LEGISLATIVE PACKET

MEDICAL BOARD MEETING

JANUARY 29, 2010
SAN FRANCISCO, CA

2009 Implementation Plans

AB 501

IMPLEMENTATION of AB 501 – Use of M.D., Limited License, Fee/Fund

Implementation Item	Completed By	Date to be Completed
Use of M.D.		
Notify hospitals and teaching schools of change.	Licensing	1/15/10
Determine if there needs to be anything added to the website.	Licensing	1/31/10
Limited License		
Develop new forms or amend the existing application forms to allow for requesting a Limited License.	Licensing	2/1/10
Determine if regulations will be needed.	Licensing	2/1/10
Determine if a new designation will be needed to identify the Limited Licenses.	Licensing	2/1/10
Changes to sections of law?	Licensing	2/1/10
Determine how a Limited License will be noticed to the public.	Licensing/Legal	2/1/10
Reconvene to follow up on implementation items.	Legislative Unit	2/1/10
Fee/Fund		
Work with budget staff on the analysis of the reserve fund to determine any needed decrease or increase with regard to the initial and renewal license fees.	Budget Analyst and Legislative Unit	In progress.
Revise fund condition projections using the four-month reserve for 2010 and ongoing.	Budget Analyst	1/31/10

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 501
Author:	Emmerson
Chapter:	#400
Subject:	Licensing: Limited, Use of M.D., Fee/Fund
Sponsor:	Medical Board of California
Board Position:	Sponsor/Support

DESCRIPTION OF LEGISLATION:

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

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

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

Amendments to this bill further clarify the use of the initials M.D. In addition to graduates of an approved medical school while enrolled in post graduate training in California, a graduate of an approved medical school who has not had their license revoked or suspended may use the initials M.D. as long as they do not represent themselves as a physician who is entitled to practice medicine, do not engage in any of the acts prohibited by Section 2060. All medical schools are in support of this provision.

This bill was amended July 13, 2009 to direct the Office of State Audits and Evaluations within the Department of Finance to perform a review of the Board's financial status instead of the Bureau of State Audits (BSA). The Office of State Audits and Evaluations must make the results of its review available by June 1, 2012. The funding for the review will come from the existing resources of the Office of State Audits and Evaluations within the Department of Finance.

IMPLEMENTATION:

- Newsletter Article
- Notify Board Staff
- Licensing staff to develop requirements, policies and procedures with legal staff, to be in effect by January 1, 2010, for the issuance of limited licenses.
- Notify MBC budget staff of changes to the fee cap in order to evaluate the need and timing for any changes in fees.
- Fund condition projections to be revised using the four-month reserve maximum for January 2010 and ongoing.
- Notify medical schools, hospitals, and training programs of changes to the use of the initials M.D. by January 1, 2010.
- Update Board's website as necessary.

Assembly Bill No. 501

CHAPTER 400

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

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 501, Emmerson. Physicians and surgeons.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law makes it a misdemeanor for a person who is not licensed as a physician and surgeon under the act to use certain words, letters, and phrases or any other terms that imply that he or she is authorized to practice medicine as a physician and surgeon.

This bill would authorize certain persons who are not licensed as physicians and surgeons under the act to use the words "doctor" or "physician," the letters or prefix "Dr.," or the initials "M.D.," as specified.

Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes a licensee who demonstrates that he or she is unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician. Existing law authorizes the board to commence disciplinary actions relating to physicians and surgeons including, but not limited to, unprofessional conduct, as defined, and to issue letters of reprimand, and suspend and revoke licenses.

This bill would authorize an applicant for a license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license fee and signs an agreement agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board. The bill would make any person who knowingly provides false information in this agreement subject to any sanctions available to the board. The bill would authorize the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license.

Under existing law, licensees of the board are required to pay licensure fees, including an initial licensing fee of $790 and a biennial renewal fee

of $790. Existing law authorizes the board to increase those fees in certain circumstances and states the intent of the Legislature that, in setting these fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board equal to 2 months' operating expenditures.

This bill would require those fees to be fixed by the board at a maximum of $790, while retaining the authority of the board to raise those fees in certain circumstances. The bill would state the intent of the Legislature that, in setting those fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board in an amount not less than 2 nor more than 4 months' operating expenditures. The bill would also require the Office of State Audits and Evaluations within the Department of Finance to commence a preliminary review of the board's financial status by January 1, 2012, and to make the results of that review available upon request by June 1, 2012, as specified.

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

SECTION 1. Section 2054 of the Business and Professions Code is amended to read:

2054. (a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor.

(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric medicine may use the phrases "doctor of podiatric medicine," "doctor of podiatry," and "podiatric doctor," or the initials "D.P.M.," and shall not be in violation of subdivision (a).

(c) Notwithstanding subdivision (a), any of the following persons may use the words "doctor" or "physician," the letters or prefix "Dr.," or the initials "M.D.":

(1) A graduate of a medical school approved or recognized by the board while enrolled in a postgraduate training program approved by the board.

(2) A graduate of a medical school who does not have a certificate as a physician and surgeon under this chapter if he or she meets all of the following requirements:

(A) If issued a license to practice medicine in another jurisdiction, has not had that license revoked or suspended by any jurisdiction.

(B) Does not otherwise hold himself or herself out as a physician and surgeon entitled to practice medicine in this state except to the extent authorized by this chapter.

(C) Does not engage in any of the acts prohibited by Section 2060.

(3) A person authorized to practice medicine under Section 2111 or 2113 subject to the limitations set forth in those sections.

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

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

(1) Pays the initial license fee.

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

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

(c) Any person who knowingly provides false information in the agreement submitted pursuant to subdivision (a) shall be subject to any sanctions available to the board.

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

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

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

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

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any, in an amount fixed by the board consistent with this section. The initial license fee shall not exceed seven hundred ninety dollars ($790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

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

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

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

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

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

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

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

(i) Not later than January 1, 2012, the Office of State Audits and Evaluations within the Department of Finance shall commence a preliminary review of the board's financial status, including, but not limited to, its projections related to expenses, revenues, and reserves, and the impact of the loan from the Contingent Fund of the Medical Board of California to the General Fund made pursuant to the Budget Act of 2008. The office shall make the results of this review available upon request by June 1, 2012. This review shall be funded from the existing resources of the office during the 2011–12 fiscal year.

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AB 1070

IMPLEMENTATION of AB 1070 – Enforcement Enhancements

Implementation Item	Completed By	Date to be Completed
Business and Professions Code Sections		
801.01 – Finds and declares the importance of the required reporting and clarifies the filing requirements for self insured entities (UC system, Kaiser, county hospitals, sheriff departments).	Enforcement	1/31/10
	Enforcement	1/1/10
	Enforcement	1/15/10
804.5 – Recognizes that various entities are implementing risk management programs in the interest of early intervention to address known complications and other unanticipated events. Prohibits these programs from including provisions that prohibit patients from contacting or cooperating with the Board or from filing or withdrawing a complaint.	Enforcement to inform investigators via supervisor meeting on 1/20/10.	1/20/10
2006 – Extends the sunset date of the vertical enforcement and prosecution model to June 1, 2013.	Enforcement	No action needed
2008 – Allows the Board president to sit on a disciplinary panel when the Board does not have a full complement of members.	Enforcement	1/1/10
2225.5 – Requires all medical records requested by the Board to be certified.	Enforcement	No action needed
2227 – Allows an administrative law judge to recommend that a licensee be issued a public reprimand that includes additional requirements	Enforcement	No action needed

for education and training.		
2425.3 – Requires licensees to report to the Board information regarding any specialty board certifications held and his or her practice status, both upon renewal and initial licensure.	Enforcement	No action needed
Government Code Sections		
12925, 12925.5, 12529.6, 12529.7 – Extends the sunset date of the vertical enforcement and prosecution model to January 1, 2013.		
- Adds to the provisions relating to the vertical enforcement and prosecution model, a requirement that the Board establish and implement a plan to assist in team building between the Board's staff and the Health Quality Enforcement Section of the Department of Justice. This was a recommendation of the 2009 evaluation report. Requires a new evaluation report by March 1, 2012.	OST to develop contract.	4/1/10
	Enforcement	7/1/11

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1070
Author:	Hill
Chapter:	#505
Subject:	Enforcement Enhancements: reporting, public reprimand
Sponsor:	Medical Board of California
Board Position:	Sponsor/Support

DESCRIPTION OF LEGISLATION:

This bill is the vehicle carrying enforcement enhancements for the Medical Board (Board). This bill finds and declares the importance of the required reporting under Business and Professions Code section 801.01 and makes various technical changes to this section to enhance the Board's ability to effectively protect consumers.

This bill would allow the Board President to sit on a disciplinary panel when the Board does not have a full complement of members. This bill would require all medical records requested by the Board to be certified.

This bill would allow an administrative law judge to recommend that a licensee be issued a public reprimand that includes additional requirements for education and training.

This bill would require all licensees to report to the Board information regarding any specialty board certifications held and his or her practice status. Licensees would be allowed to report his or her cultural background and foreign language proficiencies. Reporting would occur both at the time of renewal or upon initial licensure.

This bill extends the sunset date of the vertical enforcement and prosecution model from July 1, 2010 to July 1, 2012. This bill also requires the Board to establish and implement a plan to assist in team building between the Board's staff and the Health Quality Enforcement Section of the Department of Justice.

IMPLEMENTATION:

- Newsletter Article
- Notify Board Staff
- Notify Discipline Coordination Staff within the Enforcement division to include the Board President, effective January 1, 2010, in disciplinary panels as needed.
- Work with Enforcement staff on new procedures, to be in place by January 1, 2010, for requiring certified medical records.

- Notify Enforcement staff and Administrative Law Judges of changes to the allowable recommendations for education and training to be included in public reprimands.
- Work with Enforcement staff on any necessary updates to the Disciplinary Guidelines, to be complete by January 1, 2010.
- Work with Licensing Staff to develop the method by which the information regarding licensees' specialty board certifications and practice status will be requested upon license issuance.
- Work with ISB staff to update website and online licensing survey system to reflect new reporting requirements.
- Work with Enforcement Staff to contract with a facilitator to assist in developing a team building plan between the Board's Investigative staff and Deputy Attorney Generals in the Health Quality Enforcement Section of the Department of Justice.

Assembly Bill No. 1070

CHAPTER 505

An act to amend Sections 801.01, 2006, 2008, 2225.5, 2227, and 2425.3 of, and to add Section 804.5 to, the Business and Professions Code, and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code, relating to healing arts.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, Hill. Healing arts.

(1) Existing law provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California, physicians and surgeons by the Medical Board of California (Medical Board), and podiatrists by the California Board of Podiatric Medicine. Existing law requires those licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report specified settlements, arbitration awards, or civil judgments to the licensee's board if based on the licensee's alleged negligence, error, or omission in practice or his or her rendering of unauthorized professional services.

This bill would specify that the reporting requirements apply to the University of California, as specified. With respect to a governmental agency required to submit a report, including a local governmental agency, the bill would require the agency to, prior to submitting a report, provide written notice of its intention to file a report to the affected licensee and provide the licensee with an opportunity to respond to the agency, as specified. By imposing new duties on local agencies, the bill would impose a state-mandated local program.

Existing law requires licensees and insurers required to make these reports to send a copy of the report to the claimant or his or her counsel and requires a claimant or his or her counsel who does not receive a copy of the report within a specified time period to make the report to the appropriate board. Existing law makes a failure of a licensee, claimant, or counsel to comply with these requirements a public offense punishable by a specified fine.

This bill would require any entity or person required to make a report to notify the claimant or his or her counsel that the report has been sent to the appropriate board and would require the claimant or his or her counsel to make the report if the notice is not received within a specified time.

The bill would also make a failure to substantially comply with any of the reporting requirements an infraction punishable by a specified fine. By

expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law requires these reports to include certain information, including a brief description of the facts of each claim, charge, or allegation, and the amount of the judgment or award and the date of its entry or service.

This bill would eliminate the requirement that this description be brief and would require the description to also include the role of each physician and surgeon or podiatrist in the care or professional services provided to the patient, as specified. The bill would also require the report to include a copy of the judgment or award.

(2) The Medical Practice Act provides for the regulation of physicians and surgeons by the Medical Board, and provides that the protection of the public is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions.

This bill would prohibit any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, from requiring that a patient waive his or her rights to contact or cooperate with the board, or to file a complaint with the board.

(3) Existing law authorizes the Medical Board to appoint panels from its members for the purposes of fulfilling specified obligations and prohibits the president of the board from serving as a member of a panel.

This bill would allow the president of the board to serve as a member of a panel if there is a vacancy in the membership of the board.

(4) Under existing law, a physician and surgeon or podiatrist who fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, is required to pay a civil penalty of $1,000 per day, as specified.

This bill would place a limit of $10,000 on those civil penalties and would make other related changes, including providing a definition of "certified medical records," as specified.

(5) Existing law prescribes the disciplinary action that may be taken against a physician and surgeon or podiatrist. Among other things, existing law authorizes the licensee to be publicly reprimanded.

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

(6) Existing law requires the Medical Board to request a licensed physician and surgeon to report, at the time of license renewal, any specialty board certification he or she holds, as specified. Existing law also authorizes a licensed physician and surgeon to report to the board, at the time of license renewal, information regarding his or her cultural background and foreign language proficiency.

This bill would instead require licensees to provide that information at the time of license renewal and immediately upon issuance of an initial license, except as specified.

Existing law requires a licensed physician and surgeon to also report, at the time of license renewal, his or her practice status, as specified.

This bill would also require that this information be provided immediately upon issuance of an initial license.

(7) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board and various other boards. Existing law simultaneously assigns a complaint received by the Medical Board to an investigator and a deputy attorney general, as specified. Existing law makes these provisions inoperative on July 1, 2010. Existing law also requires the Medical Board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this prosecution model by July 1, 2009.

This bill would extend the operation of those provisions until January 1, 2013. The bill would require the Medical Board to 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. The bill would also require the Medical Board to, in consultation with specified agencies, report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by March 1, 2012. The bill would make other related changes.

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

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

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

SECTION 1. Section 801.01 of the Business and Professions Code is amended to read:

801.01. The Legislature finds and declares that the filing of reports with the applicable state agencies required under this section is essential for the protection of the public. It is the intent of the Legislature that the reporting requirements set forth in this section be interpreted broadly in order to expand reporting obligations.

(a) A complete report shall be sent to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine, with respect to a licensee of the board as to the following:

(1) A settlement over thirty thousand dollars ($30,000) or arbitration award of any amount or a civil judgment of any amount, whether or not

vacated by a settlement after entry of the judgment, that was not reversed on appeal, of a claim or action for damages for death or personal injury caused by the licensee's alleged negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(2) A settlement over thirty thousand dollars ($30,000), if the settlement is based on the licensee's alleged negligence, error, or omission in practice, or on the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee.

(b) The report shall be sent by the following:

(1) The insurer providing professional liability insurance to the licensee.

(2) The licensee, or his or her counsel, if the licensee does not possess professional liability insurance.

(3) A state or local governmental agency that self-insures the licensee. For purposes of this section "state governmental agency" includes, but is not limited to, the University of California.

(c) The entity, person, or licensee obligated to report pursuant to subdivision (b) shall send the complete report if the judgment, settlement agreement, or arbitration award is entered against or paid by the employer of the licensee and not entered against or paid by the licensee. "Employer," as used in this paragraph, means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this paragraph shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

(d) The report shall be sent to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine, as appropriate, within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(e) The entity, person, or licensee required to report under subdivision (b) shall notify the claimant or his or her counsel, if he or she is represented by counsel, that the report has been sent to the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. If the claimant or his or her counsel has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties or the arbitration award was served on the parties or the date of entry of the civil judgment, the claimant or the claimant's counsel shall make the report to the appropriate board.

(f) Failure to substantially comply with this section is a public offense punishable by a fine of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000).

(g) (1) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may develop a prescribed form for the report.

(2) The report shall be deemed complete only if it includes the following information:

(A) The name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not the person received an award under the settlement, arbitration, or judgment.

(B) The name and last known business and residential address of every licensee who was alleged to have acted improperly, whether or not that person was a named defendant in the action and whether or not that person was required to pay any damages pursuant to the settlement, arbitration award, or judgment.

(C) The name, address, and principal place of business of every insurer providing professional liability insurance to any person described in subparagraph (B), and the insured's policy number.

(D) The name of the court in which the action or any part of the action was filed, and the date of filing and case number of each action.

(E) A description or summary of the facts of each claim, charge, or allegation, including the date of occurrence and the licensee's role in the care or professional services provided to the patient with respect to those services at issue in the claim or action.

(F) The name and last known business address of each attorney who represented a party in the settlement, arbitration, or civil action, including the name of the client he or she represented.

(G) The amount of the judgment, the date of its entry, and a copy of the judgment; the amount of the arbitration award, the date of its service on the parties, and a copy of the award document; or the amount of the settlement and the date it was reduced to writing and signed by all parties. If an otherwise reportable settlement is entered into after a reportable judgment or arbitration award is issued, the report shall include both the settlement and a copy of the judgment or award.

(H) The specialty or subspecialty of the licensee who was the subject of the claim or action.

(I) Any other information the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine may, by regulation, require.

(3) Every professional liability insurer, self-insured governmental agency, or licensee or his or her counsel that makes a report under this section and has received a copy of any written or electronic patient medical or hospital records prepared by the treating physician and surgeon or podiatrist, or the staff of the treating physician and surgeon, podiatrist, or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the report, or a copy of any deposition in the matter

that discusses the care, treatment, or medical condition of the person, shall include with the report, copies of the records and depositions, subject to reasonable costs to be paid by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine. If confidentiality is required by court order and, as a result, the reporter is unable to provide the records and depositions, documentation to that effect shall accompany the original report. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification of any protective order to permit disclosure to the board. A professional liability insurer, self-insured governmental agency, or licensee or his or her counsel shall maintain the records and depositions referred to in this paragraph for at least one year from the date of filing of the report required by this section.

(h) If the board, within 60 days of its receipt of a report filed under this section, notifies a person named in the report, that person shall maintain for the period of three years from the date of filing of the report any records he or she has as to the matter in question and shall make those records available upon request to the board to which the report was sent.

(i) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

(j) (1) A state or local governmental agency that self-insures licensees shall, prior to sending a report pursuant to this section, do all of the following with respect to each licensee who will be identified in the report:

(A) Before deciding that a licensee will be identified, provide written notice to the licensee that the agency intends to submit a report in which the licensee may be identified, based on his or her role in the care or professional services provided to the patient that were at issue in the claim or action. This notice shall describe the reasons for notifying the licensee. The agency shall include with this notice a reasonable opportunity for the licensee to review a copy of records to be used by the agency in deciding whether to identify the licensee in the report.

(B) Provide the licensee with a reasonable opportunity to provide a written response to the agency and written materials in support of the licensee's position. If the licensee is identified in the report, the agency shall include this response and materials in the report submitted to a board under this section if requested by the licensee.

(C) At least 10 days prior to the expiration of the 30-day reporting requirement under subdivision (d), provide the licensee with the opportunity to present arguments to the body that will make the final decision or to that body's designee. The body shall review the care or professional services provided to the patient with respect to those services at issue in the claim or action and determine the licensee or licensees to be identified in the report and the amount of the settlement to be apportioned to the licensee.

(2) Nothing in this subdivision shall be construed to modify either the content of a report required under this section or the timeframe for filing that report.

(k) For purposes of this section, "licensee" means a licensee of the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

SEC. 2. Section 804.5 is added to the Business and Professions Code, to read:

804.5. The Legislature recognizes that various types of entities are creating, implementing, and maintaining patient safety and risk management programs that encourage early intervention in order to address known complications and other unanticipated events requiring medical care. The Legislature recognizes that some entities even provide financial assistance to individual patients to help them address these unforeseen health care concerns. It is the intent of the Legislature, however, that such financial assistance not limit a patient's interaction with, or his or her rights before, the Medical Board of California.

Any entity that provides early intervention, patient safety, or risk management programs to patients, or contracts for those programs for patients, shall not include, as part of any of those programs or contracts, any of the following:

(a) A provision that prohibits a patient or patients from contacting or cooperating with the board.

(b) A provision that prohibits a patient or patients from filing a complaint with the board.

(c) A provision that requires a patient or patients to withdraw a complaint that has been filed with the board.

SEC. 3. 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, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 2008 of the Business and Professions Code is amended to read:

2008. The board may appoint panels from its members for the purpose of fulfilling the obligations established in subdivision (c) of Section 2004. Any panel appointed under this section shall at no time be comprised of less than four members and the number of public members assigned to the panel shall not exceed the number of licensed physician and surgeon members assigned to the panel. The president of the board shall not be a member of any panel unless there is a vacancy in the membership of the board. Each panel shall annually elect a chair and a vice chair.

SEC. 5. Section 2225.5 of the Business and Professions Code is amended to read:

2225.5. (a) (1) A licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for

each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Public Health and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

SEC. 6. Section 2227 of the Business and Professions Code is amended to read:

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

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

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

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

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

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

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

SEC. 7. Section 2425.3 of the Business and Professions Code is amended to read:

2425.3. (a) A licensed physician and surgeon shall report to the board, immediately upon issuance of an initial license and at the time of license renewal, any specialty board certification he or she holds that is issued by a member board of the American Board of Medical Specialties or approved by the Medical Board of California.

(b) A licensed physician and surgeon shall also report to the board, immediately upon issuance of an initial license and at the time of license renewal, his or her practice status, designated as one of the following:

(1) Full-time practice in California.

(2) Full-time practice outside of California.

(3) Part-time practice in California.

(4) Medical administrative employment that does not include direct patient care.

(5) Retired.

(6) Other practice status, as may be further defined by the board.

(c) (1) A licensed physician and surgeon shall report to the board, immediately upon issuance of an initial license and at the time of license renewal, and the board shall collect, information regarding his or her cultural background and foreign language proficiency. The board shall provide an option for a licensed physician and surgeon to decline to state in the report his or her cultural background and foreign language proficiency.

(2) Information collected pursuant to this subdivision shall be aggregated on an annual basis based on categories utilized by the board in the collection of the data, and shall be aggregated into both statewide totals and ZIP code of primary practice location totals.

(3) Aggregated information under this subdivision shall be compiled annually and reported on the board's Internet Web site on or before October 1 of each year.

(d) The information collected pursuant to subdivisions (a) and (b) may also be placed on the board's Internet Web site.

SEC. 8. Section 12529 of the Government Code, as amended by Section 19 of Chapter 33 of the Statutes of 2008, 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, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 9. Section 12529 of the Government Code, as amended by Section 20 of Chapter 33 of the Statutes of 2008, 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.

SEC. 10. Section 12529.5 of the Government Code, as amended by Section 21 of Chapter 33 of the Statutes of 2008, 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, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 11. Section 12529.5 of the Government Code, as amended by Section 22 of Chapter 33 of the Statutes of 2008, 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.

SEC. 12. 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

SB 132

IMPLEMENTATION of SB 132 POLYSOMNOGRAPHIC TECHNOLOGISTS

Implementation Item	Completed By	Date to be Completed
Within 1-3 months		
Advertise AGPA position to implement program.	Licensing	11/24/09
Hire AGPA to begin implementing program.	Licensing	1/15/2010
Identify the national organizations currently certifying this staff.	AGPA	2/15/2010
Identify scope of practice for each registrant category.	AGPA	3/1/2010
Identify applicable experience in lieu of passage of a national certifying examination.	AGPA	3/1/2010
Identify projected number of applicants for each registrant category.	AGPA	3/1/2010
Identify modifications needed to ATS system to accommodate the three new registrant categories.	ISB to work with DCA on database.	2/1/2010
Reconvene meeting with staff regarding discussion of policies and procedures.	Legislative Analyst	2/1/2010
Create certificates and wallet cards for the three categories.	AGPA/ISB	6/1/2010
Expand DOJ contracted background check data to include further detail reflecting if a person is free on bail or on his own recognizance pending trial or appeal.	AGPA	6/1/2010

Create a new account code with budget staff.	Budget Analyst	3/1/2010
Work with ISB on CAS and ATS modifications.	ISB	3/1/2010
Establish criteria for educational certification (within three years).	AGPA	3/1/2010
Hold meetings with interested parties.	AGPA	4/1/2010
Prepare regulatory package for approval by the Board.	AGPA	7/15/2010
Prepare language for pamphlets.	AGPA	9/1/2010
Lay groundwork for outreach activities including adding new categories to the Board website and links from the website to the application.	AGPA	7/1/2010
Draft new forms and application.	AGPA/ISB	7/1/2010
Board website and links from the website to the application.	AGPA/ISB	7/1/1020
Within 9-12 months		
Ensure DOJ is aware of new registrant category.	AGPA	8/1/2010
Ensure contract is in place with GLOBAL for registrant certificates and wallet cards.	AGPA	8/1/2010
Test ATS system for new registrant categories.	AGPA/ISB	8/1/2010

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 132
Author: Denham
Chapter: #635
Subject: Polysomnographic Technologists (urgent)
Sponsor: California Sleep Society
Board Position: Support

DESCRIPTION OF LEGISLATION:

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

IMPLEMENTATION:

- Newsletter article
- Notify staff
- Budget/personnel draft BCP, duty statement, and submit as appropriate to initiate program.
- Work with Licensing staff on the following timeline:
  - Within 1-3 months:
    1. Advertise and hire AGPA to implement program.
    2. Identify the national organizations currently certifying this staff.
    3. Identify scope of practice for each registrant category.
    4. Identify applicable experience in lieu of passage of a national certifying examination.
    5. Identify projected number of applicants for each registrant category.
    6. Identify modifications needed to ATS system to accommodate the three new registrant categories.
  - Within 3-6 months:
    1. Augment EDD contract services to create certificates and wallet cards for the three categories.
    2. Expand DOJ contracted background check data to include further detail reflecting if a person is free on bail or on his own recognizance pending trial or appeal.
    3. Create a new account code with budget staff.
    4. Work with ISB on CAS and ATS modifications.
    5. Establish criteria for educational certification (within three years).
    6. Hold meetings with interested parties.

- Within 6-9 months:
  1. Prepare regulatory package for approval by the Board.
  2. Prepare language for pamphlets.
  3. Lay groundwork for outreach activities including adding new categories to the Board website and links from the website to the application.
- Within 9-12 months:
  1. Ensure DOJ is aware of new registrant category.
  2. Ensure contract is in place with EDD for registrant certificates and wallet cards.
  3. Test ATS system for new registrant categories.

Senate Bill No. 132

CHAPTER 635

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

[Approved by Governor October 23, 2009. Filed with Secretary of State October 23, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

This bill would require the Medical Board of California to adopt regulations within one year after the effective date of this act relative to the qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, with a specified exception for that examination requirement for a 3-year period. The bill would prohibit a person from using the title "certified polysomnographic technologist" or engaging in the practice of polysomnography unless he or she undergoes a Department of Justice background check, as specified, is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. The bill would define polysomnography to mean the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board, within one year after the effective date of this act, to adopt regulations related to the employment of polysomnographic technicians and trainees.

This bill would require polysomnographic technologists to apply to and register with the Medical Board of California for fees to be fixed by the

board at no more than $100 each, and to renew their registration biennially for a fee of no more than $150. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, thereby making an appropriation. The bill would further set forth specified disciplinary standards and procedures.

The bill would specify that these provisions do not apply to diagnostic electroencephalograms conducted in accordance with the guidelines of the American Clinical Neurophysiology Society.

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

Appropriation: yes.

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

SECTION 1. Chapter 7.8 (commencing with Section 3575) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

3575. (a) For the purposes of this chapter, the following definitions shall apply:

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

(2) "Polysomnography" means the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders. Polysomnography shall include, but not be limited to, the process of analysis, monitoring, and recording of physiologic data during sleep and wakefulness to assist in the treatment of disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep activities. Polysomnography shall also include, but not be limited to, the therapeutic and diagnostic use of oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bilevel modalities, adaptive servo-ventilation, and maintenance of nasal and oral airways that do not extend into the trachea.

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

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

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

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

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

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

(1) The board shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all polysomnographic technologist, technician, or trainee certification candidates for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

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

(3) The Department of Justice shall provide state and federal responses to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

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

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

(d) An individual may use the title "certified polysomnographic technologist" and may engage in the practice of polysomnography only under the following circumstances:

(1) He or she is registered with the board and has successfully undergone a state and federal level criminal offender record information search pursuant to subdivision (c).

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

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

(e) Within one year after the effective date of this chapter, the board shall adopt regulations that establish the means and circumstances in which a licensed physician and surgeon may employ polysomnographic technicians

and polysomnographic trainees. The board may also adopt regulations specifying the scope of services that may be provided by a polysomnographic technician or polysomnographic trainee. Any regulation adopted pursuant to this section may specify the level of supervision that polysomnographic technicians and trainees are required to have when working under the supervision of a certified polysomnographic technologist or licensed health care professional.

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

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

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

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

(2) An act of dishonesty or fraud.

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

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

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

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

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

(c) The registration shall expire after two years. The registration may be renewed biennially at a fee which shall be paid into the Contingent Fund of the Medical Board of California to be fixed by the board at a sum not in excess of one hundred fifty dollars ($150).

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

3578. Nothing in this chapter shall prohibit a clinic or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code from employing a certified polysomnographic technologist.

3579. Nothing in this chapter shall apply to diagnostic electroencephalograms conducted in accordance with the guidelines of the American Clinical Neurophysiology Society.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the health and safety of the general public by providing needed qualifications for, and oversight of, the practice of polysomnography at the earliest possible time, it is necessary that this act take effect immediately.

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Other Tracker from 2009

Other Trackers from 2009

AB 175 **(Galgiani, Chapter 419) Medical telemedicine: optometrists**
This bill allows optometrists to perform telemedicine within their scope of practice. This bill specifies that in the case that a reviewing optometrist identifies a disease or condition requiring consultation or referral, that consultation or referral must be with an appropriate physician or ophthalmologist.
Implementation by Board Staff:
- *Newsletter Article*

AB 356 **(Fletcher, Chapter 434) Radiologic technology: fluoroscopy**
This bill allows physician assistants to take the appropriate licensing exams for fluoroscopy licentiate permits issued by the Radiologic Health Branch of the California Department of Public Health (DPH). Physician Assistants thus are authorized to perform these functions as long as they pass the required exam, but are not required to obtain an RT certification.
Implementation by Board Staff: None

AB 1071 **(Emmerson, Chapter 270) Medical Board of California: Disciplinary Actions**
This bill extends the sunset dates of the Medical Board to January 1, 2013.
Implementation by Board Staff:
- *Newsletter Article*

AB 1116 **(Carter, Chapter 509) Medical Board of California: Disciplinary procedures: Applicants**
This bill enacts the Donda West Law. This bill requires that physicians or dentists conduct a physical examination on patients prior to performing elective cosmetic surgery, including liposuction. The physical examination may be performed by a licensed physician, nurse practitioner, physician assistant, or dentists (who holds a surgical permit) and the exam must include a complete medical history. It may be performed in advance of surgery but by no more than 30 days.
Implementation by Board Staff:
- *Newsletter Article*

SB 470 **(Corbett, Chapter 590) Prescriptions**
This bill requires every prescription to include on the label, the purpose for which the drug is prescribed, if it is requested by the patient, thus physicians should include this information, upon request, on prescriptions written for patients.
Implementation by Board Staff:
- *Newsletter Article*

SB 819 **(B&P Comm., Chapter 308) Omnibus**

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. The provisions relating to the Medical Board are as follows:

- 2089.5 – Specifying the type of residency programs; and technical changes.
- 2096 – Specifying the type of residency programs; and technical changes.
- 2102 – Since the Federation of State Medical Boards (FSMB) will not test anyone without a state license, this eliminates this option and makes technical changes.
- 2107 – Technical changes.
- 2135 – Technical changes as follows:
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency among all licensing pathways.
- 2168.4 & 2169 – Making the renewal requirements for the special faculty permit the same as those for the physician's certificate renewal.
- 2172 – Repeal; board no longer administers examinations.
- 2173 – Repeal; board no longer administers examinations.
- 2174 – Repeal; board no longer administers examinations.
- 2175 – Requiring the Board to maintain examination records until June 1, 2070.
- 2221 – Making the process by which an applicant's probationary certificate can be modified or terminated consistent with the process that a licensee on probation must follow to modify or terminate probation.
- 2307 – Specify that recommendations for reinstatement can come from physicians licensed in any state; and technical changes.
- 2335 – Re-amending section from AB 253 (2007), the Board's restructuring bill, due to subsequent section amendments in a bill that was signed afterward. This section was included in a bill that was

signed after ours, which did not include the amendments we were requesting. Our amendments add 10 days to the 90-day period by which provisions and proposed decisions must be issued by the Board. This provision will make the requirements consistent with the Administrative Procedures Act.

Implementation by Board Staff:

- *Newsletter Article*
- *Work with Licensing and Enforcement staff on technical changes.*

SB 821 **(B&P Comm., Chapter 307) Omnibus**

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. The provisions relating to the Medical Board are as follows:

- **805(a)(2)** – Add the category of Special Faculty Permit holders to the definition of "Licentiate" so that they are subject to the same reporting requirements as all other licensees.

- **821.5** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program. All reports now come to the Board under B&P Code section 805.

- **821.6** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.

Implementation by Board Staff:

- *Newsletter Article*
- *Work with Licensing staff on new licentiate category*

2010 Legislative Proposals

2010 Legislative Proposals

Medical Board Sponsored:

Enforcement:

1. Representation of Board obtained Expert Witness for enforcement cases
2. Up front Specialty Reviews - Enforcement Committee
3 Default Decisions - DCA Enforcement Bill
4. Posting PC 23 Orders - possible DCA or Omnibus
5 Omnibus - various sections

Licensing:

1. Licensing Committee Proposal (see Licensing Committee materials)
2. Midwifery Advisory Council Proposal (technical clean up of reporting language)
3. Licensing Enhancements - staff work during 2010, proposals for 2011
4. Omnibus - various sections

Overall:

1. Malpractice Coverage for Volunteer Physicians - Access to Care Committee
2. Biennial Program Audit of Board - Discussions w/Senate B&P related to Sunset Review (page 1 contains language from State Bar law, B&P Code 6145(b))

Other Concepts from Other Sources (Information or Action)

1. Physician Assistant Statue of Limitations (pages 2-3)
2. Physician Assistant Sign and Attest per Delegation of Services Agreement (pages 4-5)
3. Letter of Request from Assembly Member Carter to Sponsor New version of AB 252 (pages 6-13)
4. SB 1441 Task Force Recommendations - see agenda item #11
5. DCA sponsored Enforcement Enhancements (pages 14-19)
6. Peer Review - DCA to convene stakeholders (page 20)
7. Radiologist Assistant Practice Act under the Medical Board (page 21)
8. Other

Business & Professions Code 6145 related to the California State Bar
6145 (b) relates to performance audits

6145. (a) The board shall engage the services of an independent national or regional public accounting firm with at least five years of experience in governmental auditing for an audit of its financial statement for each fiscal year. The financial statement shall be promptly certified under oath by the Treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary. The audit shall examine the receipts and expenditures of the State Bar and the State Bar sections to ensure that the receipts of the sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5, and that the receipts of the sections are applied only to the work of the sections. The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity. In selecting the accounting firm, the board shall consider the value of continuity, along with the risk that continued long-term engagements of an accounting firm may affect the independence of that firm.

(b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary. Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, to December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary. For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

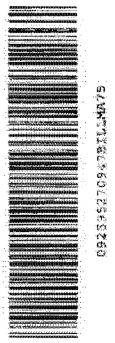
General Subject: Healing arts: physician assistants.

Under existing law regarding administrative adjudication, a hearing to determine whether a license granted to a physician assistant shall be revoked, suspended, limited, or conditioned is initiated by filing an accusation. An accusation is a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which a licensee is charged. The Physician Assistant Committee of the Medical Board of California enforces provisions relating to physician assistant licensure.

This bill would require an accusation against a physician assistant to be filed against the physician assistant within 3 years after the committee discovers the act or omission alleged as the ground for disciplinary action, or within 7 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This statute of limitation would not apply to an accusation based on the procurement of a license by fraud or misrepresentation, or upon an allegation of

unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee upon proof of specified facts. The bill would toll the limitations period in certain circumstances and would also establish a different time limit for an accusation alleging sexual misconduct by a licensee.

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



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Physician assistants.

Existing law, the Physician Assistant Practice Act, is administered by the Physician Assistant Committee of the Medical Board of California and provides for the licensure and regulation of physician assistants. Existing law provides that a physician assistant may perform the medical services that are set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon. Existing law requires a physician assistant and his or her supervising physician and surgeon to establish written guidelines for the adequate supervision of the physician assistant. Existing law provides that those requirements may be satisfied by adopting protocols for some or all of the tasks performed by the physician assistant, as specified.

This bill would provide that a physician assistant may sign and attest to any certificate, card, form, or other required documentation that the physician assistant's

supervising physician or medical group may sign, provided that it is within the physician assistant's scope of practice and is consistent with the terms of the physician assistant's delegation of services agreement, as defined. The bill would require a state agency or department to accept those attestations in lieu of the supervising physician's attestation. The bill would further provide that a delegation of services agreement may authorize a physician assistant to order durable medical equipment, certify disability, as specified, and make arrangements with regard to home health services or personal care services. The bill would make conforming changes to related provisions and would make a statement of legislative intent.

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

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Assembly
California Legislature

WILMER AMINA CARTER
ASSEMBLYMEMBER, SIXTY-SECOND DISTRICT
CHAIR, ASSEMBLY SUBCOMMITTEE NO. 2 ON EDUCATION FINANCE

COMMITTEES
BUDGET
EDUCATION
HEALTH
INSURANCE
UTILITIES AND COMMERCE

SELECT COMMITTEES
CHAIR, INLAND EMPIRE TRANSPORTATION ISSUES
CENSUS
DOMESTIC VIOLENCE
RENEWABLE ENERGY
SCHOOLS AND COMMUNITY

SUBCOMMITTEES
JOINT LEGISLATIVE BUDGET

COMMISSIONS
CALIFORNIA WORKFORCE INVESTMENT BOARD
EDUCATION COMMISSION OF THE STATES
CURRICULUM COMMISSION

14 January 2010

VIA FACSIMILE (916) 263-2387
FOLLOWED BY MAIL

Ms. Barbara Yaroslavsky, President
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

RE: Request for Medical Board of California Sponsorship for New Version of AB 252 (Carter) - Patient Safety in Cosmetic Medical Procedures

Dear Ms. Yaroslavsky and Members of the Medical Board:

The Medical Board of California has been steadfast in its support of AB 252 (and its predecessor, AB 2398) to help deter the casual offering of elective cosmetic medical procedures in California, and to stiffen penalties for the unlawful corporate practice of medicine common to settings offering and rendering medical procedures characterized as "cosmetic" in nature. Elective cosmetic medical procedures or treatments are those performed solely to alter or reshape normal structures of the body solely in order to improve appearance.

I intend to author a new version of the bill, a draft copy of which is enclosed for your review, as a complementary and necessary enforcement match to my AB 1116, which was signed into law this year by the Governor with the support of the Medical Board. I write to request support from the Board, matching its earlier positions, and also write to respectfully request that the Board adopt a position of "sponsorship" of the measure.

Both AB 252 and the earlier AB 2398 - with Board support - received overwhelming votes of bipartisan support in both houses of the Legislature. I believe the same will be true, this year, and will be working to ensure enactment of this bill focusing exclusively on the unlawful business violations of the Medical Practice Act.

The New Bill

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

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

Medi-Spa Practices in California Warrant Legislative Action

I remain alarmed at the "commodity" mentality that has developed in California regarding the performance of medical procedures that happen to be "cosmetic," and the false sense of security generated by pleasant surroundings and unqualified or poorly supervised personnel dressed in medical-style white coats. Most alarming to me as a policymaker, and as a consumer, is the disregard in these phony settings for basic patient evaluation and the need for a medical determination that treatment is appropriate simply because certain medical procedures that are cosmetic in nature are asserted to be "minor" or "noninvasive," or may be regarded by some as the less-than-serious rendering of medical care.

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

> "***Medical spas are marketing vehicles for medical procedures. If they are offering medical procedures, they must be owned by physicians. The use of the term 'medical spa' is for advertising purposes to make the procedures seem more appealing. In reality, however, it is the practice of medicine***.
>
> *The Medical Board, however, is concerned when medicine is being marketed like a pedicure, and consumers are led to believe that being injected, lasered, and resurfaced requires no more thought than changing hair color.*
>
> Medical treatments should be performed by medical professionals only. There is risk to any procedure, however minor, and consumers should be aware of those risks. While it is illegal for unlicensed personnel to provide these types of treatments, consumers should be aware that some persons and firms are operating illegally. Cosmetologists, while licensed professionals and highly qualified in superficial treatments such as facials and microdermabrasion, may never inject the skin, use lasers, or perform medical-level dermabrasion or skin peels. Those types of treatments must be performed by qualified medical personnel. In California, that means a physician, or a registered nurse or physician assistant under the supervision of a physician." (Emphases added.)

In the spirit of the Board's statements, I write to respectfully request that the Medical Board renew its full advocacy partnership with me in this effort, and vote both to support the new bill, and become a sponsor of the measure.

If you should have any questions as it relates to my request, please do not hesitate to contact my office.

Sincerely,

Wilmer Amina Carter

Wilmer Amina Carter
Assembly Member – District 62

Encl.

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

Ms. Barbara Johnston, Executive Officer
Medical Board of California

BILL NUMBER: AB XXXX

BILL TEXT

INTRODUCED BY Assembly Member Carter

_____, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB XXXX, Carter. Practice of medicine: cosmetic surgery: employment of physicians and surgeons.

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

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

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

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

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

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 other artificial legal entity, 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 subdivisions (a) of 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 only be provided by the holder of a valid physician's and surgeon's certificate is guilty of violating paragraph (6) of subdivision (a) of Section 550 of the Penal Code.

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

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

BILL NUMBER: AB 252
VETOED DATE: 08/05/2009

To the Members of the California State Assembly:

I am returning Assembly Bill 252 without my signature.

This bill is duplicative of existing law and unnecessary. The Medical Board of California already has significant legal authority to take action against physicians that violate the Medical Practice Act.

For this reason, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

This bill would authorize the revocation of the license of a physician and surgeon who practices medicine with, or serves or is employed as the medical director of, a business organization that provides outpatient elective cosmetic medical procedures or treatments, as defined, knowing that the organization is owned or operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists. The bill would also make a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is owned and operated in violation of the prohibition, and that contracts with or employs a physician and surgeon to facilitate the offer or provision of those procedures or treatments that may only be provided by a licensed physician and surgeon, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

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

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

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

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 other artificial legal entity, 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 subdivisions (a) and (b) of 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) In addition to any other remedies for a violation of Section 2400 involving any other types of medical procedures, a physician and surgeon who practices medicine with a business organization that offers to provide, or provides, outpatient elective cosmetic medical procedures or treatments, knowing that the organization is owned or operated in violation of Section 2400, may have his or her license to practice revoked. A physician and surgeon who contracts to serve as, or otherwise allows himself or herself to be employed as, the medical director of a business organization that he or she does not own and that offers to provide or provides outpatient elective cosmetic medical procedures or treatments that may only be provided by the holder of a valid physician's and surgeon's certificate under this chapter shall be deemed to have knowledge that the business organization is in violation of Section 2400.

(b) A business organization that offers to provide, or provides, outpatient elective cosmetic medical procedures or treatments, that is owned or operated in violation of Section 2400, and that contracts with, or otherwise employs, a physician and surgeon to facilitate its offers to provide, or the provision of, outpatient elective cosmetic medical procedures or treatments that may only

be provided by the holder of a valid physician's and surgeon's certificate is guilty of violating paragraph (6) of subdivision (a) of Section 550 of the Penal Code.

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

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

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

CONSUMER PROTECTION ENFORCEMENT INITIATIVE

"A Systematic Solution to a Systemic Problem"

The Department of Consumer Affairs (DCA) is the umbrella agency that oversees 19 healing arts boards that protect and serve California consumers. The healing arts boards regulate a variety of professions from doctors and nurses to physical therapists and optometrists. These licensees are some of the best in the country and provide excellent care to Californians on a daily basis. However, when a licensee violates the laws that govern his or her profession, enforcement action must be taken to protect the public.

In recent years some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. In fact, some boards take an average of three years to investigate and prosecute these cases; this is an unacceptable timeframe that could put consumers' safety at risk.

DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on these cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas:

- Administrative Improvements
- Staffing and IT Resources
- Legislative Changes

Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months.

I. Administrative Improvements

During the review of the enforcement process, DCA worked with the boards to identify areas that could be improved administratively to better coordinate broad enforcement objectives, improve the services provided to the healing arts boards, and establish streamlined enforcement processes and procedures that can be used by all boards. The following are some of the efforts that emerged from those discussions:

"365 Project"
DCA's Division of Investigation (DOI) embarked on a project in 2009 to strategically focus on cases that were one year or older. DOI worked closely with boards to identify the cases upon which they should focus their resources. This project has produced impressive results, and in 2009 the DOI closed 50% more cases than the comparable period in 2008.

Delegation of Subpoena Authority
One of the initial administrative changes implemented by DCA was delegating subpoena authority to each executive officer as a tool to gather evidence and interview witnesses. DCA's Legal Office conducted subpoena training for board staff, and this authority has started being exercised by boards. We expect to see increased use of subpoenas as a result of this change, and boards will be able to pursue cases that they otherwise would not have pursued.

Process Improvement
DCA and the boards are working to identify best practices for a number of enforcement processes and procedures, such as complaint intake, handling of anonymous complaints, vote by email protocols, and adjudication procedures. This effort will take advantage of the most effective practices utilized by the various boards, and entities in other states, and will ultimately shave time off all aspects of the enforcement process.

Enforcement Academy
DCA's Strategic Organization, Leadership, & Individual Development Division is developing enhanced training programs for enforcement staff. The enforcement academy will teach investigators and other enforcement staff key skills used in complaint intake, investigation procedures, case management, database use, and other areas. Never before has DCA offered such a comprehensive enforcement training program. An initial training was offered in November 2009, and the full enforcement academy will begin its regular cycle in April 2010.

Deputy Director for Enforcement and Compliance
DCA established an executive level position that reports to the Director and is responsible for regularly examining each board's enforcement program to monitor enforcement performance and compliance with all applicable requirements. This position monitors performance measures so that boards' enforcement programs can be continuously assessed for improvement.

Performance Expectations with Other Agencies
DCA has been working with the Attorney General's Office and the Office of Administrative Hearings (OAH) to establish performance agreements that will expedite the prosecution of cases. DCA and the AG's Office are developing expectations for filing accusations, setting settlement conferences, and filing continuance requests. Further, DCA is working with OAH to establish timelines for setting cases for hearings, which, once implemented, could reduce a case timeline by months.

II. Enhancing Enforcement Resources

There are 36 licensing entities under the DCA (of which are 19 healing arts boards) and, with a few exceptions, all of these programs share the resources of the Department, from Division of Investigations (DOI), to Personnel to IT Support. While the healing arts boards fall under the umbrella of DCA they are separate semi-autonomous groups overseen by board members appointed by the Governor and the Legislature. Additionally, all of the licensing entities under DCA are special fund agencies funded exclusively through fees collected through licensees with no general fund support.

Enforcement Staff

DCA's review of the enforcement process identified a need for more focused staff resources in the areas of investigations and complaint intake. The majority of DCA's licensing entities share the resources of DCA's overburdened DOI. Annually, DOI's 48 investigative staff members receive over 1,300 cases, in topics ranging from nurses to repossessors to smog check stations. Having so many investigations performed by DOI has resulted in a number of problems, including loss of control over the investigation by the boards, a lack of investigators with expertise in specific licensing areas, and excessive caseloads. These problems have led to excessive turn-around times and growing backlogs. Through the 365 Project, the DOI has worked with boards to reduce the case backlog, but the current structure has revealed a need for more significant changes.

In order to increase accountability in the investigative process, DCA is working to provide boards with the authority to hire non-sworn investigators to be housed within each board. This will enhance boards' control over investigations, allow for more appropriate workload distribution, and enable investigators to develop expertise. Additionally, to coincide with process improvement efforts, some boards will increase complaint intake staff. DCA is seeking a total of approximately 140 new enforcement positions (full year equivalent) across all healing arts boards. The vast majority of these positions are investigators and investigative supervisors, and the remainder is mostly complaint intake staff. In addition to increasing staffing, DCA will ensure that staff are properly trained, monitored, and assessed so that cases are expedited as quickly as possible.

Because DCA's boards are special fund agencies, new positions will not place a drain on the General Fund and boards will pay for new staff with existing resources or with fee increases where necessary. The number of positions requested is a result of an individual assessment of each board, and assumes workload savings associated with DCA's current process improvement efforts. The Governor's Budget includes the initial phase-in of these positions beginning July 2010.

Create a New Licensing and Enforcement Database

DCA's current licensing and enforcement database systems are antiquated and impede the boards' ability to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. The CPEI relies on advanced workflow capabilities and cross-entity external system communications that the aging system's technology cannot provide.

The implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. DCA intends to procure a Modifiable Commercial Off-The-Shelf (or "MOTS") enterprise licensing and

enforcement case management system. DCA's research has shown various MOTS licensing and enforcement systems exist that can provide intelligent case management to reduce enforcement and licensing turnaround times, detailed performance measurements, increased data quality, advanced configurability, and robust web presences for public self-service.

The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-11.

III. Statutory Changes: Putting Consumers First

Each board within DCA has a statutory mandate to hold consumer protection as its paramount objective. Over the years, boards' enforcement authorities have been slow to keep up with legal trends and changes in the professions regulated, and due process protections have grown to protect licensees above consumers. DCA believes that now is the time to re-align consumer protection laws so that they place public protection first. In 2010, the DCA will pursue legislation to help boards carry out their critical missions of protecting consumers.

Increased Suspension Authority

One of the most important roles that professional licensing boards do to protect consumers is preventing potentially dangerous individuals from practicing. The CPEI would strengthen the boards' ability to do this in a number of ways, including authorizing the DCA Director to issue an order for a licensee to cease practice or restrict practice, upon the request of a board executive officer. This authority is necessary in the most egregious cases because the standard enforcement process can take a year to complete, at best, and even the expedited process in existing law (interim suspension order) can take months to complete. This proposal would also seek the statutory authority to revoke or deny a license to an individual for acts of sexual misconduct with a patient or conviction as a felony sex offender.

DCA is also seeking automatic suspension authority for licensees who test positive for drugs or alcohol when they are already in a diversion program or on probation for drug or alcohol related practice violations. In such instances, a board has already made a determination that a licensee presents a threat to the public; allowing the licensee to continue practicing would unacceptably place consumers in harm's way. Similarly, DCA believes that practicing under the influence of drugs or alcohol is as much a threat to public safety as driving under the influence. This proposal would make such activity a crime, and would allow law enforcement to quickly intervene when a patient's safety is at risk.

Additionally, the CPEI would provide for the automatic suspension of convicted felons for the duration of their sentence.

Increased Access to Critical Information

The CPEI would make improvements to the information that boards receive, so they can investigate possible violations of law. Specifically, it would prohibit the use of a gag clause in a civil settlement that would prohibit consumers or their legal counsel from filing a complaint with the appropriate board. Regulatory gag clauses are explicitly prohibited in legal malpractice settlements and there have been numerous court decisions that describe a compelling public interest in voiding regulatory gag clauses in other professions. The Center for Public Interest Law notes that the inclusion of gag clauses is an alarmingly pervasive practice that thwarts the ability of boards to carry out their consumer protection mission. The CPEI would also require court officials to report to the healing arts boards convictions and felony charges filed against the boards' licensees, and expand reporting by employers and supervisors regarding individuals who were suspended or terminated for cause.

Adequate access to medical records can shave months off the process to investigate a licensee. Medical records are used by healing arts boards' to determine whether a licensee caused harmed to a patient. Any delay in an investigation of a licensee may result in a potentially dangerous licensee continuing to practice. Thus, it is essential that healing arts boards have quick access to medical records. The CPEI gives all of the healing arts boards the authority to inspect and copy, as applicable, any documents and records relevant to an investigation. In cases where a licensee fails

to cooperate with an investigation, the CPEI provides boards with additional authorities to ensure compliance.

Enforcement Process Efficiencies

DCA proposes to remove unnecessary workload and costs from the enforcement process. This can be done by streamlining the appeal process for citations, permitting boards to contract with collection agencies to retrieve unpaid fines and fees, authorizing executive officers to sign default decisions and certain stipulated settlements, and allowing licensees to agree to stipulated settlements before a formal accusation is filed. These are relatively small changes that could result in significant workload savings.

Efficiency and accountability will also be improved by tightening deadlines on boards and establishing deadlines on other state agencies. This proposal would reduce the time allotted for a board to act on the proposed decision from an Administrative Law Judge from 100 days to 45 days. DCA also believes that establishing a deadline for the Department of Justice to notify healing arts boards of arrests and convictions of licensees would greatly improve the board's ability to pursue cases in a timely manner.

Licensing Fees

Lastly, DCA is seeking to tie the maximum licensing fee amounts to the Consumer Price Index to keep up with inflation and ensure the boards have the resources to adequately run their enforcement programs.

BILL NUMBER: SB 820
VETOED DATE: 10/12/2009

To the Members of the California State Senate:

I am returning Senate Bill 820 without my signature.

Peer review is an extremely important part of assuring the integrity and quality of care provided in our California hospitals. Unfortunately, the peer review process has also been criticized over the years because it increases litigious behavior, and lacks transparency and responsiveness. While perhaps well-intentioned, this bill does not provide a solution to the problem, but rather, jeopardizes the entire process by narrowing the reporting element to "serious" cases of incompetence involving only patients. How is this good policy? For example, what about a physician that engages in egregious behavior against hospital staff or even other physicians ? how does this serve the public by keeping these reports from the Medical Board?

This bill also fails to align with recent Joint Commission requirements that hospitals adopt a "zero tolerance" policy towards physicians engaging in disruptive behavior in their interactions with nurses and other hospital staff. A peer review body should not be limited from acting on this type of behavior and in fact, should be encouraged to act more swiftly.

I believe the peer review process is worth preserving. It does however, deserve to be thoroughly reviewed and reworked to ensure that inappropriate behavior of any kind is immediately acted upon. I would ask that the author and interested stakeholders work with my Department of Consumer Affairs to streamline and improve the peer review process in order to increase its effectiveness in taking action against providers that jeopardize quality or safety measures.

For this reason, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3550 is added to the Business and Professions Code, to read:
3550. In its concern with the growing shortage and geographic maldistribution of medical imaging health care services in California, the Legislature intends to establish in this chapter a framework for development of a new category of health manpower--the radiologist assistant.

The purpose of this chapter is to encourage the more effective utilization of the skills of radiologists by enabling them to delegate health care tasks to qualified radiologist assistants where this delegation is consistent with the patient's health and welfare and with the laws and regulations relating to radiologist assistants.

This chapter is established to encourage the utilization of radiologist assistants by radiologists and to provide that existing legal constraints should not be an unnecessary hindrance to the more effective use of medical imaging health care services. It is also the purpose of this chapter to allow for innovative development of programs for the education, training, and utilization of radiologist assistants.

3550.5. This chapter shall be known and cited as the Radiologist Assistant Practice Act.

SECTION 2. Section 3551 is added to the Business and Professions Code, to read: 3551. As used in this chapter:
(a) "Board" means the Medical Board of California.
(b) "Approved program" means a program for the education of radiologist assistants that has been formally approved by the committee.
(c) "Medical imaging" means any procedure intended for use in the diagnosis or treatment of disease or other medical conditions and that includes, but is not limited to, x-rays, nuclear medicine and other procedures, and that excludes echocardiography and diagnostic sonography.
(d) "Radiologist Assistant-Student" means a person who is currently enrolled in an approved program.
(e) " Radiologist Assistant" means a person who meets the requirements of this chapter and is licensed by the committee.
(f) "Supervising radiologist " means a physician licensed by the board or by the Osteopathic Medical Board of California and certified by or board-eligible for the American Board of Radiology, who supervises one or more radiologist assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a radiologist assistant.
(g) "Direct supervision" means the physician is physically present on the premises.
(h) "Radiologist" means a physician licensed by the board or by the Osteopathic Medical Board of California and is certified by or board-eligible for the American Board of Radiology.
(i) "Supervision" means that a licensed physician who is a certified radiologist oversees the activities of, and accepts responsibility for, the medical services rendered by a radiologist assistant.
(j) "Committee" or "examining committee" means the Radiologist Assistant Committee.
(k) "Regulations" means the rules and regulations as contained in the California Code of Regulations.

2010 Tracker

Medical Board of California
Tracker - Legislative Bill File
1/20/2010

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 526	Fuentes	Public Protection and Physician Health Program Act of 2009	Sen. Approps.	Oppose	8/19/2009
AB 583	Hayashi	Disclosure of Education and Office Hours	Sen. Inactive	Support	7/8/2009
AB 646	Swanson	Physician employment: district hospital pilot project	Sen. Health	Support in Concept	5/5/2009
AB 648	Chesbro	Rural Hospitals: physician employment	Sen. B&P	Support in Concept	5/28/2009
AB 933	Fong	Workers' Compensation: utilization review	Sen. L. & I.R.	Support	
AB 977	Skinner	Pharmacists: Imunization protocols with physicians	Asm. Approps.	Rec:	1/6/2010
AB 1310	Hernandez	Healing Arts: database	Sen. Approps.	Support	6/29/2009
SB 294	Negrete McLeod	Healing Arts: Enforcement	Asm. B&P	Rec: None	9/4/2009
SB 389	Negrete McLeod	Fingerprinting	Asm. Pub. S.	Support	6/1/2009
SB 726	Ashburn	Hospitals: employment of physician; pilot project revision	Asm. Inact.	Support	8/20/2009

AB 977

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 977
Author:	Skinner
Bill Date:	January 13, 2010, amended
Subject:	Pharmacists: immunization protocols with physicians
Sponsor:	Author

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow a pharmacist, in consultation with a physician, to administer influenza immunizations to any person 18 years of age or older.

ANALYSIS:

Current law does not allow pharmacists to administer medications. With the growing need for an increased availability of health care providers who can administer influenza immunizations, it would provide better access to care if the public could utilize their pharmacists when searching for an influenza vaccine.

This bill would require a pharmacist to complete a pharmacy-based immunization delivery training program prior to initiating or administering any immunizations. These pharmacists would also be required to complete 3 hours of immunization related continuing education coursework annually and be certified in basic life support.

A pharmacist would be required to provide patients with a Vaccine Information Statement and provide the patient and the patient's physician with documentation of having administered the immunization.

The Medical Board (Board) would be required to develop standardized protocols for the initiation and administration of influenza immunizations by pharmacists and the board may consult the Board of Pharmacy for collaboration in developing those protocols.

FISCAL: Minor and absorbable

POSITION: Support

January 20, 2010

AMENDED IN ASSEMBLY JANUARY 13, 2010

AMENDED IN ASSEMBLY JANUARY 6, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 977

Introduced by Assembly Member Skinner

February 26, 2009

An act to add and repeal Section 4052.8 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 977, as amended, Skinner. Pharmacists: immunization protocols with physicians.

Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists by the California State Board of Pharmacy. A violation of the Pharmacy Law is a crime. Existing law, among other things, authorizes a pharmacist to administer immunizations pursuant to a protocol with a prescriber.

This bill, until January 1, 2015, would additionally authorize a pharmacist, *in consultation with a physician and surgeon,* to initiate and administer influenza immunizations to any person 18 years of age or older pursuant to standardized protocols developed and approved by ~~both the board and~~ the Medical Board of California *in consultation with public health officers. The bill would, with respect to the development*

and approval of those standardized protocols, authorize the Medical Board of California to consult with the board. The bill would require a pharmacist, prior to initiating and administering those immunizations, to complete a specified pharmacy-based immunization delivery training program. The bill would also require a pharmacist initiating and administering those immunizations to complete 3 hours of immunization-related continuing education coursework annually and to be certified in basic life support. The bill would require a pharmacist, at the time of administration of that immunization, to provide the patient with a Vaccine Information Statement and to provide the patient and the patient's physician with documentation of administration of the immunization. The bill would also require a pharmacist administering that immunization to maintain a specified immunization record, provide documentation of administration to the appropriate immunization registry, report any adverse event and ensure proper storage and handling of vaccines. The bill would authorize a pharmacist initiating and administering vaccines under these provisions to initiate and administer epinephrine for severe allergic reactions.

This bill would require the board and the Medical Board of California to complete an evaluation of influenza immunizations initiated and administered under the standardized protocols authorized by the bill, and *would require the board* to report to the appropriate policy committees of the Legislature by January 1, 2014.

Because this bill would create new requirements under the Pharmacy Law, the violation of which would be a crime, it would impose a state-mandated local program.

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

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

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

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

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

(a) Vaccines are a safe, effective, and efficient means to prevent sickness and death from infectious diseases as reported by the United States Department of Health and Human Services (HHS).

(b) The federal Centers for Disease Control and Prevention report that 220,000,000 persons should get the influenza vaccination annually, however, fewer than 100,000,000 do.

(c) According to the California Health Care Foundation, 6,600,000 Californians are uninsured and may not have access to immunizations.

(d) Pharmacists represent the third largest health professional group in the United States and are on the front line of preventative care.

(e) Pharmacists are trained to screen, administer, and properly deal with any adverse events that may arise from vaccines.

(f) Primary care physicians play an integral role in preventative health care for Californians. This act will provide an adjunct to that preventative health care.

(g) Therefore, in order to achieve greater access to immunization and to protect Californians, it is the intent of the Legislature to provide greater access to lifesaving vaccinations and to ensure that pharmacists may administer influenza vaccinations.

SEC. 2. Section 4052.8 is added to the Business and Professions Code, to read:

4052.8. (a) A pharmacist may, *in consultation with a physician and surgeon,* initiate and administer influenza immunizations, pursuant to standardized protocols developed and approved by ~~both the board and~~ the Medical Board of California in consultation with public health officers, to any person 18 years of age or older. *With respect to the development and approval of those standardized protocols, the Medical Board of California may consult with the board.* The standardized protocols shall be consistent with protocols developed by the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention.

(b) Prior to initiating and administering immunizations, a pharmacist shall complete the American Pharmacists Association's Pharmacy-Based Immunization Delivery Certificate Training Program or another pharmacy-based immunization training certificate program endorsed by the federal Centers for Disease Control and Prevention or the Accreditation Council for Pharmaceutical Education.

(c) (1) A pharmacist initiating and administering any immunization pursuant to this section shall also complete three hours of immunization-related continuing education coursework annually.

(2) If a pharmacist fails to satisfy this requirement, he or she shall, in addition to any other applicable disciplinary action, retake the training identified in subdivision (b) and also complete the three hours of immunization-related continuing education coursework described in paragraph (1) prior to initiating and administering any further immunizations.

(3) The three hours of immunization-related continuing education may be applied toward the continuing education requirement described in Section 4231.

(d) A pharmacist initiating and administering any immunization pursuant to this section shall at all times be certified in basic life support.

(e) At the time of administration of an immunization, the pharmacist shall do all of the following:

(1) Provide the patient or the patient's agent with the appropriate Vaccine Information Statement, produced by the federal Centers for Disease Control and Prevention, for each immunization administered.

(2) Provide documentation of administration of the immunization to the patient and the patient's physician or primary care provider, if one can be identified.

(3) Provide documentation of administration of the immunization to the appropriate immunization registry.

(f) The pharmacist shall maintain an immunization administration record, which shall include, but not be limited to, the name of the vaccine, the expiration date, the date of administration, the manufacturer and lot number, the administration site and route, the Vaccine Information Statement date, and the name and title of the person administering, for

10 years from the date of administration.

(g) Any pharmacist initiating and administering vaccines may initiate and administer epinephrine by injection for severe allergic reactions.

(h) Any adverse event shall be reported to the Vaccine Adverse Event Reporting System within the United States Department of Health and Human Services.

(i) Upon receipt of a vaccine as authorized by this section, a pharmacist is responsible for ensuring that proper vaccine temperatures are maintained during subsequent storage and handling to preserve the potency of the vaccine.

(j) The board and the Medical Board of California shall evaluate the effectiveness of the initiation and administration of immunizations pursuant to this section, and *the board shall* report to the appropriate policy committees of the Legislature by January 1, 2014.

(k) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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2010 Tracker II

Medical Board of California
2009 Tracker II - Legislative Bills
1/20/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Unbilical Cord Blood Collection Program	Sen. Health	06/24/09
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Asm. Approps - susp.	03/25/09
AB 259	Skinner	Health Care Coverage: certified nurse-midwives: direct access	Asm. Health	01/04/10
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Sen. Approps. - susp	07/23/09
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Asm. Health	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Asm, Hum. S.	
AB 456	Emmerson	State Agencies: period review	Sen. B&P	05/28/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Sen. T&H	05/14/09
AB 520	Carter	Public Records: limiting requests	Asm. Jud.	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Sen. Health	06/18/09
AB 718	Emmerson	Electronic Prescribing Pilot Program	Sen. Rules	09/01/09
AB 721	Nava	Physical Therapists: scope of practice	2-year bill	04/13/09
AB 832	Jones	Ambulatory surgical clinics: workgroup	Asm. Approps.	05/05/09
AB 834	Solorio	Health Care Practitioners: peer review	Asm. B&P	04/14/09
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Sen. Approps. - susp	07/23/09
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Asm. Approps.	04/14/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Sen. Health	06/02/09
AB 1140	Niello	Healing Arts (spot)	Sen. Health	04/14/09
AB 1152	Anderson	Professional Corporations: licensed physical therapists	Sen. B&P	07/08/09

Medical Board of California
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1/20/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1162	Carter	Health Facilities: licensure	Introduced	
AB 1168	Carter	Professions and Vocations (spot)	Introduced	
AB 1194	Strickland	State Agency Internet Web Sites: information	Asm. B&P	
AB 1458	Davis	Drugs: adverse effects: reporting	Asm. Approps.	05/05/09
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Asm. B&P	
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Asm. Approps.	01/13/10
AB 1542	Health Comm.	Medical Records: centralized location	Sen. Health	07/01/09
SB 26	Simitian	Home-generated Pharmaceutical Waste	Sen. Approps.	04/15/09
SB 58	Aanestad	Physicians and Surgeons: peer review	Sen. Approps.	05/19/09
SB 92	Aanestad	Health care reform	Sen. Health	03/11/09
SB 238	Calderon	Medical Information: prescription refil requirements	Sen. Health	04/23/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Sen. Approps.	05/14/09
SB 368	Maldonado	Confidential Medical Information: unlawful disclsure	Sen. Health	12/15/09
SB 374	Calderon	Health Care Providers: resonable disclosure: reproductive choices	Asm. Approps. - susp	06/24/09
SB 395	Wyland	Medical Practice	Sen Rules	
SB 442	Ducheny	Clinic Corporation: licensing	Sen. Approps.	01/12/10
SB 482	Padilla	Healing Arts: Medical Practice	Sen. Jud.	04/14/09
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Asm. Approps.	05/12/09

Medical Board of California
2009 Tracker II - Legislative Bills
1/20/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Sen. G.O.	
SB 638	Negrete McLeod	Regulatory boards: operations	Sen. Rules	
SB 700	Negrete McLeod	Healing Arts: peer review	Sen. Inactive	05/20/09
SB 719	Huff	State Agency Internet Web Sites: information searchability	Sen. Approps.	
SB 761	Aanestad	Health Manpower Pilot Projects	Asm. Health	05/06/09
SB 810	Leno	Single-Payer Health Care Coverage	Sen. Approps.	01/13/10
SJR 14	Leno	Medical Marijuana	Asm. Health	
SJR 15	Leno	Public Health Laboratories	Asm. Health	08/17/09