LEGISLATIVE PACKET

MEDICAL BOARD MEETING

JULY 20, 2012
SACRAMENTO, CA

MEDICAL BOARD OF CALIFORNIA
TRACKER – LEGISLATIVE BILL FILE
July 10, 2012

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 589	Perea	Medical School Scholarships	Sen. Approps.	Support	08/17/11
AB 783	Hayashi	Professional Corporations: Licensed PTs	Sen. B&P	Support	04/07/11
AB 1533	Mitchell	UCLA IMG Pilot Program	Enrolled	Sponsor	3/21/12
AB 1548	Carter	Cosmetic Surgery: Employment of Physicians	Enrolled	Support	3/22/12
AB 1621	Halderman	Physicians & Surgeons: Prostate Cancer	Enrolled	Support	
AB 1896	Chesbro	Tribal Health Programs: Health Care Practitioners	Enrolled	No Position	3/27/12
AB 2561	Hernandez	Certified Surgical Tech.	Sen. Approps	Neutral	6/26/12
AB 2570	Hill	Licensees: Settlement Agreements	Sen. Approps	Support	
SB 122	Price	International Medical Schools	Asm. Approps		7/2/12
SB 616	DeSaulnier	CURES	Asm. 3rd Reading	Reco: Support	6/27/12
SB 924	Price, Walters & Steinberg	PTs: Direct Access: Professional Corporations	Asm. Approps	Oppose Unless Amended	6/18/12
SB 1095	Rubio	Pharmacy: Clinics	Asm. Approps	Support	6/25/12
SB 1236	Price	Healing Arts Boards	Asm. Approps	Reco: Support	6/18/12
SB 1237	Price	Professions & Vocations: Regulatory Boards (VEP Sunset Extension)	Asm. Approps	Reco: No Position	7/5/12
SB 1274	Wolk	Healing Arts: Hospitals: Employment	Asm. Approps	Support	4/26/12
SB 1416	Rubio	Medical Residency Training Program Grants	Asm. Approps	Support	5/29/12
SB 1483	Steinberg	Physician Health Program	Asm. Approps	Reco: Neutral if Amended	7/2/12
SB 1575	B&P Comm.	Omnibus – B&P Health	Asm. Approps	Sponsor	6/28/12

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

SPONSORED BILLS

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1533
Author:	Mitchell
Bill Date:	March 21, 2012, amended
Subject:	UCLA IMG Pilot Program
Sponsor:	Medical Board of California and University of California
Position:	Sponsor/Support

STATUS OF BILL:

This bill has been sent to enrollment.

DESCRIPTION OF CURRENT LEGISLATION:

AB 1533 would authorize a pilot for the University of California at Los Angeles (UCLA) international medical graduate (IMG) program. The pilot would allow program participants to engage in supervised patient care activities (i.e., similar to participation at the level of a UC medical student on a health care team) for a typical assignment lasting 16 weeks (but not to exceed 24 weeks), as part of an approved and supervised clinical clerkship/rotation at UCLA health care facilities, or with other approved UCLA affiliates. All such training will occur with supervision provided by licensed physicians.

This bill would also request the UC to prepare a report for the Board and Legislature after the pilot program has been operative for five years, which would include the number of participants in the pilot program; the number of participants issued a license by the Board; and the potential for retention or expansion of the pilot program. This bill would sunset the pilot program on January 1, 2019.

This bill was amended to require the report to be submitted on or before January 1, 2018, and to require the report to include data on the number of participants who practice in designated medically underserved areas.

ANALYSIS:

In 2006, the UCLA Department of Family Medicine developed an innovative program to prepare bilingual (English-Spanish speaking), bi-cultural IMGs to enter accredited family medicine programs in California and to pursue licensure and board-certification as family physicians. This program functions as a pre-residency training program. The program recruits proficient bilingual IMGs from international medical schools with curricula that meet the educational requirements set forth by the Medical Board of California (the Board) for purposes

of physician licensure. To be eligible for the UCLA IMG program, participants must have U.S. citizenship or Permanent Resident or Refugee Status. UCLA IMG graduates commit to 24-36 months of post-residency employment in a California health care facility located in a designated medically underserved area. As of June 2011, the UCLA IMG program has placed a total of 42 graduates in 15 urban and rural family medicine residencies in California. An additional 10-12 graduates are expected to enter accredited family medicine training programs in July 2012.

Since its inception, the UCLA IMG program has had an extraordinary record of success in preparing participants for entry to residency training in California. As part of the program, all participants complete a Clinical Observership program. Typically, this assignment lasts 16 weeks (but not to exceed 24 weeks). In no instance do UCLA IMGs hold themselves out to be licensed in California for purposes of patient care or any other program activities. Because these trainees are neither "medical students" enrolled in the School of Medicine (since they have already graduated from medical school in their country), nor "medical residents" enrolled in residency training, these individuals are not currently authorized by state law to engage in "hands on" clinical training as part of their course of study. The result is that UCLA IMGs are required to function as "observers," even when supervised by licensed physicians who are teaching in accredited California training programs.

AB 1533 would authorize a pilot for the UCLA IMG program. The pilot would allow program participants to engage in supervised patient care activities for a typical assignment lasting 16 weeks (but not to exceed 24 weeks), as part of an approved and supervised clinical clerkship/rotation at UCLA health care facilities, or with other approved UCLA affiliates (e.g., participating California family medicine programs). All such training will occur with supervision provided by licensed physicians.

This bill also requests the UC to prepare a report for the Board and Legislature after the pilot program has been operative for five years, which would include the number of participants in the pilot program; the number of participants issued a license by the Board; and the potential for retention or expansion of the pilot program. This bill would sunset the pilot program on January 1, 2019.

The March 21st amendments were taken at the request of the Assembly Republican Caucus. The amendments would require the report prepared by the UC to be submitted on or before January 1, 2018, and would also require the report to include data on the number of participants who practice in designated medically underserved areas. The Board and the UC have no concerns with these amendments.

The Board and the UC believe this pilot program will benefit the UCLA IMG program, its participants, and California family medicine programs seeking to increase the recruitment of bilingual physicians to their programs. Although the UCLA IMG program could continue to operate with no change, residency programs throughout the state continue to express their interest and support for a mechanism through which these trainees could participate in clinical

training activities as they work and prepare to enter a residency program. This pilot would improve the preparation and readiness of program participants. Because UCLA IMG graduates commit to 24-36 months of post-residency employment in a California health care facility located in a designated medically underserved area, the continued success of the UCLA program offers longer term benefits for underserved communities throughout the state. The value of this pilot takes on added importance as provisions of health care reform take effect in 2014, and as California prepares to provide health services to substantial numbers of new Spanish-speaking patients

FISCAL: No cost to the Board. The UCLA IMG program is funded by private sources. Funding sponsors include Kaiser Permanente Community Benefit, UniHealth Foundation, The California Endowment, Molina Family Foundation, New America Alliance, Kaplan educational programs and, private individuals.

SUPPORT: MBC (Co-Sponsor)
University of California (Co-Sponsor)
California Academy of Family Physicians
California State Rural Health Association
Los Angeles County Board of Supervisors
California Medical Association

OPPOSITION: None on file

POSITION: Sponsor/Support

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1533

Introduced by Assembly Member Mitchell

January 23, 2012

An act to add and repeal Section 2066.5 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1533, as amended, Mitchell. Medicine: trainees: international medical graduates.

The Medical Practice Act provides for licensing and regulation of physicians and surgeons by the Medical Board of California and imposes various requirements in that regard. Existing law requires an applicant for a license as a physician and surgeon to successfully complete a specified medical curriculum, a clinical instruction program, and a training program. Existing law provides that nothing in the Medical Practice Act shall be construed to prohibit a foreign medical graduate from engaging in the practice of medicine whenever and wherever required as part of a clinical service program, subject to certain conditions.

This bill, until January 1, 2019, would authorize a clinical instruction pilot program for certain bilingual international medical graduates at the ~~Medical~~ *David Geffen* School of *Medicine of* the University of California at Los Angeles (UCLA) as part of an existing preresidency training program, at the option of UCLA. The bill would provide that nothing in the Medical Practice Act shall be construed to prohibit a foreign medical graduate participating in the pilot program from engaging in the practice of medicine when required as part of the pilot

program. The bill would set forth the requirements for international medical graduates to participate in the pilot program. The bill would require UCLA to provide the board with the names of the participants and other information. The bill would authorize the board to consider participation in the clinical instruction pilot program as remediation for medical education deficiencies in a participant's subsequent application for licensure as a physician and surgeon. The bill would request UCLA to report to the board and the Legislature ~~after the pilot program has been operative for 5 years~~ *on or before January 1, 2018.* The bill would make related legislative findings and declarations.

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. The Legislature finds and declares all of the following:

(a) California needs more Spanish-speaking health professionals. Although Hispanics represent nearly 39 percent of California's population, only 5.2 percent of the state's physician workforce is Hispanic. According to the 2010 federal census, an estimated 35 percent of California's almost 15 million Hispanics reside in medically underserved areas, compared to 20 percent of the total population.

(b) California needs more primary care doctors. Each year, there are approximately 19,500 graduates of medical schools in the United States who compete in the National Residency Match Program (NRMP) or "Match" process for one of the 25,000 first-year graduate medical education (GME) positions (residency training positions). The United States has more GME positions than United States medical school graduates. As a result, an estimated 5,500 International Medical Graduates (IMGs), or 20 percent of the total, enter United States residency training each year. According to the NRMP data for 2011, 94.4 percent of family medicine residency positions were filled. Because not all positions were filled, this indicates that there is capacity within existing programs to accept more IMG residents in family medicine, provided that these individuals are eligible and well prepared.

(c) IMGs legally residing in the United States can be part of the solution for California's shortage of Hispanic physicians. Between

400 to 1,000 unlicensed Hispanic IMG physicians legally reside and work in ~~Southern~~ *southern* California. Because they do not have a California medical license, they cannot practice medicine in California. Many work in a variety of roles such as ultrasound technicians, health educators, or interpreters, and a few have retrained as nurses.

(d) There is an existing California training resource that is underutilized. Since 2006, the David Geffen School of Medicine at the University of California at Los Angeles (UCLA) has operated an innovative and highly successful program to prepare English-Spanish bilingual, bicultural individuals who have graduated from an accredited medical school outside the United States to enter accredited family medicine programs in California. The UCLA program functions as a preresidency training program. However, because these IMG trainees are neither "medical students" enrolled in the school of medicine (because they have already graduated from medical school in their country), nor "medical residents" enrolled in residency training, these individuals are not currently recognized by state law as trainees who are authorized to engage in ~~"hands on"~~ *"hands-on"* clinical training, at even the level of a medical student, as part of their course of study. The UCLA IMG program accepts a small number of exceptionally promising bilingual unlicensed Hispanic IMGs who legally reside in California to participate in a program lasting from 4 to 21 months, with total time for completion determined by UCLA based upon assessment of qualifications of each program participant. To be eligible for licensure in California, graduates of both foreign medical schools as well as United States medical schools must successfully pass Steps 1 and 2 of the United States Medical Licensing Exam (USMLE). Upon receiving a passing score on these exams, medical school graduates are then eligible to compete for a residency position in one of California's 30-plus family medicine training programs. Once the three-year family medicine residency training program is completed, these licensed family physicians commit to practice in an underserved community in California for up to three years.

SEC. 2. Section 2066.5 is added to the Business and Professions Code, to read:

2066.5. (a) The pilot program authorized by this section shall be known and may be cited as the University of California at Los

Angeles David Geffen School of Medicine's International Medical Graduate Pilot Program.

(b) Nothing in this chapter shall be construed to prohibit a foreign medical graduate from engaging in the practice of medicine when required as part of the pilot program authorized by this section.

(c) There is currently a preresidency training program at the University of California, Los Angeles David Geffen School of Medicine, Department of Family Medicine, hereafter referred to as UCLA, for selected international medical graduates (IMGs). Participation in the pilot program authorized by this section shall be at the option of UCLA. This section authorizes those IMGs, through the new pilot program authorized by this section, to receive, through the existing program, hands-on clinical instruction in the courses specified in subdivision (c) of Section 2089.5. The pilot program, as administered by UCLA, shall include all of the following elements:

(1) Each pilot program participant shall have done all of the following:

(A) Graduated from a medical school recognized by the Medical Board of California at the time of selection.

(B) Taken and passed the United States Medical Licensing Examination Steps 1 and 2 (Clinical Knowledge and Clinical Science).

(C) Submitted an application and materials to the Educational Commission for Foreign Medical Graduates.

(2) A pilot program participant shall receive all clinical instruction at health care facilities operated by the University of California, Los Angeles, or other approved ~~UCLA designated~~ *UCLA-designated* teaching sites, which shall be hospitals or clinics with either a signed formal affiliation agreement with UCLA or a signed letter of agreement.

(3) Participation of a trainee in clinical instruction offered by the pilot program shall not generally exceed 16 weeks. However, at the discretion of UCLA, an additional eight weeks of clinical instruction may be granted. In no event shall a participant receive more than 24 weeks of clinical instruction under the pilot program.

(4) The clinical instruction shall be supervised by licensed physicians on faculty at UCLA or faculty affiliated with UCLA

as specified in an approved affiliation agreement between UCLA and the affiliated entity.

(5) The clinical instruction shall be provided pursuant to written affiliation agreements for clinical instruction of trainees established by UCLA.

(6) The supervising faculty shall evaluate each participant on a regular basis and shall document the completion of each aspect of the clinical instruction portion of the program for each participant.

(d) UCLA shall provide the board with the names of the participants in the pilot program on an annual basis, or more frequently if necessary to maintain accuracy. Upon a reasonable request of the board, UCLA shall provide additional information such as the courses successfully completed by program participants, the dates of instruction, and other relevant information.

(e) Nothing in this section shall be construed to alter the requirements for licensure set forth in Sections 2089 and 2089.5. The board may consider participation in the clinical instruction portion of the pilot program as remediation for medical education deficiencies identified in a participant's application for licensure or authorization for postgraduate training should such a deficiency apply to that applicant.

(f) ~~After the pilot program has been operative for five years,~~ *On or before January 1, 2018,* UCLA is requested to prepare a report for the board and the Legislature. Topics to be addressed in the report shall include the number of participants in the pilot program, the number of participants in the pilot program who were issued physician's and surgeon's certificates by the board, *the number of participants who practice in designated medically underserved areas,* and the potential for retention or expansion of the pilot program.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

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OMNIBUS

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 1575
Author:	Committee on Business, Professions, and Economic Development
Bill Date:	June 28, 2012, amended
Subject:	Omnibus
Sponsor:	Committee, Medical Board, and other health boards
Position:	Support MBC Provisions

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

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 Medical Board of California (Board). The omnibus language would allow the Board to send renewal notices via e-mail; would clarify that the Board has enforcement jurisdiction over all licensees, including licensees with a non-practice license status; would establish a retired license status for licensed midwives; and would make other technical changes.

Recent amendments do not impact the provisions in the bill related to the Board.

ANALYSIS:

BPC Sections 2021 & 2424 Renewal Notices – Ability to Send via E-Mail

These provisions allow the Board to send renewal notices via e-mail and require the Board to annually send an electronic notice to all licensees that have opted to receive correspondence via e-mail to confirm that the e-mail address on file with the Board is current.

The Board will be moving to a new information technology (IT) system, BreEZe, which will allow physicians and surgeons to receive notifications via email. Currently, physician and surgeons can pay their renewal fees online; however, they receive their renewal notice via US postal service. The new IT system will allow individuals the opportunity to choose the best method (i.e. electronically or via US Postal Service) of receiving information from the Board. The instructions will be specific that if they identify the electronic method, this will be the only notification tool used. In reviewing the Board's laws, it has been determined that Business and Professions (B&P) Code section 2424(a) will impede this process as currently written. The statue requires the Board to send a delinquent notice via US postal service and it must be sent certified

mail. In order to save mailing costs, mailing time, printing costs, etc., this bill would allow the Board to send renewal notices via e-mail if requested by the physician and also include a process to ensure that the e-mail address on record is current.

BPC Section 2220 – Non Practice License Status, Authority to Impose Discipline

This provision would clarify that the Board has enforcement jurisdiction over all licensees, "including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders."

The Medical Board recently lost a court of appeal case related to taking disciplinary action against a licensee that held a retired license. The respondent's attorney alleged the Board lacked jurisdiction to impose discipline because, as the holder of a retired license status, the respondent was not permitted to engage in the practice of medicine. Board staff and legal counsel believe that Board does have jurisdiction to impose discipline on any license it issues because that licensee can opt to change their license status by meeting limited requirements. If the Board lacks jurisdiction to impose discipline, it may create a retired status loophole that would insulate any licensee from discipline by transferring his or her license to a retired or inactive status. However, the court ruled that the holder of a retired status license is not a licensee under the Board's jurisdiction and that the Board's disciplinary authority is relevant to the holder of a retired license, "only if and when the retired licensee seeks to return to the practice of medicine and files and application" with the Board for restoration of his or her license. This bill would make it clear that the Board does in fact have jurisdiction over all licensees.

BPC Section 2518 - Licensed Midwives – Retired Licensed Status

This provision would establish a retired license status for licensed midwives (LMs), similar to the retired license status for physicians.

A retired license status for licensed midwives appears to have been left out of the Licensed Midwifery Practice Act due to an oversight. For most practitioners, there is a status that allows for retirement where fees are not required, but the licensee can still use the initials of a licensee after his or her name. This bill would establish the retired license status for LMs.

Additional Technical Changes:

- **Section 2064** - In 2005, the Medical Board requested a change in the omnibus bill to change Section 2064 from "...in an approved medical school or clinical training program...", to "...in an approved medical school ~~or~~ and training program". This amendment was asked for in error and the board should have not asked for this change.

- **Section 2184** – would clarify that clinical training should be included as a way an applicant may have spent time in a postgraduate training program, in order to qualify an applicant to have the period of validity for USMLE test scores extended.

- **Section 2516** – would change the term "infant" to "neonate" in subdivision (a)(3)(L) related to reporting requirements. According to the Midwifery Advisory Council, "neonate" is a more appropriate term to use for this reporting requirement than "infant", as it describes a newborn in the first 4 weeks of life.

FISCAL: None to MBC

SUPPORT: Board of Behavioral Sciences
Medical Board of California

OPPOSITION: None on file

AMENDED IN ASSEMBLY JUNE 28, 2012

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN SENATE APRIL 16, 2012

SENATE BILL No. 1575

Introduced by Committee on Business, Professions and Economic Development (Senators Price (Chair), Corbett, Correa, Emmerson, Hernandez, Negrete McLeod, Strickland, Vargas, and Wyland)

March 12, 2012

An act to amend Sections 1640, *1715.5,* 1934, 1950.5, 2021, 2064, 2184, 2220, 2424, 2516, 2518, 2570.13, 2904.5, 3057.5, 3742, 3750, 3750.5, 4209, 4980.04, 4980.34, 4980.397, 4980.398, 4980.399, 4980.40, 4980.43, 4980.44, 4980.48, 4980.50, 4980.78, 4980.80, 4984.01, 4984.4, 4984.7, 4984.72, 4989.16, 4989.42, 4992.05, 4992.07, 4992.09, 4992.1, 4996.1, 4996.3, 4996.4, 4996.6, 4996.28, 4999.22, 4999.32, 4999.45, 4999.46, 4999.50, 4999.52, 4999.53, 4999.55, 4999.57, 4999.58, 4999.59, 4999.62, 4999.63, 4999.64, 4999.76, 4999.90, 4999.100, 4999.106, and 4999.120 of, to add Sections 1902.2, 1942, 1958.1, and 4300.1 to, and to repeal Section 1909.5 of, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1575, as amended, Committee on Business, Professions and Economic Development. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.

(1) Existing law, the Dental Practice Act, provides for the licensure and regulation of the practice of dentistry by the Dental Board of California within the Department of Consumer Affairs. Existing law establishes the Dental Hygiene Committee of California under the jurisdiction of the board and provides for the licensure and regulation of the practice of dental hygienists by the committee.

This bill would require dental hygienists, upon initial licensure and renewal, to report their employment status to the committee and would require that information to be posted on the committee's Internet Web site. This bill would also require an approved dental hygiene education program to register extramural dental facilities, as defined, with the committee.

Existing law provides that a dental hygienist may have his or her license suspended or revoked by the board for committing acts of unprofessional conduct, as defined.

This bill would include within the definition of unprofessional conduct the aiding or abetting of the unlicensed or unlawful practice of dental hygiene.

Existing law authorizes the committee to deny an application for licensure or to revoke or suspend a license for specified reasons.

This bill would require the committee to deny a license or renewal of a license to any person who is required by law to register as a sex offender.

Existing law authorizes the Dental Board of California to issue a special permit to persons meeting certain requirements, including furnishing satisfactory evidence of having graduated from a dental college.

This bill would allow that requirement to also be met through completion of an accredited advanced education program.

The bill would delete obsolete references.

(2) Existing law, 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. Existing law provides for the licensure and regulation of the practice of podiatric medicine by the California Board of Podiatric Medicine within the Medical Board of California.

Existing law requires the Medical Board of California and the California Board of Podiatric Medicine to provide written notification

by certified mail to any physician and surgeon or podiatrist who does not renew his or her license within 60 days of expiration.

This bill would require the Medical Board of California and the California Board of Podiatric Medicine to provide that written notification either by certified mail or by electronic mail if requested by the licensee. The bill would require the Medical Board of California to annually send an electronic notice to all licensees and applicants requesting confirmation that his or her electronic mail address is current.

Existing law authorizes the Medical Board of California to take action against all persons guilty of violating the Medical Practice Act. Existing law requires the Medical Board of California to enforce and administer various disciplinary provisions as to physician and surgeon certificate holders.

This bill would specify that those certificate holders include those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders.

(3) Existing law, the Licensed Midwifery Practice Act of 1993, provides for the licensure and regulation of the practice of licensed midwifery by the Medical Board of California. A violation of the act is a crime. Under existing law, these licenses are subject to biennial renewal that includes the payment of a specified fee and the completion of specified continuing education.

This bill would exempt a licensee from those renewal requirements if the licensee has applied to the board and has been issued a retired status license. The bill would prohibit the holder of a retired status license from engaging in the practice of midwifery. Because a violation of that prohibition would constitute a crime, the bill would impose a state-mandated local program.

(4) Existing law, the Occupational Therapy Practice Act, requires the California Board of Occupational Therapy to ensure proper supervision of occupational therapy assistants and aides. An aide is required to be supervised by an occupational therapist.

This bill would also provide for an aide to be supervised by an occupational therapy assistant.

(5) Existing law, the Psychology Licensing Law, provides for the licensure and regulation of psychologists by the Board of Psychology. Existing law provides that a licensed psychologist is a health care practitioner for purposes of specified telehealth provisions that concern

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2013. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

~~SEC. 8.~~

SEC. 9. Section 2021 of the Business and Professions Code is amended to read:

2021. (a) If the board publishes a directory pursuant to Section 112, it may require persons licensed pursuant to this chapter to furnish any information as it may deem necessary to enable it to compile the directory.

(b) Each licensee shall report to the board each and every change of address within 30 days after each change, giving both the old and new address. If an address reported to the board at the time of application for licensure or subsequently is a post office box, the applicant shall also provide the board with a street address. If another address is the licensee's address of record, he or she may request that the second address not be disclosed to the public.

(c) Each licensee shall report to the board each and every change of name within 30 days after each change, giving both the old and new names.

(d) The board shall annually send an electronic notice to each applicant and licensee who has chosen to receive correspondence via electronic mail that requests confirmation from the applicant or licensee that his or her electronic mail address is current. An applicant or licensee that does not confirm his or her electronic mail address shall receive correspondence at a mailing address provided pursuant to subdivision (b).

~~SEC. 9.~~

SEC. 10. Section 2064 of the Business and Professions Code is amended to read:

2064. Nothing in this chapter shall be construed to prevent a regularly matriculated student undertaking a course of professional instruction in an approved medical school, or to prevent a foreign medical student who is enrolled in an approved medical school or clinical training program in this state, or to prevent students

enrolled in a program of supervised clinical training under the direction of an approved medical school pursuant to Section 2104, from engaging in the practice of medicine whenever and wherever prescribed as a part of his or her course of study.

~~SEC. 10.~~

SEC. 11. Section 2184 of the Business and Professions Code is amended to read:

2184. (a) Each applicant shall obtain on the written examination a passing score, established by the board pursuant to Section 2177.

(b) (1) Passing scores on each step of the United States Medical Licensing Examination shall be valid for a period of 10 years from the month of the examination for purposes of qualification for licensure in California.

(2) The period of validity provided for in paragraph (1) may be extended by the board for any of the following:

(A) For good cause.

(B) For time spent in a postgraduate training program, including, but not limited to, residency training, clinical training, fellowship training, remedial or refresher training, or other training that is intended to maintain or improve medical skills.

(C) For an applicant who is a physician and surgeon in another state or a Canadian province who is currently and actively practicing medicine in that state or province.

(3) Upon expiration of the 10-year period plus any extension granted by the board under paragraph (2), the applicant shall pass the Special Purpose Examination of the Federation of State Medical Boards or a clinical competency written examination determined by the board to be equivalent.

~~SEC. 11.~~

SEC. 12. Section 2220 of the Business and Professions Code is amended to read:

2220. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.

(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

~~SEC. 12.~~

SEC. 13. Section 2424 of the Business and Professions Code is amended to read:

2424. (a) The board or the California Board of Podiatric Medicine, as the case may be, shall notify in writing either by certified mail, return receipt requested, or by electronic mail if requested by the licensee, any physician and surgeon or any podiatrist who does not renew his or her license within 60 days from its date of expiration.

(b) Notwithstanding Section 163.5, any such licensee who does not renew his or her expired license within 90 days of its date of expiration shall pay all the following fees:

(1) The renewal fee in effect at the time of renewal.

(2) A penalty fee equal to 50 percent of the renewal fee.

(3) The delinquency fee required by Section 2435 or 2499.5, as the case may be.

(c) Notwithstanding any other provision of law, the renewal of any expired physician's and surgeon's or podiatrist's license within six months from its date of expiration shall be retroactive to the date of expiration of that license. The division or board, for good

2011/2012
LEGISLATION

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 589
Author: Perea
Bill Date: August 17, 2011, amended
Subject: Medical School Scholarships
Sponsor: California Medical Association
Position: Support

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would create the Steven M. Thompson Medical School Scholarship Program (STMSSP) within the Health Professions Education Foundation (HPEF). The STMSSP would be funded by private or federal funds and would only be implemented if HPEF determines that sufficient funds are available.

This bill was amended to specify that funds supporting the Steven M. Thompson Loan Repayment Program (STLRP) shall not be used to support the STMSSP. This bill was also amended to specify that STMSSP program participants must agree in writing to the program requirements prior to completing an accredited medical or osteopathic school based in the United States. This bill also specifies that the cost of administering the program shall not exceed ten percent of the total appropriation of the program.

ANALYSIS:

The STLRP was created in 2002 via legislation which was co-sponsored by the Medical Board of California (the Board). The STLRP encourages recently licensed physicians to practice in underserved locations in California by authorizing a plan for repayment of their student loans (up to $105,000) in exchange for a minimum three years of service. In 2006, the administration of STLRP was transitioned from the Board to HPEF. Since 1990, HPEF has administered statewide scholarship and loan repayment programs for a wide range of health professions students and recent graduates and is funded through grants and contributions from public and private agencies, hospitals, health plans, foundations, corporations, as well as through a surcharge on the renewal fees of various health professionals, including a $25 fee paid by physicians and surgeons.

AB 589 would create the STMSSP in HPEF. STMSSP participants must commit in writing to three years of full-time professional practice in direct patient

care in an eligible setting. The maximum amount per total scholarship is $105,000 to be distributed over the course of medical school.

The committee charged with selecting scholarship recipients must use guidelines that provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and who meet one or more of the following criteria:

- Speak a Medi-Cal threshold language.
- Come from an economically disadvantaged background.
- Have experience working in medically underserved areas or with medically underserved populations.

The selection committee must give preference to applicants who have committed to practicing in a primary specialty and who will serve in a practice setting in a super-medically underserved area. The selection committee must also include a factor ensuring geographic distribution of placements.

The STMSSP would have originally been funded by funds transferred from the Managed Care Administrative Fines and Penalties Fund that are in excess of the first $1,000,000, including accrued interest, as the first $1,000,000 funds the STLRP (this bill would not reduce the funding to the current STLRP).

The May 27th amendments remove all references to the STMSSP being funded by the Managed Care Administrative Fines and Penalties Fund. As amended, the STMSSP would be funded by federal or private funds and the bill shall only be implemented if HPEF determines that there are sufficient funds available in order to implement STMSSP.

The July 12th amendments specify that funds supporting the STLRP shall not be used to support the STMSSP.

This amendment was suggested by Senate Health Committee. The Senate Health Committee analysis suggested this amendment to clarify that the STLRP and the STMSSP funds are separate and the STLRP funds should not be used to fund the STMSSP.

The August 17th amendments specify that STMSSP program participants must agree in writing to the program requirements prior to completing an accredited medical or osteopathic school, and require the school to be based in the United States. The amendments also mandate that the costs of administering the STMSSP program shall not exceed ten percent of the total appropriation of the program. The amendments also make other technical and clarifying changes.

These amendments specify program requirements, in order to help ensure that this bill can be easily implemented. These amendments also ensure that the administrative program costs stay within the program's budget.

According to the author's office, this bill will address shortages of physician services that exist in over 200 regions in California identified as medically

underserved areas. The purpose of this bill is to make medical school more financially accessible for students who are willing to pursue careers in primary care. According to the author's

office, this bill will help to address the geographical disparity of physician supply in California, as well as the increasing cost of medical education, which is a barrier to entry for students from economically disadvantaged backgrounds. The author's office believes this bill will provide underserved communities with greater access to medical care. This bill is consistent with the mission of the Medical Board of promoting access to care.

SUPPORT: California Medical Association (Sponsor)
Association of California Healthcare Districts
California Primary Care Association
Children's Hospital Central California
City of Kernan
Community Clinic Association of Los Angeles County
Medical Board of California

OPPOSITION: None on file

FISCAL: None

AMENDED IN SENATE AUGUST 17, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 589

Introduced by Assembly Member Perea
(Principal coauthors: Senators Alquist and Rubio)

February 16, 2011

An act to add Article 6 (commencing with Section 128560) to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, relating to health professions.

LEGISLATIVE COUNSEL'S DIGEST

AB 589, as amended, Perea. Medical school scholarships.

Existing law establishes the Medically Underserved Account for Physicians within the Health Professions Education Fund that is managed by the Health Professions Education Foundation and the Office of Statewide Health Planning and Development. Under existing law, the primary purpose of the account is to fund the Steven M. Thompson Physician Corps Loan Repayment Program, which provides for the repayment of prescribed educational loans, not to exceed $105,000, obtained by a physician and surgeon who practices in a medically underserved area of the state.

This bill would establish within the Health Professions Education Foundation the Steven M. Thompson Medical School Scholarship Program (STMSSP), managed by the foundation and the Office of

Statewide Health Planning and Development to promote the education of medical doctors and doctors of osteopathy, as specified. This bill would provide up to $105,000 in scholarships to selected participants who agree in writing prior to ~~entering~~ *completing* an accredited medical or osteopathic school *based in the United States* to serve in an eligible setting.

This bill would establish the Steven M. Thompson Medical School Scholarship Account within the Health Professions Education Fund to receive federal or private funds for the STMSSP. This bill would provide that the STMSSP will be implemented only to the extent that the account contains sufficient funds as determined by the foundation.

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 6 (commencing with Section 128560) is added to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 6. Steven M. Thompson Medical School Scholarship Program

128560. (a) There is hereby established within the Health Professions Education Foundation, the Steven M. Thompson Medical School Scholarship Program.

(b) It is the intent of this article that the foundation and the office provide the ongoing program management for the program.

128565. For purposes of this article, the following definitions shall apply:

(a) "Account" means the Steven M. Thompson Medical School Scholarship Account established within the Health Professions Education Fund pursuant to this article.

(b) "Foundation" means the Health Professions Education Foundation.

(c) "Medi-Cal threshold languages" means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000 LEP individuals eligible for Medi-Cal residing in a county, 1,000 LEP individuals eligible for

Medi-Cal residing in a single ZIP Code, or 1,500 LEP individuals eligible for Medi-Cal residing in two contiguous ZIP Codes.

(d) "Medically underserved area" means an area defined as a health professional shortage area in Part 5 (commencing with Sec. 5.1) of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225.

(e) "Medically underserved population" means the persons served by the Medi-Cal program, the Healthy Families Program, and uninsured populations.

(f) "Office" means the Office of Statewide Health Planning and Development (OSHPD).

(g) "Practice setting" means either of the following:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, each of which is located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A medical practice located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(h) "Primary specialty" means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(i) "Program" means the Steven M. Thompson Medical School Scholarship Program.

(j) "Selection committee" means the advisory committee of not more than seven members established pursuant to subdivision (b) of Section 128551.

(k) "Super-medically underserved area" means an area defined as medically underserved pursuant to subdivision (d) that also meets a heightened criteria of physician shortage as determined by the foundation.

128570. (a) Persons participating in the program shall be persons who agree in writing prior to ~~entering~~ *completing* an accredited medical or osteopathic school *based in the United States*

to serve in an eligible practice setting, pursuant to subdivision (g) of Section 128565, for at least three years. The program shall be used only for the purpose of promoting the education of medical doctors and doctors of osteopathy and related administrative costs.

(b) A program participant shall commit to three years of full-time professional practice once the participant has achieved full licensure pursuant to Article 4 (commencing with Section 2080) of Chapter 5 or Section 2099.5 of the Business and Professions Code and after completing an accredited residency program. The obligated professional service shall be in direct patient care in an eligible practice setting pursuant to subdivision (g) of Section 128565.

(1) Leaves of absence *either during medical school or service obligation* shall be permitted for serious illness, pregnancy, or other natural causes. The selection committee shall develop the process for determining the maximum permissible length of an absence, *the maximum permissible leaves of absences,* and the process for reinstatement. Awarding of scholarship funds shall be deferred until the participant is back to full-time status.

(2) Full-time status shall be defined by the selection committee. The selection committee may establish exemptions from this requirement on a case-by-case basis.

(c) The maximum allowable amount per total scholarship shall be one hundred five thousand dollars ($105,000). These moneys shall be distributed over the course of a standard medical school curriculum. The distribution of funds shall increase over the course of medical school, increasing to ensure that at least 45 percent of the total scholarship award is distributed upon matriculation in the final year of school.

(d) In the event the program participant does not complete *medical school and* the minimum three years of professional service pursuant to the contractual agreement between the foundation and the participant, the office shall recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

128575. (a) The selection committee shall use guidelines that meet all of the following criteria to select scholarship recipients:

(1) Provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of

patients from medically underserved populations and who meet one or more of the following criteria:

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have experience working in medically underserved areas or with medically underserved populations.

(2) Give preference to applicants who have committed to practicing in a primary specialty.

(3) Give preference to applicants who will serve in a practice setting in a super-medically underserved area.

(4) Include a factor ensuring geographic distribution of placements.

(b) The selection committee may award up to 20 percent of the available scholarships to program applicants who will practice specialties outside of a primary specialty.

(c) The foundation, in consultation with the selection committee, shall develop a process for outreach to potentially eligible applicants.

128580. (a) The Steven M. Thompson Medical School Scholarship Account is hereby established within the Health Professions Education Fund for the purposes of receiving federal or private funds.

(b) Funds in the account shall be used to fund scholarships pursuant to agreements made with recipients and as follows:

(1) Scholarships shall not exceed one hundred five thousand dollars ($105,000) per recipient.

(2) Scholarships shall not exceed the amount of the educational expenses incurred by the recipient.

(c) Funds placed in the account for purposes of this article shall, upon appropriation by the Legislature, be used for the purposes of this article. Funds supporting the Steven M. Thompson Physician Corps Loan Repayment Program established pursuant to Article 5 (commencing with Section 128550) shall not be used for the purposes of this article.

(d) The account shall be used to pay for the cost of administering ~~the program, not to exceed 5 percent of the total appropriation for the program.~~ *the program and for any other purpose authorized by this article. The cost of administering the program, including promoting the education of medical doctors and doctors of osteopathy in an accredited school who agree to service in an*

eligible setting and related administrative costs, shall not exceed 10 percent of the total appropriation for the program.

(e) The office and the foundation shall manage the account established by this section prudently in accordance with other provisions of law.

(f) This article shall be implemented only to the extent that the account contains sufficient funds as determined by the foundation.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 783
Author:	Hayashi
Bill Date:	April 7, 2011, amended
Subject:	Professional Corporations: Licensed Physical Therapists
Sponsor:	California Medical Association, California Orthopaedic Association, and the Podiatric Medical Association
Position:	Support

STATUS OF BILL:

This bill is in Senate Business, Professions and Economic Development Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would add licensed physical therapists and occupational therapists to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical corporation.

ANALYSIS:

Since 1990, the Physical Therapy Board has allowed physical therapist's to be employed by medical corporations. On September 29, 2010, the California Legislative Counsel issued a legal opinion that concluded a physical therapist may not be employed by a professional medical corporation and stated that only professional physical therapy corporations or naturopathic corporations may employ physical therapists. This issue came to the Legislature's attention when existing law was amended to add naturopathic doctor corporations and physical therapists were listed as professionals allowed to be employed by these corporations. Because the medical corporation section of law did not specifically list physical therapists, the issue was brought to the forefront and to the California Legislative Counsel for an opinion. On November 3, 2010, the Physical Therapy Board voted to rescind the 1990 resolution that authorized the forming of a general corporation employing physical therapists.

Currently, many physical therapists are employed by medical corporations. According to the author's office, this bill was introduced to "prevent the unnecessary loss of employment during this economic recession by allowing medical and podiatric medical corporations to continue to employ physical therapists, as they have done for over 21 years".

The Occupational Therapy Association of California requested that this bill be amended to clarify that occupational therapists are allowed to be employed by medical corporations because they work in numerous health care settings throughout California and should have the choice to be employed by medical corporations; this amendment was taken.

The Medical Board has received complaints regarding physicians who are employing physical therapists. Neither the Medical Board nor the Physical Therapy Board have taken action against licensees as of yet. This bill will codify the practice that has been allowed for over 20 years and allow physicians in medical corporations to employ physical therapists.

SB 543 (Steinberg, Chapter 448, Statutes of 2011) was signed into law and is now effective, as of January 1, 2012. Among other provisions, this bill specifies that no physical therapist shall be subject to discipline by the Physical Therapy Board for providing physical therapy services as a professional employee of a professional medical corporation; this provision sunsets on January 1, 2013. The language in SB 543 was added because the Physical Therapy Board was attempting to take action against physical therapists employed by a medical corporation. SB 543 puts this issue in a holding pattern, until January 1, 2013, which will allow time for it to be fixed through a statute change.

FISCAL: None to the Board

SUPPORT: CMA (Co-sponsor), California Orthopaedic Association (Co-sponsor); California Podiatric Medical Association (co-sponsor); California Chiropractic Association; California Hospital Association; California Labor Federation; California Society of Anesthesiologists; California Society of Physical Medicine and Rehabilitation; California Teamsters Public Affairs Council; Kaiser Permanente; Occupational Therapy Association of California; Western States Council of the United Food and Commercial Workers; and Individual Physical Therapists

OPPOSITION: California Physical Therapy Association
Individual Physical Therapists

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 783

Introduced by Assembly Member Hayashi

February 17, 2011

An act to amend Section 2406 of the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to ~~professional corporations, and declaring the urgency thereof, to take effect immediately.~~ *professional corporations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 783, as amended, Hayashi. Professional corporations: licensed physical *therapists and occupational* therapists.

Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation ~~or a~~, podiatric medical corporation, *or a chiropractic corporation,* subject to certain limitations.

This bill would add licensed physical therapists *and licensed occupational therapists* to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also make conforming changes to a related provision.

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

Vote: ~~2/3~~ *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 2406 of the Business and Professions Code is amended to read:

2406. A medical corporation or podiatry corporation is a corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, podiatrists, chiropractors, acupuncturists, naturopathic doctors, physical therapists, or, in the case of a medical corporation only, physician assistants, marriage and family therapists, or clinical social workers are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board.

SEC. 2. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed physical therapists.
(12) Licensed occupational therapists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.

(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.

(10) Licensed physical therapists.
(11) Licensed occupational therapists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.
~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~
~~In order to authorize licensed physical therapists to be shareholders, officers, directors, or professional employees of~~

~~medical corporations and podiatric medical corporations as soon as possible, it is necessary that this act take effect immediately.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1548
Author:	Carter
Bill Date:	March 22, 2012, amended
Subject:	Cosmetic Surgery: Employment of Physicians
Sponsor:	American Society for Dermatologic Surgery and California Society of Dermatology and Dermatologic Surgery
Position:	Support

STATUS OF BILL:

This bill is enrolled (it has been sent to the Governor).

DESCRIPTION OF CURRENT LEGISLATION:

This bill would prohibit outpatient cosmetic surgery centers from violating the prohibition of the corporate practice of medicine. This bill defines "outpatient elective cosmetic medical procedures or treatments."

This bill was amended to specify that nothing in this bill shall be construed to alter or apply to arrangements currently authorized by law, including but not limited to, any entity operating a medical facility authorized to provide medical services under Section 1206 of the Health and Safety Code.

ANALYSIS:

The intent of this bill is to elevate the penalties of violating the corporate practice of medicine prohibition in order to prevent further offenses and to convince consumers with business models that violate this law to reconsider and revise their business practices.

This bill would enhance the penalty for corporations violating the prohibition of the corporate practice of medicine to a public offense punishable by imprisonment for up to five years and/or by a fine not exceeding $50,000. Current law states that this violation is punishable as a misdemeanor, a $1,200 fine, and imprisonment for up to 180 days.

This bill would define "outpatient elective cosmetic medical procedures or treatments" as medical procedures or treatments that are performed to alter or reshape normal structures of the body solely in order to improve appearance.

The March 21st amendments specify that nothing in this bill shall be construed to alter or apply to arrangements currently authorized by law, including but not limited to, any entity operating a medical facility authorized to provide medical services under Section 1206 of the Health and Safety Code; these amendments do not impact the Board's analysis or the Board's Support position.

The purpose of this bill is to elevate the penalties of violating the corporate practice of medicine prohibition in order to prevent further offenses, which will help to ensure consumer protection. The Board has previously supported similar legislation, such as AB 2566 (Carter) in 2010 that contained language that mirrors the language in this bill, and AB 252 (Carter) in 2009 that authorized the revocation of a physician's license for knowingly practicing with an organization that is in violation of the corporate practice of medicine. Both bills were vetoed for being "duplicative of existing law." In 2008 AB 2398 (Nakanishi) contained very similar provisions to AB 252 and was held in the Senate.

FISCAL: None to the Board

SUPPORT:
American Society for Dermatologic Surgery (Co-Sponsor)
CA Society of Dermatology and Dermatologic Surgery (Co-Sponsor)
American Academy of Dermatology Association
American Academy of Facial Plastic and Reconstructive Surgery
American Academy of Otolaryngology Head and Neck Surgery
American Medical Association
American Society of Ophthalmic Plastic & Reconstructive Surgery
California Medical Association
Medical Board of California
Physicians Coalition for Injectable Safety

OPPOSITION: None on File

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1548

Introduced by Assembly Member Carter
(Coauthors: Assembly Members Bill Berryhill and Hill)
(Coauthors: Senators Correa, Emmerson, Negrete McLeod, and Wyland)

January 25, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1548, as amended, Carter. Practice of medicine: cosmetic surgery: employment of physicians and surgeons.

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

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

This bill, with respect to a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is owned and operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists, and that contracts with or employs these licensees to facilitate the offer or provision of procedures or treatments that may only be provided by these licensees,

would make that business organization guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. *The bill would prohibit construing its provisions to alter or apply to any arrangements currently authorized by law.* Because the bill would expand a public offense, it would impose a state-mandated local program.

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

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

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

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

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

SECTION 1. The Legislature finds and declares that the Medical Practice Act ~~restricts the employment of physicians and surgeons by a corporation or~~ *prohibits corporations and* other artificial legal ~~entity~~ *entities from exercising professional rights, privileges, or powers*, as described in Article 18 (commencing with Section 2400) of Chapter 5 of Division 2 of the Business and Professions Code, and that the prohibited conduct described in Section 2417.5 of the Business and Professions Code, as added by this act, is declaratory of existing law.

SEC. 2. Section 2417.5 is added to the Business and Professions Code, to read:

2417.5. (a) A business organization that offers to provide, or provides, outpatient elective cosmetic medical procedures or treatments, that is owned or operated in violation of Section 2400, and that contracts with, or otherwise employs, a physician and surgeon to facilitate its offers to provide, or the provision of, outpatient elective cosmetic medical procedures or treatments that may be provided only by the holder of a valid physician's and surgeon's certificate is guilty of violating paragraph (6) of subdivision (a) of Section 550 of the Penal Code.

(b) For purposes of this section, "outpatient elective cosmetic medical procedures or treatments" means medical procedures or

treatments that are performed to alter or reshape normal structures of the body solely in order to improve appearance.

(c) Nothing in this section shall be construed to alter or apply to arrangements currently authorized by law, including, but not limited to, any entity operating a medical facility or other business authorized to provide medical services under Section 1206 of the Health and Safety Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1621
Author:	Halderman
Bill Date:	February 8, 2012, introduced
Subject:	Physicians and Surgeons: Prostate Cancer
Sponsor:	Author
Position:	Support

STATUS OF BILL:

This bill has been enrolled (it has been sent to the Governor).

DESCRIPTION OF CURRENT LEGISLATION:

This bill would exempt physicians working on trauma cases from current law that requires physicians to provide specified information on prostate diagnostic procedures to patients who undergo an examination of the prostate gland.

ANALYSIS:

Existing law (Business and Professions Code Section 2248), the Grant H. Kenyon Prostate Cancer Detection Act, requires physicians that examine a patient's prostate gland during a physical examination to provide information to the patient about the availability of appropriate diagnostic procedures if any of the following conditions are present: the patient is over 50 years of age; the patient manifests clinical symptomatology; the patient is at an increased risk of prostate cancer; or the provision of the information is medically necessary, in the opinion of the physician. Physicians often meet this requirement by providing patients with the 59-page booklet published by the National Cancer Institute and available on the Medical Board's Web site. Existing law specifies that a violation of this provision constitutes unprofessional conduct.

Existing law also defines "trauma case" as any injured person who has been evaluated by prehospital personnel according to policies and procedures established by the local EMS agency and who has been found to require transportation to a trauma facility.

The author's office believes that providing the required prostate diagnostic procedure information is not appropriate in all settings. Physicians in trauma settings may need to perform prostate exams on patients who are unconscious or in critical condition to evaluate pelvic fracture and internal bleeding after major trauma. This bill would add an exemption to existing law to allow for trauma situations.

Emergency room doctors also contend that current law can be impractical in trauma situations, especially since the patients are often unconscious and can be transferred to another unit or facility before regaining consciousness. In addition, providing trauma patients with information on prostate cancer could be misleading and lead the patient to think he is at risk for prostate cancer, when the examination was performed for a different reason.

The Board took a support position on this bill because the exemption to existing law proposed by this bill for trauma cases is a reasonable exemption. Especially due to the fact that the patients are unconscious in many cases and a "trauma case" that would be eligible for this exemption is already defined in existing law.

FISCAL: None

SUPPORT: California Chapter of the American College of Emergency Physicians
California Hospital Association
Medical Board of California
Northern CA Chapter of the American College of Surgeons

OPPOSITION: None on File

ASSEMBLY BILL No. 1621

Introduced by Assembly Member Halderman

February 8, 2012

An act to amend Section 2248 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1621, as introduced, Halderman. Physicians and surgeons: prostate cancer.

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 a physician and surgeon examining a patient's prostate gland during a physical examination to provide the patient with specified information if certain conditions are present.

This bill would exempt from this requirement a physician and surgeon working on a trauma case, defined as any injured person who has been evaluated by prehospital personnel according to policies and procedures established by the local EMS agency and who has been found to require transportation to a trauma facility.

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 2248 of the Business and Professions Code is amended to read:

2248. This section shall be known as, and may be cited as, the Grant H. Kenyon Prostate Cancer Detection Act.

(a) If a physician and surgeon, during a physical examination, examines a patient's prostate gland, the physician and surgeon shall provide information to the patient about the availability of appropriate diagnostic procedures, including, but not limited to, the prostate antigen (PSA) test, if any of the following conditions are present:

(1) The patient is over 50 years of age.

(2) The patient manifests clinical symptomatology.

(3) The patient is at an increased risk of prostate cancer.

(4) The provision of the information to the patient is medically necessary, in the opinion of the physician and surgeon.

(b) Violation of subdivision (a) constitutes unprofessional conduct and is not subject to Section 2314.

(c) This section shall not apply to a physician and surgeon working on a trauma case as defined in Section 1798.160 of the Health and Safety Code.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1896
Author:	Chesbro
Bill Date:	March 27, 2012, amended
Subject:	Tribal Health Programs: Health Care Practitioners
Sponsor:	California Rural Indian Health Board (CRIHB)
Position:	None

STATUS OF BILL:

This bill has been sent to enrollment.

DESCRIPTION OF CURRENT LEGISLATION:

AB 1896 would align state law with the federal Patient Protection and Affordable Care Act (PPACA) and would exempt all health care practitioners employed by a tribal health program from California licensure, if they are licensed in another state.

BACKGROUND (Provided by CRIHB):

Federal Law

In the early 1970s, Congress passed the Indian Self Determination and Education Assistance Act that allowed Indian tribes and tribal organizations to acquire increased control over the management of federal programs that impact their resources and governments. These agreements are referred to as "638 compacts and contracts." Contracts and compacts are very similar. Self-Determination contracts are authorized under the 1975 Indian Self Determination and Education Assistance Act. Self-Governance compacts are made possible by 1994 amendments to the 1975 Indian Self Determination and Education Assistance Act.

Federal law, Public Law 111-148, enacted in 2010, provides the following: "Licensed health professionals employed by a tribal health program shall be exempt, if licensed in any state, from the licensing requirements of the state in which the tribal health program performs the services described in the contract or compact of the tribal health program under the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 450 et seq.)"

The Federal Government and Tribes have a unique legal relationship

The "trust relationship" between the U.S. and Tribes has long been recognized in the Constitution, statutes, regulations, case law, Presidential executive orders and agency policies, and the general course of dealings between Tribes and the Federal government. In its role, the

U.S. provides a variety of services, including health care, to American Indians (AIs).

An Indian Tribe is a self-governing entity and is acknowledged as such by the U.S. In the case Cherokee Nation v. Georgia, Justice Marshall described tribes as "domestic dependent nations." This and other judicial descriptions recognize 1) the nationhood of Tribes and 2) the Federal government's trust role.

Delivery of Indian Health Care

The Indian Health Care Improvement Act (IHCIA), along with the Snyder Act of 1921, forms the statutory basis for the delivery of federally-funded health care and the direct delivery of care to AIs. Since its passage in 1976, the IHCIA has provided the programmatic and legal framework for carrying out the federal government's trust responsibility for Indian Health.

To accomplish this goal, the Federal Government created Indian Health Service (IHS), an agency within the Department of Health and Human Services (HHS), whose sole mission is to deliver health care to AIs. The IHS provides comprehensive health care services—using a public health model—to 1.9 million AIs residing in tribal communities located in 35 States.

Indian Health Service

Throughout the U.S., the IHS directly operates 31 hospitals, 52 health centers, 2 school health centers, and 31 health stations. In addition, Tribes and Tribal organizations, through contracts and compacts under the Indian Self-Determination and Education Assistance Act, operate almost 50% of the IHS system and provide health care in 15 hospitals, 256 health centers, 9 school health centers, and 282 health stations (including 166 Alaska Native village clinics). The IHS or Tribes/Tribal organizations also operate 11 regional youth substance abuse treatment centers and 2,241 units of staff quarters.

Authority of Tribal Health Programs to Hire Providers

Historically, Tribal Health Programs have experienced shortages in doctors, nurses and other providers. The Indian Health Service reports the vacancy rates range from 10% to 25% depending on the type of provider and this is primarily due to the remoteness of the Tribal Health clinics. California's 31 Tribal Health Programs operate 57 ambulatory clinics and have difficulty hiring and retaining providers to work in the facilities. These necessary safety net clinics serve over 130,000 American Indian patients and non-Indian Medi-Cal patients on an annual basis.

States and the New Federal Tribal Health Program Provider Provision

Maine, Arizona, Nebraska and are some of the first states to deal with the new Federal provision.

Maine
On July 15, 2010, Anthony Marple, MaineCare Services Director issued a letter regarding the provision. In the letter Director Marple states, "We have recently had inquiries about Maine physician licensing requirements from Indian Health Service Providers who come to practice in Maine... This letter is to confirm that IHS providers do not have to be licensed in the State of Maine so long as they are licensed in some other state or territory (including Puerto Rico)."

Arizona
Arizona is complying with the provision. Arizona's Department of Health Services and Health Care Cost Containment System have complied with the law through procedural rules.

Nebraska
Nebraska initially chose not to comply with the provision. In response, the Ponca Tribe filed a lawsuit against Nebraska officials that alleged they were ignoring the provision. In August of 2011, the tribe withdrew the lawsuit after state health officials and the Attorney General's Office reported they had reviewed the matter and decided the tribe's doctor, Rosa M. Huguet and the Fred LeRoy Health and Wellness Center in Omaha fell under federal jurisdiction.

ANALYSIS:

This bill would align California law with the federal law and would provide that an individual, who is licensed as a health care practitioner in any other state and is employed by a tribal health program, is exempt from any licensing requirement in California law governing the healing arts, including physician licensing requirements. This bill defines health care practitioner as any person who engages in acts that are the subject of licensure or regulation under the law of any other state. Federal law defines "tribal health program" as an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded in whole or part, by the Indian Health Services (IHS) through, or in contract or compact with the IHS under the ISDEAA.

According to the sponsors, tribal clinics can see patients that are not associated with a tribe, and1/3 of the patients seen in tribal health clinics are non-Indian Medi-Cal patients. Currently, in order to receive Medi-Cal payments, the provider must be licensed in California. The purpose of AB 1896 is to align California law with the federal PPACA and to allow the tribal health programs to receive Medi-Cal payments for services provided by practitioners, even if they are not licensed in California, as allowed by federal law.

Board staff has met with CRIHB several times and has discussed the importance of protecting consumers and ensuring that all patients, including patients not associated with an Indian Tribe, have complaint resolution options available. According to the sponsors, the following are options available for all patients receiving services in tribal health programs:

- IHS, which among other avenues, offers a web-based patient safety adverse event reporting system called WebCident.

- Tribal Health Program Governing Boards have compliance services, established by the Boards of Directors of Tribal Health Programs. Compliance services include an anonymous hotline for complaints operated by the United Indian Health Service, an option to file a complaint, which may be investigated and if applicable, disciplinary or corrective action can be taken.

- The Federal Tort Claims Act, which allows parties claiming to have been injured by negligent actions of employees of the U.S. to file claims against the federal government. This encompasses negligent acts of Tribal contractors carrying out contracts, grants, or cooperative agreements.

- Licensing Boards in other states that issued the practitioner license.

Board staff will continue to work with CRIHB, the author's office, and other interested parties to ensure that if this bill is passed, it is implemented in a way that will ensure consumer protection for all patients served in tribal health programs.

FISCAL: None

SUPPORT: CRIHB (Sponsor)

OPPOSITION: None on file

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1896

Introduced by Assembly Member Chesbro

February 22, 2012

An act to amend the heading of Article 10 (commencing with Section 710) of Chapter 1 of Division 2 of, and to add Section 719 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1896, as amended, Chesbro. Tribal health programs: health care practitioners.

Under existing federal law, licensed health professionals employed by a tribal health program are required to be exempt, if licensed in any state, from the licensing requirements of the state in which the tribal health program performs specified services. A tribal health program is defined as an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the Indian Health Service.

Existing law provides for the licensure and regulation of health care practitioners by various healing arts boards *within the Department of Consumer Affairs*.

This bill would codify that federal requirement by specifying that a *person who is licensed as a* health care practitioner *in any other state and is* employed by a tribal health program is exempt from any state licensing requirement *with respect to acts authorized under the person's license* where the tribal health program performs specified services.

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. The heading of Article 10 (commencing with Section 710) of Chapter 1 of Division 2 of the Business and Professions Code is amended to read:

Article 10. Federal Personnel and Tribal Health Programs

SEC. 2. Section 719 is added to the Business and Professions Code, to read:

719. (a) A *person who is licensed as a* health care practitioner *in any other state and is* employed by a tribal health program, as defined in Section 1603 of Title 25 of the United States Code, shall be exempt from any licensing requirement described in this division *with respect to acts authorized under the person's license* where the tribal health program performs the services described in the contract or compact of the tribal health program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. Sec. 450 et seq.).

(b) For purposes of this section, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under ~~this division or any initiative act referred to in this division~~ *the law of any other state*.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 2561
Author:	Hernandez
Bill Date:	June 26, 2012
Subject:	Certified Surgical Technologists
Sponsor:	California State Assembly Association of Surgical Technologists
Position:	Neutral

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would define certified surgical technologist (CST) and would define surgical technology patient care. This bill would prohibit individuals from holding themselves out to be CSTs unless they meet specified requirements.

The recent amendments would replace the term "healing arts licensee" with "health care practitioner" and would specify that this bill would not prohibit a health care practitioner from performing a task or function within his or her scope of practice. The amendments would define "health care practitioner".

ANALYSIS:

This bill would amend definitions and title protection for certified surgical technologists into the Medical Practice Act. CSTs work under the supervision of a physician, similar to a medical assistant. This bill would not require the Medical Board of California (Board) to issue a license or registration for a CST.

This bill would provide title protection by prohibiting individuals from using the title "Certified Surgical Technologist" in California unless the individual: has successfully completed a nationally accredited educational program for surgical technologists, or a training program for surgical technology in the army, navy, air force, marine corps, or coast guard of the United States or in the United States Public Health Service; and holds and maintains certification as a surgical technologist by the National Board of Surgical Technology and Surgical Assisting or its successor, or another nationally accredited surgical technologist certification program. This bill would define "Certified Surgical Technologist" as a person who practices surgical technology, and who has successfully completed a nationally accredited educational program for surgical technologists and holds and maintains certification as a surgical technologist by any of the entities described above.

This bill would define "surgical technology" to mean surgical patient care as follows:

- Preparing the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely.
- Preparing the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique.

- Anticipating the needs of the surgical team based on knowledge of human anatomy and pathophysiology and how they relate to the surgical patient and the patient's surgical procedure.

- As directed in an operating room setting, performing the following tasks at the sterile field:
    - Passing supplies, equipment, or instruments.
    - Sponging or suctioning an operative site.
    - Preparing and cutting suture material.
    - Transferring and pouring irrigation fluids.
    - Transferring but not administering drugs within the sterile field.
    - Handling specimens.
    - Holding retractors and other instruments.
    - Applying electrocautery to clamps on bleeders.
    - Connecting drains to suction apparatus.
    - Applying dressings to closed wounds.
    - Assisting in counting sponges, needles, supplies, and instruments with the registered nurse circulator.
    - Cleaning and preparing instruments for sterilization on completion of the surgery.
    - Assisting the surgical team with cleaning of the operating room on completion of the surgery.

This bill would specify that it does not repeal, modify, or amend any existing law relating to the supervision of surgical technologists and it would not prohibit or limit any healing arts licensee described in this division from performing a task or function within the scope of the healing art licensee's license. This bill would also not apply to a registered nurse or an individual employed by a health care facility whose primary functions include the cleaning or sterilization of supplies, instruments, equipment, or operating rooms.

The June 26th amendments revise the bill to specify that it does not prohibit or limit any health care practitioner from performing a task for function within his or her scope of practice. It also would define "health care practitioner" as any person who engages in acts that are the subject of licensure or regulation.

According to the findings and declarations included in this bill, the surgical technology profession has grown to meet the continuing demand for well-educated, highly skilled, and versatile individuals to work with physicians and surgeons and other skilled professionals to deliver the highest possible level of patient care. Surgical site infections have been found to be the second most common hospital-acquired infections in the United States; the purpose of this bill is to encourage the education,

training, and utilization of surgical technologists in California, given their role in surgical settings in order to take specific steps to prevent surgical site infections. This bill does not raise any concerns for the Board and the Board has taken a neutral position on this bill.

FISCAL: None

SUPPORT: California State Assembly Association of Surgical Technologists (Sponsor)

OPPOSITION: None on File.

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2561

Introduced by Assembly Member Roger Hernández

February 24, 2012

An act to add Article 25 (commencing with Section 2525.20) to Chapter 5 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, as amended, Roger Hernández. Certified surgical technologists.

Existing law provides for the licensure and regulation of healing arts licensees by boards within the Department of Consumer Affairs, including the licensure and regulation of physicians and surgeons by the Medical Board of California.

This bill would make it unlawful for a person to use the title "certified surgical technologist" unless the person meets certain educational requirements, and holds a certification by a specified entity.

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. The Legislature finds and declares the following:

(a) Surgical technologists are responsible for the environmental disinfection, safety, and efficiency of the operating room, and their knowledge and experience with aseptic surgical technique qualifies them for a role of importance in the surgical suite.

(b) The surgical technology profession has grown to meet the continuing demand for well-educated, highly skilled, and versatile individuals to work with physicians and surgeons and other skilled professionals to deliver the highest possible level of patient care.

(c) As surgical site infections have been found to be the second most common hospital-acquired infections in the United States, a key purpose of this article is to encourage the education, training, and utilization of surgical technologists in California, given their role in surgical settings in order to take specific steps to prevent surgical site infections.

SEC. 2. Article 25 (commencing with Section 2525.20) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Certified Surgical Technologists

2525.20. This article shall be known and cited as the Certified Surgical Technologist Act.

2525.22. As used in this article, the following definitions shall apply:

(a) "Certified surgical technologist" means a person who practices surgical technology, and who has successfully completed a nationally accredited educational program for surgical technologists and holds and maintains certification as a surgical technologist by any of *the* entities described in Section 2525.24.

(b) "Surgical technology" means intraoperative surgical patient care as follows:

(1) Preparing the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely.

(2) Preparing the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique.

(3) Anticipating the needs of the surgical team based on knowledge of human anatomy and pathophysiology and how they relate to the surgical patient and the patient's surgical procedure.

(4) As directed in an operating room setting, performing the following tasks at the sterile field:

(A) Passing supplies, equipment, or instruments.

(B) Sponging or suctioning an operative site.

(C) Preparing and cutting suture material.

(D) Transferring and pouring irrigation fluids.

(E) Transferring but not administering drugs within the sterile field.

(F) Handling specimens.

(G) Holding retractors and other instruments.

(H) Applying electrocautery to clamps on bleeders.

(I) Connecting drains to suction apparatus.

(J) Applying dressings to closed wounds.

(K) Assisting in counting sponges, needles, supplies, and instruments with the registered nurse circulator.

(L) Cleaning and preparing instruments for sterilization on completion of the surgery.

(M) Assisting the surgical team with cleaning of the operating room on completion of the surgery.

2525.24. (a) It shall be unlawful for a person to use the title "certified surgical technologist" in this state unless the person satisfies the following requirements:

(1) The person has successfully completed a nationally accredited educational program for surgical technologists or a training program for surgical technology provided by the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Public Health Service.

(2) The person holds and maintains certification as a surgical technologist by the National Board of Surgical Technology and Surgical Assisting or its successor, or another nationally accredited surgical technologist credentialing organization.

(b) A violation of this section shall not be subject to Section 2314.

2525.30. This article does not repeal, modify, or amend any existing law relating to the supervision of surgical technologists, nor shall it be construed to do so.

2525.31. This article does not prohibit or limit any ~~healing arts licensee described in this division~~ *health care practitioner* from performing a task or function within ~~the~~ *his or her* scope of ~~the healing art licensee's license~~ *practice*, nor shall it be construed as

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

2525.32. This article does not apply to any of the following:

(a) A registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) or a vocational nurse licensed pursuant to Chapter 6.5 (commencing with Section 2840).

(b) An individual employed by a health care facility whose primary functions include the cleaning or sterilization of supplies, instruments, equipment, or operating rooms.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 2570
Author:	Hill
Bill Date:	February 24, 2012, introduced
Subject:	Licensees: Settlement Agreements
Sponsor:	Author
Position:	Support

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would prohibit a physician from including a "gag clause" provision in a civil settlement agreement, or one that prohibits the other party in the dispute from contacting, filing a complaint with, or cooperating with, the appropriate licensing board, or requiring the other party to withdraw a previously filed complaint. A violation of this provision would subject the licensee to disciplinary action.

ANALYSIS:

Current law in the Medical Practice Act (Section 2220.7) already prohibits a physician from including a "gag clause" in a civil settlement and subjects physicians to disciplinary action if they violate this provision of law. This bill would expand this prohibition to all boards, bureaus, and programs within the Department of Consumer Affairs. The language in this bill is identical to the language included in AB 446 (Negrete McLeod, 2005), which the Medical Board of California (Board) supported and AB 2260 (Negrete McLeod, Chapter 645, Statutes of 2006), which the Board sponsored, that among other things, prohibited a physician from including a "gag clause" provision in a civil settlement agreement.

The Board has taken a support position on this bill because it will ensure that consumers in California will not be coerced to waive their right to file a complaint as a condition of receiving civil settlement. This will help other boards under DCA to ensure that the appropriate administrative actions are taken and consumers are protected, regardless of the status of the civil settlement.

FISCAL: None

SUPPORT: Board of Behavioral Sciences
Center for Public Interest Law
Medical Board of California

OPPOSITION: None on file

ASSEMBLY BILL No. 2570

Introduced by Assembly Member Hill
(Coauthor: Senator Correa)

February 24, 2012

An act to add Section 143.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2570, as introduced, Hill. Licensees: settlement agreements.

Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct are not to be reported to the disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency.

This bill would prohibit a licensee who is regulated by the Department of Consumer Affairs or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program, or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A licensee in violation of these provisions would be subject to disciplinary action by the board, bureau, or program. The bill would also prohibit a board, bureau, or program from requiring its licensees in a disciplinary action that is based on a complaint or report that has been settled in a civil

action to pay additional moneys to the benefit of any plaintiff in the civil action.

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 143.5 is added to the Business and Professions Code, to read:

143.5. (a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program or that requires the other party to withdraw a complaint from the department, board, bureau, or program. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

(b) Any board, bureau, or program within the Department of Consumer Affairs that takes disciplinary action against a licensee or licensees based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties may not require its licensee or licensees to pay any additional sums to the benefit of any plaintiff in the civil action.

(c) As used in this section, "board" shall have the same meaning as defined in Section 22, and "licensee" means a person who has been granted a license, as that term is defined in Section 23.7.

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SB 122 (PRICE)

International Medical Schools

This Item will be discussed as part of the Licensing Committee Update, Agenda Item 14.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 616
Author: DeSaulnier
Bill Date: June 27, 2012, amended
Subject: Controlled Substances: Reporting
Sponsor: Author

STATUS OF BILL:

This bill is on the Assembly Third Reading File.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the Controlled Substance Utilization Review and Evaluation System (CURES) Fund, which would consist of contributions collected from organizations for purposes of funding the CURES program, to be administered by the Department of Justice (DOJ).

ANALYSIS:

The CURES Program is currently housed in 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, including the Medical Board of California (Board), to access patient controlled substance history information through a secure Web site.

According to a DOJ, there is currently no permanent funding to support the CURES/ PDMP program. The California Budget Act of 2011 eliminated all General Fund support of CURES/PDMP, which included funding for system support, staff support and related operating expenses. To perform the minimum critical functions and to avoid shutting down the program, DOJ opted to assign five staff to perform temporary dual job assignments on a part-time basis. Although some tasks are being performed, the program is faced with a constant backlog (e.g., four-week backlog on processing new user applications, six-week response time on emails, twelve week backlog on voicemails, etc.)

The only funding currently available to DOJ for CURES is through renewable contracts with five separate regulatory boards (including the Board) and one grant. While DOJ has been able to successfully renew contracts with the boards and receive grant funding this year, these sources of funding are not permanent and may not be available in future years and cannot be used to fund staff positions. In addition, these

funding sources are insufficient to operate and maintain the PDMP system, make necessary enhancements or fully fund a PDMP modernization effort.

This bill would make findings and declarations related to the importance of CURES and would establish the CURES Fund that would consist of all funds contributed by organizations for the purpose of funding the CURES Program. This bill would make the money in the CURES Fund available for allocation to DOJ, upon appropriation by the Legislature, for the purposes of funding the CURES Program.

The Board believes CURES is a very important enforcement tool and an effective aid for physicians to use to prevent "doctor shopping". Although the Board currently helps to fund CURES at a cost of $150,000 this year, these funds cannot be used for staffing. The Board is aware of the issues DOJ is facing related to insufficient staffing and funding for CURES/PDMP, and due to the importance of this program, is suggesting that the Board support any effort to get CURES more fully funded in order for the PDMP to be at optimum operating capacity.

FISCAL: None to the Board.

SUPPORT: DOJ

OPPOSITION: None on file

POSITION: Recommendation: Support

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN ASSEMBLY JUNE 26, 2012

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL No. 616

Introduced by Senator DeSaulnier

February 18, 2011

An act to amend Section 11165 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 616, as amended, DeSaulnier. Controlled substances: reporting.

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, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would ~~require that dispensing pharmacies and clinics report that information to the department twice a week~~ *establish the CURES Fund within the state treasury to receive contributions to be allocated,*

upon appropriation by the Legislature, to the Department of Justice for the purposes of the CURES program, and would make related findings and declarations.

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

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

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

(a) The Controlled Substance Utilization Review and Evaluation System (CURES) is a valuable investigative, preventive, and educational tool for law enforcement, regulatory boards, educational researchers, and the health care community. Recent budget cuts to the Attorney General's Division of Law Enforcement have resulted in insufficient funding to support the CURES Prescription Drug Monitoring Program (PDMP). The PDMP is necessary to ensure health care professionals have the necessary data to make informed treatment decisions and to allow law enforcement to investigate diversion of prescription drugs. Without a dedicated funding source, the CURES PDMP is not sustainable.

(b) Each year the CURES program responds to more than 60,000 requests from practitioners and pharmacists regarding all of the following:

(1) Helping identify and deter drug abuse and diversion of prescription drugs through accurate and rapid tracking of Schedule II, II, and IV controlled substances.

(2) Helping practitioners make better prescribing decisions.

(3) Helping reduce misuse, abuse, and trafficking of those drugs.

(c) Schedules II, III, and IV, controlled substances have had deleterious effects on private and public interests, including the misuse, abuse, and trafficking in dangerous prescription medications resulting in injury and death. It is the intent of the Legislature to work with stakeholders to fully fund the operation of the CURES program which seeks to mitigate those deleterious effects, and which has proven to be a cost-effective tool to help reduce the misuse, abuse, and trafficking of those drugs.

~~SECTION 1~~

SEC. 2. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist 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 from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, ~~and~~ the Osteopathic Medical Board of California Contingent Fund, *and 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 or dispense these controlled substances.

(b) The reporting of Schedule III and Schedule IV controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The department may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III and Schedule IV controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or 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 any

individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(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 or clinic shall provide the following information to the Department of Justice ~~twice a week~~ *on a weekly basis* and in a format specified by the Department of Justice:

(1) Full name, address, and the 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 and license number; 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, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis 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 CURES Fund is hereby established within the State Treasury. The Cures Fund shall consist of all funds contributed by organizations for the purposes of funding the CURES program. Money in the CURES Fund shall, upon appropriation by the Legislature, be available for allocation to the Department of Justice for the purposes of funding the CURES program.

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AB 924

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 924
Author:	Price, Walters, and Steinberg
Bill Date:	June 18, 2012, amended
Subject:	Physical Therapists: Direct Access to Services: Professional Corporations
Sponsor:	California Physical Therapy Association
Position:	Oppose Unless Amended

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would add licensed physical therapists, chiropractors, acupuncturists, naturopathic doctors, occupational therapists, marriage and family therapists, and clinical social workers, to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical or podiatry corporation.

This bill would allow a patient to directly access PT services, without being referred by a physician, provided that the treatment is within the scope of a PT as long as specified conditions are met. This bill would also require a PT to provide a patient that has directly accessed their PT services to provide a specified written notice, orally and in writing and signed by the patient, before performing PT services.

This bill was recently amended to allow a podiatrist to sign off on the plan of care and perform the examination required by this bill. The notice that the PT must provide the patient was also amended to include podiatrists, as well as make a technical amendment.

ANALYSIS:

This bill would add licensed physical therapists, chiropractors, acupuncturists, naturopathic doctors, occupational therapists, marriage and family therapists, and clinical social workers, to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical or podiatry corporation. This bill would also require medical or podiatry corporations to disclose to patients, orally and in writing, when initiating physical therapy (PT) treatment services, the patient may seek services form a PT provider of his or her choice who may not necessarily be employed by the medical or podiatry corporation; this requirement does not apply to medical corporations that contract with a health

care service plan.

The Medical Board of California (the Board) has taken a support position on AB 783 (Hayashi), which would add licensed physical therapists and occupational therapists to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical corporation. This bill would also add other health care practitioners who may be professional employees of a medical corporation.

This bill would also allow a patient to directly access PT services, without being referred by a physician, provided that the treatment is within the scope of a PT as long as the following conditions are met:

- If the PT has reason to believe the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a PT, the PT shall refer the patient to a physician, an osteopathic physician, or to a dentist, podiatrist or chiropractor.
- The PT shall comply with advertising requirements (Business and Professions Code Section 650).
- The PT shall notify the patient's physician, with the patient's written authorization, that the PT is treating the patient.
- The PT shall not continue treating the patient beyond 30 business days (approximately 6 weeks) or 12 visits, whichever occurs first, without receiving a dated signature on the PTs plan of care from a licensed physician, osteopathic physician, or podiatrist, indicating approval of the PT's plan of care. The bill would specify that approval of the plan of care shall include an appropriate examination by the licensed physician, osteopathic physician, or podiatrist.

This bill would require a PT to provide to patients that have directly accessed their PT services to provide a specified written notice, orally and in writing, and signed by the patient, before performing PT services. The notice must be in at least 14-point type, on one page, and must state the following:

Direct Physical Therapy Treatment Services

You are receiving direct physical therapy treatment services from a physical therapist licensed by the Physical Therapy Board of California.

Under California law, you may continue to receive direct physical therapy treatment services for a period of 30 business days or 12 visits, whichever occurs first, after which time a physical therapist may continue providing you with physical therapy treatment services only after receiving, from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California, or from a person holding a certificate to practice podiatric medicine

from the California Board of Podiatric Medicine and acting within his or her scope of practice, a dated signature on the physical therapists plan of care indicating approval of the physical therapists plan of care.

If you have received direct physical therapy treatment services for a duration of 30 business days or 12 visits, whichever occurs first, from a physical therapist, it may constitute unprofessional conduct for that physical therapist or another physical therapist to provide direct physical therapy treatment services without receiving from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California a dated signature on the physical therapists plan of care, indicating approval of the physical therapist's plan of care.

This bill changes the scope of practice of a PT by allowing that practitioner to treat patients without a referral from a physician. The Board has taken an oppose position in the past on bills that allowed for direct patient access to PT services. This bill does limit the amount of time a patient can receive PT services before being seen by a physician to 30 business days or 12 visits, whichever occurs first. This bill also requires that a notice be given to the patient, orally and in writing, and be signed by the patient.

The Board is opposed to this bill unless it is amended to remove the provisions that allow for direct patient access to PT services. The Board feels that expanding the scope of practice for PT's by allowing them to see patients directly, without having the patients first seen by a physician, puts patients at risk. A patient's condition cannot be accurately determined without first being examined by a physician, as PTs are not trained to make these comprehensive assessments and diagnoses. As such, the Board believes this bill would compromise patient care and consumer protection, and is opposed unless it is amended to remove the provisions that allow for direct patient access to PT services.

FISCAL: None to the Board

SUPPORT:
California Physical Therapy Association (Sponsor)
California Advocates for Nursing Home Reform
California Senior Legislature
Numerous Individuals

OPPOSITION:
California Association of Joint Powers Authorities
California Chiropractic Association
California Medical Association
California Orthopaedic Association
California Society of Anesthesiologists
Medical Board of California (unless amended)

AMENDED IN ASSEMBLY JUNE 18, 2012

AMENDED IN SENATE JANUARY 26, 2012

AMENDED IN SENATE MAY 24, 2011

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL No. 924

Introduced by Senators Price, Walters, and Steinberg
(Coauthors: Assembly Members Chesbro, Fong, Knight, Morrell, and Wieckowski)

February 18, 2011

An act to amend Sections 2406 and 2690 of, and to add Sections 2406.5, 2620.1, and 2694.5 to, the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 924, as amended, Price. Physical therapists: direct access to services: professional corporations.

(1) Existing law, the Physical Therapy Practice Act, creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists. The act defines the term "physical therapy" for its purposes and makes it a crime to violate any of its provisions.

This bill would specify that patients may access physical therapy treatment directly, and would, in those circumstances, require a physical therapist to refer his or her patient to another specified healing arts practitioner if the physical therapist has reason to believe the patient

has a condition requiring treatment or services beyond that scope of practice, and, with the patient's written authorization, to notify the patient's *primary* physician and surgeon, if any, that the physical therapist is treating the patient. The bill would prohibit a physical therapist from treating a patient beyond 30 business days or 12 visits, whichever occurs first, unless the physical therapist receives a specified authorization from a person with a physician and surgeon's certificate *or from a person with a podiatric medicine certificate and acting within his or her scope of practice*. The bill would require a physical therapist, prior to the initiation of treatment services, to provide a patient with a specified notice concerning the limitations on the direct treatment services.

(2) Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation or a podiatric medical corporation, subject to certain limitations.

This bill would add licensed physical therapists and licensed occupational therapists to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also provide that specified healing arts licensees may be shareholders, officers, directors, or professional employees of a physical therapy corporation. The bill would require, except as specified, that a medical corporation, podiatry corporation, and physical therapy corporation provide patients with a specified disclosure notifying them that they may seek physical therapy treatment services from any physical therapy provider. The bill would also make conforming changes to related provisions.

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

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

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

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

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

SECTION 1. The Legislature finds and declares that an individual's access to early intervention to physical therapy treatment may decrease the duration of a disability, reduce pain, and lead to a quicker recovery.

SEC. 2. Section 2406 of the Business and Professions Code is amended to read:

2406. A medical corporation or podiatry corporation is a corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, podiatrists, chiropractors, acupuncturists, naturopathic doctors, physical therapists, occupational therapists, or, in the case of a medical corporation only, physician assistants, marriage and family therapists, or clinical social workers, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board.

SEC. 3. Section 2406.5 is added to the Business and Professions Code, to read:

2406.5. (a) A medical corporation or podiatry corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, shall disclose to its patients, orally and in writing, when initiating any physical therapy treatment services, that the patient may seek physical therapy treatment services from a physical therapy provider of his or her choice who may not necessarily be employed by the medical or podiatry corporation.

(b) This disclosure requirement shall not apply to any medical corporation that contracts with a health care service plan with a license issued pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) if the licensed health

care service plan is also exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

SEC. 4. Section 2620.1 is added to the Business and Professions Code, to read:

2620.1. (a) In addition to receiving wellness and evaluation services from a physical therapist, a person may initiate physical therapy treatment directly from a licensed physical therapist provided that the treatment is within the scope of practice of physical therapists, as defined in Section 2620, and that all the following conditions are met:

(1) If, at any time, the physical therapist has reason to believe that the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a physical therapist, the physical therapist shall refer the patient to a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or to a person licensed to practice dentistry, podiatric medicine, or chiropractic.

(2) The physical therapist shall comply with Article 6 (commencing with Section 650) of Chapter 1 of Division 2.

(3) With the patient's written authorization, the physical therapist shall notify the patient's *primary* physician and surgeon, if any, that the physical therapist is treating the patient.

(4) With respect to a patient initiating physical therapy treatment services directly from a physical therapist, the physical therapist shall not continue treating that patient beyond 30 business days or 12 visits, whichever occurs first, without receiving, from a person holding a physician and surgeon's certificate from the Medical Board of California or the Osteopathic Medical Board of California, *or from a person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within his or her scope of practice,* a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care. Approval of the physical therapist's plan of care shall include an appropriate patient examination by the person holding a physician and surgeon's certificate from the Medical Board of California or the Osteopathic Medical Board of California, *or by the person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within his or her scope of practice.* For

purposes of this paragraph, "business day" means any calendar day except Saturday, Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(b) The conditions in paragraphs (1), (2), (3), and (4) of subdivision (a) do not apply to a physical therapist when providing evaluation or wellness physical therapy services to a patient as described in subdivision (a) of Section 2620 or treatment provided upon referral or diagnosis by a physician and surgeon, podiatrist, dentist, chiropractor, or other appropriate health care provider acting within his or her scope of practice. Nothing in this subdivision shall be construed to alter the disclosure requirements of Section 2406.5.

(c) Nothing in this section shall be construed to expand or modify the scope of practice for physical therapists set forth in Section 2620, including the prohibition on a physical therapist diagnosing a disease.

(d) Nothing in this section shall be construed to require a health care service plan, insurer, workers' compensation insurance plan, or any other person or entity, including, but not limited to, a state program or state employer, to provide coverage for direct access to treatment by a physical therapist.

(e) When a person initiates physical therapy treatment services directly pursuant to this section, the physical therapist shall not perform physical therapy treatment services without first providing the following written notice, orally and in writing, on one page, in at least 14-point type, and obtaining a patient signature on the notice:

Direct Physical Therapy Treatment Services

You are receiving direct physical therapy treatment services from ~~an individual who is not a physician and surgeon, but who is~~ a physical therapist licensed by the Physical Therapy Board of California.

Under California law, you may continue to receive direct physical therapy treatment services for a period of 30 business days or 12 visits, whichever occurs first, after which time a physical therapist may continue providing you with physical therapy

treatment services only after receiving, from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California, *or from a person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within his or her scope of practice,* a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care.

If you have received direct physical therapy treatment services for a duration of 30 business days or 12 visits, whichever occurs first, from a physical therapist, it may constitute unprofessional conduct for that physical therapist or for another physical therapist to provide direct physical therapy treatment services without receiving from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California, *or from a person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within his or her scope of practice,* a dated signature on the physical therapist's plan of care, indicating approval of the physical therapist's plan of care.

_____

[Patient's Signature/Date]

SEC. 5. Section 2690 of the Business and Professions Code is amended to read:

2690. A physical therapy corporation is a corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physical therapists, physicians and surgeons, podiatrists, acupuncturists, naturopathic doctors, occupational therapists, speech-language pathologists, audiologists, registered nurses, psychologists, and physician assistants are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physical therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board.

SEC. 6. Section 2694.5 is added to the Business and Professions Code, to read:

2694.5. A physical therapy corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, shall disclose to its patients, orally and in writing, when initiating any physical therapy treatment services, that the patient may seek physical therapy treatment services from a physical therapy provider of his or her choice who may not necessarily be employed by the physical therapy corporation.

SEC. 7. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.

(9) Licensed acupuncturists.

(10) Naturopathic doctors.

(11) Licensed professional clinical counselors.

(12) Licensed physical therapists.

(13) Licensed occupational therapists.

(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(10) Licensed professional clinical counselors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(g) Marriage and family therapist corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.

(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(10) Licensed professional clinical counselors.
(*l*) Acupuncture corporation.

(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage and family therapists.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(12) Licensed professional clinical counselors.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.
(o) Professional clinical counselor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Licensed marriage and family therapists.
(5) Registered nurses.
(6) Licensed chiropractors.
(7) Licensed acupuncturists.

(8) Naturopathic doctors.
(p) Physical therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(5) Licensed occupational therapists.
(6) Licensed speech-language pathologists.
(7) Licensed audiologists.
(8) Registered nurses.
(9) Licensed psychologists.
(10) Licensed physician assistants.

SEC. 8. 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 1095
Author:	Rubio
Bill Date:	June 25, 2012, amended
Subject:	California Outpatient Pharmacy Safety and Improvement Act
Sponsor:	California Ambulatory Surgery Association (CASA)
Position:	Support

STATUS OF BILL:

This bill is in Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would expand the type of clinics that may be issued a limited license by the Board of Pharmacy to include specified outpatient settings and Medicare certified ambulatory surgical centers. The license issued by the Board of Pharmacy allows these clinics to purchase drugs at wholesale for administration or dispensing to clinic patients for pain and nausea under the direction of a physician.

The recent amendments are technical in nature and do not affect the Board's analysis.

ANALYSIS:

Currently, one of the requirements for a clinic to be issued a license by the Board of Pharmacy is state licensure as a surgical clinic by the California Department of Public Health (CDPH). However, a ruling issued several years ago (*Capen v. Shewry: 155 Cal.App.4th 378*) prohibited CDPH from issuing licenses to any outpatient setting or surgical center with any percentage of physician ownership. This ruling required surgery centers owned by physicians to instead be accredited; and therefore were not eligible to obtain a license from the Pharmacy Board to purchase drugs at wholesale for administration or dispensing to clinic patients. According to the author, this is problematic because 90% of surgery centers have some percentage of physician ownership. Currently, physicians working in accredited surgery centers are each individually required to acquire and maintain on-hand a myriad of medications to dispense at the point of care, instead of the surgery center being able to purchase medication at wholesale and safely store the medication in a centralized location in the surgery center.

The June 25th amendments change the wording in existing law and combine subdivision (b) and (d) into a newly amended subdivision (b). The amendments also take out the notwithstanding language in subdivision (b). These amendments were taken at the request of the Board of Pharmacy and are technical in nature.

The Board has taken a support position on this bill because it will resolve an unintended consequence created by the 2007 court decision that prohibited CDPH from licensing surgical centers with any percentage of physician ownership. This bill would allow accredited and certified surgery centers to obtain a license from the Pharmacy Board, which will permit accredited surgery centers to purchase medication at wholesale and safely store the medication in a centralized location in the surgery center. **The recent amendments do not change the Board's support position or the reasons for that position.**

FISCAL: None

SUPPORT: CASA (Sponsor)
Aspen Surgery Center
Golden Triangle SurgiCenter
Medical Board of California
Millennium Surgery Center, Inc.
Physicians Plaza Surgical Center
Southwest Surgical Center
Surgical Care Affiliates

OPPOSITION: None on file

AMENDED IN ASSEMBLY JUNE 25, 2012

SENATE BILL No. 1095

Introduced by Senator Rubio
(Coauthor: Senator Wyland)

February 16, 2012

An act to amend Sections 4190 and 4195 of, and to amend the heading of Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of, the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1095, as amended, Rubio. Pharmacy: clinics.

Existing law, the Pharmacy Law, provides for the licensure and regulation of the practice of pharmacy by the California State Board of Pharmacy and makes a knowing violation of its provisions a crime. Existing law authorizes a surgical clinic, as defined, that is licensed by the board to purchase drugs at wholesale for administration or dispensing, under the direction of a physician and surgeon, to patients registered for care at the surgical clinic. Existing law prohibits a surgical clinic from operating without a license issued by the board. Existing law requires these surgical clinics to comply with various regulatory requirements and to maintain specified records. Existing law authorizes the board to inspect a surgical clinic at any time in order to determine whether a surgical clinic is operating in compliance with certain requirements.

This bill would expand these provisions to additionally authorize an outpatient setting or an ambulatory surgical center, as specified, to purchase drugs at wholesale for administration or dispensing, subject to the requirements applicable to surgical clinics. The bill would delete the requirement that a surgical clinic be licensed by the board ~~but would~~

~~require the clinics described above to be licensed in order to receive the benefits of these provisions~~ *in order to operate.* The bill would specify that the board is authorized to inspect only *an outpatient setting, an ambulatory surgical care center, or* a *surgical* clinic that is licensed by the board.

Because a knowing violation of these requirements by outpatient settings and ambulatory surgical centers 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. This act shall be known and may be cited as the California Outpatient Pharmacy Patient Safety and Improvement Act.

SEC. 2. The heading of Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of the Business and Professions Code is amended to read:

Article 14. Clinics

SEC. 3. Section 4190 of the Business and Professions Code is amended to read:

4190. (a) For the purposes of this article, "clinic" means a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code, an outpatient setting accredited by an accreditation agency, as defined in Section 1248 of the Health and Safety Code, or an ambulatory surgical center certified to participate in the Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.).

(b) ~~Notwithstanding any provision of this chapter, a~~ *A* clinic *licensed by the board* may purchase drugs at wholesale for administration or dispensing, under the direction of a physician

and surgeon, to patients registered for care at the clinic, as provided in subdivision (c). *A separate license shall be required for each clinic location. A clinic licensed by the board shall notify the board of any change in the clinic's address on a form furnished by the board.* The clinic shall keep records of the kind and amounts of drugs purchased, administered, and dispensed, and the records shall be available and maintained for a minimum of three years for inspection by all properly authorized personnel.

(c) The drug distribution service of a clinic shall be limited to the use of drugs for administration to the patients of the clinic and to the dispensing of drugs for the control of pain and nausea for patients of the clinic. Drugs shall not be dispensed in an amount greater than that required to meet the patient's needs for 72 hours. Drugs for administration shall be those drugs directly applied, whether by injection, inhalation, ingestion, or any other means, to the body of a patient for his or her immediate needs.

(d) No clinic shall be entitled to the benefits of this section until it has obtained a license from the board. ~~A separate license shall be required for each clinic location. A clinic licensed by the board shall notify the board of any change in the clinic's address on a form furnished by the board.~~

(e) If a clinic is licensed by the board, any proposed change in ownership or beneficial interest in the licensee shall be reported to the board, on a form to be furnished by the board, at least 30 days prior to the execution of any agreement to purchase, sell, exchange, gift or otherwise transfer any ownership or beneficial interest or prior to any transfer of ownership or beneficial interest, whichever occurs earlier.

(f) Nothing in this section shall limit the ability of a physician and surgeon or a group medical practice to prescribe, dispense, administer, or furnish drugs at a clinic as provided in Sections 2241.5, 2242, and 4170.

SEC. 4. Section 4195 of the Business and Professions Code is amended to read:

4195. The board shall have the authority to inspect a clinic that is licensed pursuant to this article at any time in order to determine whether the clinic is, or is not, operating in compliance with this article and all other provisions of the law.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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 1236
Author: Price
Bill Date: June 18, 2012, amended
Subject: Healing Arts Boards
Sponsor: Author

STATUS OF BILL:

This bill is in the Assembly Business, Professions and Consumer Protection Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the sunset bill for the Physician Assistant Committee (PAC). This bill would rename this committee the Physician Assistant Board (PAB), and would make it its own Board, not a committee of the Medical Board of California (Board). This analysis will only include the relevant sections of the bill in the Business and Professions Code (BPC) that are related to the PAB.

ANALYSIS:

In addition to making the PAC its own board, this bill would extend the sunset date of the PAB to January 1, 2017. This bill would also create a retired license status for Physician Assistants. Lastly, this bill would revise the makeup of the members of the PAB. Upon expiration of the current Medical Board Member, this bill would require a member to be appointed to the PAB that is also a member of the Board, but that member shall serve as an ex officio, nonvoting member whose functions will include reporting to the Board on the actions or discussion of the PAB.

Board staff is suggesting that the Board take a support position on this bill. Although the PAC currently resides within the Board, the PAC acts independently on many of its mandates. The Board would continue to perform investigative services for the new PAB; the Board and PAC currently have a cooperative working relationship. This bill would maintain close ties with the Board and PAB, by requiring a Medical Board Member to sit on the PAB and provide reports to the Board.

FISCAL: None to MBC

SUPPORT: Board of Podiatric Medicine and PAC

OPPOSITION: None on file

POSITION: Recommendation: Support Provisions related to the PAC/PAB

AMENDED IN ASSEMBLY JUNE 18, 2012

AMENDED IN SENATE APRIL 17, 2012

SENATE BILL No. 1236

Introduced by Senator Price

February 23, 2012

An act to amend Sections 800, 801.01, 802.1, 802.5, 803, 803.1, 803.5, 803.6, 805, 2335, 2460, 2465, 2470, 2472, 2475, 2477, 2484, 2493, 2496, 2497.5, 3501, 3502, 3502.1, 3502.3, 3502.5, 3504, 3504.1, 3505, 3506, 3507, 3508, 3509, 3509.5, 3510, 3511, 3512, 3513, 3514.1, 3516, 3516.5, 3517, 3518, 3519, 3519.5, 3520, 3521, 3521.1, 3521.2, 3521.5, 3522, 3523, 3524, 3524.5, 3526, 3527, 3529, 3530, 3531, 3533, 3534, 3534.1, 3534.2, 3534.3, 3534.4, 3534.5, 3534.6, 3534.7, 3534.9, 3534.10, 3535, 3537.10, 3537.20, 3537.30, 3537.50, 3540, 3546 of, and to add ~~Sections~~ *Section* 3521.3 ~~and 3521.4~~ to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1236, as amended, Price. Healing arts boards.

(1) Existing law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine within the jurisdiction of the Medical Board of California. Under existing law, the California Board of Podiatric Medicine will be repealed on January 1, 2013. Existing law requires that boards scheduled for repeal be reviewed by the Joint Sunset Review Committee of the Legislature.

This bill would extend the operation of the California Board of Podiatric Medicine until January 1, 2017. The bill would specify that the board is subject to review by the appropriate policy committees of the Legislature. The bill would revise provisions regarding the examination of applicants for certification to practice podiatric medicine.

(2) Existing law establishes the Physician Assistant Committee within the jurisdiction of the Medical Board of California and provides for its membership, operation, duties, and powers with respect to licensure and regulation of physician assistants, including requirements for the payment of license renewal fees. Under existing law, the committee will be repealed on January 1, 2013.

This bill would rename the committee as the Physician Assistant Board, make various conforming changes relative to this change in designation, and extend the operation of the board until January 1, 2017. The bill would revise the composition of the board and would specify ~~exemptions to the requirements for the payment of license renewal fees. The bill would specify~~ that the board is subject to review by the appropriate policy committees of the Legislature. *The bill would allow the board to establish, by regulation, a system for placement of a licensee on retired status, as specified.*

(3) Existing law specifies reports to be made and procedures to be followed when a coroner receives information, as specified, that a death may be the result of a physician and surgeon's, or podiatrist's gross negligence or incompetence, and in connection with disciplinary actions against those licensees.

This bill would expand those provisions to include conduct of a physician assistant.

(4) Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her licensing board the occurrence of an indictment or information charging a felony against the licensee or the conviction of the licensee of a felony or misdemeanor. Under existing law the failure of those licensees to submit the required report is a crime.

This bill would impose that requirement on a physician assistant. Because a violation of this requirement by a physician assistant 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.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one year period for those unpaid costs.

(f) All costs recovered under this section shall be deposited in the Board of Podiatric Medicine Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.

SEC. 21. 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 ~~committee~~ *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 ~~committee~~ *board.*

(5) "Supervising physician" 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 ~~Medical Board of California~~ *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.

(b) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations ~~promulgated by the board~~ *adopted* under this chapter.

SEC. 22. Section 3502 of the Business and Professions Code is amended to read:

3502. (a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations ~~of the Medical Board of California~~ *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.

(b) Notwithstanding any other provision of 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.

The supervising physician and surgeon shall be physically available to the physician assistant for consultation when such 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) The supervising physician and surgeon 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. The physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

(3) Notwithstanding any other provision of law, the Medical Board of California or 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.

SEC. 23. 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"~~ *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 may 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 ~~committee~~ *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 ~~committee~~ *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 ~~phone~~ *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 the provisions of 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 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 and countersigned and dated by a supervising physician and surgeon within seven days.

(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled

substances shall register with the United States Drug Enforcement Administration (DEA).

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

SEC. 24. Section 3502.3 of the Business and Professions Code is amended to read:

3502.3. (a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the Medical Board of California's regulations for inclusion in a delegation of services agreement, a delegation of services agreement may authorize a physician assistant to do any of the following:

(1) Order durable medical equipment, subject to any limitations set forth in Section 3502 or the delegation of services agreement. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.

(2) For individuals receiving home health services or personal care services, after consultation with the supervising physician, approve, sign, modify, or add to a plan of treatment or plan of care.

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

SEC. 25. Section 3502.5 of the Business and Professions Code is amended to read:

3502.5. Notwithstanding any other provision of law, a physician assistant may perform those medical services permitted pursuant to Section 3502 during any state of war emergency, state of emergency, or state of local emergency, as defined in Section 8558 of the Government Code, and at the request of a responsible federal, state, or local official or agency, or pursuant to the terms of a mutual aid operation plan established and approved pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), regardless of whether the physician assistant's approved

supervising physician is available to supervise the physician assistant, so long as a licensed physician is available to render the appropriate supervision. "Appropriate supervision" shall not require the personal or electronic availability of a supervising physician if that availability is not possible or practical due to the emergency. The local health officers and their designees may act as supervising physicians during emergencies without being subject to approval by the Medical Board of California. At all times, the local health officers or their designees supervising the physician assistants shall be licensed physicians and surgeons. Supervising physicians acting pursuant to this section shall not be subject to the limitation on the number of physician assistants supervised under Section 3516.

No responsible official or mutual aid operation plan shall invoke this section except in the case of an emergency that endangers the health of individuals. Under no circumstances shall this section be invoked as the result of a labor dispute or other dispute concerning collective bargaining.

SEC. 26. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician Assistant ~~board~~ *Board* within the jurisdiction of the Medical Board of California. The board consists of nine members. 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. Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 27. Section 3504.1 of the Business and Professions Code is amended to read:

3504.1. Protection of the public shall be the highest priority for the Physician Assistant Board 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.

SEC. 28. Section 3505 of the Business and Professions Code is amended to read:

3505. The members of the board shall include four physician assistants, one physician and surgeon who is also a member of the Medical Board of California, and four public members. Upon the expiration of the term of the member who is a member of the

Medical Board of California, that position shall be filled by a physician assistant. *Upon the expiration of the term of the member who is a member of the Medical Board of California, above, there shall be appointed to the board a physician and surgeon who is also a member of the Medical Board of California who shall serve as an ex officio, nonvoting member and whose functions shall include reporting to the Medical Board of California on the actions or discussions of the board.* Following the expiration of the term of the member described above, the board shall include five physician assistants, *one physician and surgeon,* and four public members.

Each member of the board shall hold office for a term of four years expiring on January 1st, and shall serve until the appointment and qualification of a successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. No member shall serve for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired terms.

The Governor shall appoint the licensed members qualified as provided in this section and two public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member.

SEC. 29. Section 3506 of the Business and Professions Code is amended to read:

3506. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 30. Section 3507 of the Business and Professions Code is amended to read:

3507. The appointing power has power to remove from office any member of the board, as provided in Section 106.

SEC. 31. Section 3508 of the Business and Professions Code is amended to read:

3508. (a) The board may convene from time to time as deemed necessary by the board.

(b) Notice of each meeting of the board shall be given at least two weeks in advance to those persons and organizations who express an interest in receiving notification.

(c) The board shall receive permission of the director to meet more than six times annually. The director shall approve meetings that are necessary for the board to fulfill its legal responsibilities.

SEC. 32. Section 3509 of the Business and Professions Code is amended to read:

3509. It shall be the duty of the board to:

(a) Establish standards and issue licenses of approval for programs for the education and training of physician assistants.

(b) Make recommendations to the Medical Board of California concerning the scope of practice for physician assistants.

(c) Make recommendations to the Medical Board of California concerning the formulation of guidelines for the consideration of applications by licensed physicians to supervise physician assistants and approval of such applications.

(d) Require the examination of applicants for licensure as a physician assistant who meet the requirements of this chapter.

SEC. 33. Section 3509.5 of the Business and Professions Code is amended to read:

3509.5. The board shall elect annually a chairperson and a vice chairperson from among its members.

SEC. 34. Section 3510 of the Business and Professions Code is amended to read:

3510. The board may adopt, amend, and repeal regulations as may be necessary to enable it to carry into effect the provisions of this chapter; provided, however, that the Medical Board of California shall adopt, amend, and repeal such regulations as may be necessary to enable ~~it~~ *the board* to implement the provisions of this chapter under its jurisdiction. All regulations shall be in accordance with, and not inconsistent with, the provisions of this chapter. Such regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 35. Section 3511 of the Business and Professions Code is amended to read:

3511. Five members shall constitute a quorum for transacting any business. The affirmative vote of a majority of those present at a meeting of the board shall be required to carry any motion. *The physician and surgeon who serves as an ex officio member shall not be counted for purposes of a quorum.*

SEC. 36. Section 3512 of the Business and Professions Code is amended to read:

3512. (a) Except as provided in Sections 159.5 and 2020, the board shall employ within the limits of the Physician Assistant Fund all personnel necessary to carry out the provisions of this chapter including an executive officer who shall be exempt from civil service. The Medical Board of California and board shall make all necessary expenditures to carry out the provisions of this chapter from the funds established by Section 3520. The board may accept contributions to effect the purposes of this chapter.

(b) 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. 37. Section 3513 of the Business and Professions Code is amended to read:

3513. The board shall recognize the approval of training programs for physician assistants approved by a national accrediting organization. Physician assistant training programs accredited by a national accrediting agency approved by the board shall be deemed approved by the board under this section. If no national accrediting organization is approved by the board, the board may examine and pass upon the qualification of, and may issue certificates of approval for, programs for the education and training of physician assistants that meet board standards.

SEC. 38. Section 3514.1 of the Business and Professions Code is amended to read:

3514.1. (a) The board shall formulate by regulation guidelines for the consideration of applications for licensure as a ~~physician's~~ *physician* assistant.

(b) The board shall formulate by regulation guidelines for the approval of ~~physician's~~ *physician* assistant training programs.

SEC. 39. Section 3516 of the Business and Professions Code is amended to read:

3516. (a) Notwithstanding any other provision of law, a physician assistant licensed by the board shall be eligible for employment or supervision by any physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that employment or supervision.

(b) No physician and surgeon shall supervise more than four physician assistants at any one time, except as provided in Section 3502.5.

(c) The Medical Board of California may restrict a physician and surgeon to supervising specific types of physician assistants including, but not limited to, restricting a physician and surgeon from supervising physician assistants outside of the field of specialty of the physician and surgeon.

SEC. 40. Section 3516.5 of the Business and Professions Code is amended to read:

3516.5. (a) Notwithstanding any other provision of law and in accordance with regulations established by the Medical Board of California, the director of emergency care services in a hospital with an approved program for the training of emergency care physician assistants, may apply to the Medical Board of California for authorization under which the director may grant approval for emergency care physicians on the staff of the hospital to supervise emergency care physician assistants.

(b) The application shall encompass all supervising physicians employed in that service.

(c) Nothing in this section shall be construed to authorize any one emergency care physician while on duty to supervise more than four physician assistants at any one time.

(d) A violation of this section by the director of emergency care services in a hospital with an approved program for the training of emergency care physician assistants constitutes unprofessional conduct within the meaning of Chapter 5 (commencing with Section 2000).

(e) A violation of this section shall be grounds for suspension of the approval of the director or disciplinary action against the director or suspension of the approved program under Section 3527.

SEC. 41. Section 3517 of the Business and Professions Code is amended to read:

3517. The board shall require a written examination of physician assistants in the manner and under the rules and regulations as it shall prescribe, but the examination shall be conducted in that manner as to ensure that the identity of each applicant taking the examination will be unknown to all of the examiners until all examination papers have been graded. Except as otherwise provided in this chapter, or by regulation, no physician assistant applicant shall receive approval under this chapter without

first successfully passing an examination given under the direction of the board.

Examinations for licensure as a physician assistant may be required by the board under a uniform examination system, and for that purpose the board may make those arrangements with organizations furnishing examination material as may, in its discretion, be desirable. The board shall, however, establish a passing score for each examination. The licensure examination for physician assistants shall be held by the board at least once a year with such additional examinations as the board deems necessary. The time and place of examination shall be fixed by the board.

SEC. 42. Section 3518 of the Business and Professions Code is amended to read:

3518. The board shall keep current, two separate registers, one for approved supervising physicians and one for licensed ~~physician's~~ *physician* assistants, by specialty if applicable. These registers shall show the name of each licensee, his or her last known address of record, and the date of his or her licensure or approval. Any interested person is entitled to obtain a copy of the register in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) upon application to the board together with a sum as may be fixed by the board, which amount shall not exceed the cost of this list so furnished.

SEC. 43. Section 3519 of the Business and Professions Code is amended to read:

3519. The board shall issue under the name of the Medical Board of California a license to all physician assistant applicants who meet all of the following requirements:

(a) Provide evidence of successful completion of an approved program.

(b) Pass any examination required under Section 3517.

(c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527.

(d) Pay all fees required under Section 3521.1.

SEC. 44. Section 3519.5 of the Business and Professions Code is amended to read:

3519.5. (a) The board may issue under the name of the Medical Board of California a probationary license 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 applicant's activities shall be supervised by another physician assistant.

(2) Total or partial restrictions on issuing a drug order 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 services.

(8) Compliance with all provisions of this chapter.

(b) The board and the Medical Board of California may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee.

(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the board and the Medical Board of California. These 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.

SEC. 45. Section 3520 of the Business and Professions Code is amended to read:

3520. Within 10 days after the beginning of each calendar month the Medical Board of California shall report to the Controller the amount and source of all collections made under this chapter and at the same time pay all those sums into the State Treasury, where they shall be credited to the Physician Assistant Fund, which fund is hereby created. All money in the fund shall be used to carry out the purpose of this chapter.

SEC. 46. Section 3521 of the Business and Professions Code is amended to read:

3521. The fees to be paid for approval to supervise physician assistants are to be set by the board as follows:

(a) An application fee not to exceed fifty dollars ($50) shall be charged to each physician and surgeon applicant.

(b) An approval fee not to exceed two hundred fifty dollars ($250) shall be charged to each physician and surgeon upon approval of an application to supervise physician assistants.

(c) A biennial renewal fee not to exceed three hundred dollars ($300) shall be paid for the renewal of an approval.

(d) The delinquency fee is twenty-five dollars ($25).

(e) The duplicate approval fee is ten dollars ($10).

(f) The fee for a letter of endorsement, letter of good standing, or letter of verification of approval shall be ten dollars ($10).

SEC. 47. Section 3521.1 of the Business and Professions Code is amended to read:

3521.1. The fees to be paid by physician assistants are to be set by the board as follows:

(a) An application fee not to exceed twenty-five dollars ($25) shall be charged to each physician assistant applicant.

(b) An initial license fee not to exceed two hundred fifty dollars ($250) shall be charged to each physician assistant to whom a license is issued.

(c) A biennial license renewal fee not to exceed three hundred dollars ($300).

(d) The delinquency fee is twenty-five dollars ($25).

(e) The duplicate license fee is ten dollars ($10).

(f) The fee for a letter of endorsement, letter of good standing, or letter of verification of licensure shall be ten dollars ($10).

SEC. 48. Section 3521.2 of the Business and Professions Code is amended to read:

3521.2. The fees to be paid by physician assistant training programs are to be set by the board as follows:

(a) An application fee not to exceed five hundred dollars ($500) shall be charged to each applicant seeking program approval by the board.

(b) An approval fee not to exceed one hundred dollars ($100) shall be charged to each program upon its approval by the board.

SEC. 49. Section 3521.3 is added to the Business and Professions Code, to read:

~~3521.3. Every licensed physician assistant is exempt from the payment of the renewal fee and requirement for continuing medical education if the licensee has applied to the board for a retired license. The holder of a retired license may not engage in the practice of a physician assistant.~~

3521.3. (a) The board may establish, by regulation, a system for the placement of a license on a retired status, upon application, for a physician assistant who is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the board.

(b) No licensee with a license on a retired status shall engage in any activity for which a license is required.

(c) The board shall deny an applicant's application for a retired status license if the license is canceled or if the license is suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(d) Beginning one year from the effective date of the regulations adopted pursuant to subdivision (a), if an applicant's license is delinquent, the board shall deny an applicant's application for a retired status license.

(e) The board shall establish minimum qualifications for a retired status license.

(f) The board may exempt the holder of a retired status license from the renewal requirements described in Section 3524.5.

(g) The board shall establish minimum qualifications for the restoration of a license in a retired status to an active status. These minimum qualifications shall include, but are not limited to, continuing education and payment of a fee as provided in subdivision (c) of Section 3521.1.

~~SEC. 50. Section 3521.4 is added to the Business and Professions Code, to read:~~

~~3521.4. (a) Every licensed physician assistant is exempt from the payment of the renewal fee specified in Section 3521.1 while engaged in full-time training or active service in the Army, Navy, Air Force, or Marines, or in the United States Public Health Service.~~

~~(b) Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for payment of such fee for the current renewal period upon his or her discharge from full-time active service and shall have a period of 60 days after becoming liable within which to pay the renewal fee before the delinquency fee is required. Any person who is discharged from active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.~~

~~(c) The time spent in full-time active service or training shall not be included in the computation of the five-year period for renewal and reinstatement of licensure provided in Sections 3524.~~

~~(d) Nothing in this section shall exempt a person, exempt from renewal fees under this section, from meeting the continuing education requirements as provided in Section 3524.5.~~

~~SEC. 51.~~

SEC. 50. Section 3521.5 of the Business and Professions Code is amended to read:

3521.5. The board shall report to the appropriate policy and fiscal committees of each house of the Legislature whenever the Medical Board of California approves a fee increase pursuant to Sections 3521 and 3521.1. The board shall specify the reasons for each increase in the report. Reports prepared pursuant to this section shall identify the percentage of funds derived from an increase in fees pursuant to Senate Bill 1077 of the 1991–92 Regular Session (Chapter 917, Statutes of 1991) that will be used for investigational and enforcement activities by the Medical Board of California and board.

~~SEC. 52.~~

SEC. 51. Section 3522 of the Business and Professions Code is amended to read:

3522. An approval to supervise physician assistants shall expire at 12 midnight on the last day of the birth month of the physician and surgeon during the second year of a two-year term if not renewed.

The Medical Board of California shall establish a cyclical renewal program, including, but not limited to, the establishment of a system of staggered expiration dates for approvals and a pro rata formula for the payment of renewal fees by physician and surgeon supervisors.

To renew an unexpired approval, the approved supervising physician and surgeon, on or before the date of expiration, shall apply for renewal on a form prescribed by the Medical Board of California and pay the prescribed renewal fee.

~~SEC. 53.~~

SEC. 52. Section 3523 of the Business and Professions Code is amended to read:

3523. All physician assistant licenses shall expire at 12 midnight of the last day of the birth month of the licensee during the second year of a two-year term if not renewed.

The board shall establish by regulation procedures for the administration of a birthdate renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates and a pro rata formula for the payment of renewal fees by physician assistants affected by the implementation of the program.

To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

~~SEC. 54.~~

SEC. 53. Section 3524 of the Business and Professions Code is amended to read:

3524. A license or approval that has expired may be renewed at any time within five years after its expiration by filing an application for renewal on a form prescribed by the board or Medical Board of California, as the case may be, and payment of all accrued and unpaid renewal fees. If the license or approval is not renewed within 30 days after its expiration, the licensed physician assistant and approved supervising physician, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in Section 3522 or 3523 which next occurs after the effective date of the renewal, when it shall expire, if it is not again renewed.

~~SEC. 55.~~

SEC. 54. Section 3524.5 of the Business and Professions Code is amended to read:

3524.5. The board may require a licensee to complete continuing education as a condition of license renewal under Section 3523 or 3524. The board shall not require more than 50 hours of continuing education every two years. The board shall, as it deems appropriate, accept certification by the National

Commission on Certification of Physician Assistants (NCCPA), or another qualified certifying body, as determined by the board, as evidence of compliance with continuing education requirements.

~~SEC. 56.~~

SEC. 55. Section 3526 of the Business and Professions Code is amended to read:

3526. A person who fails to renew his or her license or approval within five years after its expiration may not renew it, and it may not be reissued, reinstated, or restored thereafter, but that person may apply for and obtain a new license or approval if he or she:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(b) 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 board that, with due regard for the public interest, he or she is qualified to practice as a physician assistant.

(c) Pays all of the fees that would be required as if application for licensure was being made for the first time.

~~SEC. 57.~~

SEC. 56. Section 3527 of the Business and Professions Code is amended to read:

3527. (a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

(b) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

(c) The Medical Board of California may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician

assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical Board of California, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the Medical Board of California, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

(e) The board may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, a physician assistant license, after a hearing as required in Section 3528 for unprofessional conduct that includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the ~~California~~ Medical Board *of California*, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control

guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

(g) The expiration, cancelation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

~~SEC. 58.~~

SEC. 57. Section 3529 of the Business and Professions Code is amended to read:

3529. The board may hear any matters filed pursuant to subdivisions (a) and (b) of Section 3527, or may assign the matter to a hearing officer. The Medical Board of California may hear any matters filed pursuant to subdivision (c) of Section 3527, or may assign the matter to a hearing officer. If a matter is heard by the board or the Medical Board of California, the hearing officer who presided at the hearing shall be present during the board's or the Medical Board of California's consideration of the case, and, if requested, assist and advise the board or the Medical Board of California.

~~SEC. 59.~~

SEC. 58. Section 3530 of the Business and Professions Code is amended to read:

3530. (a) A person whose license or approval has been revoked or suspended, 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 the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license or approval revoked for unprofessional conduct, except that the ~~committee~~ *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 approval revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the Medical Board of California. The petition shall be accompanied by at least two verified recommendations from physicians licensed either by the Medical Board of California or the Osteopathic Medical Board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by 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 that shall be acted upon in accordance with the Administrative Procedure Act.

(d) 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, as the ~~committee~~ *board* or administrative law judge finds necessary.

(e) The board or administrative law judge, when hearing a petition for reinstating a license or approval or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) 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.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

~~SEC. 60.~~

SEC. 59. Section 3531 of the Business and Professions Code is amended to read:

3531. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The board may order the license suspended or revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his *or her* plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

~~SEC. 61.~~

SEC. 60. Section 3533 of the Business and Professions Code is amended to read:

3533. Whenever any person has engaged in any act or practice which constitutes an offense against this chapter, the superior court of any county, on application of the Medical Board of California, may issue an injunction or other appropriate order restraining such conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. The Medical Board of California or the board may commence action in the superior court under the provisions of this section.

~~SEC. 62.~~

SEC. 61. Section 3534 of the Business and Professions Code is amended to read:

3534. ~~(a)~~ It is the intent of the Legislature that the board shall seek ways and means to identify and rehabilitate physician assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety.

~~SEC. 63.~~

SEC. 62. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The board shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, "committee" means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

~~SEC. 64.~~

SEC. 63. Section 3534.2 of the Business and Professions Code is amended to read:

3534.2. (a) Any committee established by the board shall have at least three members. In making appointments to a committee the board shall consider the appointments of persons who are either recovering of substance abuse and have been free from abuse for at least three years immediately prior to their appointment or who are knowledgeable in the treatment and recovery of substance abuse. The board also shall consider the appointment of a physician and surgeon who is board certified in psychiatry.

(b) Appointments to a committee shall be by the affirmative vote of a majority of members appointed to the board. 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 so appointed.

(c) A majority of the members of a committee shall constitute a quorum for the transaction of business. Any action requires an affirmative vote of a majority of those members present at a meeting constituting at least a quorum. Each committee shall elect from its membership a chairperson and a vice chairperson. 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 matters relating to any physician

assistant applying for or participating in a diversion program, and a meeting which will be convened entirely in closed session need not comply with Section 11125 of the Government Code. A committee shall only convene in closed session to the extent it is necessary to protect the privacy of an applicant or participant. Each member of a committee shall receive a per diem and shall be reimbursed for expenses as provided in Section 103.

~~SEC. 65.~~

SEC. 64. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No board or

committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

~~SEC. 66.~~

SEC. 65. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the board and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the board, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

~~SEC. 67.~~

SEC. 66. Section 3534.5 of the Business and Professions Code is amended to read:

3534.5. A participant may be terminated from the program for any of the following reasons: (a) the participant has successfully completed the treatment program; (b) the participant has failed to comply with the treatment program designated for him or her; (c) the participant fails to meet any of the criteria set forth in subdivision (d); or (d) it is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an

applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of medicine by that individual creates too great a risk to the public health and safety, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physician assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The board shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physician assistant in the program, and the possible results of noncompliance with the program.

~~SEC. 68.~~

SEC. 67. Section 3534.6 of the Business and Professions Code is amended to read:

3534.6. In addition to the criteria and causes set forth in Section 3534.4, the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

~~SEC. 69.~~

SEC. 68. Section 3534.7 of the Business and Professions Code is amended to read:

3534.7. All board and committee records and records of proceedings and participation of a physician assistant in a program shall be confidential and are not subject to discovery or subpoena.

~~SEC. 70.~~

SEC. 69. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the board contracts with any other entity to carry out this section, the executive officer of the board or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the board shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall

remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

~~SEC. 71.~~

SEC. 70. Section 3534.10 of the Business and Professions Code is amended to read:

3534.10. Participation in a diversion program shall not be a defense to any disciplinary action which may be taken by the board. This section does not preclude the board from commencing disciplinary action against a physician assistant who is terminated unsuccessfully from the program under this section. That disciplinary action may not include as evidence any confidential information.

~~SEC. 72.~~

SEC. 71. Section 3535 of the Business and Professions Code is amended to read:

3535. (a) Notwithstanding any other provision of law, physicians and surgeons licensed by the Osteopathic Medical Board of California may use or employ physician assistants provided (1) each physician assistant so used or employed is a graduate of an approved program and is licensed by the board, and (2) the scope of practice of the physician assistant is the same as that which is approved by the Division of Licensing of the Medical Board of California for physicians and surgeons supervising physician assistants in the same or similar specialty.

(b) Any person who violates subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) This section shall become operative on July 1, 2001.

~~SEC. 73.~~

SEC. 72. Section 3537.10 of the Business and Professions Code is amended to read:

3537.10. (a) Subject to the other provisions of this article, the Office of Statewide Health Planning and Development, hereafter in this article referred to as the office, shall coordinate the establishment of an international medical graduate physician assistant training program, to be conducted at an appropriate educational institution or institutions. The goal of the program shall be to place as many international medical graduate physician assistants in medically underserved areas as possible in order to

provide greater access to care for the growing population of medically indigent and underserved. The method for accomplishing this goal shall be to train foreign medical graduates to become licensed as physician assistants at no cost to the participants in return for a commitment from the participants to serve full-time in underserved areas for a four-year period.

(b) By February 1, 1994, or one month after federal funds to implement this article become available, whichever occurs later, the office shall establish a training program advisory task force. The task force shall be comprised of representatives from all of the following groups:

(1) Physician assistant program directors.

(2) Foreign medical graduates.

(3) The California Academy of Physician Assistants.

(4) Nonprofit community health center directors.

(5) Physicians.

(6) The board, at the board's option.

The office may, instead, serve solely as a consultant to the task force.

(c) The task force shall do all of the following:

(1) Develop a recommended curriculum for the training program that shall be from 12 to 15 months in duration and shall, at a minimum, meet curriculum standards consistent with the board's regulations. The program shall be subject to the board's approval. By April 1, 1994, or three months after federal funds to implement this article become available, whichever occurs later, the curriculum shall be presented by the office to the Committee on Allied Health Education and Accreditation of the American Medical Association, or its successor organization, for approval.

(2) Develop recommended admission criteria for participation in the pilot and ongoing program.

(3) Assist in development of linkages with academic institutions for the purpose of monitoring and evaluating the pilot program.

~~SEC. 74.~~

SEC. 73. Section 3537.20 of the Business and Professions Code is amended to read:

3537.20. Any person who has satisfactorily completed the program established by this article shall be eligible for licensure by the board as a "physician assistant" if the person has complied with all of the following requirements:

(a) Has successfully completed the written examination required under Section 3517.

(b) Has successfully completed the Test of English as a Foreign Language (TOEFL).

~~SEC. 75.~~

SEC. 74. Section 3537.30 of the Business and Professions Code is amended to read:

3537.30. (a) The Legislature recognizes that the goal of this program would be compromised if participants do not observe their commitments under this program to provide the required service in a medically underserved area. The goal of this program would not be met if all that it accomplished was merely to license physician assistants that served populations that are not medically underserved.

(b) Since damages would be difficult or impossible to ascertain in the event of default by the participant, this section shall set forth the extent of liquidated damages that shall be recoverable by the program in the case of default.

(c) In the case of default by a participant who has successfully completed the program and has obtained licensure under this article, the program shall collect the following damages from the participant:

(1) The total cost expended by the program for the training of the applicant, and interest thereon from the date of default.

(2) The total amount needed for the program to seek cover as set forth in subdivision (b) of Section 3537.35.

(3) The costs of enforcement, including, but not limited to, the costs of collecting the liquidated damages, the costs of litigation, and attorney's fees.

(d) The Attorney General may represent the office, or the board, or both in any litigation necessitated by this article, or, if the Attorney General declines, the office, or the board, or both may hire other counsel for this purpose.

(e) Funds collected pursuant to subdivision (c) shall be allocated as follows:

(1) Costs of training recovered pursuant to paragraph (1) of subdivision (c) shall be allocated to the office to be used upon appropriation for the continuing training program pursuant to this article.

(2) Costs of seeking cover recovered pursuant to paragraph (2) of subdivision (c) shall be deposited in the Physician Assistant Training Fund established pursuant to Section 3537.40 for the purposes of providing grants pursuant to subdivision (c) of Section 3537.35.

(3) Costs of enforcement recovered pursuant to paragraph (3) of subdivision (c) shall be allocated between the office, and the Attorney General, or other counsel, according to actual costs.

~~SEC. 76.~~

SEC. 75. Section 3537.50 of the Business and Professions Code is amended to read:

3537.50. No General Fund revenues shall be expended to carry out this article. The implementation of the pilot program and, if applicable, the permanent program established by this article shall be contingent upon the availability of federal funds, which do not divert or detract from funds currently utilized to underwrite existing physician assistant training programs or to fund existing functions of the board. The new funding shall be sufficient to cover the full additional cost to the educational institution or institutions that establish the program or programs, the cost of tuition and attendance for the students in the program or programs, and any additional costs, including enforcement costs, that the office or the board incurs as a result of implementing this article. Nothing in this article shall be construed as imposing any obligations upon the office, the board, or any physician assistant training program in the absence of adequate funding as described in this section. Nothing in this article shall be construed either as precluding applicants for the program established by this article from seeking state or federal scholarship funds, or state and federal loan repayment funds available to physician assistant students, or as requiring that any applicants be granted preference in the award of those funds. Nothing in this article shall be construed as impairing the autonomy of any institution that offers a physician assistant training program.

~~SEC. 77.~~

SEC. 76. Section 3540 of the Business and Professions Code is amended to read:

3540. A physician assistants corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and

its shareholders, officers, directors, and employees rendering professional services who are certified physician assistants are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physician assistants corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) is the board.

~~SEC. 78.~~

SEC. 77. Section 3546 of the Business and Professions Code is amended to read:

3546. The Medical Board of California may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a physician assistant corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time as the regulations may provide, and (b) that a physician assistant corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

~~SEC. 79.~~

SEC. 78. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1237
Author: Price
Bill Date: July 5, 2012, amended
Subject: Omnibus – Sunset Dates
Sponsor: Author

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried in relation to sunset dates. This analysis will only include the relevant sections of the bill in the Business and Professions Code (BPC) that impact the Medical Board of California (Board). The omnibus language would extend the sunset date of the vertical enforcement and prosecution model, from January 1, 2013 to January 1, 2014.

ANALYSIS:

This bill extends the sunset date of the vertical enforcement and prosecution model from January 1, 2013, to January 1, 2014. The new date will coincide with the date the Board's sunset date, and vertical enforcement will be an issue that will be identified in the Board's sunset report.

Board staff is just making the Board aware of this bill, no position is needed.

FISCAL: None to the Board.

SUPPORT: California Retailers Association
California Society of Health-System Pharmacists
Court Reporters Board of California
California State Board of Pharmacy
Healthcare Distribution Management Association

OPPOSITION: None on file

POSITION: Recommendation: No Position

AMENDED IN ASSEMBLY JULY 5, 2012

AMENDED IN ASSEMBLY JUNE 15, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 16, 2012

SENATE BILL No. 1237

Introduced by Senator Price

February 23, 2012

An act to amend Sections 2006, 2450.3, 2602, 2607.5, 4001, 4003, 8000, 8005, 8027, 8030.2, ~~and~~ 8030.5, *9812.5, 9830.5, 9832.5, 9847.5, 9849, 9851, 9853, 9860, and 9863* of the Business and Professions Code, and to amend ~~Section~~ *Sections 12529, 12529.5, and* 12529.6 of the Government Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1237, as amended, Price. Professions and vocations: regulatory boards.

(1) Existing law, until January 1, 2013, declares that using a vertical enforcement and prosecution model for the Medical Board of California's investigations is in the best interests of the people of California. Under existing law, a vertical enforcement and prosecution model is described as the joint assignment *of* a complaint to a board investigator and to a deputy attorney general responsible for prosecuting the case if the investigation results in the filing of an accusation. Existing law requires the board to, among other things, establish and implement a plan to locate specified staff in the same offices in order to carry out the intent of the vertical enforcement and prosecution model.

This bill would extend the operation of these provisions to January 1, 2014, and would also make a conforming change in that regard.

(2) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California. Existing law repeals these provisions on January 1, 2014. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would make a conforming change with regard to the operation of these provisions until January 1, 2014, and the bill would also specify that this board would be subject to review by the appropriate policy committees of the Legislature.

(3) Existing law, the Physical Therapy Practice Act, provides for the licensure and regulation of physical therapists by the Physical Therapy Board of California. Existing law authorizes the board to appoint an executive officer. Existing law makes these provisions inoperative on July 1, 2013, and repealed on January 1, 2014. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would delete the inoperative date and would instead repeal these provisions on January 1, 2014. The bill would also specify that this board would be subject to review by the appropriate policy committees of the Legislature.

(4) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacies, pharmacists, pharmacy technicians, wholesalers of dangerous drugs or devices, and others by the California State Board of Pharmacy. Existing law authorizes the board to appoint an executive officer. Under existing law, the board and its authority to appoint an executive officer will be repealed on January 1, 2013. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of the California State Board of Pharmacy and its authority to appoint an executive officer until January 1, 2017, and would specify that the board is subject to review by the appropriate policy committees of the Legislature.

(5) Existing law provides for the licensure and regulation of court reporters by the Court Reporters Board of California within the Department of Consumer Affairs. Existing law authorizes this board to appoint an executive officer and committees as necessary. Existing law repeals these provisions on January 1, 2013.

This bill would extend the operation of these provisions until January 1, 2017, and would specify that the board is subject to review by the appropriate policy committees of the Legislature.

Existing law requires, until January 1, 2013, certain fees and revenues collected by the board to be deposited into the Transcript Reimbursement Fund, to be available to provide reimbursement for the cost of providing shorthand reporting services to low-income litigants in civil cases. Existing law authorizes, until January 1, 2013, low-income persons appearing pro se to apply for funds from the Transcript Reimbursement Fund, subject to specified requirements and limitations. Existing law requires the board, until January 1, 2013, to publicize the availability of the fund to prospective applicants. Existing law requires the unencumbered funds remaining in the Transcript Reimbursement Fund as of January 1, 2013, to be transferred to the Court Reporters' Fund.

This bill would extend the operation of these provisions until January 1, 2017, and would make a technical change to these provisions. By extending the operation of the Transcript Reimbursement Fund, which is a continuously appropriated fund, the bill would make an appropriation.

(6) Existing law, the Electronic and Appliance Repair Dealer Registration Law, provides for the registration and regulation of electronic and appliance service dealers and service contractors by the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation within the Department of Consumer Affairs and makes a failure to comply with its provisions a crime. Existing law, until January 1, 2013, requires a service contractor to pay specified fees to the bureau, including a registration fee and a registration renewal fee. Existing law, until January 1, 2013, requires the Director of Consumer Affairs to gather evidence of violations of the Electronic and Appliance Repair Dealer Registration Law, and any of its regulations, by a service contractor or by any employee, partner, officer, or member of any service contractor. Existing law, until January 1, 2013, requires a service contractor to maintain specified records to be open for inspection by the director and other law enforcement officials. Existing law, until January 1, 2013, also provides for the revocation of the registration of a service contractor by the director and for the superior court to issue a restraining order or injunction against a service contractor who violates these provisions.

This bill would extend the operation of these provisions to January 1, 2015. By extending the operation of certain of these provisions, the

violation of which is a crime, this bill would impose a state-mandated local program.

(7) Existing law, until January 1, 2013, establishes the Health Quality Enforcement Section within the Department of Justice for the purpose of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California. Existing law, until January 1, 2013, requires all complaints against licensees of these boards to be made available to the Health Quality Enforcement Section.

This bill would extend the operation of these provisions until January 1, 2014.

(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.

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

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

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

2006. (a) Any reference in this chapter to an investigation by the board shall be deemed to refer to a joint investigation conducted by employees of the Department of Justice and the board under the vertical enforcement and prosecution model, as specified in Section 12529.6 of the Government Code.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 2450.3 of the Business and Professions Code is amended to read:

2450.3. There is within the jurisdiction of the Osteopathic Medical Board of California a Naturopathic Medicine Committee authorized under the Naturopathic Doctors Act (Chapter 8.2 (commencing with Section 3610)). This section shall become

SEC. 25. Section 9863 of the Business and Professions Code, as amended by Section 62 of Chapter 354 of the Statutes of 2007, is amended to read:

9863. If, upon summary investigation, it appears probable to the director that a violation of this chapter, or the regulations thereunder, has occurred, the director, in his or her discretion, may suggest measures that in the director's judgment would compensate the complainant for the damages he or she has suffered as a result of the alleged violation. If the service dealer accepts the director's suggestions and performs accordingly, the director shall give that fact due consideration in any subsequent disciplinary proceeding. If the service dealer declines to abide by the suggestions of the director, the director may investigate further and may institute disciplinary proceedings in accordance with the provisions of this chapter.

This section shall become operative on January 1, ~~2013~~ *2015*.

SEC. 26. Section 12529 of the Government Code, as amended by Section 8 of Chapter 505 of the Statutes of 2009, is amended to read:

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

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

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

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

(e) This section shall remain in effect only until January 1, ~~2013~~ *2014*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2013~~ *2014*, deletes or extends that date.

SEC. 27. Section 12529 of the Government Code, as amended by Section 9 of Chapter 505 of the Statutes of 2009, is amended to read:

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

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

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

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board

of Psychology, and the committees under the jurisdiction of the Medical Board of California, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative January 1, ~~2013~~ *2014*.

SEC. 28. Section 12529.5 of the Government Code, as amended by Section 10 of Chapter 505 of the Statutes of 2009, is amended to read:

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

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

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

(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

(e) This section shall remain in effect only until January 1, ~~2013~~ *2014*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2013~~ *2014*, deletes or extends that date.

SEC. 29. Section 12529.5 of the Government Code, as amended by Section 11 of Chapter 505 of the Statutes of 2009, is amended to read:

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

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

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

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

(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

(e) This section shall become operative January 1, ~~2013~~ *2014*.

~~SEC. 12.~~

SEC. 30. Section 12529.6 of the Government Code is amended to read:

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

for those investigations is in the best interests of the people of California.

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

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

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

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

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

(2) Establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices, as appropriate, in order to carry out the intent of the vertical enforcement and prosecution model.

(3) Establish and implement a plan to assist in team building between its enforcement staff and the staff of the Health Quality Enforcement Section in order to ensure a common and consistent knowledge base.

(f) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 1274
Author:	Wolk
Bill Date:	April 26, 2012, amended
Subject:	Hospitals: Employment
Sponsor:	Shriners Hospital for Children
Position:	Support

STATUS OF BILL:

This bill is in the Assembly Appropriations Comittee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow Shriners Hospital for Children (Shriners) to continue to employ physicians, and will allow the hospital to bill insurers for the services rendered to patients with insurance coverage.

This bill was recently amended to make technical changes; these changes do not impact the Board's analysis or recommended position.

ANALYSIS:

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

Shriners has provided high quality sub-specialty care to children with neuromusculoskeletal conditions, burn injuries and other special health care needs without regard to payment for services, since 1923. There are two Shriners hospitals in California, one in Sacramento and one in Los Angeles, which serve 34,000 children in California each year.

Shriners has always directly employed physicians because they are exempted from the ban on the corporate practice of medicine (CPM), as they are a charitable institution that does not charge for medical professional services. The Shriners Endowment Fund has fully supported the operations of Shriners hospitals since its inception. However, the Endowment Fund has incurred a significant decrease in value and Shriners has continued to serve children and their families through deficit spending, which is not sustainable. This bill would allow Shriners to bill insurers for services provided to patients who have insurance coverage, and still allow Shriners to directly employ physicians.

This bill is drafted in a way that would only apply to the two Shriners Hospitals in California, by requiring the hospital to be owned and operated by a licensed charitable organization that offers only pediatric subspecialty care, and that prior to January 1, 2013, must have employed physicians on an annual basis and must not have charged for professional services rendered to patients. This bill requires Shriners Hospital to meet the following conditions:

- The hospital does not increase the number of salaried licensees by more than five physicians and surgeons or podiatrists each year.
- The hospital does not expand its scope of services beyond pediatric subspecialty care.
- The hospital accepts each patient needing service, regardless of his or her ability to pay, including whether the patient has any form of health insurance.
- The medical staff concur by an affirmative vote that the physician's and surgeon's employment is in the best interest of the communities served by the hospital.
- The hospital does not interfere with, control, or otherwise direct the physician's and surgeon's professional judgment in a manner prohibited by existing law.

The April 26th amendments make technical changes only; these changes do not impact the Board's analysis or recommended position.

This bill will narrowly expand the CPM exemption to allow Shriners to recoup some patient care costs from insurance companies, which will allow Shriners to stay in operation, without having to limit services to the 34,000 children they serve each year in California. The Board has taken a support position on this bill.

FISCAL: None

SUPPORT: Shriners Hospital for Children (Sponsor)
Medical Board of California

OPPOSITION: None on file

AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1274

Introduced by Senator Wolk

February 23, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, as amended, Wolk. Healing arts: hospitals: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions.

This bill would authorize 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, to charge for services rendered to patients, provided certain conditions are met, including, but not limited to, that the hospital does not increase the number of salaried licensees by more than 5 each year, that the hospital accepts each patient regardless of his or her ability to pay, and that the medical staff concur by an affirmative vote that the ~~physician and surgeon's~~ *licensee's* employment meets a specified standard.

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 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 ~~Division of Licensing~~ *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 Alcohol and Drug Programs, 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 owned and operated by a health care district pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code may employ a licensee pursuant to Section 2401.1, and may charge for professional services rendered by the licensee, if the physician and surgeon in whose name the charges are made approves the charges. However, the hospital shall not interfere with, control, or otherwise direct the physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

(e) 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 ~~physicians and surgeons or podiatrists~~ *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 ~~insurance~~ *care coverage*.

(4) The medical staff concur by an affirmative vote that the ~~physician and surgeon's~~ *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 ~~the~~ *a* physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 1416
Author:	Rubio and Hernandez
Bill Date:	May 29, 2012, amended
Subject:	Medical Residency Training Program Grants
Sponsor:	Author
Position:	Support

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish a grant program in the Office of Statewide Health Planning and Development (OSHPD) to be used to fund grants to medical residency training programs for the creation of additional residency positions. The grant program would be funded by donations from private individuals or entities, and the funds are required to be appropriated by the Legislature.

This bill would require OSHPD, in consultation with the California Healthcare Workforce Policy Committee, to develop criteria for distribution of available moneys in the fund. This bill would require OSHPD to give priority to programs that meet particular specifications.

This bill was amended to require OSHPD to develop criteria only upon receipt of donations sufficient to cover the costs of developing the criteria and to specify that general fund monies cannot be used to implement this bill.

ANALYSIS:

This bill would allow for private funding to be used to fund grants to be used to create more medical residency training positions. This bill would require OSHPD, in consultation with the California Healthcare Workforce Policy Committee, to develop criteria for distribution of available moneys in the fund. This bill would require OSHPD to give priority to programs that meet the following specifications: are located in a medically underserved area; have a proven record of placing graduates in those medically underserved areas; place an emphasis on training primary care providers; and place an emphasis on training physician specialties that are most needed in the program's community. This bill would make other technical changes.

The May 29th amendments require OSHPD to develop criteria only upon receipt of donations sufficient to cover the costs of developing the criteria and specify that general fund monies cannot be used to implement this bill.

This bill may help to create more medical residency slots using private funding and may help to address physician shortages, which is especially important as provisions of health care reform take effect in 2014, and as California prepares to provide health services to substantial numbers of new patients. This bill is also consistent with the mission of the Medical Board of promoting access to care. The Board took a support position on this bill and the recent amendments do not impact the Board's support position or the reasons for taking that position.

FISCAL: None

SUPPORT: American Federation of State, County and Municipal Employees
California Academy of Child and Adolescent Psychiatry
California Academy of Family Physicians
California Medical Association
Medical Board of California

OPPOSITION: California Right to Life Committee, Inc.

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 16, 2012

SENATE BILL No. 1416

Introduced by Senators Rubio and Hernandez

February 24, 2012

An act to add Article 4 (commencing with Section 128310) to Chapter 4 of Part 3 of Division 107 of the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1416, as amended, Rubio. Medical residency training program grants: grants.

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 to, among other things, 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 Health Professions Development Program for participation in the state medical contract program.

The bill would create the Graduate Medical Education Trust Fund in the State Treasury *to consist of private moneys donated to the commission for deposit into the fund and any interest that accrues on those moneys,* and would require that moneys in the fund be used, upon appropriation by the Legislature, to fund grants to graduate medical residency training programs, as specified. The bill would require the Office of Statewide Health Planning and Development, in consultation with the California Healthcare Workforce Policy Commission, to develop criteria ~~by December 31, 2013~~, *upon receipt of private donations of sufficient moneys to develop the criteria,* for distribution of available funds. *The bill would state that no General Fund moneys shall be used to implement the provisions of the bill.*

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 (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 shall, upon appropriation by the Legislature, 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) All private moneys donated by private individuals or entities to the commission for deposit into the fund.

~~(2) Any amounts appropriated to the fund by the Legislature.~~

~~(3)~~

(2) Any interest that accrues on amounts in the fund.

(e) No General Fund moneys shall be used to implement this article.

~~(e)~~

(f) (1) The Office of Statewide Health Planning and Development, in consultation with the California Healthcare Workforce Policy Committee, shall develop criteria ~~on or before December 31, 2013,~~ 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)~~

(g) 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 subdivision (a) of 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)~~

(h) 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)~~

(i) 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 1483
Author:	Steinberg
Bill Date:	July 2, 2012, amended
Subject:	Physicians and Surgeons: Physician Health Program
Sponsor:	California Medical Association California Hospital Association California Psychiatric Association California Society of Addiction Medicine

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would create the Physician Health Awareness, and Monitoring Quality Act of 2012. This bill would establish the Physician Health Program (PHP), which would be administered by the Physician Health, Recovery, and Monitoring Oversight Committee (Committee), also created by this bill. This bill would place the Committee in the Department of Consumer Affairs (DCA), and would require DCA to select a contractor to implement the PHP, and the Committee would serve as the evaluation body of the PHP. The PHP would provide for confidential participation by physicians who have a qualifying illness and are not on probation with the Medical Board of California (Board). The PHP would refer physicians (participants) to monitoring programs though written agreements and monitor the compliance of the participants with that agreement. The bill would require the Committee to report to DCA on the outcome of the PHP and the bill would require regular audits of the PHP. This bill would increase the physician and surgeon license renewal fee by $39.50 to fund the costs of the PHP and the Committee.

ANALYSIS:

This bill would define "physician and surgeon" as a holder of a valid physician's and surgeon's certificate. For the purposes of participating in the PHP, it also would include students enrolled in medical schools approved or recognized by the Board, graduates of medical schools enrolled in medical specialty residency training programs approved or recognized by the Board, or physicians and surgeons seeking reinstatement of a license from the Board.

Including students and graduates enrolled in residency training programs could expand the PHP to include individuals that do not reside in California or may even include individuals attending international medical schools. In addition, if a student or graduate enrolled in residency training, who is participating in the PHP, doesn't comply with the written agreement, that individual may not yet be licensed by the Board; however, applicants would be required to report this information on their licensing application, as this information is already required to be reported on the Board's licensing application. The sponsors have been informed of this.

This bill would define "qualifying illness" to mean alcohol or substance abuse, a mental disorder, or another health condition that a clinical evaluation determines can be monitored and treated with private clinical and monitoring programs. The definition for "impairment" also includes this terminology.

It is not necessarily clear what other health condition could be monitored and treated with private and clinical monitoring programs. However, this would be under the purview of DCA.

This bill would define "Physician Health Program" in part as the vendors, providers, or entities that contract with the committee. This bill would prohibit the PHP from offering or providing treatment services to physicians.

This bill would create the PHP and require the PHP to do all of the following:

- Be available to all physicians and surgeons.
- Promote awareness among members of the medical community on the recognition of health issues that could interfere with safe practice.
- Educate the medical community on the benefits of and options available for early intervention to address those health issues.
- Refer physicians and surgeons to monitoring programs certified by the program by executing a written agreement with the participant and monitoring the compliance of the participant with that agreement.
- Provide for the confidential participation by physicians and surgeons who have a qualifying illness and who are not on probation with the Board.

It is not clear how the PHP will certify programs, but it is assumed that the Committee/DCA would have to promulgate regulations to establish this process.

This bill would create the Physician Health, Awareness, and Monitoring Quality Oversight Committee in DCA, which would be allowed to take any reasonable administrative actions to carry out the responsibilities of this bill, including hiring staff and entering into contracts with vendors or others. The Committee is required to be formed no later than April 1, 2013 and would consist of 14 members; 12 members would be appointed by the Governor and would consist of the following:

- Eight physician members that have education, training, and experience in the identification and treatment of substance use or mental disorders, or both. The physician appointments are as follows:
    - Two members recommended by a statewide association representing psychiatrists with at least 3,000 members.
    - Two members recommended by a statewide association representing addiction medicine specialists with at least 300 members.
    - Three members recommended by a statewide association representing physicians from all specialties, modes of practice, and practice settings with at least 25,000 members.
    - One member recommended by a statewide hospital association representing at least 400 hospitals.
- Four members of the public that have experience in a field related to mental illness, or alcohol or substance abuse, or both, as specified.

One public member would be appointed by the Speaker of the Assembly, and one public member would be appointed by the Senate Committee on Rules. This bill would require members of the Committee to serve without compensation and would serve for a term of four years, unless specified differently in the bill. The Committee would be subject to the Bagley-Keene Open Meeting Act and the California Public Records Act.

The Committee would be required to adopt rules that would include, but not be limited to, criteria for acceptance of participants into the PHP and refusal to accept a person as a participant, and assigning the costs of participation and the associated financial responsibilities of participants. The rules are required to be consistent with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of DCA.

This bill would require DCA to select a contractor for the PHP program for a five year term, termed a "program vendor". This bill would require the Committee to serve as the evaluation body for procurement. This bill would specify criteria for the program vendor selected through the contracting process, who would be responsible for running the PHP program. This criteria would require the program vendor to monitor the monitoring entities that participants have retained for mentoring treatment, and provide ongoing services to physicians that resume practice. The program vendor would also be required to have a system in place for immediately reporting physicians who fail to meet program requirements. The system would be required to ensure absolute confidentiality in the communication to the enforcement division of the Board, and would not be allowed to provide information to any other individual or entity, unless authorized by the physician.

Although this bill requires the program to report to the Board participants who fail to meet the requirements of this program, it does not require the reporting to the Board of those whose treatment does not substantially alleviate the impairment, those who withdraw or terminate prior to completion, or those who after an assessment are unable to practice medicine safely. This lack of reporting to the Board appears to be an oversight in how the bill was drafted and should be corrected for consumer protection purposes.

The contract with the Program Vendor for the PHP would require the PHP to do the following:

- Report annually to the Committee on the statistics of the PHP, as specified.
- Submit to periodic audits and inspections, as specified. The audits would be required to be published, given to the Legislature, and posted on the Committee's Web site. The Committee would be required to biennially contract to perform an audit of the PHP, as specified. This bill would not allow General Fund monies to be used for this purpose.
- The Committee would be required to report statistics to DCA, and DCA would be required to report this information to the Legislature, as specified.

This bill would require a physician to enter into an individual agreement with the PHP and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the written agreement as a condition of participation. The written agreement would be required to include the following:

- A jointly agreed-upon plan and mandatory conditions and procedures to monitor compliance with the program, including, but not limited to, an agreement to cease practice.
- Compliance with the terms and conditions of treatment and monitoring.
- Limitations on practice.
- Conditions and terms for return to practice.
- Criteria for program completion.
- Criteria for termination of the participant from the program.
- A stipulation that expenses related to treatment, monitoring, laboratory tests, and other activities specified in the written agreement will be paid by the participant.
- If a participant retains the service of a private monitoring entity, the participant must agree to authorize the program to receive reports from the private monitoring entity and to request information from the private monitoring entity regarding the participant's treatment status.

This bill would specify that agreements with participants would not be disclosed to the Board or Committee if the participant did not enroll in PHP as a condition of probation or as a result of an action by the Board and if the participant is in compliance with the conditions and procedures in the agreement. This bill would require the PHP to

immediately report the name of the participant to the Committee when it learns the participant is failing to meet the requirements of the program, if the participant's impairment is not substantially alleviated through treatment, if the participant withdraws or is terminated from PHP prior to completion, or if the participant is unable to practice medicine with reasonable skill and safety. This bill would require the Committee to refer the matter to the Board within two business days of receiving a report from the PHP.

This bill would increase the biennial license renewal fee for all physicians and surgeons by $39.50, to fund the costs of the PHP and the Committee.

The previous major issues of concern with this bill – that it was located in the Medical Practice Act, that it did not identify a state agency to have oversight of the Committee and the PHP, and that it did not identify a funding source, have been addressed.

The Board does have a concern with implementing the fee increase on January 1, 2013. The Board sends renewal notices to physicians 90 days in advance of the renewal expiration date. For licensees with a renewal expiration date of January 1, 2013, the renewal letters go out on October 1, 2012. With the transition to a new computer system set for October 15, 2012, the Board's current computer system is frozen and no new changes can currently be made. The new system will not be able to accept revisions until mid to late November, then the programming time to accomplish this update and revise all renewal forms, the web site, cashiering, etc. will take approximately 3-4 months. Board staff would not have time to update the computer system, revise the renewal forms and get out the renewal letters by October 1, 2012. Board staff instead would either have to delay the renewal of those applicants, or have to send an additional letter to those applicants requesting an additional $39.50 in renewal fees. This additional workload would result in fiscal impact to the Board.

The Board would be able to implement this bill in a more efficient manner if the increased fee had a delayed implementation date of July 1, 2013. This would give the Board until April 1, 2013 to update the computer system and revise forms, etc., and would allow Board staff the necessary time to do this within its normal workload, and would not result in a fiscal impact to the Board. As this is the last remaining concern, Board staff is suggesting a Neutral if Amended position on this bill, with the amendment being to delay implementation of the increased fee to July 1, 2013.

FISCAL: As currently written, this bill would result in additional workload to Board staff at a cost of $20,000 to update its computer system and revise forms in an extremely short period of time.

SUPPORT: California Medical Association (Co-Sponsor)
California Hospital Association (Co-Sponsor)
California Psychiatric Association (Co-Sponsor)
California Society of Addiction Medicine (Co-sponsor)
California Academy of Family Physicians
California Society of Anesthesiologists
Kaiser Permanente

OPPOSITION: None on file

POSITION: Recommendation: Neutral if Amended

AMENDED IN ASSEMBLY JULY 2, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 17, 2012

SENATE BILL No. 1483

Introduced by Senator Steinberg

February 24, 2012

An act to add Article 12.7 (commencing with Section 830) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1483, as amended, Steinberg. Physicians and surgeons.

Existing law provides for the ~~licensing~~ *licensure* and regulation of physicians and surgeons by the Medical Board of California (board) within the Department of Consumer Affairs (department). Under existing law, the biennial license renewal fee for physicians and surgeons is required to be fixed by the board and may not exceed $790.

This bill would create the Physician Health Program, administered by the Physician Health, Recovery, and Monitoring Oversight Committee within the department, with 14 members to be appointed as specified. The purpose of the program would be, among other things, to promote awareness and education relative to physician and surgeon health issues, including impairment due to alcohol or substance abuse, mental disorders, or other health conditions that could affect the safe practice of medicine, and to make treatment available to all physicians and surgeons subject to a written agreement with the program that includes agreement by the physician and surgeon to pay for expenses

associated with the treatment. The bill would also provide for referral by the program of physicians and surgeons, as defined, to certified monitoring programs on a voluntary basis, governed by a written agreement between the participant and the program. The bill would require the department to select a contractor to implement the program, with the committee serving as the evaluation body for submitted proposals. The bill would require the program to report the name of a participant to the board and the committee when it learns of the participant's failure to meet the requirements of the program. The bill would require the committee to report to the department certain statistics received from the program, would require the department to report to the Legislature on the outcomes of the program, and would require regular audits of the program.

This bill would increase the biennial license renewal fee by $39.50 for purposes of these provisions, except as specified. The bill would direct the board to transfer this revenue on a monthly basis to the Physician Health, Awareness, and Monitoring Quality Trust Fund, which the bill would create, and would specify that the use of these funds is subject to appropriation by the Legislature.

The bill would enact other related provisions and make other conforming changes.

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

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

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

(a) (1) It is in every patient's interest to have physicians and surgeons who are healthy and well.

(2) Physicians and surgeons may have health conditions that interfere with their ability to practice medicine safely.

(3) In such cases, the most effective long-term protection for patients is early intervention to address health issues that have the potential to interfere with the safe practice of physicians and surgeons.

(b) While the Legislature recognizes that physicians and surgeons have a number of options for obtaining treatment, it is the intent of the Legislature in enacting this act to promote awareness among members of the medical community about health

issues that could interfere with safe practice, to promote awareness that private early intervention options are available, to provide resources and referrals to ensure physicians and surgeons are better able to choose high-quality private interventions that meet their specific needs, and to provide a separate mechanism for monitoring treatment.

SEC. 2. Article 12.7 (commencing with Section 830) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 12.7. Physician Health, Awareness, and Monitoring Quality

830. This article shall be known and may be cited as the Physician Health, Awareness, and Monitoring Quality Act of 2012.

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

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

(b) "Committee" means the Physician Health, Awareness, and Monitoring Quality Oversight Committee established pursuant to Section 830.6.

(c) "Department" means the Department of Consumer Affairs.

(d) "Impairment" means the inability to practice medicine with reasonable skill and safety to patients by reason of alcohol or substance abuse, a mental disorder, or another health condition as determined by a clinical evaluation in individual circumstances.

(e) "Participant" means a physician and surgeon enrolled in the program pursuant to an agreement entered into as provided in Section 830.10.

(f) "Physician Health Program" or "program" means the program defined in Section 830.4 and includes vendors, providers, or entities that contract with the committee pursuant to this article. The program itself shall not offer or provide treatment services to physicians and surgeons.

(g) "Physician and surgeon" means a holder of a valid physician and surgeon's certificate. For the purposes of participating in the program under this article, "physician and surgeon" shall also mean a student enrolled in a medical school approved or recognized by the board, a graduate of a medical school enrolled in a medical specialty residency training program approved or recognized by

the board, or a physician and surgeon seeking reinstatement of a license from the board.

(h) "Qualifying illness" means alcohol or substance abuse, a mental disorder, or another health condition that a clinical evaluation determines can be monitored and treated with private clinical and monitoring programs.

830.4. The Physician Health Program shall do all of the following:

(a) Subject to the requirements of Section 830.10, be available to all physicians and surgeons, as defined in subdivision (g) of Section 830.2.

(b) Promote awareness among members of the medical community on the recognition of health issues that could interfere with safe practice.

(c) Educate the medical community on the benefits of and options available for early intervention to address those health issues.

(d) Refer physicians and surgeons to monitoring programs certified by the program by executing a written agreement with the participant and monitoring the compliance of the participant with that agreement.

(e) Provide for the confidential participation by physicians and surgeons who have a qualifying illness and who are not on probation with the board.

830.6. (a) (1) There is hereby established within the Department of Consumer Affairs the Physician Health, Awareness, and Monitoring Quality Oversight Committee that shall have the duties and responsibilities set forth in this article. The committee may take any reasonable administrative actions to carry out the responsibilities and duties set forth in this article, including, but not limited to, hiring staff and entering into contracts.

(2) The committee shall be formed no later than April 1, 2013.

(3) The committee composition shall be as follows:

(A) All of the members under this subparagraph shall be appointed by the Governor and licensed in this state as physicians and surgeons with education, training, and experience in the identification and treatment of substance use or mental disorders, or both.

(i) Two members recommended by a statewide association representing psychiatrists with at least 3,000 members.

(ii) Two members recommended by a statewide association representing addiction medicine specialists with at least 300 members.

(iii) Three members recommended by a statewide association representing physicians and surgeons from all specialties, modes of practice, and practice settings with at least 25,000 members.

(iv) One member recommended by a statewide hospital association representing at least 400 hospitals.

(v) For the purpose of the initial composition of the committee, one member appointed under clause (i) shall be appointed for a two-year term and the other member for a three-year term; one member appointed under clause (ii) shall be appointed for a two-year term and the other member for a three-year term; one member appointed under clause (iii) shall be appointed for a two-year term, one member ~~for a~~ shall be appointed for *a* three-year term, and one member shall be appointed for a four-year term; and the member appointed under clause (iv) shall be appointed for a four-year term.

(B) All members appointed under this subparagraph shall have experience in a field related to mental illness, or alcohol or substance abuse, or both.

(i) Four members of the public appointed by the Governor. For the initial appointment to the committee, two members shall be appointed to serve for two-year terms and two members shall be appointed to serve for four-year terms.

(ii) One member of the public appointed by the Speaker of the Assembly. The initial appointment shall be for a three-year term.

(iii) One member of the public appointed by the Senate Committee on Rules. The initial appointment shall be for a three-year term.

(4) For the purposes of this section, a public member may not be any of the following:

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

(B) A current or former employee of a physician and surgeon, or a business providing or arranging for physician and surgeon services, or having any financial interest in the business of a physician and surgeon.

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

(D) An individual or an affiliate of an organization who has conducted business with or regularly appeared before the board.

(5) A public member shall meet all of the requirements for public members on a board as set forth in Chapter 6 (commencing with Section 450) of Division 1.

(b) Members of the committee shall serve without compensation.

(c) Except as provided for in subdivision (a), committee members shall serve terms of four years and may be reappointed.

(d) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(e) The rules adopted by the committee shall be consistent with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315, the guidelines of the Federation of State Physician Health Programs, Inc., as well as community standards of practice, including, but not limited to, criteria for acceptance of participants into the program and the refusal to accept a person as a participant into the program and the assigning of costs of participation and associated financial responsibilities of participants. In the event of any conflicts between the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315 and the guidelines of the Federation of State Physician Health Programs, Inc., and community standards of practice, the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs pursuant to Section 315 shall prevail.

830.8. (a) The department shall select a contractor for the Physician Health Program pursuant to a request for proposals, and the committee shall contract for a five-year term with that entity. The process for procuring the services for the program shall be administered by the department pursuant to Article 4 (commencing

with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. However, the committee shall serve as the evaluation body for the procurement.

(b) The ~~chief executive officer of the~~ program vendor shall have expertise in the areas of substance or alcohol abuse, and mental disorders in health care professionals.

(c) The program vendor shall ~~have a medical director to~~ oversee clinical aspects of the program's operations. The ~~medical director~~ *program vendor* shall have expertise in the diagnosis and treatment of alcohol and substance abuse and mental disorders in health care professionals.

~~(d) The program vendor shall have established relationships with local medical societies and hospital well-being committees for conducting education, outreach, and referrals for physician and surgeon health.~~

~~(e)~~

(d) The program vendor shall monitor the monitoring entities that participating physicians and surgeons have retained for monitoring a participant's treatment and shall provide ongoing services to physicians and surgeons that resume practice.

~~(f)~~

(e) The program vendor shall have a system for immediately reporting physicians and surgeons who fail to meet the requirements of the program as provided in subdivision (e) of Section 830.10. This system shall ensure absolute confidentiality in the communication to the enforcement division of the board, and shall not provide this information to any other individual or entity unless authorized by the enrolled physician and surgeon.

~~(g)~~

(f) The contract entered into pursuant to this article shall also require the program vendor to do both of the following:

(1) Report annually to the committee statistics related to the program, including, but not limited to, the number of participants currently in the program, the number of participants referred by the board as a condition of probation, the number of participants who have successfully completed their agreement period, the number of participants terminated from the program, and the number of participants reported by the program pursuant to subdivision (e) of Section 830.10. However, in making that report,

the program shall not disclose any personally identifiable information relating to any participant.

(2) Submit to periodic audits and inspections of all operations, records, and management related to the program to ensure compliance with the requirements of this article and its implementing rules and regulations.

~~(h)~~

(g) In addition to the requirements of Section 830.16, the committee shall monitor compliance of the program with the requirements of this article. The committee or its designee may make periodic inspections and onsite visits with the vendor contracted to provide Physician Health Program services.

~~(i)~~

(h) Copies of the audits referenced in paragraph (2) of subdivision ~~(g)~~ *(f)* shall be published and provided to the appropriate policy committees of the Legislature within 10 business days of publication. A copy shall also be made available to the public by posting a link on the committee's Internet Web site homepage no more than 10 business days after publication.

830.10. (a) A physician and surgeon shall, as a condition of participation in the Physician Health Program, enter into an individual agreement with the program and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement with the program.

(b) The written agreement between the physician and surgeon and the program shall be consistent with the standards adopted by the committee pursuant to subdivision (e) of Section 830.6, and shall include all of the following:

(1) A jointly agreed-upon plan and mandatory conditions and procedures to monitor compliance with the program, including, but not limited to, an agreement to cease practice.

(2) Compliance with terms and conditions of treatment and monitoring.

(3) Limitations on practice.

(4) Conditions and terms for return to practice.

(5) Criteria for program completion.

(6) Criteria for termination of the participant from the program.

(7) A stipulation that expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement with the program will be paid by the participant.

(c) In addition, if the physician and surgeon retains the services of a private monitoring entity, he or she shall agree to authorize the program vendor to receive reports from the private monitoring entity and to request information from the private monitoring entity regarding his or her treatment status. Except as provided in subdivisions (b), ~~(e),~~ (d), and (e), and subdivision ~~(f)~~ *(e)* of Section 830.8, a physician and surgeon's participation in the program pursuant to an agreement shall be confidential unless waived by the physician and surgeon.

(d) Any agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, and shall not be disclosed to the committee or the board if both of the following apply:

(1) The physician and surgeon did not enroll in the program as a condition of probation or as a result of an action of the board.

(2) The physician and surgeon is in compliance with the conditions and procedures in the agreement.

(e) (1) The program shall immediately report the name of a participant to the board and the committee when it learns of the participant's failure to meet the requirements of the program, including failure to cease practice when required, failure to submit to evaluation, treatment, or biological testing when required, or a violation of the rules adopted by the committee pursuant to subdivision (e) of Section 830.6. The program shall also immediately report the name of a participant to the committee when it learns that the participant's impairment is not substantially alleviated through treatment, or if the participant withdraws or is terminated from the program prior to completion, or if, in the opinion of the program after a risk assessment is conducted, the participant is unable to practice medicine with reasonable skill and safety.

(2) Notwithstanding subdivision ~~(f)~~ *(e)* of Section 830.8, the report shall provide sufficient information to permit the board to assess whether discipline or other action is required to protect the public.

(f) Except as otherwise provided in subdivisions (b), (c), ~~(e),~~ ~~and (f)~~ *(d), and (e)* of Section 830.8, subdivision (e) of this section,

and this subdivision, any oral or written information reported to the board pursuant to this section, including, but not limited to, any physician and surgeon's participation in the program and any agreement entered into pursuant to this article, shall remain confidential as provided in subdivision (c) of Section 800, and shall not constitute a waiver of any existing evidentiary privileges under any other provision or rule of law. However, confidentiality regarding the physician and surgeon's participation in the program and of all information and records created by the program related to that participation shall not apply if the board has referred a participant as a condition of probation.

(g) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the board against a physician and surgeon based on acts or omissions within the course and scope of his or her practice.

(h) Any information received, developed, or maintained by the committee regarding a physician and surgeon in the program shall not be used for any other purposes.

830.12. (a) The biennial license renewal fee established in subdivision (d) of Section 2435 shall increase by thirty-nine dollars and fifty cents ($39.50) for purposes of this article, except those purposes specified in Section 830.10. The board shall, on a monthly basis, transfer the revenue generated from this increase to the trust fund described in subdivision (b).

(b) There is hereby established in the State Treasury the Physician Health, Awareness, and Monitoring Quality Trust Fund into which all revenue generated pursuant to subdivision (a) shall be deposited. These funds shall be used, upon appropriation by the Legislature, exclusively for the purposes of this article, except those purposes specified in Section 830.10.

(c) Nothing in this section shall be construed to prohibit additional funding from private sources from being used to support operations of the program or to support the establishment of the committee and the program.

830.14. (a) The committee shall report to the department statistics received from the program pursuant to Section 830.8, and the department shall, thereafter, report to the appropriate policy committees of the Legislature on or before October 1, 2014, and annually thereafter, the outcomes of the program, including, but not limited to, the number of individuals served, the number of

participants currently in the program, the number of participants referred by the board as a condition of probation, the number of individuals who have successfully completed their agreement period, the number of participants terminated from the program, and the number of individuals reported to the board for noncompliance pursuant to subdivision (e) of Section 830.10. However, in making those reports, the committee and the department shall not disclose any personally identifiable information relating to any physician and surgeon participating in the program pursuant to an agreement entered into pursuant to Section 830.10.

(b) This section shall become inoperative on October 1, 2018, pursuant to Section 10231.5 of the Government Code.

830.16. (a) The committee shall biennially contract to perform an audit of the Physician Health Program and its vendors. This section is not intended to reduce the number of audits the committee may otherwise conduct. The initial audit shall commence two years after the award of an initial five-year contract. Under no circumstances shall General Fund revenue be used for this purpose.

(b) Any person or entity conducting the audit required by this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the audit and shall not disclose any information identifying any program participant.

(c) The biennial audit shall be completed by ____ and shall ascertain if the program is operating in conformance with the rules and regulations established by the committee.

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MBC TRACKER II BILLS
7/10/2012

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 137	Portantino	Health Care Coverage: Mammographies	Sen. Health	01/23/12
AB 369	Huffman	Health Care Coverage: Prescriptions Drugs	Sen. Approps	07/03/12
AB 377	Solorio	Pharmacy	Sen. Approps	04/14/11
AB 439	Skinner	Health Care Information	Senate	06/15/12
AB 510	Lowenthal, B.	Radiation Control: Health Facilities and Clinics: Records	Enrolled	07/02/12
AB 714	Atkins	Health Care Coverage: California Health Benefit Exchange	Sen. Approps	06/30/11
AB 916	Perez, M.	Health: Underserved Communities	Sen. Approps	07/05/12
AB 1217	Fuentes	Surrogacy Agreements	Sen. Approps	06/11/12
AB 1280	Hill	Ephedrine: Retail Sale	Sen. Approps	02/09/12
AB 1309	Miller	UC Riverside Medical School	Senate	07/02/12
AB 1409	Perez, M.	Regulations: Small Business	Senate	06/19/12
AB 1453	Monning	Essential Health Benefits	Sen. Approps	04/17/12
AB 1461	Monning	Individual Health Care Coverage	Sen. Approps	04/09/12
AB 1580	Bonilla	Health Care: Eligibility: Enrollment	Sen. 3rd Reading	
AB 1588	Atkins	Reservist Licensees: Fees and Continuing Education	Sen. Approps	06/25/12
AB 1636	Monning	Health and Wellness Programs	Sen. Approps	06/25/12
AB 1687	Fong	Worker's Compensation	Sen. Approps	06/18/12
AB 1731	Block	Newborn Screening Program: Critical Congenital Heart Disease	Sen. Approps	07/06/12
AB 1733	Logue	Telehealth	Sen. Approps	06/20/12
AB 1783	Perea	Public Contracts: Small Business Preferences	Enrolled	04/10/12
AB 1800	Ma	Health Care Coverage	Sen. Approps	06/26/12
AB 1904	Block	Military Spouses: Expedited Licensure	Sen. Approps	06/12/12
AB 2009	Galgiani	Communicable Disease: Influenza Vaccinations	Sen. Consent	06/01/12
AB 2041	Swanson	Regulations: Adoption: Disability Access	Sen. Approps	06/12/12
AB 2109	Pan	Communicable Disease: Immunization Exemption	Sen. Approps	06/20/12
AB 2214	Monning	Health Workforce Development	Sen. Approps	07/03/12

MBC TRACKER II BILLS
7/10/2012

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 2221	Block	Public Records	Sen. 3rd Reading	03/28/12
AB 2266	Mitchell	Medi-Cal: Enhanced Health Homes	Sen. Approps	06/25/12
AB 2285	Eng	Peace Officer Testing: Cheating	Sen. 3rd Reading	05/23/12
AB 2343	Torres	Criminal History Information	Sen. 3rd Reading	03/28/12
AB 2348	Mitchell	Registered Nurses: Dispensation of Drugs	Senate	06/27/12
AB 2356	Skinner	Tissue Donation	Senate	05/30/12
SB 103	Liu	State Government: Meetings	Asm. Approps	07/12/11
SB 173	Simitian	Healing Arts: Mammograms	Asm. Approps	08/15/11
SB 393	Hernandez	Medical Homes	Assembly	06/15/12
SB 411	Price	Home Care Services Act of 2011	Inactive File	08/30/11
SB 628	Yee	Acupuncture: Regulation	Asm. Approps	05/31/12
SB 703	Hernandez	Basic Health Program	Asm. Approps	
SB 764	Steinberg	Developmental Services: Telehealth Systems Program	Asm. Approps	07/03/12
SB 951	Hernandez	Health Care Coverage: Essential Health Benefits	Asm. Approps	04/16/12
SB 961	Hernandez	Individual Health Care Coverage	Asm. Approps	04/09/12
SB 975	Wright	Professions & Vocations: Regulatory Authority	Asm. 3rd Reading	06/27/12
SB 1050	Alquist	Autism: Telehealth Task Force	Asm. Approps	06/15/12
SB 1099	Wright	Regulations	Asm. Approps	05/17/12
SB 1134	Yee	Persons of Unsound Mind: Psychotherapist Duty to Protect	Enrolled	05/08/12
SB 1172	Lieu	Sexual Orientation Change Efforts	Asm. 3rd Reading	07/05/12
SB 1185	Price	Centralized Intelligence Partnership Act	Asm. Approps	05/29/12
SB 1199	Dutton	Radiologic Technologists	Asm. Approps	06/25/12
SB 1301	Hernandez	Prescription Drugs: 90-Day Supply	Asm. Approps	06/21/12
SB 1329	Simitian	Prescription Drugs: Collection & Distribution Program	Asm. 3rd Reading	06/26/12
SB 1407	Leno	Medical Information: Disclosure	Asm. Approps	06/20/12
SB 1410	Hernandez	Independent Medical Review	Asm. Approps	05/25/12

MBC TRACKER II BILLS
7/10/2012

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 1446	Negrete McLeod	Naturopathic Doctors	Asm. Approps	06/28/12
SB 1524	Hernandez	Nursing	Asm. Approps	06/28/12
SB 1538	Simitian	Health Care: Mammograms	Asm. Approps	06/19/12
SCR 72	Price	National Consumer Protection Week	Senate	03/06/12