | Sen. Approps | 04/23/15 |
| SB 190 | Beall | Health Care Coverage: Acquired Brain Injury | Sen. Health | 04/06/15 |
| SB 201 | Wieckowski | California Public Records Act | Sen. Judiciary | |
| SB 202 | Hernandez | Controlled Substances: Unfair or Deceptive Practice | Sen. Judiciary | 03/16/15 |
| SB 214 | Berryhill | Foster Care Services | Senate | |
| SB 216 | Pan | Public Employees' Retirement System | Senate | 04/21/15 |
| SB 221 | Jackson | State Public Employees: Sick Leave: Veterans | Sen. Approps | 04/20/15 |
| SB 238 | Mitchell | Foster Care: Psychotropic Medication | Sen. Approps | 04/07/15 |
| SB 243 | Hernandez | Medi-Cal: Reimbursement: Provider Rates | Sen. Approps | 04/13/15 |
| SB 253 | Monning | Dependent Children: Psychotropic Medication | Sen. Approps | 04/22/15 |
| SB 259 | Bates | Health Care Professionals | Senate | |
| SB 275 | Hernandez | Health Facility Data | Assembly | |
| SB 280 | Stone, J | Public Employees: Compensation | Sen. Pub. Emp. | 04/15/15 |
| SB 282 | Hernandez | Health Care Coverage: Prescription Drugs | Sen. Approps | 04/09/15 |
| SB 289 | Mitchell | Telephonic and Electronic Patient Management Services | Sen. Approps | 04/06/15 |
| SB 291 | Lara | Mental Health: Vulnerable Communities | Sen. Approps | 04/28/15 |
| SB 293 | Pan | Public Employees: Retirement | Senate | |
| SB 296 | Cannella | Medi-Cal: Specialty Mental Health Services: Documentation | Sen. Approps | 04/20/15 |
| SB 299 | Monning | Medi-Cal: Provider Enrollment | Assembly | |

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| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| SB 315 | Monning | Health Care Access Demonstration Project Grants | Sen. Approps | 04/13/15 |
| SB 319 | Beall | Child Welfare Services: Public Health Nursing | Sen. Health | 03/26/15 |
| SB 346 | Wieckowski | Health Facilities: Community Benefits | Sen. Health | 04/23/15 |
| SB 349 | Bates | Optometry: Mobile Optometric Facilities | Sen. B&P | 04/06/15 |
| SB 370 | Wolk | Immunizations: Disclosure of Information: TB Screening | Sen. Health | |
| SB 375 | Berryhill | Public Employees' Retirement | Senate | |
| SB 376 | Lara | Public Contracts: UC | Sen. Approps | 04/06/15 |
| SB 402 | Mitchell | Pupil Health: Vision Examinations | Sen. Approps | 04/22/15 |
| SB 407 | Morrell | Comprehensive Perinatal Services Program: Licensed Midwives | Sen. Approps | 04/21/15 |
| SB 435 | Pan | Medical Home: Health Care Delivery Model | Sen. Approps | 04/06/15 |
| SB 447 | Allen | Medi-Cal: Clinics: Drugs and Supplies | Sen. Approps | 04/06/15 |
| SB 453 | Pan | Prisons: Involuntary Medication | Sen. Approps | 04/28/15 |
| SB 459 | Liu | State Government: Data | Senate | |
| SB 464 | Hernandez | Healing Arts: Self-Reporting Tools | Sen. B&P | 04/27/15 |
| SB 467 | Hill | Professions and Vocations | Sen. Approps | 04/21/15 |
| SB 484 | Beall | Juveniles | Sen. Health | 04/22/15 |
| SB 492 | Liu | Coordinate Care Initiative: Consumer Bill of Rights | Sen. Approps | 04/20/15 |
| SB 525 | Nielsen | Respiratory Care Practice | Sen. Consent | 04/06/15 |
| SB 547 | Liu | Long-Term Care | Sen. Health | |
| SB 563 | Pan | Workers' Compensation: Utilization Review | Senate | 04/13/15 |
| SB 571 | Liu | Long-Term Care: CalCareNet | Sen. Approps | 04/21/15 |
| SB 573 | Pan | Statewide Open Data Portal | Sen. Approps | |
| SB 579 | Jackson | Employees: Time Off | Sen. Approps | 04/15/15 |
| SB 587 | Stone, J | Pharmacy: Drug Regimens: Hypertension and Hyperlipidemia | Sen. B&P | 04/09/15 |
| SB 609 | Stone, J | Controlled Substances: Narcotic Replacement Treatment | Senate | 04/21/15 |

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| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|---|---|---|---|---|
| SB 613 | Allen | Public Health: Dementia Guidelines: Workgroup | Sen. Approps | 04/20/15 |
| SB 614 | Leno | Medi-Cal: Mental Health Services | Sen. Approps | 04/06/15 |
| SB 644 | Hancock | LEAP: Persons with Developmental Disabilities | Sen. Approps | 04/07/15 |
| SB 658 | Hill | Automated External Defibrillators | Sen. Judiciary | 04/27/15 |
| SB 671 | Hill | Pharmacy: Biological Product | Sen. Approps | 04/14/15 |
| SB 729 | Wieckowski | Consumer Complaints | Senate | |
| SB 744 | Huff | Pupil Health: Epinephrine Auto-Injectors | Senate | |
| SB 779 | Hall | Skilled Nursing Facilities: Certified Nurse Assistants | Sen. Approps | 04/20/15 |
| SB 780 | Mendoza | Psychiatric Technicians and Assistants | Sen. Approps | |
| SR 17 | Jackson | California Health Care Decisions Day | Adopted | 03/16/15 |