

**Medical Board of California Advisory Committee on Physician Responsibility  
in the Supervision of Affiliated Health Care Professionals**

DATE: April 12, 2010  
SUBJECT: SB 1150 (Negrete McLeod)  
STAFF: Linda Whitney

As discussed at the January 28, 2010 meeting, the Advisory Committee was established, in part, as a result of a request by Senator Negrete McLeod. Since then, the Senator has introduced legislation that, if passed, would mandate the work now being done by the Committee and Medical Board.

The bill covers a number of subjects. The element of the legislation most relevant to the committee is attached.

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Introduced by Senator Negrete McLeod

February 18, 2010

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An act to amend Sections 651 and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.55, and 1279 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as introduced, Negrete McLeod. Healing arts.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners and requires certain of those practitioners to use particular designations following their names in specified instances. Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would require certain healing arts licensees to include in advertisements, as defined, certain words or designations following their names indicating the particular educational degree they hold or healing art they practice, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light

pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by January 1, 2012, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

*see pages 13-14*

(3) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(4) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations. Existing law makes a willful violation of these and other provisions relating to outpatient settings a crime.

This bill would include, among those specified aspects, the submission for approval by an accreditation agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes

1 by regulation, unreasonably prevent truthful, nondeceptive price  
2 or otherwise lawful forms of advertising of services or  
3 commodities, by either outright prohibition or imposition of  
4 onerous disclosure requirements. However, any member of a board  
5 or committee acting in good faith in the adoption or enforcement  
6 of any regulation shall be deemed to be acting as an agent of the  
7 state.

8 ~~(j)~~

9 ~~(k)~~ The Attorney General shall commence legal proceedings in  
10 the appropriate forum to enjoin advertisements disseminated or  
11 about to be disseminated in violation of this section and seek other  
12 appropriate relief to enforce this section. Notwithstanding any  
13 other provision of law, the costs of enforcing this section to the  
14 respective licensing boards or committees may be awarded against  
15 any licensee found to be in violation of any provision of this  
16 section. This shall not diminish the power of district attorneys,  
17 county counsels, or city attorneys pursuant to existing law to seek  
18 appropriate relief.

19 ~~(k)~~

20 ~~(l)~~ A physician and surgeon or doctor of podiatric medicine  
21 licensed pursuant to Chapter 5 (commencing with Section 2000)  
22 by the Medical Board of California who knowingly and  
23 intentionally violates this section may be cited and assessed an  
24 administrative fine not to exceed ten thousand dollars (\$10,000)  
25 per event. Section 125.9 shall govern the issuance of this citation  
26 and fine except that the fine limitations prescribed in paragraph  
27 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
28 under this subdivision.

29 SEC. 2. Section 2023.5 of the Business and Professions Code  
30 is amended to read:

31 2023.5. (a) The board, in conjunction with the Board of  
32 Registered Nursing, and in consultation with the Physician  
33 Assistant Committee and professionals in the field, shall review  
34 issues and problems surrounding the use of laser or intense light  
35 pulse devices for elective cosmetic procedures by physicians and  
36 surgeons, nurses, and physician assistants. The review shall include,  
37 but need not be limited to, all of the following:

- 38 (1) The appropriate level of physician supervision needed.  
39 (2) The appropriate level of training to ensure competency.

1 (3) Guidelines for standardized procedures and protocols that  
2 address, at a minimum, all of the following:

- 3 (A) Patient selection.
- 4 (B) Patient education, instruction, and informed consent.
- 5 (C) Use of topical agents.
- 6 (D) Procedures to be followed in the event of complications or  
7 side effects from the treatment.
- 8 (E) Procedures governing emergency and urgent care situations.

9 (b) On or before January 1, 2009, the board and the Board of  
10 Registered Nursing shall promulgate regulations to implement  
11 changes determined to be necessary with regard to the use of laser  
12 or intense pulse light devices for elective cosmetic procedures by  
13 physicians and surgeons, nurses, and physician assistants.

14 (c) *On or before January 1, 2012, the board shall adopt*  
15 *regulations regarding the appropriate level of physician*  
16 *availability needed within clinics or other settings using laser or*  
17 *intense pulse light devices for elective cosmetic procedures.*  
18 *However, these regulations shall not apply to laser or intense pulse*  
19 *light devices approved by the federal Food and Drug*  
20 *Administration for over-the-counter use by a health care*  
21 *practitioner or by an unlicensed person on himself or herself.*

} new

22 (d) *Nothing in this section shall be construed to modify the*  
23 *prohibition against the unlicensed practice of medicine.*

24 SEC. 3. Section 2027.5 is added to the Business and Professions  
25 Code, to read:

26 2027.5. The board shall post on its Internet Web site an  
27 easy-to-understand factsheet to educate the public about cosmetic  
28 surgery and procedures, including their risks. Included with the  
29 factsheet shall be a comprehensive list of questions for patients to  
30 ask their physician and surgeon regarding cosmetic surgery.

31 SEC. 4. Section 1248 of the Health and Safety Code is amended  
32 to read:

33 1248. For purposes of this chapter, the following definitions  
34 shall apply:

35 (a) "Division" means the *Medical Board of California. All*  
36 *references in this chapter to the division, the Division of Licensing*  
37 *of the Medical Board of California, or the Division of Medical*  
38 *Quality shall be deemed to refer to the Medical Board of California*  
39 *pursuant to Section 2002 of the Business and Professions Code.*