

LEGISLATIVE PACKET



MEDICAL BOARD MEETING

**APRIL 30, 2010
LOS ANGELES, CA**

**Medical Board of California
Tracker - Legislative Bill File
4/22/2010**

| BILL | AUTHOR | TITLE | STATUS | POSITION | AMENDED |
|-------------|----------------|--|----------------------|-----------------------------|----------------|
| AB 526 | Fuentes | Public Protection and Physician Health Program Act of 2009 | Sen. Approps. - susp | 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. B&P | Support in Concept | 4/13/2010 |
| 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: immunizations | Sen. B&P | Support | 1/25/2010 |
| AB 1310 | Hernandez | Healing Arts: database | Sen. Approps. - susp | Support | 6/29/2009 |
| AB 1767 | Hill | Enforcement: expert reviewers | Asm. Floor | Sponsor/Support | |
| AB 2148 | Tran | Personal Income Tax: charitable deductions | Asm. Rev. & Tax | Rec: Support | |
| AB 2566 | Carter | Cosmetic surgery: employment of physicians | Asm. Approps. | Rec: Support | |
| AB 2600 | Ma | Continuing Education Requirements | Asm. B&P | Rec: Neutral | 3/25/2010 |
| SB 700 | Negrete McLeod | Peer Review | Asm. Approps. | Rec: Support | 1/26/2010 |
| SB 726 | Ashburn | Hospitals: employment of physician; pilot project revision | Asm. Inact. | Support | 8/20/2009 |
| | | | | Rec: Support if amended | |
| SB 1031 | Corbett | Medical Malpractice Insurance | Sen. B&P | Sponsor/Support | 4/5/2010 |
| SB 1069 | Pavley | Physician Assistants | Sen. Jud. | Rec: Support | 4/12/2010 |
| SB 1111 | Negrete McLeod | Regulatory Boards: CPEI | Sen. B&P | Rec: Support | 4/12/2010 |
| SB 1150 | Negrete McLeod | Healing Arts: advertisements | Sen. Approps. | Rec: Support | |
| SB 1172 | Negrete McLeod | Diversion Programs | Sen. B&P | Rec: Support | 4/12/2010 |
| SB 1410 | Cedillo | Medicine: licensure examinations | Sen. Approps. | Rec: Oppose | |
| SB 1489 | B&P Comm. | Omnibus | Sen. B&P | Rec: Support MBC Provisions | 4/5/2010 |

AB 526

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 526
Author: Fuentes
Bill Date: August 19, 2009, amended
Subject: Public Protection and Physician Health Program Act of 2009
Sponsor: California Medical Association

STATUS OF BILL:

This bill was held in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the Public Protection and Physician Health Committee (Committee) within the State and Consumer Services Agency (SCSA) with the intent of creating a program in California that will permit physicians to obtain treatment and monitoring of alcohol or substance abuse/dependency, or of mental disorder recovery so that physicians do not treat patients while impaired.

This bill was amended to require the Board to increase licensing fees by \$22 for the purposes of funding the physician health program. This bill was amended to remove the SCSA from the oversight. The Committee would now it's own governing body with no accountability.

ANALYSIS:

This bill would establish the Public Protection and Physician Health Committee. The Committee would be under the SCSA. This bill would require that the committee must be appointed and hold its first meeting no later than March 1, 2010. The Committee would be required to prepare regulations that provide clear guidance and measurable outcomes to ensure patient safety and the health and wellness of physicians by June 30, 2010. These rules and regulations shall include:

- Minimum standards, criteria, and guidelines for the acceptance, denial, referral to treatment, and monitoring of physicians and surgeons in the physician health program;
- Standards for requiring that a physician and surgeon agree to cease practice to obtain appropriate treatment services;
- Criteria that must be met prior to a physician and surgeon returning to practice;

- Standards, requirements, and procedures for random testing for the use of banned substances and protocols to follow if that use has occurred;
- Worksite monitoring requirements and standards;
- The manner, protocols, and timeliness of reports required;
- Appropriate requirements for clinical diagnostic evaluations of program participants;
- Requirements for a physician and surgeon's termination from, and reinstatement to, the program;
- Requirements that govern the ability of the program to communicate with a participant's employer or organized medical staff about the participant's status and condition;
- Group meeting and other self-help requirements, standards, protocols, and qualifications;

The Committee would be required to recommend one or more non-profit physician health programs to the SCSA. The physician health programs would be required to report annually to the committee on the number of participants served, the number of compliant participants, the number of participants who have successfully completed their agreement period, and the number of participants reported to the board for suspected noncompliance. The physician health programs would also have to agree to submit to periodic audits and inspections of all operations, records, and management related to the physician health program to ensure compliance.

This bill would require the SCSA, in conjunction with the committee, to monitor compliance of the physician health programs, including making periodic inspections and onsite visits.

This bill would permit a physician to enter into a voluntary agreement with a physician health program that must include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the treatment program. The physicians' voluntary participation in a physician health program would be confidential unless waived by the physician.

This bill would prohibit any voluntary agreement from being considered a disciplinary action or order by the Board and would prohibit the agreement from being disclosed to the Board nor to the public. Each participant, prior to entering into a voluntary agreement, would be required to disclose to the Committee whether he or she is under investigation by the Board. If a participant fails to disclose such an investigation, upon enrollment or at any time while a participant, the participant shall be terminated from the program.

Physician health programs would be permitted to report to the committee the name of and results of any contact or information received regarding a physician who is suspected of being, or is, impaired and, as a result, whose competence or professional conduct is reasonably likely to be detrimental to patient safety or to the delivery of patient care. The programs would be required to report to the committee if the physician fails to cooperate with any of the requirements of the physician health program, fails to cease practice when required, fails to submit to evaluation, treatment, or biological fluid testing when required, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the physician health program, is unable to practice medicine with reasonable skill and safety, or who withdraws or is terminated from the physician health program prior to completion.

The participating physician in a voluntary agreement would be responsible for all expenses relating to chemical or biological fluid testing, treatment, and recovery as provided in the written agreement between the physician and the physician health program.

This bill would permit, not require, the Board to increase licensing fees to no less than \$22 and not to exceed 2.5% of the license fee. This fee would be expended solely for the purposes of the physician health programs. If the board included this surcharge, it would be collected and transferred to a trust established by this bill. The Board would be required to separately identify, on the licensing fee statement, the amount being collected for the program. If the Board were to opt to increase the licensing fees to fund this program, the bill states that the Board would be allowed to include a statement indicating to licensees that the Public Protection and Physician Health Program is not a program of the Board and that, by collecting this fee, the Board does not necessarily support, endorse, or have any control of or affiliation with the program. The SCSA would be required to contract for a biennial audit to assess the effectiveness, efficiency, and overall performance of the program and make recommendations.

Amendments to this bill taken June 1, 2009 require the Board to increase licensing fees by not less than \$22 or 2.5% of the license fee, whichever is greater, to be used solely for the purposes of the physician health programs.

Amendments taken on August 19, 2009 remove the SCSA from its oversight role, making the Committee an autonomous body with no accountability.

FISCAL: Generate revenue for program of approximately \$1.5 million.

POSITION: Oppose

April 12, 2010

AMENDED IN SENATE AUGUST 19, 2009

AMENDED IN SENATE JULY 15, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 526

Introduced by Assembly Member Fuentes

February 25, 2009

An act to add and repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as amended, Fuentes. Public Protection and Physician Health Program Act of 2009.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards, as specified, and a designee of the State Department of Alcohol and Drug Programs. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees. The Medical Practice Act establishes in the Department of Consumer Affairs the Medical Board of California, which provides for the licensure and regulation of physicians and surgeons.

This bill would enact the Public Protection and Physician Health Program Act of 2009, which would, until January 1, 2021, establish ~~within the State and Consumer Services Agency~~ the Public Protection and Physician Health Oversight Committee, consisting of ~~14~~ members appointed by specified entities, would require the committee to be ~~appointed~~ *formed* and to hold its first meeting by March 1, 2010, and would require ~~agency adoption of related~~ *the committee to adopt* rules and regulations *necessary to implement these provisions* by June 30, 2010. The bill would ~~require the committee to recommend to the agency one or more physician health programs, and would authorize the agency committee to contract, including on an interim basis, as specified, with any qualified physician health program for purposes of care and rehabilitation of physicians and surgeons, including applicants enrolled in an approved postgraduate training program, with alcohol or drug abuse or dependency problems or mental disorders, as specified. The bill would impose requirements on the physician health program relating to, among other things, monitoring the status and compliance of physicians and surgeons, as defined, who enter treatment for a qualifying illness, as defined, pursuant to written, voluntary agreements, and would require the agency and committee to monitor compliance with these requirements. The bill would provide that a voluntary agreement to receive treatment would not be subject to public disclosure or disclosure to the Medical Board of California, except as specified. The bill would require the board to increase physician and surgeon and applicant licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.~~

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

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

- 1 SECTION 1. The Legislature hereby finds and declares that:
- 2 (a) California has long valued high quality medical care for its
- 3 citizens and, through its regulatory and enforcement system,
- 4 protects health care consumers through the proper licensing and
- 5 regulation of physicians and surgeons to promote access to quality
- 6 medical care. The protection of the public from harm by physicians

1 and surgeons who may be impaired by alcohol or substance abuse
2 or dependence or by a mental disorder is paramount.

3 (b) Nevertheless, physicians and surgeons experience
4 health-related problems at the same frequency as the general
5 population, and many competent physicians and surgeons with
6 illnesses may or may not immediately experience impairment in
7 their ability to serve the public. It has been estimated that at least
8 10 percent of the population struggles with alcohol or substance
9 abuse or dependence during their lifetime, which may, at some
10 point, impact approximately 12,500 of the state's 125,000 licensed
11 physicians and surgeons.

12 (c) It is in the best interests of the public and the medical
13 profession to provide a pathway to recovery for any licensed
14 physician and surgeon that is currently suffering from alcohol or
15 substance abuse or dependence or a mental disorder. The American
16 Medical Association has recognized that it is an expression of the
17 highest meaning of professionalism for organized medicine to take
18 an active role in helping physicians and surgeons to lead healthy
19 lives in order to help their patients, and therefore, it is appropriate
20 for physicians and surgeons to assist in funding such a program.

21 (d) While nearly every other state has a physician health
22 program, since 2007 California has been without any state program
23 that monitors physicians and surgeons who have independently
24 obtained, or should be encouraged to obtain, treatment for alcohol
25 or substance abuse or dependence or for a mental disorder, so that
26 they do not treat patients while impaired.

27 (e) It is essential for the public interest and the public health,
28 safety, and welfare to focus on early intervention, assessment,
29 referral to treatment, and monitoring of physicians and surgeons
30 with significant health impairments that may impact their ability
31 to practice safely. Such a program need not, and should not
32 necessarily, divert physicians and surgeons from the disciplinary
33 system, but instead focus on providing assistance before any harm
34 to a patient has occurred.

35 (f) Therefore, it is necessary to create a program in California
36 that will permit physicians and surgeons to obtain referral to
37 treatment and monitoring of alcohol or substance abuse or
38 dependence or a mental disorder, so that they do not treat patients
39 while impaired.

1 SEC. 2. Article 14 (commencing with Section 2340) is added
2 to Chapter 5 of Division 2 of the Business and Professions Code,
3 to read:

4
5 Article 14. Public Protection and Physician Health Program

6
7 2340. This article shall be known and may be cited as the Public
8 Protection and Physician Health Program Act of 2009.

9 2341. For purposes of this article, the following terms have
10 the following meanings:

11 ~~(a) "Agency" means the State and Consumer Services Agency.~~

12 ~~(b)~~

13 (a) "Board" means the Medical Board of California.

14 ~~(c)~~

15 (b) "Committee" means the Public Protection and Physician
16 Health Oversight Committee established pursuant to Section 2342.

17 ~~(d)~~

18 (c) "Impaired" or "impairment" means the inability to practice
19 medicine with reasonable skill and safety to patients by reason of
20 alcohol abuse, substance abuse, alcohol dependency, any other
21 substance dependency, or a mental disorder.

22 ~~(e)~~

23 (d) "Participant" means a physician and surgeon enrolled in the
24 program pursuant to an agreement entered into as provided in
25 Section 2345.

26 ~~(f)~~

27 (e) "Physician health program" or "program" means the program
28 for the prevention, detection, intervention, monitoring, and referral
29 to treatment of impaired physicians and surgeons, and includes
30 vendors, providers, or entities contracted with by the ~~agency~~
31 ~~committee~~ pursuant to this article.

32 ~~(g)~~

33 (f) "Physician and surgeon" means a holder of a physician's
34 and surgeon's certificate. *For the purposes of this article only,*
35 *"physician and surgeon" shall also include a graduate of a medical*
36 *school approved or recognized by the board while enrolled in a*
37 *postgraduate training program approved by the board.*

38 ~~(h)~~

39 (g) "Qualifying illness" means "alcohol or substance abuse,"
40 "alcohol or chemical dependency," or a "mental disorder" as those

1 terms are used in the Diagnostic and Statistical Manual of Mental
2 Disorders, Fourth Edition (DSM-IV) or subsequent editions.

3 ~~(i) "Secretary" means the Secretary of State and Consumer~~
4 ~~Services.~~

5 ~~(j)~~

6 ~~(h) "Treatment program" or "treatment" means the delivery of~~
7 ~~care and rehabilitation services provided by an organization or~~
8 ~~persons authorized by law to provide those services.~~

9 2342. (a) (1) ~~There is hereby established within the State and~~
10 ~~Consumer Services Agency the Public Protection and Physician~~
11 ~~Health Committee Oversight Committee, which shall have the~~
12 ~~responsibilities and duties set forth in this article. The committee~~
13 ~~may take any reasonable actions to carry out the responsibilities~~
14 ~~and duties set forth in this article, including, but not limited to,~~
15 ~~hiring staff and entering into contracts. The committee shall be~~
16 ~~appointed formed and hold its first meeting no later than March~~
17 ~~1, 2010. The committee shall be comprised of 14 members who~~
18 ~~shall be appointed as follows the following members:~~

19 ~~(A) Eight members appointed by the secretary, including the~~
20 ~~following:~~

21 ~~(i)~~

22 ~~(A) Two members who are selected by the California Psychiatric~~
23 ~~Association, unless that entity chooses not to exercise this right of~~
24 ~~selection. These members shall be licensed mental health~~
25 ~~professionals with knowledge and expertise in the identification~~
26 ~~and treatment of substance abuse and mental disorders. With~~
27 ~~respect to the initial members selected pursuant to this~~
28 ~~subparagraph, one member shall serve a term of two years and~~
29 ~~one member shall serve a term of three years.~~

30 ~~(ii) Six members who are physicians and surgeons with~~
31 ~~knowledge and expertise in the identification and treatment of~~
32 ~~alcohol dependence and substance abuse. One member shall be a~~
33 ~~designated representative from a panel recommended by a nonprofit~~
34 ~~professional association representing physicians and surgeons~~
35 ~~licensed in this state with at least 25,000 members in all modes of~~
36 ~~practice and specialties. The secretary shall fill one each of the~~
37 ~~remaining appointments from among those individuals as may be~~
38 ~~recommended by the California Society of Addiction Medicine,~~
39 ~~the California Psychiatric Association, and the California Hospital~~
40 ~~Association.~~

1 (B) (i) *Three members selected by a nonprofit professional*
2 *association representing physicians and surgeons licensed in this*
3 *state with at least 25,000 members in all modes of practice and*
4 *specialities, unless that entity chooses not to exercise this right of*
5 *selection. With respect to the initial members selected pursuant to*
6 *this clause, one member shall serve a term of two years, one*
7 *member shall serve a term of three years, and one member shall*
8 *serve a term of four years.*

9 (ii) *Two members selected by the California Society of Addiction*
10 *Medicine, unless that entity chooses not to exercise this right of*
11 *selection. With respect to the initial members selected pursuant to*
12 *this clause, one member shall serve a term of two years and one*
13 *member shall serve a term of three years.*

14 (iii) *One member selected by the California Hospital*
15 *Association, unless that entity chooses not to exercise this right of*
16 *selection. The initial member selected shall serve a term of three*
17 *years.*

18 (iv) *The members selected pursuant to this subparagraph shall*
19 *be physicians and surgeons with knowledge and expertise in the*
20 *identification and treatment of alcohol dependence and substance*
21 *abuse.*

22 ~~(B)~~

23 (C) *Four members of the public appointed by the Governor, at*
24 *least one of whom shall have experience in advocating on behalf*
25 *of consumers of medical care in this state. With respect to the*
26 *initial appointees, the Governor shall appoint two members for a*
27 *two-year term, and two members for a four-year term.*

28 ~~(C)~~

29 (D) *One member of the public appointed by the Speaker of the*
30 *Assembly. The initial appointee under this subparagraph shall*
31 *serve a term of three years.*

32 ~~(D)~~

33 (E) *One member of the public appointed by the Senate*
34 *Committee on Rules. The initial appointee under this subparagraph*
35 *shall serve a term of three years.*

36 (2) (A) *For the purpose of this subdivision, a public member*
37 *may not be any of the following:*

38 (i) *A current or former physician and surgeon or an immediate*
39 *family member of a physician and surgeon.*

1 (ii) Currently or formerly employed by a physician and surgeon
2 or business providing or arranging for physician and surgeon
3 services, or have any financial interest in the business of a licensee.

4 (iii) An employee or agent or representative of any organization
5 representing physicians and surgeons.

6 (B) Each public member shall meet all of the requirements for
7 public membership on ~~the a~~ board as set forth in Chapter 6
8 (commencing with Section 450) of Division 1.

9 (b) Members of the committee shall serve without compensation,
10 but shall be reimbursed for any travel expenses necessary to
11 conduct committee business.

12 (c) ~~Committee~~ Except as provided in subdivision (a), committee
13 members shall serve terms of four years, and may be reappointed.
14 ~~With respect to the initial appointees, the Governor shall appoint~~
15 ~~two members for a two-year term, one member for a three-year~~
16 ~~term, and one member for a four-year term. The Senate Committee~~
17 ~~on Rules and the Speaker of the Assembly shall each initially~~
18 ~~appoint one member for a three-year term. The secretary shall~~
19 ~~initially appoint four members for a two-year term, two members~~
20 ~~for a three-year term, and two members for a four-year term.~~

21 (d) The committee shall be subject to the Bagley-Keene Open
22 Meeting Act (Article 9 (commencing with Section 11120) of
23 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
24 Code), ~~and shall prepare any additional recommended and the~~
25 ~~California Public Records Act (Chapter 3.5 (commencing with~~
26 ~~Section 6250) of Division 7 of Title 1 of the Government Code).~~
27 ~~The committee shall adopt any rules and regulations necessary or~~
28 ~~advisable~~ for the purpose of implementing this article, subject to
29 the Administrative Procedure Act (Chapter 3.5 (commencing with
30 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
31 Code). The rules and regulations shall include appropriate
32 minimum standards and requirements for referral to treatment, and
33 monitoring of participants in the physician health program, and
34 shall be written in a manner that provides clear guidance and
35 measurable outcomes to ensure patient safety and the health and
36 wellness of physicians and surgeons. ~~The agency shall adopt~~
37 ~~regulations for the implementation of this article, taking into~~
38 ~~consideration the regulations recommended by the committee, and~~
39 ~~surgeons.~~

1 (e) The rules and regulations required by this section shall be
2 adopted not later than June 30, 2010, and shall, at a minimum, be
3 consistent with the uniform standards adopted pursuant to Section
4 315, and shall include all of the following:

5 (1) Minimum standards, criteria, and guidelines for the
6 acceptance, denial, referral to treatment, and monitoring of
7 physicians and surgeons in the physician health program.

8 (2) Standards for requiring that a physician and surgeon agree
9 to cease practice to obtain appropriate treatment services.

10 (3) Criteria that must be met prior to a physician and surgeon
11 returning to practice.

12 (4) Standards, requirements, and procedures for random testing
13 for the use of banned substances and protocols to follow if that
14 use has occurred.

15 (5) Worksite monitoring requirements and standards.

16 (6) The manner, protocols, and timeliness of reports required
17 to be made pursuant to Section 2345.

18 (7) Appropriate requirements for clinical diagnostic evaluations
19 of program participants.

20 (8) Requirements for a physician and surgeon's termination
21 from, and reinstatement to, the program.

22 (9) Requirements that govern the ability of the program to
23 communicate with a participant's employer or organized medical
24 staff about the participant's status and condition.

25 (10) Group meeting and other self-help requirements, standards,
26 protocols, and qualifications.

27 (11) Minimum standards and qualifications of any vendor,
28 monitor, provider, or entity contracted with by the ~~agency~~
29 *committee* pursuant to Section 2343.

30 (12) A requirement that all physician health program services
31 shall be available to all licensed physicians and surgeons with a
32 qualifying illness.

33 (13) A requirement that any physician health program shall do
34 all of the following:

35 (A) Promote, facilitate, or provide information that can be used
36 for the education of physicians and surgeons with respect to the
37 recognition and treatment of alcohol dependency, chemical
38 dependency, or mental disorders, and the availability of the
39 physician health program for qualifying illnesses.

1 (B) Offer assistance to any person in referring a physician and
2 surgeon for purposes of assessment or treatment, or both, for a
3 qualifying illness.

4 (C) Monitor the status during treatment of a physician and
5 surgeon who enters treatment for a qualifying illness pursuant to
6 a written, voluntary agreement.

7 (D) Monitor the compliance of a physician and surgeon who
8 enters into a written, voluntary agreement for a qualifying illness
9 with the physician health program setting forth a course of
10 recovery.

11 (E) Agree to accept referrals from the board to provide
12 monitoring services pursuant to a board order.

13 (F) Provide a clinical diagnostic evaluation of physicians and
14 surgeons entering the program.

15 (14) Rules and procedures to comply with auditing requirements
16 pursuant to Section 2348.

17 (15) A definition of the standard of "reasonably likely to be
18 detrimental to patient safety or the delivery of patient care," relying,
19 to the extent practicable, on standards used by hospitals, medical
20 groups, and other employers of physicians and surgeons.

21 (16) Any other provision necessary for the implementation of
22 this article.

23 2343. (a) On and after July 1, 2010, upon adoption of the rules
24 and regulations required by Section 2342, the committee ~~shall~~
25 ~~recommend one or more physician health programs to the agency,~~
26 ~~and the agency~~ may contract with any qualified physician health
27 program. The physician health program shall be a nonprofit
28 corporation organized under Section 501(c)(3) of Title 26 of the
29 United States Code. The chief executive officer shall have expertise
30 in the areas of alcohol abuse, substance abuse, alcohol dependency,
31 other chemical dependencies, and mental disorders. In order to
32 expedite the delivery of physician health program services
33 established by this article, the ~~agency committee~~ may contract with
34 an entity meeting the minimum standards and requirements set
35 forth in subdivision (e) of Section 2342 on an interim basis prior
36 to the adoption of ~~any additional~~ the rules and regulations required
37 to be adopted pursuant to ~~subdivision (d)~~ subdivisions (d) and (e)
38 of Section 2342. The ~~agency committee~~ may extend the contract
39 when the rules and regulations are adopted, provided that the

1 physician health program meets the requirements in those rules
2 and regulations.

3 (b) Any contract entered into pursuant to this article shall comply
4 with all rules and regulations required to be adopted pursuant to
5 this article. No entity shall be eligible to provide the services of
6 the physician health program that does not meet the minimum
7 standards, criteria, and guidelines contained in those rules and
8 regulations.

9 (c) The contract entered into pursuant to this article shall also
10 require the contracting entity to do both of the following:

11 (1) Report annually to the committee statistics, including the
12 number of participants served, the number of compliant
13 participants, the number of participants who have successfully
14 completed their agreement period, and the number of participants
15 ~~reported to the board for suspected noncompliance by the physician~~
16 *health program pursuant to subdivision (c) of Section 2345;*
17 provided, however, that in making that report, the physician health
18 program shall not disclose any personally identifiable information
19 relating to any physician and surgeon participating in a voluntary
20 agreement as provided in this article.

21 (2) Agree to submit to periodic audits and inspections of all
22 operations, records, and management related to the physician health
23 program to ensure compliance with the requirements of this article
24 and its implementing rules and regulations.

25 (d) In addition to the requirements of Section 2348, ~~the agency;~~
26 ~~in conjunction with the committee;~~ *committee* shall monitor
27 compliance of the physician health program with the requirements
28 of this article and its implementing regulations, including making
29 periodic inspections and onsite visits with any entity contracted
30 to provide physician health program services.

31 2344. ~~The agency committee~~ has the sole discretion to contract
32 with a physician health program for licensees of the board and no
33 provision of this article may be construed to entitle any physician
34 and surgeon to the creation or designation of a physician health
35 program for any individual qualifying illness or group of qualifying
36 illnesses.

37 2345. (a) In order to encourage voluntary participation in
38 monitored alcohol or chemical dependency or mental disorder
39 treatment programs, and in recognition of the fact that mental
40 disorders, alcohol dependency, and chemical dependency are

1 illnesses, a physician and surgeon, certified or otherwise lawfully
2 practicing in this state, may enter into a voluntary agreement with
3 a physician health program. The agreement between the physician
4 and surgeon and the physician health program shall include a
5 jointly agreed upon treatment program and mandatory conditions
6 and procedures to monitor compliance with the treatment program,
7 including, but not limited to, an agreement to cease practice, as
8 defined by the rules and regulations adopted pursuant to Section
9 2342. Except as provided in subdivisions (b), (c), (d), and (e), a
10 physician and surgeon's participation in the physician health
11 program pursuant to a voluntary agreement shall be confidential
12 unless waived by the physician and surgeon.

13 (b) (1) Any voluntary agreement entered into pursuant to this
14 section shall not be considered a disciplinary action or order by
15 the board, shall not be disclosed to the board, and shall not be
16 public information if all of the following are true:

17 (A) The voluntary agreement is the result of the physician and
18 surgeon self-enrolling or voluntarily participating in the physician
19 health program.

20 (B) The board has not referred a complaint against the physician
21 and surgeon to a district office of the board for investigation for
22 conduct involving or alleging an impairment adversely affecting
23 the care and treatment of patients.

24 (C) The physician and surgeon is in compliance with the
25 treatment program and the conditions and procedures to monitor
26 compliance.

27 (2) (A) Each participant, prior to entering into the voluntary
28 agreement described in paragraph (1), shall disclose to the
29 committee whether he or she is under investigation by the board.
30 If a participant fails to disclose such an investigation, upon
31 enrollment or at any time while a participant, the participant shall
32 be terminated from the program. For those purposes, the committee
33 shall regularly monitor recent accusations filed against physicians
34 and surgeons and shall compare the names of physicians and
35 surgeons subject to accusation with the names of program
36 participants.

37 (B) Notwithstanding subparagraph (A), a participant who is
38 under investigation by the board and who makes the disclosure
39 required in subparagraph (A) may participate in, and enter into a
40 voluntary agreement with, the physician health program.

1 (c) (1) If a physician and surgeon enters into a voluntary
2 agreement with the physician health program pursuant to this
3 article, the physician health program shall do both of the following:

4 (A) In addition to complying with any other duty imposed by
5 law, report to the committee the name of and results of any contact
6 or information received regarding a physician and surgeon who is
7 suspected of being, or is, impaired and, as a result, whose
8 competence or professional conduct is reasonably likely to be
9 detrimental to patient safety or to the delivery of patient care.

10 (B) Report to the committee if the physician and surgeon fails
11 to cooperate with any of the requirements of the physician health
12 program, fails to cease practice when required, fails to submit to
13 evaluation, treatment, or biological fluid testing when required, or
14 whose impairment is not substantially alleviated through treatment,
15 or who, in the opinion of the physician health program, is unable
16 to practice medicine with reasonable skill and safety, or who
17 withdraws or is terminated from the physician health program prior
18 to completion.

19 (2) Within 48 hours of receiving a report pursuant to paragraph
20 (1), the committee shall make a determination as to whether the
21 competence or professional conduct of the physician and surgeon
22 is reasonably likely to be detrimental to patient safety or to the
23 delivery of patient care, and, if so, refer the matter to the board
24 consistent with rules and regulations adopted by the ~~agency~~
25 *committee*. Upon receiving a referral pursuant to this paragraph,
26 the board shall take immediate action and may initiate proceedings
27 to seek a temporary restraining order or interim suspension order
28 as provided in this division.

29 (d) Except as provided in subdivisions (b), (c), and (e), and this
30 subdivision, any oral or written information reported to the board
31 pursuant to this section, including, but not limited to, any physician
32 and surgeon's participation in the physician health program and
33 any voluntary agreement entered into pursuant to this article, shall
34 remain confidential as provided in subdivision (c) of Section 800,
35 and shall not constitute a waiver of any existing evidentiary
36 privileges under any other provision or rule of law. However, this
37 subdivision shall not apply if the board has referred a complaint
38 against the physician and surgeon to a district office of the board
39 for investigation for conduct involving or alleging an impairment
40 adversely affecting the care and treatment of patients.

1 (e) Nothing in this section prohibits, requires, or otherwise
2 affects the discovery or admissibility of evidence in an action
3 against a physician and surgeon based on acts or omissions within
4 the course and scope of his or her practice.

5 (f) Any information received, developed, or maintained by the
6 ~~agency committee~~ regarding a physician and surgeon in the program
7 shall not be used for any other purpose.

8 2346. The committee shall ~~report to the agency~~ *compile the*
9 statistics received from the physician health program pursuant to
10 ~~Section 2343, and the agency shall, thereafter, report to the~~
11 ~~Legislature the 2343, and shall report to the Legislature, on or~~
12 ~~before March 1, 2011, and annually thereafter, the~~ number of
13 individuals served, the number of compliant individuals, the
14 number of individuals who have successfully completed their
15 agreement period, and the number of individuals reported to the
16 board ~~for suspected noncompliance pursuant to subdivision (c) of~~
17 ~~Section 2345~~; provided, however, that in making that report the
18 ~~agency committee~~ shall not disclose any personally identifiable
19 information relating to any physician and surgeon participating in
20 a voluntary agreement as provided herein.

21 2347. (a) A physician and surgeon participating in a voluntary
22 agreement shall be responsible for all expenses relating to chemical
23 or biological fluid testing, treatment, and recovery as provided in
24 the written agreement between the physician and surgeon and the
25 physician health program.

26 (b) In addition to the fees charged for the initial issuance or
27 biennial renewal of a physician and surgeon's certificate pursuant
28 to Section 2435, and at the time those fees are charged, the board
29 shall include a surcharge of not less than twenty-two dollars (\$22),
30 or an amount equal to 2.5 percent of the fee set pursuant to Section
31 2435, whichever is greater, and which shall be expended solely
32 for the purposes of this article. The board shall collect this
33 surcharge and cause it to be transferred monthly to the trust fund
34 established pursuant to subdivision (c). This amount may be
35 separately identified on the fee statement provided to physicians
36 and surgeons as being imposed pursuant to this article. The board
37 may include a conspicuous statement indicating that the Public
38 Protection and Physician Health Program is not a program of the
39 board and the collection of this fee does not, nor shall it be

1 construed to, constitute the board's endorsement of, support for,
2 control of, or affiliation with, the program.

3 (c) There is hereby established in the State Treasury the Public
4 Protection and Physician Health Program Trust Fund into which
5 all funds collected pursuant to this section shall be deposited. These
6 funds shall be used, upon appropriation in the annual Budget Act,
7 only for the purposes of this article.

8 (d) Nothing in this section is intended to limit the amount of
9 funding that may be provided for the purposes of this article. In
10 addition to funds appropriated in the annual Budget Act, additional
11 funding from private or other sources may be used to ensure that
12 no person is denied access to the services established by this
13 program due to a lack of available funding.

14 (e) All costs of the committee and program established pursuant
15 to this article shall be paid out of the funds collected pursuant to
16 this section.

17 2348. (a) ~~The agency committee~~ shall biennially contract to
18 perform a thorough audit of the effectiveness, efficiency, and
19 overall performance of the program and its vendors. ~~The agency~~
20 ~~committee~~ may contract with a third party to conduct the
21 performance audit, except the third party may not be a person or
22 entity that regularly testifies before the board. This section is not
23 intended to reduce the number of audits the ~~agency committee~~ or
24 board may otherwise conduct.

25 (b) The audit shall make recommendations regarding the
26 continuation of this program and this article and shall suggest any
27 changes or reforms required to ensure that individuals participating
28 in the program are appropriately monitored and the public is
29 protected from physicians and surgeons who are impaired due to
30 alcohol or drug abuse or dependency or mental disorder. Any
31 person conducting the audit required by this section shall maintain
32 the confidentiality of all records reviewed and information obtained
33 in the course of conducting the audit and shall not disclose any
34 information that is identifiable to any program participant.

35 (c) If, during the course of an audit, the auditor discovers that
36 a participant has harmed a patient, or a patient has died while being
37 treated by a participant, the auditor shall include that information
38 in his or her audit, and shall investigate and report on how that
39 participant was dealt with by the program.

1 (d) A copy of the audit shall be made available to the public by
2 posting a link to the audit on the ~~agency's~~ *committee's* Internet
3 Web site homepage no less than 10 business days after publication
4 of the audit. Copies of the audit shall also be provided to the
5 Assembly and Senate Committees on Business and Professions
6 and the Assembly and Senate Committees on Health within 10
7 business days of its publication.
8 2349. This article shall remain in effect only until January 1,
9 2021, and as of that date is repealed, unless a later enacted statute,
10 that is enacted before January 1, 2021, deletes or extends that date.

AB 583

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 583
Author: Hayashi
Bill Date: July 8, 2009, amended
Subject: Disclosure of Education and Office Hours
Sponsor: CA Medical Association and CA Society of Plastic Surgeons

STATUS OF BILL:

This bill is currently on the inactive file on the Senate Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require health care practitioners to disclose their license type and highest level of educational degree to patients and physicians would additionally be required to disclose their board certification. Physicians who supervise locations outside their primary office would be required to post the hours they are present at each location.

ANALYSIS:

Existing law requires health care practitioners to either wear a name tag or prominently display their license status in their office. This bill requires health care practitioners to disclose certain information to help the public better understand the qualifications of the health care practitioner they are considering.

This bill intends to make consumers aware of the exact educational level and particular specialty certifications of their health care practitioner. Providing the public with more complete information on health care practitioners will help to alleviate any confusion about the exact qualifications of health care practitioners.

These provisions can be satisfied by either wearing the required information on a name tag, prominently posting the information in the health care practitioner's office (diploma, certificate), or by giving the information to the patient in writing at the initial patient encounter.

This bill will also require a physician, when supervising more than one location, to post the hours the physician is present. In addition, the public may not know that when they seek care at a physician's office, the physician may not be

present. By requiring physicians to post when they are present in the office it will help the patient better understand the physician's availability.

FISCAL: Minor and absorbable enforcement costs

POSITION: Support

April 15, 2010

AMENDED IN SENATE JULY 8, 2009

AMENDED IN SENATE JUNE 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 583

Introduced by Assembly Member Hayashi

February 25, 2009

An act to amend Section 680 of the Business and Professions Code, relating to health care practitioners.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Hayashi. Health care practitioners: disclosure of education and office hours.

Existing law requires a health care practitioner to disclose, while working, his or her name and practitioner's license status on a name tag in at least 18-point type or to prominently display his or her license in his or her office, except as specified.

This bill would require each of those health care practitioners to also display the type of license and, except for nurses, the highest level of academic degree he or she holds either on a name tag in at least 18-point type, in his or her office, or in writing given to patients. The bill would require a physician and surgeon, osteopathic physician and surgeon, and doctor of podiatric medicine who is certified in a medical specialty, as specified, to disclose the name of the certifying board or association either on a name tag in at least 18-point type, in writing given to the patient on the patient's first office visit, or in his or her office. The bill would require a physician and surgeon who supervises an office in addition to his or her primary practice location to conspicuously post in each office a schedule of the regular hours when he or she will be

present in that office and the office hours during which he or she will not be present. The bill would also require an office that is part of a group practice with more than one physician and surgeon to post a current schedule of the hours when a physician and surgeon is present. The bill would exempt health care practitioners working in certain licensed laboratories and health care facilities, as specified, from the requirements to disclose license type, highest level of academic degree, and name of certifying board or association providing certification in the practitioner's specialty or subspecialty.

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

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

1 SECTION 1. Section 680 of the Business and Professions Code
2 is amended to read:

3 680. (a) (1) Except as otherwise provided in this section, a
4 health care practitioner shall disclose, while working, his or her
5 name, practitioner's license status, license type, as granted by this
6 state, and the highest level of academic degree he or she holds, by
7 one of the following methods:

8 (A) On a name tag in at least 18-point type.

9 (B) In writing to a patient at the ~~patient's~~ *patient's* initial office
10 visit.

11 (C) In a prominent display in his or her office.

12 (2) If a health care practitioner or a licensed clinical social
13 worker is working in a psychiatric setting or in a setting that is not
14 licensed by the state, the employing entity or agency shall have
15 the discretion to make an exception from the name tag requirement
16 for individual safety or therapeutic concerns.

17 (3) (A) In the interest of public safety and consumer awareness,
18 it shall be unlawful for any person to use the title "nurse" in
19 reference to himself or herself in any capacity, except for an
20 individual who is a registered nurse or a licensed vocational nurse,
21 or as otherwise provided in Section 2800. Nothing in this section
22 shall be deemed to prohibit a certified nurse assistant from using
23 his or her title.

24 (B) An individual licensed under Chapter 6 (commencing with
25 Section 2700) is not required to disclose the highest level of
26 academic degree he or she holds.

1 (b) Facilities licensed by the State Department of Social
2 Services, the State Department of Mental Health, or the State
3 Department of Public Health shall develop and implement policies
4 to ensure that health care practitioners providing care in those
5 facilities are in compliance with subdivision (a). The State
6 Department of Social Services, the State Department of Mental
7 Health, and the State Department of Public Health shall verify
8 through periodic inspections that the policies required pursuant to
9 subdivision (a) have been developed and implemented by the
10 respective licensed facilities.

11 (c) For purposes of this article, "health care practitioner" means
12 any person who engages in acts that are the subject of licensure
13 or regulation under this division or under any initiative act referred
14 to in this division.

15 (d) An individual licensed under Chapter 5 (commencing with
16 Section 2000) or under the Osteopathic Act, who is certified by
17 (1) an American Board of Medical Specialties member board, (2)
18 a board or association with equivalent requirements approved by
19 that person's medical licensing authority, or (3) a board or
20 association with an Accreditation Council for Graduate Medical
21 Education approved postgraduate training program that provides
22 complete training in that specialty or subspecialty, shall disclose
23 the name of the board or association by one of the following
24 methods:

25 (1) On a name tag in at least 18-point type.

26 (2) In writing to a patient at the patient's initial office visit.

27 (3) In a prominent display in his or her office.

28 (e) A physician and surgeon who supervises an office in addition
29 to his or her primary practice location shall prominently display
30 in each of those offices a current schedule of the regular hours
31 when he or she is present in the respective office, and the hours
32 during which each office is open and he or she is not present. If
33 the office is a part of a group practice with more than one physician
34 and surgeon, the office shall post a current schedule of the hours
35 when a physician and surgeon is present in the office.

36 (f) Subdivisions (d) and (e) shall not apply to a health care
37 practitioner working in a facility licensed under Section 1250 of

- 1 the Health and Safety Code or in a clinical laboratory licensed
- 2 under Section 1265.

AB 646

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 646
Author: Swanson
Bill Date: April 13, 2010, amended
Subject: Authorizing District Hospitals to Employ Physicians
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill eliminates a current pilot program which allows for the limited direct employment of physicians by district hospitals, and instead, this bill allows for the direct employment of physicians by 1) rural health care districts, to work at any district facility or clinic, or 2) by any public or non-profit hospitals or clinics located in health care districts which serve medically underserved urban populations and communities.

ANALYSIS:

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

The Board presently administers a pilot project to provide for the direct employment of physicians by qualified district hospitals; this project is set to expire on January 1, 2011. (Senate Bill 376/Chesbro, Chap. 411, Statutes of 2003). The Board supported SB 376 because the program was created as a limited pilot program, and required a final evaluation to assess whether this exemption will promote access to health care.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in the bill. Support for this bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the

needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law required the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally.

The Board was challenged in evaluating the program and preparing the required report because the low number of participants did not afford us sufficient information to prepare a valid analysis of the pilot. In summary, while the Board supports the ban on the corporate practice of medicine, it also believes there may be justification to extend the pilot so that a better evaluation can be made. However, until there is sufficient data to perform a full analysis of an expanded pilot, the Board's position as spelled out in the report to the Legislature (September 10, 2008) was that the statutes governing the corporate practice of medicine should not be amended as a solution to solve the problem of access to healthcare.

The pilot provided safeguards and limitations. That program provided for the direct employment of no more than 20 physicians in California by qualified district hospitals at any time and limited the total number of physicians employed by such a hospital to no more than two at a time. The Medical Board was notified of any physicians hired under the pilot, and the contracts were limited to four years of service.

This bill eliminates the pilot program and instead would allow *carte blanche* for the direct employment of physicians by 1) rural health care districts, to work at any district facility or clinic, or 2) by any public or non-profit hospitals or clinics located in health care districts which serve medically underserved urban populations and communities.

In this bill, there are no limitations as to which hospitals could participate. As an example, in the current pilot program: 1) the hospital must be located in smaller counties (a population of less than 750,000); 2) the hospital must provide a majority of care to underserved populations; 3) the hospital must notify the Medical Board.

Also, the intent of the original pilot was to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities. This was seen as one avenue through which to improve access to care for underserved

populations. Since this bill does not include such intent, it appears to be an unwarranted infringement on the prohibition of the corporate practice of medicine.

Although this bill offers limited parameters for implementation, it appears to lack adequate constraints to ensure public protections. Patients would be unaware that the physician is an employee. Information about the atypical employment relationship should be provided to patients so they can make an informed decision; informed consent is a cornerstone of patient care. Additional signage should clearly indicate that physicians are licensed by the State (with contact information for the Board) in case a patient has a need to contact the Board.

An important element of the current pilot is missing from this bill – an independent evaluation should be required to define the successes, problems, if any, and overall effectiveness of this program for the hospital, employed physicians, and on consumer protection. Additional input should be sought as to how the program could be strengthened.

Until a pilot program can be extended and evaluated, this bill seems premature with an unwarranted expansion. Further, although under current law and under this bill the participating hospital is prohibited from interfering with, controlling, or otherwise directing the physician's professional judgment, it is still of concern that there would be an unlimited number of physicians in California who could be employed.

FISCAL: Unknown

POSITION: Support in Concept

April 15, 2010

AMENDED IN SENATE APRIL 13, 2010

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 646

Introduced by Assembly Member Swanson

(Coauthors: Assembly Members Beall, Buchanan, Chesbro, Coto,
De Leon, Evans, Fong, Fuentes, Furutani, Hall, Jeffries, Lieu,
Bonnie Lowenthal, Ma, Mendoza, Nava, Portantino, Price, Salas,
Skinner, and Torres)

(Coauthors: Senators DeSaulnier and Wiggins Price, Romero, Wiggins
and Yee)

February 25, 2009

An act to amend, *repeal, and add* Section 2401 of, and to repeal
Section 2401.1 of, the Business and Professions Code, relating to healing
arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as amended, Swanson. Physicians and surgeons:
employment.

Existing law, the Medical Practice Act, restricts the employment of
licensed physicians and surgeons and podiatrists by a corporation or
other artificial legal entity, subject to specified exemptions, and makes
it a crime to practice medicine without a license. Existing law
establishes, until January 1, 2011, a pilot project to allow qualified
district hospitals that, among other things, provide more than ~~50 percent~~
50% of patient days to the care of Medicare, Medi-Cal, and uninsured
patients, to employ a physician and surgeon, if the hospital does not

interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals to provide medically necessary services in rural and medically underserved communities, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete that pilot project and would instead, *until January 1, 2021*, authorize a health care district, as defined, *and a clinic owned or operated by a health care district, as specified*, to employ physicians and surgeons if the health care district's service area includes a Medically Underserved Area (MUA) or a Medically Underserved Population (MUP), or has been federally designated as a Health Professional Shortage Area (HPSA); *the district board conducts a public hearing and adopts a specified resolution declaring the need for the district to recruit and directly employ one or more physicians and surgeons*; and the ~~chief~~ executive officer of the district provides specified documentation to the Medical Board of California. Upon receipt of that documentation, the bill would require the board to approve the employment of up to 5 primary or specialty care physicians and surgeons by the district, and, upon receipt of additional documentation after that employment, to approve an additional 5 primary or specialty care physicians and surgeons. The bill would provide that a district may, until December 31, 2020, enter into, renew, or extend any employment contract with a physician and surgeon for up to 10 years. The bill would require the Office of Statewide Health Planning and Development, in consultation with the State Department of Public Health and the board, to report to the Legislature by June 1, 2018, with regard to the efficacy of the employment of physicians and surgeons by health care districts, as specified.

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

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

- 1 SECTION 1. Section 2401 of the Business and Professions
- 2 Code is amended to read:
- 3 2401. (a) Notwithstanding Section 2400, a clinic operated
- 4 primarily for the purpose of medical education by a public or
- 5 private nonprofit university medical school, which is approved by

1 the ~~Division of Licensing~~ board or the Osteopathic Medical Board
2 of California, may charge for professional services rendered to
3 teaching patients by licensees who hold academic appointments
4 on the faculty of the university, if the charges are approved by the
5 physician and surgeon in whose name the charges are made.

6 (b) Notwithstanding Section 2400, a clinic operated under
7 subdivision (p) of Section 1206 of the Health and Safety Code
8 may employ licensees and charge for professional services rendered
9 by those licensees. However, the clinic shall not interfere with,
10 control, or otherwise direct the professional judgment of a
11 physician and surgeon in a manner prohibited by Section 2400 or
12 any other provision of law.

13 (c) Notwithstanding Section 2400, a narcotic treatment program
14 operated under Section 11876 of the Health and Safety Code and
15 regulated by the State Department of Alcohol and Drug Programs,
16 may employ licensees and charge for professional services rendered
17 by those licensees. However, the narcotic treatment program shall
18 not interfere with, control, or otherwise direct the professional
19 judgment of a physician and surgeon in a manner prohibited by
20 Section 2400 or any other provision of law.

21 (d) (1) Notwithstanding Section 2400, a health care district
22 operated pursuant to Division 23 (commencing with Section 32000)
23 of the Health and Safety Code may employ physicians and
24 surgeons, and may charge for professional services rendered by a
25 physician and surgeon, if the physician and surgeon in whose name
26 the charges are made approves the charges, and if all of the
27 following conditions are met:

28 (A) The service area of the health care district includes a
29 Medically Underserved Area (MUA) or a Medically Underserved
30 Population (MUP), *as defined in Section 127928 of the Health and*
31 *Safety Code*, or has been federally designated as a Health
32 Professional Shortage Area (HPSA).

33 (B) (i) ~~The chief executive officer of the health care district~~
34 ~~documents that the district has been actively attempting and unable~~
35 ~~to recruit a primary or specialty care physician and surgeon for~~
36 ~~any 12 consecutive month period, beginning on or after July 1,~~
37 ~~2008.~~

38 (ii) ~~The chief executive officer submits an application to the~~

39 (B) *The board conducts a public hearing and adopts a formal*
40 *resolution declaring that a need exists for the district to recruit*

1 *and directly employ one or more physicians and surgeons to serve*
2 *unmet community need.*

3 *(C) The resolution shall include all of the following findings*
4 *and declarations:*

5 *(i) Patients living within the community have been forced to*
6 *seek care outside of the community, or have faced extensive delays*
7 *in access to care, due to the lack of physicians and surgeons.*

8 *(ii) The communities served by the district lack sufficient*
9 *numbers of physicians and surgeons to meet community need or*
10 *have lost or are threatened with the impending loss of one or more*
11 *physicians and surgeons due to retirement, planned relocation, or*
12 *other reasons.*

13 *(iii) The district has been actively working to recruit one or*
14 *more physicians and surgeons to address unmet community need,*
15 *or to fill an impending vacancy, for a minimum of 12 consecutive*
16 *months, beginning July 1, 2008, without success.*

17 *(iv) The direct employment of one or more physicians and*
18 *surgeons by the district is necessary in order to augment or*
19 *preserve access to essential medical care in the communities served*
20 *by the district.*

21 *(D) The resolution shall also do the following:*

22 *(i) Direct the district's executive officer to begin actively*
23 *recruiting one or more physicians and surgeons, up to the limits*
24 *specified in this chapter, as district employees.*

25 *(ii) Prohibit the executive officer from actively recruiting or*
26 *employing a physician and surgeon who is currently employed by*
27 *a federally qualified health center, rural health center, or other*
28 *community clinic not affiliated with the district.*

29 *(E) Upon adoption of the resolution by the board, the executive*
30 *officer shall submit an application to the board certifying the*
31 *district's inability to recruit one or more physicians and surgeons,*
32 *including all relevant documentation, certifying that the inability*
33 *to recruit primary or specialty care physicians and surgeons has*
34 *negatively impacted patient care in the community, and that the*
35 *employment of physicians and surgeons by the district would meet*
36 *a critical, unmet need in the community based upon a number of*
37 *factors, including, but not limited to, the number of patients*
38 *referred for care outside of the community, the number of patients*
39 *who experienced delays in treatment, the length of treatment*
40 *delays, and negative patient outcomes.*

1 (2) Upon receipt and review of the ~~certification application,~~
2 *adopted resolution, and all relevant documentation* of the district's
3 inability to recruit a physician and surgeon as specified in
4 subparagraph ~~(B)~~ (E) of paragraph (1), the board shall approve
5 and authorize the employment of up to five primary or specialty
6 care physicians and surgeons by the district.

7 (3) Upon receipt and review of subsequent ~~certification~~
8 *documentation* of the need for additional primary or specialty care
9 physicians and surgeons by the district, the board shall approve
10 and authorize the employment of up to five additional primary or
11 specialty care physicians and surgeons by the district.

12 (4) Employment contracts with physicians and surgeons issued
13 pursuant to this subdivision shall be for a period of not more than
14 10 years, but may be renewed or extended. Districts may enter
15 into, renew, or extend employment contracts with physicians and
16 surgeons pursuant to this subdivision until December 31, 2020.

17 (5) The Office of Statewide Health Planning and Development,
18 in consultation with the State Department of Public Health and the
19 board, shall conduct an efficacy study of the program under this
20 subdivision to evaluate improvement in physician and surgeon
21 recruitment and retention in the districts participating in the
22 program, impacts on physician and surgeon and health care access
23 in the communities served by these districts, impacts on patient
24 outcomes, degree of patient and participating physician and surgeon
25 satisfaction, and impacts on the independence and autonomy of
26 medical decisionmaking by employed physicians and surgeons.
27 This study shall be completed and its results reported to the
28 Legislature no later than June 1, 2018.

29 (6) *This subdivision applies to health care districts and to any*
30 *clinic owned or operated by a health care district, provided the*
31 *health care district meets the criteria of, and ensures compliance*
32 *with, the requirements of this subdivision.*

33 (e) A health care district authorized to employ physicians and
34 surgeons pursuant to subdivision (d) shall not interfere with,
35 control, or otherwise direct a physician and surgeon's professional
36 judgment in a manner prohibited by Section 2400 or any other
37 provision of law. Violation of this prohibition is punishable as a
38 violation of Section 2052, by a fine not exceeding ten thousand
39 dollars (\$10,000), by imprisonment in the state prison, by
40 imprisonment in a county jail not exceeding one year, or by both

1 the fine and either imprisonment. This subdivision is declaratory
2 of existing law, and, as such, does not create a new crime or expand
3 the scope of any existing crime.

4 *(f) Nothing in subdivision (d) shall be construed to affect a*
5 *primary care clinic licensed pursuant to subdivision (a) of Section*
6 *1204 of the Health and Safety Code.*

7 *(g) This section shall remain in effect only until January 1, 2021,*
8 *and as of that date is repealed, unless a later enacted statute, that*
9 *is enacted before January 1, 2021, deletes or extends that date.*

10 SEC. 2. Section 2401 is added to the Business and Professions
11 Code, to read:

12 2401. (a) Notwithstanding Section 2400, a clinic operated
13 primarily for the purpose of medical education by a public or
14 private nonprofit university medical school, which is approved by
15 the board or the Osteopathic Medical Board of California, may
16 charge for professional services rendered to teaching patients by
17 licensees who hold academic appointments on the faculty of the
18 university, if the charges are approved by the physician and
19 surgeon in whose name the charges are made.

20 (b) Notwithstanding Section 2400, a clinic operated under
21 subdivision (p) of Section 1206 of the Health and Safety Code may
22 employ licensees and charge for professional services rendered
23 by those licensees. However, the clinic shall not interfere with,
24 control, or otherwise direct the professional judgment of a
25 physician and surgeon in a manner prohibited by Section 2400 or
26 any other provision of law.

27 (c) Notwithstanding Section 2400, a narcotic treatment program
28 operated under Section 11876 of the Health and Safety Code and
29 regulated by the State Department of Alcohol and Drug Programs,
30 may employ licensees and charge for professional services
31 rendered by those licensees. However, the narcotic treatment
32 program shall not interfere with, control, or otherwise direct the
33 professional judgment of a physician and surgeon in a manner
34 prohibited by Section 2400 or any other provision of law.

35 (d) This section shall become operative on January 1, 2021.

36 ~~SEC. 2.~~

37 SEC. 3. Section 2401.1 of the Business and Professions Code
38 is repealed.

O

AB 648

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 648
Author: Chesbro
Bill Date: May 28, 2009, amended
Subject: Authorizing Rural Hospitals to Employ Physicians
Sponsor: California Hospital Association

STATUS OF BILL:

This bill is currently in the Senate Business and Professions Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill allows rural hospitals, as defined, to employ physicians and surgeons to provide medical services at the hospital or any other health facility that the rural hospital owns or operations.

ANALYSIS:

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

The Board presently administers a pilot project to provide for the direct employment of physicians by qualified district hospitals; this project is set to expire on January 1, 2011. (Senate Bill 376/Chesbro, Chap. 411, Statutes of 2003). The Board supported SB 376 because the program was created as a limited pilot program, and required a final evaluation to assess whether this exemption will promote access to health care.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in the bill. Support for this bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for

physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law required the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally.

The Board was challenged in evaluating the program and preparing the required report because the low number of participants did not afford sufficient information to prepare a valid analysis of the pilot. In summary, while the Board supports the ban on the corporate practice of medicine, it also believes there may be justification to extend the pilot so that a better evaluation can be made. However, until there is sufficient data to perform a full analysis of an expanded pilot, the Board's position as spelled out in the report to the Legislature (September 10, 2008) was that the statutes governing the corporate practice of medicine should not be amended as a solution to solve the problem of access to healthcare.

The current pilot provided safeguards and limitations. That program provided for the direct employment of no more than 20 physicians in California by qualified district hospitals at any time and limited the total number of physicians employed by such a hospital to no more than two at a time. The Medical Board was notified of any physicians hired under the pilot, and the contracts were limited to four years of service.

This bill allows rural hospitals, as defined, to employ physicians and surgeons to provide medical services at the hospital or any other health facility that the rural hospital owns or operations. None of the safeguards and limitations of the pilot are included in this bill. Instead, this bill includes few parameters:

1) The rural hospital that employs a physician shall develop and implement a written policy to ensure that each employed physician exercises his or her independent medical judgment in providing care to patients.

2) Each physician employed by a rural hospital shall sign a statement biennially indicating that the physician and surgeon:

a) Voluntarily desires to be employed by the hospital.

b) Will exercise independent medical judgment in all matters relating to the provision of medical care to his or her patients.

c) Will report immediately to the Medical Board of California any action or event that the physician reasonably and in good faith believes constitutes a compromise of his or her independent medical judgment in providing patient care

3) The signed statement shall be retained by the rural hospital for a period of at least three years. A copy of the signed statement shall be submitted by the rural hospital to the Board within 10 working days after the statement is signed by the physician.

4) If a report is filed per 2) c), above, and the Board believes that a rural hospital has violated this prohibition, the Board shall refer the matter to the Department of Public Health (DPH), which shall investigate the matter. If the department believes that the rural

hospital has violated the prohibition, it shall notify the rural hospital. Certain due process procedures are set forth and penalties are outlined.

Although this bill offers limited parameters for implementation, it appears to lack adequate constraints to ensure public protections. Patients would be unaware the physician is an employee. Information about the atypical employment relationship should be provided to patients so they can make an informed decision; informed consent is a cornerstone of patient care. Additional signage should clearly indicate that physicians are licensed by the State (with contact information for the Board) in case a patient has a need to contact the Board.

The written policy and statement (required per Items 1) and 2), above) should be more appropriately submitted to both the Board and the DPH, so both agencies are aware of the policy the hospital has established for the physicians as it relates to public protection.

Further, employment protection must be provided for all employed physicians, so that any report filed per Item 4), above, does not lead to retaliatory action by the hospital.

Lastly, an important element of the current pilot is missing from this bill – an independent evaluation should be required to define the successes, problems, if any, and overall effectiveness of this program for the hospital, employed physicians, and on consumer protection. Additional input should be sought as to how the program could be strengthened.

Until a pilot program as originally envisioned by SB 376 is fully functional and evaluated, this bill seems premature with an unwarranted expansion. Further, it is still of concern that there would be an unlimited number of physicians in California who could be employed, even if the participating hospital is prohibited from interfering with, controlling, or otherwise directing the physician's professional judgment.

FISCAL: Unknown

POSITION: Support in Concept

April 15, 2010

AMENDED IN ASSEMBLY MAY 28, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 648

Introduced by Assembly Member Chesbro
(Principal coauthor: Assembly Member Nielsen)

(Principal coauthor: Senator Cox)

(Coauthor: ~~Assembly Member Buchanan~~ Coauthors: Assembly
Members Buchanan, Fuentes, and Miller)

(Coauthor: Senator ~~Cox~~ Ducheny)

February 25, 2009

An act to add and repeal Chapter 6.5 (commencing with Section 124871) of Part 4 of Division 106 of the Health and Safety Code, relating to rural hospitals.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, as amended, Chesbro. Rural hospitals: physician services.

Existing law generally provides for the licensure of health facilities, including rural general acute care hospitals, by the State Department of Public Health.

Existing law requires the department to provide expert technical assistance to strategically located, high-risk rural hospitals, as defined, to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. Existing law also requires the department to continue to provide regulatory relief when appropriate through program flexibility for such items as staffing, space, and physical plant requirements.

This bill would, until January 1, 2020, establish a demonstration project authorizing a rural hospital, as defined, that meets specified conditions, to employ up to 10 physicians and surgeons at one time, except as provided, to provide medical services at the rural hospital or other health facility that the rural hospital owns or operates, and to retain all or part of the income generated by the physicians and surgeons for medical services billed and collected by the rural hospital if the physician and surgeon in whose name the charges are made approves the charges. The bill would require a rural hospital that employs a physician and surgeon pursuant to those provisions to develop and implement a policy regarding the independent medical judgment of the physician and surgeon.

The bill would require these physicians and surgeons to biennially sign a specified statement.

The bill would impose various duties on the department and the Medical Board of California including, not later than January 1, 2019, a requirement that the board deliver a report to the Legislature regarding the demonstration project.

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

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

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

3 (a) Many hospitals in the state are having great difficulty
4 recruiting and retaining physicians.

5 (b) There is a shortage of physicians in communities across
6 California, particularly in rural areas, and this shortage limits access
7 to health care for Californians in these communities.

8 (c) *The average age of physicians in rural and underserved*
9 *urban communities is approaching 60 years of age, with many of*
10 *these physicians planning to retire within the next two years.*

11 (e)

12 (d) Allowing rural hospitals to directly employ physicians will
13 allow rural hospitals to provide economic security adequate for a
14 physician to relocate and reside in the communities served by the
15 rural hospitals and will help rural hospitals recruit physicians to
16 provide medically necessary services in these communities and

1 further enhance technological developments such as the adoption
2 of electronic medical records.

3 ~~(d)~~

4 (e) Allowing rural hospitals to directly employ physicians will
5 provide physicians with the opportunity to focus on the delivery
6 of health services to patients without the burden of administrative,
7 financial, and operational concerns associated with the
8 establishment and maintenance of a medical office, thereby giving
9 the physicians a reasonable professional and personal lifestyle.

10 ~~(e)~~

11 (f) It is the intent of the Legislature by enacting this act to
12 establish a demonstration project authorizing a rural hospital that
13 meets the conditions set forth in Chapter 6.5 (commencing with
14 Section 124871) of the Health and Safety Code to employ
15 physicians directly and to charge for their professional services.

16 ~~(f)~~

17 (g) It is the further intent of the Legislature to prevent a rural
18 hospital that employs a physician from interfering with, controlling,
19 or otherwise directing the physician's medical judgment or medical
20 treatment of patients.

21 SEC. 2. Chapter 6.5 (commencing with Section 124871) is
22 added to Part 4 of Division 106 of the Health and Safety Code, to
23 read:

24
25 CHAPTER 6.5. RURAL HOSPITAL PHYSICIAN AND SURGEON
26 SERVICES DEMONSTRATION PROJECT
27

28 124871. For purposes of this chapter, a rural hospital means
29 all of the following:

30 (a) A general acute care hospital located in an area designated
31 as nonurban by the United States Census Bureau.

32 (b) A general acute care hospital located in a rural-urban
33 commuting area code of 4 or greater as designated by the United
34 States Department of Agriculture.

35 (c) A rural general acute care hospital, as defined in subdivision
36 (a) of Section 1250.

37 124872. (a) Notwithstanding Article 18 (commencing with
38 Section 2400) of Chapter 5 of Division 2 of the Business and
39 Professions Code and in addition to other applicable laws, a rural
40 hospital whose service area includes a medically underserved area,

1 a medically underserved population, or that has been federally
2 designated as a health professional shortage area may employ one
3 or more physicians and surgeons, not to exceed 10 physicians and
4 surgeons at one time, except as provided in subdivision (c), to
5 provide medical services at the rural hospital or other health
6 facility, as defined in Section 1250, that the rural hospital owns or
7 operates. The rural hospital may retain all or part of the income
8 generated by the physician and surgeon for medical services billed
9 and collected by the rural hospital, if the physician and surgeon in
10 whose name the charges are made approves the charges.

11 (b) A rural hospital may participate in the program if both of
12 the following conditions are met:

13 (1) The rural hospital can document that it has been unsuccessful
14 in recruiting one or more primary care or speciality physicians for
15 at least 12 continuous months beginning July 1, 2008.

16 (2) The chief executive officer of the rural hospital certifies to
17 the Medical Board of California that the inability to recruit primary
18 care or speciality physicians has negatively impacted patient care
19 in the community and that there is a critical unmet need in the
20 community, based on a number of factors, including, but not
21 limited to, the number of patients referred for care outside the
22 community, the number of patients who experienced delays in
23 treatment, and the length of the treatment delays.

24 (c) The total number of licensees employed by the rural hospital
25 at one time shall not exceed 10, unless the employment of
26 additional physicians and surgeons is deemed appropriate by the
27 Medical Board of California on a case-by-case basis. In making
28 this determination the board shall take into consideration whether
29 access to care is improved for the community served by the hospital
30 by increasing the number of physicians and surgeons employed.

31 124873. (a) A rural hospital that employs a physician and
32 surgeon pursuant to Section 124872 shall develop and implement
33 a written policy to ensure that each employed physician and
34 surgeon exercises his or her independent medical judgment in
35 providing care to patients.

36 (b) Each physician and surgeon employed by a rural hospital
37 pursuant to Section 124872 shall sign a statement biennially
38 indicating that the physician and surgeon:

39 (1) Voluntarily desires to be employed by the hospital.

1 (2) Will exercise independent medical judgment in all matters
2 relating to the provision of medical care to his or her patients.

3 (3) Will report immediately to the Medical Board of California
4 any action or event that the physician and surgeon reasonably and
5 in good faith believes constitutes a compromise of his or her
6 independent medical judgment in providing care to patients in a
7 rural hospital or other health care facility owned or operated by
8 the rural hospital.

9 (c) The signed statement required by subdivision (b) shall be
10 retained by the rural hospital for a period of at least three years.
11 A copy of the signed statement shall be submitted by the rural
12 hospital to the Medical Board of California within 10 working
13 days after the statement is signed by the physician and surgeon.

14 (d) A rural hospital shall not interfere with, control, or direct a
15 physician's and surgeon's exercise of his or her independent
16 medical judgment in providing medical care to patients. If, pursuant
17 to a report to the Medical Board of California required by paragraph
18 (3) of subdivision (a), the Medical Board of California believes
19 that a rural hospital has violated this prohibition, the Medical Board
20 of California shall refer the matter to the State Department of
21 Public Health, which shall investigate the matter. If the department
22 concludes that the rural hospital has violated the prohibition, it
23 shall notify the rural hospital. The rural hospital shall have 20
24 working days to respond in writing to the department's notification,
25 following which the department shall make a final determination.
26 If the department finds that the rural hospital violated the
27 prohibition, it shall assess a civil penalty of five thousand dollars
28 (\$5,000) for the first violation and twenty-five thousand dollars
29 (\$25,000) for any subsequent violation that occurs within three
30 years of the first violation. If no subsequent violation occurs within
31 three years of the most recent violation, the next civil penalty, if
32 any, shall be assessed at the five thousand dollar (\$5,000) level.
33 If the rural hospital disputes a determination by the department
34 regarding a violation of the prohibition, the rural hospital may
35 request a hearing pursuant to Section 131071. Penalties, if any,
36 shall be paid when all appeals have been exhausted and the
37 department's position has been upheld.

38 (e) Nothing in this chapter shall exempt a rural hospital from a
39 reporting requirement or affect the authority of the board to take
40 action against a physician's and surgeon's license.

- 1 124874. (a) Not later than January 1, 2019, the board shall
2 deliver a report to the Legislature regarding the demonstration
3 project established pursuant to this chapter. The report shall include
4 an evaluation of the effectiveness of the demonstration project in
5 improving access to health care in rural and medically underserved
6 areas and the demonstration project's impact on consumer
7 protection as it relates to intrusions into the practice of medicine.
8 (b) This chapter shall remain in effect only until January 1,
9 2020, and as of that date is repealed, unless a later enacted statute,
10 that is enacted before January 1, 2020, deletes or extends that date.

AB 933

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 933
Author: Fong
Bill Date: February 26, 2009, introduced
Subject: Workers' Compensation: utilization review
Sponsor: California Society of Industrial Medicine and Surgery
California Society of Physical Medicine and Rehabilitation
Union of American Physicians and Dentists (AFSCME)

STATUS OF BILL:

This bill is in the Senate Committee on Labor and Industrial Relations.

DESCRIPTION OF CURRENT LEGISLATION:

This bill clarifies current law to provide that physicians performing utilization review for injured workers must be licensed in California.

ANALYSIS:

Current law does not require physicians who perform utilization reviews of workers' compensation claims to be licensed in California as long as the physicians are licensed in another state. However, current law does state that performing an evaluation that leads to the modification, delay, or denial of medical treatment is an act of diagnosing for the purpose of providing a different mode of treatment for the patient. Only a licensed physician is allowed to override treatment decisions.

The author and proponents of this bill believe that out-of-state physicians are making inappropriate decisions regarding these utilization reviews in part because there is no regulatory agency holding them accountable.

This bill would ensure that any physician performing a utilization review in California would be regulated by the Medical Board (Board) by requiring all physicians performing these reviews to be licensed in this state.

This bill is similar to last year's AB 2969 (Lieber) which was vetoed. The Board has supported that legislation in the past.

FISCAL: None to the Board

POSITION: Support

April 15, 2010

ASSEMBLY BILL

No. 933

Introduced by Assembly Member Fong

February 26, 2009

An act to amend Sections 3209.3 and 4610 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 933, as introduced, Fong. Workers' compensation: utilization review.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law, for purposes of workers' compensation, defines "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology, as specified, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

This bill would require the psychologist to be licensed by California state law.

Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services,

and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

This bill would require the physician to be licensed by California state law.

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

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

1 SECTION 1. Section 3209.3 of the Labor Code is amended to
2 read:

3 3209.3. (a) "Physician"—~~includes~~ *means* physicians and
4 surgeons holding an M.D. or D.O. degree, psychologists,
5 acupuncturists, optometrists, dentists, podiatrists, and chiropractic
6 practitioners licensed by California state law and within the scope
7 of their practice as defined by California state law.

8 (b) "Psychologist" means a ~~licensed~~ psychologist *licensed by*
9 *California state law* with a doctoral degree in psychology, or a
10 doctoral degree deemed equivalent for licensure by the Board of
11 Psychology pursuant to Section 2914 of the Business and
12 Professions Code, and who either has at least two years of clinical
13 experience in a recognized health setting or has met the standards
14 of the National Register of the Health Service Providers in
15 Psychology.

16 (c) When treatment or evaluation for an injury is provided by
17 a psychologist, provision shall be made for appropriate medical
18 collaboration when requested by the employer or the insurer.

19 (d) "Acupuncturist" means a person who holds an
20 acupuncturist's certificate issued pursuant to Chapter 12
21 (commencing with Section 4925) of Division 2 of the Business
22 and Professions Code.

23 (e) Nothing in this section shall be construed to authorize
24 acupuncturists to determine disability for the purposes of Article
25 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under
26 Section 2708 of the Unemployment Insurance Code.

27 SEC. 2. Section 4610 of the Labor Code is amended to read:

28 4610. (a) For purposes of this section, "utilization review"
29 means utilization review or utilization management functions that

1 prospectively, retrospectively, or concurrently review and approve,
2 modify, delay, or deny, based in whole or in part on medical
3 necessity to cure and relieve, treatment recommendations by
4 physicians, as defined in Section 3209.3, prior to, retrospectively,
5 or concurrent with the provision of medical treatment services
6 pursuant to Section 4600.

7 (b) Every employer shall establish a utilization review process
8 in compliance with this section, either directly or through its insurer
9 or an entity with which an employer or insurer contracts for these
10 services.

11 (c) Each utilization review process shall be governed by written
12 policies and procedures. These policies and procedures shall ensure
13 that decisions based on the medical necessity to cure and relieve
14 of proposed medical treatment services are consistent with the
15 schedule for medical treatment utilization adopted pursuant to
16 Section 5307.27. Prior to adoption of the schedule, these policies
17 and procedures shall be consistent with the recommended standards
18 set forth in the American College of Occupational and
19 Environmental Medicine Occupational Medical Practice
20 Guidelines. These policies and procedures, and a description of
21 the utilization process, shall be filed with the administrative director
22 and shall be disclosed by the employer to employees, physicians,
23 and the public upon request.

24 (d) If an employer, insurer, or other entity subject to this section
25 requests medical information from a physician in order to
26 determine whether to approve, modify, delay, or deny requests for
27 authorization, the employer shall request only the information
28 reasonably necessary to make the determination. The employer,
29 insurer, or other entity shall employ or designate a medical director
30 who holds an unrestricted license to practice medicine in this state
31 issued pursuant to Section 2050 or Section 2450 of the Business
32 and Professions Code. The medical director shall ensure that the
33 process by which the employer or other entity reviews and
34 approves, modifies, delays, or denies requests by physicians prior
35 to, retrospectively, or concurrent with the provision of medical
36 treatment services, complies with the requirements of this section.
37 Nothing in this section shall be construed as restricting the existing
38 authority of the Medical Board of California.

39 (e) No person other than a ~~licensed~~ physician *licensed by*
40 *California state law* who is competent to evaluate the specific

1 clinical issues involved in the medical treatment services, and
2 where these services are within the scope of the physician's
3 practice, requested by the physician may modify, delay, or deny
4 requests for authorization of medical treatment for reasons of
5 medical necessity to cure and relieve.

6 (f) The criteria or guidelines used in the utilization review
7 process to determine whether to approve, modify, delay, or deny
8 medical treatment services shall be all of the following:

9 (1) Developed with involvement from actively practicing
10 physicians.

11 (2) Consistent with the schedule for medical treatment utilization
12 adopted pursuant to Section 5307.27. Prior to adoption of the
13 schedule, these policies and procedures shall be consistent with
14 the recommended standards set forth in the American College of
15 Occupational and Environmental Medicine Occupational Medical
16 Practice Guidelines.

17 (3) Evaluated at least annually, and updated if necessary.

18 (4) Disclosed to the physician and the employee, if used as the
19 basis of a decision to modify, delay, or deny services in a specified
20 case under review.

21 (5) Available to the public upon request. An employer shall
22 only be required to disclose the criteria or guidelines for the
23 specific procedures or conditions requested. An employer may
24 charge members of the public reasonable copying and postage
25 expenses related to disclosing criteria or guidelines pursuant to
26 this paragraph. Criteria or guidelines may also be made available
27 through electronic means. No charge shall be required for an
28 employee whose physician's request for medical treatment services
29 is under review.

30 (g) In determining whether to approve, modify, delay, or deny
31 requests by physicians prior to, retrospectively, or concurrent with
32 the provisions of medical treatment services to employees all of
33 the following requirements must be met:

34 (1) Prospective or concurrent decisions shall be made in a timely
35 fashion that is appropriate for the nature of the employee's
36 condition, not to exceed five working days from the receipt of the
37 information reasonably necessary to make the determination, but
38 in no event more than 14 days from the date of the medical
39 treatment recommendation by the physician. In cases where the
40 review is retrospective, the decision shall be communicated to the

1 individual who received services, or to the individual's designee,
2 within 30 days of receipt of information that is reasonably
3 necessary to make this determination.

4 (2) When the employee's condition is such that the employee
5 faces an imminent and serious threat to his or her health, including,
6 but not limited to, the potential loss of life, limb, or other major
7 bodily function, or the normal timeframe for the decisionmaking
8 process, as described in paragraph (1), would be detrimental to the
9 employee's life or health or could jeopardize the employee's ability
10 to regain maximum function, decisions to approve, modify, delay,
11 or deny requests by physicians prior to, or concurrent with, the
12 provision of medical treatment services to employees shall be made
13 in a timely fashion that is appropriate for the nature of the
14 employee's condition, but not to exceed 72 hours after the receipt
15 of the information reasonably necessary to make the determination.

16 (3) (A) Decisions to approve, modify, delay, or deny requests
17 by physicians for authorization prior to, or concurrent with, the
18 provision of medical treatment services to employees shall be
19 communicated to the requesting physician within 24 hours of the
20 decision. Decisions resulting in modification, delay, or denial of
21 all or part of the requested health care service shall be
22 communicated to physicians initially by telephone or facsimile,
23 and to the physician and employee in writing within 24 hours for
24 concurrent review, or within two business days of the decision for
25 prospective review, as prescribed by the administrative director.
26 If the request is not approved in full, disputes shall be resolved in
27 accordance with Section 4062. If a request to perform spinal
28 surgery is denied, disputes shall be resolved in accordance with
29 subdivision (b) of Section 4062.

30 (B) In the case of concurrent review, medical care shall not be
31 discontinued until the employee's physician has been notified of
32 the decision and a care plan has been agreed upon by the physician
33 that is appropriate for the medical needs of the employee. Medical
34 care provided during a concurrent review shall be care that is
35 medically necessary to cure and relieve, and an insurer or
36 self-insured employer shall only be liable for those services
37 determined medically necessary to cure and relieve. If the insurer
38 or self-insured employer disputes whether or not one or more
39 services offered concurrently with a utilization review were
40 medically necessary to cure and relieve, the dispute shall be

1 resolved pursuant to Section 4062, except in cases involving
2 recommendations for the performance of spinal surgery, which
3 shall be governed by the provisions of subdivision (b) of Section
4 4062. Any compromise between the parties that an insurer or
5 self-insured employer believes may result in payment for services
6 that were not medically necessary to cure and relieve shall be
7 reported by the insurer or the self-insured employer to the licensing
8 board of the provider or providers who received the payments, in
9 a manner set forth by the respective board and in such a way as to
10 minimize reporting costs both to the board and to the insurer or
11 self-insured employer, for evaluation as to possible violations of
12 the statutes governing appropriate professional practices. No fees
13 shall be levied upon insurers or self-insured employers making
14 reports required by this section.

15 (4) Communications regarding decisions to approve requests
16 by physicians shall specify the specific medical treatment service
17 approved. Responses regarding decisions to modify, delay, or deny
18 medical treatment services requested by physicians shall include
19 a clear and concise explanation of the reasons for the employer's
20 decision, a description of the criteria or guidelines used, and the
21 clinical reasons for the decisions regarding medical necessity.

22 (5) If the employer, insurer, or other entity cannot make a
23 decision within the timeframes specified in paragraph (1) or (2)
24 because the employer or other entity is not in receipt of all of the
25 information reasonably necessary and requested, because the
26 employer requires consultation by an expert reviewer, or because
27 the employer has asked that an additional examination or test be
28 performed upon the employee that is reasonable and consistent
29 with good medical practice, the employer shall immediately notify
30 the physician and the employee, in writing, that the employer
31 cannot make a decision within the required timeframe, and specify
32 the information requested but not received, the expert reviewer to
33 be consulted, or the additional examinations or tests required. The
34 employer shall also notify the physician and employee of the
35 anticipated date on which a decision may be rendered. Upon receipt
36 of all information reasonably necessary and requested by the
37 employer, the employer shall approve, modify, or deny the request
38 for authorization within the timeframes specified in paragraph (1)
39 or (2).

1 (h) Every employer, insurer, or other entity subject to this section
2 shall maintain telephone access for physicians to request
3 authorization for health care services.

4 (i) If the administrative director determines that the employer,
5 insurer, or other entity subject to this section has failed to meet
6 any of the timeframes in this section, or has failed to meet any
7 other requirement of this section, the administrative director may
8 assess, by order, administrative penalties for each failure. A
9 proceeding for the issuance of an order assessing administrative
10 penalties shall be subject to appropriate notice to, and an
11 opportunity for a hearing with regard to, the person affected. The
12 administrative penalties shall not be deemed to be an exclusive
13 remedy for the administrative director. These penalties shall be
14 deposited in the Workers' Compensation Administration Revolving
15 Fund.

AMENDED IN ASSEMBLY JANUARY 25, 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

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 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.

Amendments to this bill removed the physician consultation from the provisions.

FISCAL: Minor and absorbable

POSITION: Support

April 15, 2010

AMENDED IN ASSEMBLY JANUARY 25, 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 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:

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

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

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

7 (c) According to the California Health Care Foundation,
8 6,600,000 Californians are uninsured and may not have access to
9 immunizations.

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

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

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

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

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

24 4052.8. (a) A pharmacist may, ~~in consultation with a physician~~
25 ~~and surgeon~~, initiate and administer influenza immunizations,
26 pursuant to standardized protocols developed and approved by the
27 Medical Board of California in consultation with public health
28 officers, to any person 18 years of age or older. With respect to
29 the development and approval of those standardized protocols, the
30 Medical Board of California may consult with the board. The
31 standardized protocols shall be consistent with protocols developed
32 by the Advisory Committee on Immunization Practices of the
33 federal Centers for Disease Control and Prevention.

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

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

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

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

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

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

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

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

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

28 (f) The pharmacist shall maintain an immunization
29 administration record, which shall include, but not be limited to,
30 the name of the vaccine, the expiration date, the date of
31 administration, the manufacturer and lot number, the administration
32 site and route, the Vaccine Information Statement date, and the
33 name and title of the person administering, for 10 years from the
34 date of administration.

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

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

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

5 (j) The board and the Medical Board of California shall evaluate
6 the effectiveness of the initiation and administration of
7 immunizations pursuant to this section, and the board shall report
8 to the appropriate policy committees of the Legislature by January
9 1, 2014.

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

13 ~~SEC. 4.~~

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

AB 1310

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1310
Author: Hernandez
Bill Date: June 29, 2009, amended
Subject: Healing Arts: database
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Office of Statewide Health Planning (OSHPD) to obtain additional information from all healing arts boards.

Amendments to this bill made the collecting of the information permissive instead of mandatory.

ANALYSIS:

Under current law, a healthcare workforce clearinghouse, created by SB 139 (Scott), is charged with collecting data from the various health boards. The intent is to establish an ongoing data stream of changes in California's health workforce and provide the necessary information needed to make complex policy changes to meet California's health workforce needs. Currently, healing arts boards are not mandated to provide any information to the clearinghouse which makes it difficult for the Office of Statewide Health Planning and Development (OSHPD) to produce the necessary results.

This bill would require all of the health licensing boards to collect and submit specific data on age, race, gender, practice location, type of practice to the clearinghouse, etc. This will enhance the state's ability to address health workforce shortages and also identify communities that have the highest need for health professionals.

The Medical Board (Board) already requests much of the data collection required in this bill. According to the author, it was this good work being done by the Board that prompted the drafting of this bill to require the same efforts from all other healing arts boards.

New requirements that are not maintained on our computer system include location of high school, description of primary practice setting, and additional practice locations.

This bill was amended to make the collecting of the information permissive rather than mandatory. This addresses the concerns raised by the Board allowing the position on this bill to transition to 'support' from 'support if amended.'

FISCAL: Unknown

POSITION: Support

April 15, 2010

AMENDED IN SENATE JUNE 29, 2009
AMENDED IN ASSEMBLY JUNE 2, 2009
AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1310

Introduced by Assembly Member Hernandez

February 27, 2009

An act to add Section 857 to the Business and Professions Code, *and to add Section 128051.5 to the Health and Safety Code*, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require ~~the Medical Board of California and the Board of Registered Nursing~~ *certain healing arts boards* to add and label as "mandatory" ~~specified fields on an application for initial licensure or~~

a renewal form for applicants applying to those boards collect specified information from their licensees and would require those boards and the Department of Consumer Affairs to, as much as practicable, work with OSHPD to transfer that data to the Health Care Workforce Clearinghouse. The bill would further require the department OSHPD, in consultation with the division and the clearinghouse department, to select a database and to also add some of the collected data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

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

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

1 SECTION 1. Section 857 is added to the Business and
2 Professions Code, to read:

3 857. (a) ~~Each~~ Every healing arts board specified in subdivision
4 (c) shall add and label as "mandatory" the following fields on an
5 application for initial licensure or renewal for a person applying
6 to that board:

7 (1) ~~First name, middle name, and last name.~~

8 (2) ~~Last four digits of social security number.~~

9 (3) ~~Complete mailing address.~~ (f) shall, in a manner deemed
10 appropriate by the board, collect the following information from
11 persons licensed, certified, registered, or otherwise subject to
12 regulation by that board:

13 (4)

14 (1) Educational background and training, including, but not
15 limited to, degree, related school name and location, and year of
16 graduation, and, as applicable, the highest professional degree
17 obtained, related professional school name and location, and year
18 of graduation.

19 (5)

20 (2) Birth date and place of birth.

21 (6)

22 (3) Sex.

23 (7)

1 (4) Race and ethnicity.

2 ~~(8)~~

3 (5) Location of high school.

4 ~~(9) Mailing address of primary practice, if applicable.~~

5 ~~(10)~~

6 (6) Number of hours per week spent at primary practice location,
7 if applicable.

8 ~~(11)~~

9 (7) Description of primary practice setting, if applicable.

10 ~~(12)~~

11 (8) Primary practice information, including, but not limited to,
12 primary specialty practice, practice location ZIP Code, and county.

13 ~~(13)~~

14 (9) Information regarding any additional practice, including,
15 but not limited to, a description of practice setting, practice location
16 ZIP Code, and county.

17 ~~(b) The department, in consultation with the Healthcare~~
18 ~~Workforce Development Division and the Health Care Workforce~~
19 ~~Clearinghouse, shall select a database and shall add the data~~
20 ~~specified in paragraphs (5) to (13), inclusive, of subdivision (a) to~~
21 ~~that database.~~

22 ~~(c) The following boards are subject to subdivision (a):~~

23 ~~(1) The Medical Board of California.~~

24 ~~(2) The Board of Registered Nursing.~~

25 ~~(d) (1) The department shall collect the specified data in the~~
26 ~~database pursuant to subdivision (b) and shall submit that data to~~
27 ~~Health Care Workforce Clearinghouse annually on or before~~
28 ~~January 1.~~

29 ~~(2) The Health Care Workforce Clearinghouse shall prepare a~~
30 ~~written report containing the findings of this data and shall submit~~
31 ~~the written report annually to the Legislature no later than March~~
32 ~~1, commencing March 1, 2012.~~

33 *(b) The information collected pursuant to this section shall be*
34 *used for the purpose of measuring and evaluating the state's health*
35 *care workforce development needs. For this purpose, the*
36 *department and the boards specified in subdivision (f) shall, as*
37 *much as practicable, work with the Office of Statewide Health*
38 *Planning and Development to transfer the data collected pursuant*
39 *to this section to the Health Care Workforce Clearinghouse.*

1 (c) Personally identifiable information collected pursuant to
2 this section shall be confidential and not subject to public
3 inspection.

4 (d) A board that collects information pursuant to this section
5 shall state in a conspicuous manner that reporting the information
6 is not a condition of license renewal, and that no adverse action
7 will be taken against any licensee that does not report any
8 information.

9 (e) A board that collects information pursuant to this section
10 shall do so in a manner that minimizes any fiscal impact, which
11 may include, but is not limited to, sending the request for
12 information in a renewal notice, a regular newsletter, via electronic
13 mail, or posting the request on the board's Internet Web site, and
14 by allowing licensees to provide the information to the board
15 electronically.

16 (f) The following boards are subject to this section:

17 (1) The Acupuncture Board.

18 (2) The Dental Hygiene Committee of California.

19 (3) The Dental Board of California.

20 (4) The Medical Board of California.

21 (5) The Bureau of Naturopathic Medicine.

22 (6) The California Board of Occupational Therapy.

23 (7) The State Board of Optometry.

24 (8) The Osteopathic Medical Board of California.

25 (9) The California State Board of Pharmacy.

26 (10) The Physical Therapy Board of California.

27 (11) The Physician Assistant Committee, Medical Board of
28 California.

29 (12) The California Board of Podiatric Medicine.

30 (13) The Board of Psychology.

31 (14) The Board of Registered Nursing.

32 (15) The Respiratory Care Board of California.

33 (16) The Speech-Language Pathology and Audiology Board.

34 (17) The Board of Vocational Nursing and Psychiatric
35 Technicians of the State of California.

36 (18) The Board of Behavioral Sciences.

37 SEC. 2. Section 128051.5 is added to the Health and Safety
38 Code, to read:

39 128051.5. (a) The Office of Statewide Health Planning and
40 Development shall, in consultation with the Healthcare Workforce

1 *Development Division and the Department of Consumer Affairs,*
2 *select a database and shall add the data collected pursuant to*
3 *Section 857 of the Business and Professions Code to that database.*
4 *(b) The Health Care Workforce Clearinghouse shall prepare a*
5 *written report containing the findings of this data and shall submit*
6 *the written report annually to the Legislature no later than March*
7 *1, commencing March 1, 2012.*

AB 1767

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1767
Author: Hill
Bill Date: February 2, 2010, introduced
Subject: Enforcement: expert reviewers
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Medical Board (Board) to provide representation to a licensed physician who provides expertise to the Board in the evaluation of the conduct of a licensee when, as a result of providing the expertise, the physician is subject to a disciplinary proceeding undertaken by a specialty board of which the physician is a member.

ANALYSIS:

The Board is currently required to provide legal representation to physicians who provide expertise to the Board if they are named as a defendant in a civil action arising out of the evaluation, opinions, or statements made while testifying on behalf of the Board.

When a professional grievance is filed with a specialty board of which the physician is a member, the Board is not able to protect the physician. This creates a disincentive for these reviewers who provide a critical consumer protection function for the Board.

This bill would give the Board a way to protect its expert witnesses in the case that their testimony for the Board brings about complaints or grievances with the specialty boards of which the physicians who participate as expert witnesses are members. This bill removes the disincentive for physicians to use their expertise to assist in the Board's enforcement cases, thus preserving the ease with which the Board is able to recruit physicians to participate as expert witnesses.

FISCAL: Unknown

POSITION: Sponsor/Support

April 15, 2010

ASSEMBLY BILL

No. 1767

Introduced by Assembly Member Hill

February 9, 2010

An act to add Section 2316 to the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as introduced, Hill. Physicians and surgeons: expert testimony.

Existing law requires a board under the Business and Professions Code, including the Medical Board of California, to provide legal representation to any person hired or under contract who provides expertise to the board in the evaluation of an applicant or the conduct of a licensee when that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board. Existing law also provides immunity from civil liability to any person providing testimony to the Medical Board of California, the California Board of Podiatric Medicine, or the Department of Justice indicating that a licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness.

This bill would require the Medical Board of California to provide representation to any licensed physician and surgeon who provides expertise to the board in the evaluation of the conduct of an applicant or a licensee when, as a result of providing that expertise, the physician and surgeon is subject to a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member.

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

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

1 SECTION 1. (a) The Legislature finds and declares that
2 consumer protection is further strengthened when the Medical
3 Board of California uses board-certified physicians and surgeons
4 in the investigation of complaints and the prosecution of
5 administrative disciplinary actions. The Legislature further finds
6 and declares that the use of board-certified physicians and surgeons
7 is consistent with the requirements of Section 2220.08 of the
8 Business and Professions Code, and in conformity with existing
9 case law that requires that the standard of care and any deviations
10 from the standard of care be established by expert witnesses.

11 (b) The Legislature finds and declares that a disturbing trend
12 may be emerging whereby board-certified physicians and surgeons
13 may be subject to discipline from the very boards that certified
14 them as expert witnesses for the Medical Board of California in
15 administrative proceedings. Actual or threatened discipline against
16 board-certified physicians and surgeons may chill participation in
17 the board's expert reviewer program and may significantly impair
18 and hamper the effective and timely resolution of complaints and
19 licensure and disciplinary actions. The Legislature finds and
20 declares that the enactment of legislation is necessary to prevent
21 this occurrence and for the protection of California consumers.

22 SEC. 2. Section 2316 is added to the Business and Professions
23 Code, to read:

24 2316. If a licensed physician and surgeon who provides
25 expertise to the board in the evaluation of an applicant or a licensee
26 is, as a result of providing that expertise, the subject of a
27 disciplinary proceeding undertaken by a specialty board of which
28 the physician and surgeon is a member, the board shall provide
29 representation for the physician and surgeon in that disciplinary
30 proceeding.

AB 2148

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2148
Author: Tran
Bill Date: February 18, 2010, introduced
Subject: Personal Income Tax: charitable donations
Sponsor: Author

STATUS OF BILL:

This bill is in the Assembly Revenue and Tax Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow a tax deduction for medical services contributed without compensation for physicians who volunteer their services in a community clinic.

ANALYSIS:

This bill is intended to encourage physicians to volunteer services where needed. The tax deduction for services provided is designed to give an incentive for physicians to provide uncompensated services in underserved communities.

This bill places limit on the maximum amount of deduction allowed per physician each year. The Franchise Tax Board estimates that, given the average rate applied to physician services, the general fund revenue losses will be \$900,000 in the next fiscal year and \$600,000 in following years.

FISCAL: None to the Board

POSITION: Recommendation: Support

April 15, 2010

ASSEMBLY BILL

No. 2148

Introduced by Assembly Member Tran

February 18, 2010

An act to add Section 17206.2 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2148, as introduced, Tran. Personal income tax: charitable contribution deduction: physician.

The Personal Income Tax Law, in modified conformity with federal income tax laws, allows various deductions in computing the income that is subject to the taxes imposed by that law, including a deduction for a charitable contribution made by a taxpayer during the taxable year.

This bill would allow a deduction for the value of medical services contributed free of charge by a physician to a local community clinic, not to exceed specified amounts.

This bill would take effect immediately as a tax levy.

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

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

- 1 SECTION 1. Section 17206.2 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17206.2. (a) There shall be allowed as a deduction the value
- 4 of medical services contributed free of charge by a physician to a
- 5 local community clinic during the taxable year.
- 6 (b) For purposes of this section, all of the following apply:

1 (1) "Local community clinic" means a community clinic or free
2 clinic as defined in subdivision (a) of Section 1204 of the Health
3 and Safety Code.

4 (2) "Physician" means a person authorized to practice medicine
5 or osteopathy under the laws of any state.

6 (3) The deduction allowed to any taxpayer by this section shall
7 not exceed either of the following:

8 (A) The value of any contribution that exceeds a rate of fifty
9 dollars (\$50) per hour for any medical services rendered.

10 (B) One thousand five hundred dollars (\$1,500) per taxable
11 year.

12 (c) No other deduction shall be allowed by this part for any
13 contribution for which a deduction is claimed under this section.

14 SEC. 2. This act provides for a tax levy within the meaning of
15 Article IV of the Constitution and shall go into immediate effect.

AB 2566

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2566
Author: Carter
Bill Date: February 19, 2010, introduced
Subject: Cosmetic Surgery: employment of physicians
Sponsor: American Society for Dermatological Surgery Association

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

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

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

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

The Board has previously supported similar legislation such as AB 252 (Carter) in 2009 that authorized the revocation of a physician’s license for knowingly practicing with an organization that is in violation of the corporate practice of medicine. This bill was vetoed for being “duplicative of existing law.” In 2008 AB 2398 (Nakanishi) contained very similar provisions to AB 252 and was held in the Senate.

The author requested the Board sponsor this legislation concept. The Board declined but stated it would likely support when the bill was in print.

FISCAL: None to the Board

POSITION: Recommendation: Support

April 17, 2010

ASSEMBLY BILL

No. 2566

Introduced by Assembly Member Carter
(Principal coauthor: Senator Correa)

February 19, 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 2566, as introduced, 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 make a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is owned and operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists, and that contracts with or employs these licensees to facilitate the offer or provision of those procedures or treatments that may only be provided by these licensees, 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

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

AB 2600

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2600
Author: Ma
Bill Date: March 25, 2010, amended
Subject: Continuing Education Requirements
Sponsor: Author

STATUS OF BILL:

This bill is in the Assembly Business and Professions Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Board to consider including a continuing education course in the diagnosis and treatment of hepatitis.

ANALYSIS:

This bill would add a provision to the section of law that sets out the various factors for the Board to consider when determining the requirements for continuing medical education for physicians, Business and Professions Code section 2191.

The Board would be required to consider including a course in the diagnosis and treatment of hepatitis to be taken by physicians whose practices may require such knowledge.

FISCAL: None to the Board

POSITION: Recommendation: Neutral

April 17, 2010

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2600

Introduced by Assembly Member Ma

February 19, 2010

~~An act to amend Section 1797 of the Health and Safety Code, relating to emergency medical services. An act to amend Section 2191 of the Business and Professions Code, relating to medicine.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2600, as amended, Ma. ~~Emergency medical services. Medicine: licensing: continuing education requirements.~~

Existing law requires the Medical Board of California to establish continuing education requirements for physicians and surgeons, and requires the board to consider including various courses in determining its continuing education requirements.

This bill would, in addition, require the board to consider including a continuing education course in the diagnosis and treatment of hepatitis.

~~Existing law, the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act, authorizes each county to designate an emergency medical services agency, for the establishment and administration of an emergency medical services program in the county. Existing law also establishes the Emergency Medical Services Authority, which, among other things, adopts regulations governing the provision of emergency medical services.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

1 abused women, particularly for physicians and surgeons in
2 emergency, surgical, primary care, pediatric, prenatal, and mental
3 health settings. ~~In the event the division~~ *If the board* establishes a
4 requirement for continuing education coursework in spousal or
5 partner abuse detection or treatment, that requirement shall be met
6 by each licensee within no more than four years from the date the
7 requirement is imposed.

8 (i) In determining its continuing education requirements, the
9 ~~division~~ *board* shall consider including a course in the special care
10 needs of individuals and their families facing end-of-life issues,
11 including, but not limited to, all of the following:

- 12 (1) Pain and symptom management.
- 13 (2) The psycho-social dynamics of death.
- 14 (3) Dying and bereavement.
- 15 (4) Hospice care.

16 (j) In determining its ~~continuation~~ *continuing* education
17 requirements, the ~~division~~ *board* shall give its highest priority to
18 considering a course on pain management.

19 (k) *In determining its continuing education requirements, the*
20 *board shall consider including a course in the diagnosis and*
21 *treatment of hepatitis to be taken by those licensees whose practices*
22 *may require such knowledge.*

23 ~~SECTION 1. Section 1797 of the Health and Safety Code is~~
24 ~~amended to read:~~

25 ~~1797. This division shall be known, and may be cited, as the~~
26 ~~Emergency Medical Services System and the Prehospital~~
27 ~~Emergency Medical Care Personnel Act.~~

SB 700

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 700
Author: Negrete McLeod
Bill Date: January 26, 2010, amended
Subject: Peer Review
Sponsor: Author

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill adds a definition of peer review. In addition, it adds that the peer review minutes or reports may be obtained by the Board.

ANALYSIS:

This bill focuses on enhancements to the peer review system as it relates to the Medical Board (Board) and oversight by the California Department of Public Health (DPH).

Specifically, this bill does the following:

- Adds a definition of what peer review is by specifying that it is the process in which the basic qualifications, staff privileges, employment, outcomes and conduct of licentiates are reviewed to determine if licensees may continue to practice in the facility and if so, under any parameters.
- Rewrites for clarity the section that requires an 805 report to be filed within 15 days from the date when;
 1. A peer review body denies or rejects a licensee's application for staff privileges or membership for a medical disciplinary cause or reason;
 2. A licensee's staff privileges, membership, or employment are revoked for a medical disciplinary cause or reason;

3. Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a total of 30 days or more within any 12 month period for medical disciplinary reasons;
4. A licensee resigns or takes a leave of absence from staff privileges, membership or employment;
5. A licensee withdraws or abandons his or her application for staff privileges, membership, or employment;
6. A licensee withdraws or abandons his or her request for renewal of staff privileges, membership, or employment after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason after receiving notice that his or her application for staff privileges, membership, or employment is denied or will be denied for a medical disciplinary cause or reason.
7. A summary suspension of staff privileges, membership, or employment is imposed for a period in excess of 14 days.

This is to ensure that the Medical Board is informed as soon as possible when a physician has had restrictions imposed or is involved in an investigation regarding medical discipline.

- Requires an 805 report to be maintained electronically for dissemination for a period of three years after receipt.
- Adds that minutes or reports of a peer review are included in the documents that the Board may inspect. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.
- Prohibits the Board from disclosing to the public any peer review summaries completed by a hospital if a court finds that the peer review was not conducted in good faith. This makes reporting fair for licensees who have a bogus report filed against them.
- Entitles the Board to inspect and copy specified unredacted documents relating to any disciplinary proceeding resulting in an action that is required to be reported pursuant to Section 805 without subpoena. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.
- Requires the Board to remove from the Internet Website any information concerning a hospital disciplinary action that is posted if a court finds that the peer review was not done in good faith. The licensee must

notify the Board of that finding. This makes reporting fair for licensees who have a bogus report filed against them.

- Requires the Board to post a factsheet on the internet that explains and provides information on 805 reporting. The will help consumers understand the process and what this reporting means.

FISCAL: Minor and absorbable

POSITION: **Executive Committee Recommendation:** Support and direct staff to continue to work with the author to enhance consumer protections in the bill.
Recommendation: Support

April 15, 2010

AMENDED IN SENATE JANUARY 26, 2010

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE MAY 11, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 700

Introduced by Senator Negrete McLeod
(Coauthor: Senator Aanestad)

February 27, 2009

An act to amend Sections 800, 803.1, 805, 805.1, 805.5, and 2027 of, and to add ~~Section 805.01~~ *Sections 805.01 and 821.4* to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 700, as amended, Negrete McLeod. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. ~~Existing law defines the term "peer review body" as including a medical or professional staff of any health care facility or clinic licensed by the State Department of Public Health.~~

This bill would define the term "peer review" ~~and would revise the definition of the term "peer review body" to include a medical or professional staff of other specified health care facilities or clinics for purposes of those provisions.~~

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board within 15 days after a specified action is taken against a person licensed by that board;

~~including imposition of a summary suspension of staff privileges, membership, or employment if the summary suspension stays in effect for a period in excess of 14 days. Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licentiate to request a hearing concerning that action.~~

~~This bill would specify that the 805 report must be filed within 15 days of the imposition of the summary suspension regardless of whether a hearing has occurred.~~

~~This bill would also require specified persons to file a report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that the licentiate departed from the standard of care, as specified, committed or was responsible for a specified adverse event, suffered from mental illness or substance abuse, or engaged in sexual misconduct may have engaged in various acts, including incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill would authorize the board to inspect and copy certain documents in the record of that investigation.~~

~~The bill would also require a peer review body that reviews physicians and surgeons to, under specified circumstances, report certain information to the executive director of the Medical Board of California, as specified.~~

~~Existing law requires the board to maintain an 805 report for a period of 3 years after receipt.~~

~~This bill would require the board to maintain the report electronically.~~

~~Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report.~~

~~This bill would specify that the boards have the authority to inspect those documents in unredacted form and without a subpoena and would authorize those boards to also inspect any peer review minutes or reports, as permitted by other applicable law, any certified copy of medical records in the record of the disciplinary proceeding.~~

Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports.

Under this bill, if a court finds, *in a final judgment*, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet.

This bill would prohibit those disclosures, and would require the Medical Board of California to remove certain information posted on the Internet, if a court finds, *in a final judgment*, that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require the Medical Board of California *to include certain exculpatory or explanatory statements in those disclosures or postings and would require the board* to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

Existing law also requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public information regarding enforcement actions taken against a licensee by the board or by another state or jurisdiction.

This bill would also require those boards to make those disclosures regarding enforcement actions taken against former licensees.

The bill would make related nonsubstantive changes.

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

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

- 1 SECTION 1. Section 800 of the Business and Professions Code
- 2 is amended to read:

1 800. (a) The Medical Board of California, the Board of
2 Psychology, the Dental Board of California, the Osteopathic
3 Medical Board of California, the State Board of Chiropractic
4 Examiners, the Board of Registered Nursing, the Board of
5 Vocational Nursing and Psychiatric Technicians, the State Board
6 of Optometry, the Veterinary Medical Board, the Board of
7 Behavioral Sciences, the Physical Therapy Board of California,
8 the California State Board of Pharmacy, the Speech-Language
9 Pathology and Audiology *and Hearing Aid Dispensers* Board, the
10 California Board of Occupational Therapy, and the Acupuncture
11 Board shall each separately create and maintain a central file of
12 the names of all persons who hold a license, certificate, or similar
13 authority from that board. Each central file shall be created and
14 maintained to provide an individual historical record for each
15 licensee with respect to the following information:

16 (1) Any conviction of a crime in this or any other state that
17 constitutes unprofessional conduct pursuant to the reporting
18 requirements of Section 803.

19 (2) Any judgment or settlement requiring the licensee or his or
20 her insurer to pay any amount of damages in excess of three
21 thousand dollars (\$3,000) for any claim that injury or death was
22 proximately caused by the licensee's negligence, error or omission
23 in practice, or by rendering unauthorized professional services,
24 pursuant to the reporting requirements of Section 801 or 802.

25 (3) Any public complaints for which provision is made pursuant
26 to subdivision (b).

27 (4) Disciplinary information reported pursuant to Section 805,
28 *including any additional exculpatory or explanatory statements*
29 *submitted by the licensee pursuant to subdivision (f) of Section*
30 *805. If a court finds, in a final judgment, that the peer review*
31 *resulting in the 805 report was conducted in bad faith and the*
32 *licensee who is the subject of the report notifies the board of that*
33 *finding, the board shall include that finding in the central file. For*
34 *purposes of this paragraph, "peer review" has the same meaning*
35 *as defined in Section 805.*

36 (5) *Information reported pursuant to Section 805.01, including*
37 *any explanatory or exculpatory information submitted by the*
38 *licensee pursuant to subdivision (b) of that section.*

39 (b) Each board shall prescribe and promulgate forms on which
40 members of the public and other licensees or certificate holders

1 may file written complaints to the board alleging any act of
2 misconduct in, or connected with, the performance of professional
3 services by the licensee.

4 If a board, or division thereof, a committee, or a panel has failed
5 to act upon a complaint or report within five years, or has found
6 that the complaint or report is without merit, the central file shall
7 be purged of information relating to the complaint or report.

8 Notwithstanding this subdivision, the Board of Psychology, the
9 Board of Behavioral Sciences, and the Respiratory Care Board of
10 California shall maintain complaints or reports as long as each
11 board deems necessary.

12 (c) The contents of any central file that are not public records
13 under any other provision of law shall be confidential except that
14 the licensee involved, or his or her counsel or representative, shall
15 have the right to inspect and have copies made of his or her
16 complete file except for the provision that may disclose the identity
17 of an information source. For the purposes of this section, a board
18 may protect an information source by providing a copy of the
19 material with only those deletions necessary to protect the identity
20 of the source or by providing a comprehensive summary of the
21 substance of the material. Whichever method is used, the board
22 shall ensure that full disclosure is made to the subject of any
23 personal information that could reasonably in any way reflect or
24 convey anything detrimental, disparaging, or threatening to a
25 licensee's reputation, rights, benefits, privileges, or qualifications,
26 or be used by a board to make a determination that would affect
27 a licensee's rights, benefits, privileges, or qualifications. The
28 information required to be disclosed pursuant to Section 803.1
29 shall not be considered among the contents of a central file for the
30 purposes of this subdivision.

31 The licensee may, but is not required to, submit any additional
32 exculpatory or explanatory statement or other information that the
33 board shall include in the central file.

34 Each board may permit any law enforcement or regulatory
35 agency when required for an investigation of unlawful activity or
36 for licensing, certification, or regulatory purposes to inspect and
37 have copies made of that licensee's file, unless the disclosure is
38 otherwise prohibited by law.

39 These disclosures shall effect no change in the confidential status
40 of these records.

1 SECTION 1. Section 800 of the Business and Professions Code
2 is amended to read:

3 800. (a) ~~The Medical Board of California, the Board of~~
4 ~~Psychology, the Dental Board of California, the Osteopathic~~
5 ~~Medical Board of California, the State Board of Chiropractic~~
6 ~~Examiners, the Board of Registered Nursing, the Board of~~
7 ~~Vocational Nursing and Psychiatric Technicians, the State Board~~
8 ~~of Optometry, the Veterinary Medical Board, the Board of~~
9 ~~Behavioral Sciences, the Physical Therapy Board of California,~~
10 ~~the California State Board of Pharmacy, and the Speech-Language~~
11 ~~Pathology and Audiology Board shall each separately create and~~
12 ~~maintain a central file of the names of all persons who hold a~~
13 ~~license, certificate, or similar authority from that board. Each~~
14 ~~central file shall be created and maintained to provide an individual~~
15 ~~historical record for each licensee with respect to the following~~
16 ~~information:~~

17 (1) ~~Any conviction of a crime in this or any other state that~~
18 ~~constitutes unprofessional conduct pursuant to the reporting~~
19 ~~requirements of Section 803.~~

20 (2) ~~Any judgment or settlement requiring the licensee or his or~~
21 ~~her insurer to pay any amount of damages in excess of three~~
22 ~~thousand dollars (\$3,000) for any claim that injury or death was~~
23 ~~proximately caused by the licensee's negligence, error or omission~~
24 ~~in practice, or by rendering unauthorized professional services;~~
25 ~~pursuant to the reporting requirements of Section 801 or 802.~~

26 (3) ~~Any public complaints for which provision is made pursuant~~
27 ~~to subdivision (b).~~

28 (4) ~~Disciplinary information reported pursuant to Section 805.~~
29 ~~If a court finds that the peer review resulting in the 805 report was~~
30 ~~conducted in bad faith and the licensee who is the subject of the~~
31 ~~report notifies the board of that finding, the board shall include~~
32 ~~that finding in the central file. For purposes of this paragraph, "peer~~
33 ~~review" has the same meaning as defined in Section 805.~~

34 (5) ~~Information reported pursuant to Section 805.01.~~

35 (b) ~~Each board shall prescribe and promulgate forms on which~~
36 ~~members of the public and other licensees or certificate holders~~
37 ~~may file written complaints to the board alleging any act of~~
38 ~~misconduct in, or connected with, the performance of professional~~
39 ~~services by the licensee.~~

1 If a board, or division thereof, a committee, or a panel has failed
2 to act upon a complaint or report within five years, or has found
3 that the complaint or report is without merit, the central file shall
4 be purged of information relating to the complaint or report.

5 Notwithstanding this subdivision, the Board of Psychology, the
6 Board of Behavioral Sciences, and the Respiratory Care Board of
7 California shall maintain complaints or reports as long as each
8 board deems necessary.

9 (e) The contents of any central file that are not public records
10 under any other provision of law shall be confidential except that
11 the licensee involved, or his or her counsel or representative, shall
12 have the right to inspect and have copies made of his or her
13 complete file except for the provision that may disclose the identity
14 of an information source. For the purposes of this section, a board
15 may protect an information source by providing a copy of the
16 material with only those deletions necessary to protect the identity
17 of the source or by providing a comprehensive summary of the
18 substance of the material. Whichever method is used, the board
19 shall ensure that full disclosure is made to the subject of any
20 personal information that could reasonably in any way reflect or
21 convey anything detrimental, disparaging, or threatening to a
22 licensee's reputation, rights, benefits, privileges, or qualifications,
23 or be used by a board to make a determination that would affect
24 a licensee's rights, benefits, privileges, or qualifications. The
25 information required to be disclosed pursuant to Section 803.1
26 shall not be considered among the contents of a central file for the
27 purposes of this subdivision.

28 The licensee may, but is not required to, submit any additional
29 exculpatory or explanatory statement or other information that the
30 board shall include in the central file.

31 Each board may permit any law enforcement or regulatory
32 agency when required for an investigation of unlawful activity or
33 for licensing, certification, or regulatory purposes to inspect and
34 have copies made of that licensee's file, unless the disclosure is
35 otherwise prohibited by law.

36 These disclosures shall effect no change in the confidential status
37 of these records.

38 SEC. 2. Section 803.1 of the Business and Professions Code
39 is amended to read:

1 803.1. (a) Notwithstanding any other provision of law, the
2 Medical Board of California, the Osteopathic Medical Board of
3 California, and the California Board of Podiatric Medicine shall
4 disclose to an inquiring member of the public information regarding
5 any enforcement actions taken against a licensee, including a
6 former licensee, by the board or by another state or jurisdiction,
7 including all of the following:

8 (1) Temporary restraining orders issued.

9 (2) Interim suspension orders issued.

10 (3) Revocations, suspensions, probations, or limitations on
11 practice ordered by the board, including those made part of a
12 probationary order or stipulated agreement.

13 (4) Public letters of reprimand issued.

14 (5) Infractions, citations, or fines imposed.

15 (b) Notwithstanding any other provision of law, in addition to
16 the information provided in subdivision (a), the Medical Board of
17 California, the Osteopathic Medical Board of California, and the
18 California Board of Podiatric Medicine shall disclose to an
19 inquiring member of the public all of the following:

20 (1) Civil judgments in any amount, whether or not vacated by
21 a settlement after entry of the judgment, that were not reversed on
22 appeal and arbitration awards in any amount of a claim or action
23 for damages for death or personal injury caused by the physician
24 and surgeon's negligence, error, or omission in practice, or by his
25 or her rendering of unauthorized professional services.

26 (2) (A) All settlements in the possession, custody, or control
27 of the board shall be disclosed for a licensee in the low-risk
28 category if there are three or more settlements for that licensee
29 within the last 10 years, except for settlements by a licensee
30 regardless of the amount paid where (i) the settlement is made as
31 a part of the settlement of a class claim, (ii) the licensee paid in
32 settlement of the class claim the same amount as the other licensees
33 in the same class or similarly situated licensees in the same class,
34 and (iii) the settlement was paid in the context of a case where the
35 complaint that alleged class liability on behalf of the licensee also
36 alleged a products liability class action cause of action. All
37 settlements in the possession, custody, or control of the board shall
38 be disclosed for a licensee in the high-risk category if there are
39 four or more settlements for that licensee within the last 10 years
40 except for settlements by a licensee regardless of the amount paid

1 where (i) the settlement is made as a part of the settlement of a
2 class claim, (ii) the licensee paid in settlement of the class claim
3 the same amount as the other licensees in the same class or
4 similarly situated licensees in the same class, and (iii) the
5 settlement was paid in the context of a case where the complaint
6 that alleged class liability on behalf of the licensee also alleged a
7 products liability class action cause of action. Classification of a
8 licensee in either a “high-risk category” or a “low-risk category”
9 depends upon the specialty or subspecialty practiced by the licensee
10 and the designation assigned to that specialty or subspecialty by
11 the Medical Board of California, as described in subdivision (f).
12 For the purposes of this paragraph, “settlement” means a settlement
13 of an action described in paragraph (1) entered into by the licensee
14 on or after January 1, 2003, in an amount of thirty thousand dollars
15 (\$30,000) or more.

16 (B) The board shall not disclose the actual dollar amount of a
17 settlement but shall put the number and amount of the settlement
18 in context by doing the following:

19 (i) Comparing the settlement amount to the experience of other
20 licensees within the same specialty or subspecialty, indicating if
21 it is below average, average, or above average for the most recent
22 10-year period.

23 (ii) Reporting the number of years the licensee has been in
24 practice.

25 (iii) Reporting the total number of licensees in that specialty or
26 subspecialty, the number of those who have entered into a
27 settlement agreement, and the percentage that number represents
28 of the total number of licensees in the specialty or subspecialty.

29 (3) Current American Board of Medical Specialty certification
30 or board equivalent as certified by the Medical Board of California,
31 the Osteopathic Medical Board of California, or the California
32 Board of Podiatric Medicine.

33 (4) Approved postgraduate training.

34 (5) Status of the license of a licensee. By January 1, 2004, the
35 Medical Board of California, the Osteopathic Medical Board of
36 California, and the California Board of Podiatric Medicine shall
37 adopt regulations defining the status of a licensee. The board shall
38 employ this definition when disclosing the status of a licensee
39 pursuant to Section 2027.

1 (6) Any summaries of hospital disciplinary actions that result
2 in the termination or revocation of a licensee's staff privileges for
3 medical disciplinary cause or reason, unless a court finds, *in a final*
4 *judgment*, that the peer review resulting in the disciplinary action
5 was conducted in bad faith and the licensee notifies the board of
6 that finding. For purposes of this paragraph, "peer review" has the
7 same meaning as defined in Section 805. *In addition, any*
8 *exculpatory or explanatory statements submitted by the licensee*
9 *electronically pursuant to subdivision (f) of that section shall be*
10 *disclosed.*

11 (c) Notwithstanding any other provision of law, the Medical
12 Board of California, the Osteopathic Medical Board of California,
13 and the California Board of Podiatric Medicine shall disclose to
14 an inquiring member of the public information received regarding
15 felony convictions of a physician and surgeon or doctor of podiatric
16 medicine.

17 (d) The Medical Board of California, the Osteopathic Medical
18 Board of California, and the California Board of Podiatric Medicine
19 may formulate appropriate disclaimers or explanatory statements
20 to be included with any information released, and may by
21 regulation establish categories of information that need not be
22 disclosed to an inquiring member of the public because that
23 information is unreliable or not sufficiently related to the licensee's
24 professional practice. The Medical Board of California, the
25 Osteopathic Medical Board of California, and the California Board
26 of Podiatric Medicine shall include the following statement when
27 disclosing information concerning a settlement:

28
29 "Some studies have shown that there is no significant correlation
30 between malpractice history and a doctor's competence. At the
31 same time, the State of California believes that consumers should
32 have access to malpractice information. In these profiles, the State
33 of California has given you information about both the malpractice
34 settlement history for the doctor's specialty and the doctor's history
35 of settlement payments only if in the last 10 years, the doctor, if
36 in a low-risk specialty, has three or more settlements or the doctor,
37 if in a high-risk specialty, has four or more settlements. The State
38 of California has excluded some class action lawsuits because
39 those cases are commonly related to systems issues such as product
40 liability, rather than questions of individual professional

1 competence and because they are brought on a class basis where
2 the economic incentive for settlement is great. The State of
3 California has placed payment amounts into three statistical
4 categories: below average, average, and above average compared
5 to others in the doctor's specialty. To make the best health care
6 decisions, you should view this information in perspective. You
7 could miss an opportunity for high-quality care by selecting a
8 doctor based solely on malpractice history.

9 When considering malpractice data, please keep in mind:

10 Malpractice histories tend to vary by specialty. Some specialties
11 are more likely than others to be the subject of litigation. This
12 report compares doctors only to the members of their specialty,
13 not to all doctors, in order to make an individual doctor's history
14 more meaningful.

15 This report reflects data only for settlements made on or after
16 January 1, 2003. Moreover, it includes information concerning
17 those settlements for a 10-year period only. Therefore, you should
18 know that a doctor may have made settlements in the 10 years
19 immediately preceding January 1, 2003, that are not included in
20 this report. After January 1, 2013, for doctors practicing less than
21 10 years, the data covers their total years of practice. You should
22 take into account the effective date of settlement disclosure as well
23 as how long the doctor has been in practice when considering
24 malpractice averages.

25 The incident causing the malpractice claim may have happened
26 years before a payment is finally made. Sometimes, it takes a long
27 time for a malpractice lawsuit to settle. Some doctors work
28 primarily with high-risk patients. These doctors may have
29 malpractice settlement histories that are higher than average
30 because they specialize in cases or patients who are at very high
31 risk for problems.

32 Settlement of a claim may occur for a variety of reasons that do
33 not necessarily reflect negatively on the professional competence
34 or conduct of the doctor. A payment in settlement of a medical
35 malpractice action or claim should not be construed as creating a
36 presumption that medical malpractice has occurred.

37 You may wish to discuss information in this report and the
38 general issue of malpractice with your doctor.”
39

1 (e) The Medical Board of California, the Osteopathic Medical
2 Board of California, and the California Board of Podiatric Medicine
3 shall, by regulation, develop standard terminology that accurately
4 describes the different types of disciplinary filings and actions to
5 take against a licensee as described in paragraphs (1) to (5),
6 inclusive, of subdivision (a). In providing the public with
7 information about a licensee via the Internet pursuant to Section
8 2027, the Medical Board of California, the Osteopathic Medical
9 Board of California, and the California Board of Podiatric Medicine
10 shall not use the terms “enforcement,” “discipline,” or similar
11 language implying a sanction unless the physician and surgeon
12 has been the subject of one of the actions described in paragraphs
13 (1) to (5), inclusive, of subdivision (a).

14 (f) The Medical Board of California shall adopt regulations no
15 later than July 1, 2003, designating each specialty and subspecialty
16 practice area as either high risk or low risk. In promulgating these
17 regulations, the board shall consult with commercial underwriters
18 of medical malpractice insurance companies, health care systems
19 that self-insure physicians and surgeons, and representatives of
20 the California medical specialty societies. The board shall utilize
21 the carriers’ statewide data to establish the two risk categories and
22 the averages required by subparagraph (B) of paragraph (2) of
23 subdivision (b). Prior to issuing regulations, the board shall
24 convene public meetings with the medical malpractice carriers,
25 self-insurers, and specialty representatives.

26 (g) The Medical Board of California, the Osteopathic Medical
27 Board of California, and the California Board of Podiatric Medicine
28 shall provide each licensee, including a former licensee under
29 subdivision (a), with a copy of the text of any proposed public
30 disclosure authorized by this section prior to release of the
31 disclosure to the public. The licensee shall have 10 working days
32 from the date the board provides the copy of the proposed public
33 disclosure to propose corrections of factual inaccuracies. Nothing
34 in this section shall prevent the board from disclosing information
35 to the public prior to the expiration of the 10-day period.

36 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
37 (b), the specialty or subspecialty information required by this
38 section shall group physicians by specialty board recognized
39 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
40 a different grouping would be more valid and the board, in its

1 statement of reasons for its regulations, explains why the validity
2 of the grouping would be more valid.

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

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

7 (1) (A) ~~“Peer review” means a process in which a peer review~~
8 ~~body reviews the basic qualifications, staff privileges, employment,~~
9 ~~medical outcomes, and professional conduct of licentiates to~~
10 ~~determine whether the licentiate may practice or continue to~~
11 ~~practice in a health care facility, clinic, or other setting providing~~
12 ~~medical services and, if so, to determine the parameters of that~~
13 ~~practice.~~

14 (B) ~~“Peer review body” includes:~~

15 (i) ~~A medical or professional staff of any health care facility or~~
16 ~~clinic specified under Division 2 (commencing with Section 1200)~~
17 ~~of the Health and Safety Code or of a facility certified to participate~~
18 ~~in the federal Medicare Program as an ambulatory surgical center.~~

19 (ii) ~~A health care service plan registered under Chapter 2.2~~
20 ~~(commencing with Section 1340) of Division 2 of the Health and~~
21 ~~Safety Code or a disability insurer that contracts with licentiates~~
22 ~~to provide services at alternative rates of payment pursuant to~~
23 ~~Section 10133 of the Insurance Code.~~

24 (iii) ~~Any medical, psychological, marriage and family therapy,~~
25 ~~social work, dental, or podiatric professional society having as~~
26 ~~members at least 25 percent of the eligible licentiates in the area~~
27 ~~in which it functions (which must include at least one county),~~
28 ~~which is not organized for profit and which has been determined~~
29 ~~to be exempt from taxes pursuant to Section 23701 of the Revenue~~
30 ~~and Taxation Code.~~

31 (iv) ~~A committee organized by any entity consisting of or~~
32 ~~employing more than 25 licentiates of the same class that functions~~
33 ~~for the purpose of reviewing the quality of professional care~~
34 ~~provided by members or employees of that entity.~~

35 (2) ~~“Licentiate” means a physician and surgeon, doctor of~~
36 ~~podiatric medicine, clinical psychologist, marriage and family~~
37 ~~therapist, clinical social worker, or dentist. “Licentiate” also~~
38 ~~includes a person authorized to practice medicine pursuant to~~
39 ~~Section 2113.~~

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

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

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

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

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

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

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

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

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

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

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

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

13 (2) Withdraws or abandons his or her application for
14 membership, staff privileges, or employment.

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

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

21 (e) An 805 report shall also be filed within 15 days following
22 the imposition of summary suspension of staff privileges,
23 membership, or employment, if the summary suspension remains
24 in effect for a period in excess of 14 days, regardless of whether
25 a hearing has occurred pursuant to Section 809.2.

26 (f) A copy of the 805 report, and a notice advising the licensee
27 of his or her right to submit additional statements or other
28 information pursuant to Section 800, shall be sent by the peer
29 review body to the licensee named in the report. The information
30 to be reported in an 805 report shall include the name and license
31 number of the licensee involved, a description of the facts and
32 circumstances of the medical disciplinary cause or reason, and any
33 other relevant information deemed appropriate by the reporter.

34 A supplemental report shall also be made within 30 days
35 following the date the licensee is deemed to have satisfied any
36 terms, conditions, or sanctions imposed as disciplinary action by
37 the reporting peer review body. In performing its dissemination
38 functions required by Section 805.5, the agency shall include a
39 copy of a supplemental report, if any, whenever it furnishes a copy
40 of the original 805 report.

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

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

17 (h) The Medical Board of California, the Osteopathic Medical
18 Board of California, and the Dental Board of California shall
19 disclose reports as required by Section 805.5.

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

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

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

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

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

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

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

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

1 (2) "Licentiate" means a physician and surgeon, doctor of
2 podiatric medicine, clinical psychologist, marriage and family
3 therapist, clinical social worker, or dentist. "Licentiate" also
4 includes a person authorized to practice medicine pursuant to
5 Section 2113 or 2168.

6 (3) "Agency" means the relevant state licensing agency having
7 regulatory jurisdiction over the licentiates listed in paragraph (2).

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

17 (5) "Denial or termination of staff privileges, membership, or
18 employment" includes failure or refusal to renew a contract or to
19 renew, extend, or reestablish any staff privileges, if the action is
20 based on medical disciplinary cause or reason.

21 (6) "Medical disciplinary cause or reason" means that aspect
22 of a licentiate's competence or professional conduct that is
23 reasonably likely to be detrimental to patient safety or to the
24 delivery of patient care.

25 (7) "805 report" means the written report required under
26 subdivision (b).

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

34 (1) A licentiate's application for staff privileges or membership
35 is denied or rejected for a medical disciplinary cause or reason.

36 (2) A licentiate's membership, staff privileges, or employment
37 is terminated or revoked for a medical disciplinary cause or reason.

38 (3) Restrictions are imposed, or voluntarily accepted, on staff
39 privileges, membership, or employment for a cumulative total of

1 30 days or more for any 12-month period, for a medical disciplinary
2 cause or reason.

3 (c) ~~The~~ *If a licentiate takes any action listed in paragraph (1),*
4 *(2), or (3) after receiving notice of a pending investigation initiated*
5 *for a medical disciplinary cause or reason or after receiving notice*
6 *that his or her application for membership or staff privileges is*
7 *denied or will be denied for a medical disciplinary cause or reason,*
8 *the chief of staff of a medical or professional staff or other chief*
9 *executive officer, medical director, or administrator of any peer*
10 *review body and the chief executive officer or administrator of*
11 *any licensed health care facility or clinic where the licentiate is*
12 *employed or has staff privileges or membership or where the*
13 *licentiate applied for staff privileges or membership, or sought*
14 *the renewal thereof, shall file an 805 report with the relevant*
15 *agency within 15 days after any of the following occur after notice*
16 *of either an impending investigation or the denial or rejection of*
17 *the application for a medical disciplinary cause or reason: the*
18 *licentiate takes the action.*

19 (1) ~~Resignation~~ *Resigns or takes a leave of absence from*
20 *membership, staff privileges, or employment.*

21 (2) ~~The withdrawal or abandonment of a licentiate's~~ *Withdraws*
22 *or abandons his or her application for staff privileges or*
23 *membership.*

24 (3) ~~The~~ *Withdraws or abandons his or her request for renewal*
25 *of those staff privileges or membership is withdrawn or abandoned.*

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

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

34 (f) A copy of the 805 report, and a notice advising the licentiate
35 of his or her right to submit additional statements or other
36 information, *electronically or otherwise*, pursuant to Section 800,
37 shall be sent by the peer review body to the licentiate named in
38 the report. *The notice shall also advise the licentiate that*
39 *information submitted electronically will be publicly disclosed to*
40 *those who request the information.*

1 The information to be reported in an 805 report shall include the
2 name and license number of the licentiate involved, a description
3 of the facts and circumstances of the medical disciplinary cause
4 or reason, and any other relevant information deemed appropriate
5 by the reporter.

6 A supplemental report shall also be made within 30 days
7 following the date the licentiate is deemed to have satisfied any
8 terms, conditions, or sanctions imposed as disciplinary action by
9 the reporting peer review body. In performing its dissemination
10 functions required by Section 805.5, the agency shall include a
11 copy of a supplemental report, if any, whenever it furnishes a copy
12 of the original 805 report.

13 If another peer review body is required to file an 805 report, a
14 health care service plan is not required to file a separate report
15 with respect to action attributable to the same medical disciplinary
16 cause or reason. If the Medical Board of California or a licensing
17 agency of another state revokes or suspends, without a stay, the
18 license of a physician and surgeon, a peer review body is not
19 required to file an 805 report when it takes an action as a result of
20 the revocation or suspension.

21 (g) The reporting required by this section shall not act as a
22 waiver of confidentiality of medical records and committee reports.
23 The information reported or disclosed shall be kept confidential
24 except as provided in subdivision (c) of Section 800 and Sections
25 803.1 and 2027, provided that a copy of the report containing the
26 information required by this section may be disclosed as required
27 by Section 805.5 with respect to reports received on or after
28 January 1, 1976.

29 (h) The Medical Board of California, the Osteopathic Medical
30 Board of California, and the Dental Board of California shall
31 disclose reports as required by Section 805.5.

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

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

36 (k) A willful failure to file an 805 report by any person who is
37 designated or otherwise required by law to file an 805 report is
38 punishable by a fine not to exceed one hundred thousand dollars
39 (\$100,000) per violation. The fine may be imposed in any civil or
40 administrative action or proceeding brought by or on behalf of any

1 agency having regulatory jurisdiction over the person regarding
2 whom the report was or should have been filed. If the person who
3 is designated or otherwise required to file an 805 report is a
4 licensed physician and surgeon, the action or proceeding shall be
5 brought by the Medical Board of California. The fine shall be paid
6 to that agency but not expended until appropriated by the
7 Legislature. A violation of this subdivision may constitute
8 unprofessional conduct by the licensee. A person who is alleged
9 to have violated this subdivision may assert any defense available
10 at law. As used in this subdivision, "willful" means a voluntary
11 and intentional violation of a known legal duty.

12 (l) Except as otherwise provided in subdivision (k), any failure
13 by the administrator of any peer review body, the chief executive
14 officer or administrator of any health care facility, or any person
15 who is designated or otherwise required by law to file an 805
16 report, shall be punishable by a fine that under no circumstances
17 shall exceed fifty thousand dollars (\$50,000) per violation. The
18 fine may be imposed in any civil or administrative action or
19 proceeding brought by or on behalf of any agency having
20 regulatory jurisdiction over the person regarding whom the report
21 was or should have been filed. If the person who is designated or
22 otherwise required to file an 805 report is a licensed physician and
23 surgeon, the action or proceeding shall be brought by the Medical
24 Board of California. The fine shall be paid to that agency but not
25 expended until appropriated by the Legislature. The amount of the
26 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
27 violation, shall be proportional to the severity of the failure to
28 report and shall differ based upon written findings, including
29 whether the failure to file caused harm to a patient or created a
30 risk to patient safety; whether the administrator of any peer review
31 body, the chief executive officer or administrator of any health
32 care facility, or any person who is designated or otherwise required
33 by law to file an 805 report exercised due diligence despite the
34 failure to file or whether they knew or should have known that an
35 805 report would not be filed; and whether there has been a prior
36 failure to file an 805 report. The amount of the fine imposed may
37 also differ based on whether a health care facility is a small or
38 rural hospital as defined in Section 124840 of the Health and Safety
39 Code.

1 (m) A health care service plan ~~registered~~ *licensed* under Chapter
2 2.2 (commencing with Section 1340) of Division 2 of the Health
3 and Safety Code or a disability insurer that negotiates and enters
4 into a contract with licentiates to provide services at alternative
5 rates of payment pursuant to Section 10133 of the Insurance Code,
6 when determining participation with the plan or insurer, shall
7 evaluate, on a case-by-case basis, licentiates who are the subject
8 of an 805 report, and not automatically exclude or deselect these
9 licentiates.

10 SEC. 4. Section 805.01 is added to the Business and Professions
11 Code, to read:

12 805.01. (a) As used in this section, the following terms have
13 the following definitions:

14 (1) "Agency" has the same meaning as defined in Section 805.

15 (2) "Formal investigation" means an investigation performed
16 by a peer review body based on an allegation that any of the acts
17 listed in paragraphs (1) to (4), inclusive, of subdivision (b)
18 occurred.

19 (3) "Licentiate" has the same meaning as defined in Section
20 805.

21 (4) "Peer review body" has the same meaning as defined in
22 Section 805.

23 (b) The chief of staff of a medical or professional staff or other
24 chief executive officer, medical director, or administrator of any
25 peer review body and the chief executive officer or administrator
26 of any licensed health care facility or clinic shall file a report with
27 the relevant agency within 15 days after a peer review body makes
28 a *final* decision or recommendation regarding the disciplinary
29 action, *as specified in subdivision (b) of Section 805, resulting in*
30 *a final proposed action* to be taken against a licentiate based on
31 the peer review body's determination, following formal
32 investigation of the licentiate, that any of the acts listed in
33 paragraphs (1) to (4), inclusive, occurred. ~~A peer review body shall~~
34 ~~not await a final proposed action, as defined in Section 809.1, for~~
35 ~~purposes of filing this report.~~

36 ~~(1) The licentiate departed from the standard of care and there~~
37 ~~was patient harm.~~

38 ~~(2) The licentiate committed or was responsible for the~~
39 ~~occurrence of an adverse event described in paragraph (1) of~~
40 ~~subdivision (b) of Section 1279.1 of the Health and Safety Code.~~

1 ~~(3) The licentiate suffered from mental illness or substance~~
2 ~~abuse.~~

3 ~~(4) The licentiate engaged in sexual misconduct. may have~~
4 ~~occurred, regardless of whether a hearing is held pursuant to~~
5 ~~Section 809.2. The licentiate shall receive a notice of the proposed~~
6 ~~action as set forth in Section 809.1, which shall also include a~~
7 ~~notice advising the licentiate of the right to submit additional~~
8 ~~explanatory or exculpatory statements electronically or otherwise.~~

9 ~~(1) Incompetence, or gross or repeated deviation from the~~
10 ~~standard of care involving death or serious bodily injury to one~~
11 ~~or more patients, such that the physician and surgeon poses a risk~~
12 ~~to patient safety. This paragraph shall not be construed to affect~~
13 ~~or require the imposition of immediate suspension pursuant to~~
14 ~~Section 809.5.~~

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

17 ~~(3) Repeated acts of clearly excessive prescribing, furnishing,~~
18 ~~or administering of controlled substances or repeated acts of~~
19 ~~prescribing, dispensing, or furnishing of controlled substances~~
20 ~~without a good faith effort prior examination of the patient and~~
21 ~~medical reason therefor. However, in no event shall a physician~~
22 ~~and surgeon prescribing, furnishing, or administering controlled~~
23 ~~substances for intractable pain, consistent with lawful prescribing,~~
24 ~~be reported for excessive prescribing and prompt review of the~~
25 ~~applicability of these provisions shall be made in any complaint~~
26 ~~that may implicate these provisions.~~

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

29 ~~(c) The relevant agency shall, without subpoena, be entitled to~~
30 ~~inspect and copy the following unredacted documents in the record~~
31 ~~of any formal investigation required to be reported pursuant to~~
32 ~~subdivision (b):~~

33 ~~(1) Any statement of charges.~~

34 ~~(2) Any document, medical chart, or exhibit.~~

35 ~~(3) Any opinions, findings, or conclusions.~~

36 ~~(4) Any certified copy of medical records, as permitted by other~~
37 ~~applicable law.~~

38 ~~(d) The report provided pursuant to subdivision (b) and the~~
39 ~~information disclosed pursuant to subdivision (c) shall be kept~~
40 ~~confidential and shall not be subject to discovery, except that the~~

1 information may be reviewed as provided in subdivision (c) of
2 Section 800 and may be disclosed in any subsequent disciplinary
3 hearing conducted pursuant to the Administrative Procedure Act
4 (Chapter 5 (commencing with Section 11500) of Part 1 of Division
5 3 of Title 2 of the Government Code).

6 (e) The report required under this section shall be in addition
7 to any report required under Section 805.

8 *(f) A peer review body shall not be required to make a report*
9 *pursuant to this section if that body does not make a final decision*
10 *or recommendation regarding the disciplinary action to be taken*
11 *against a licentiate based on the body's determination that any of*
12 *the acts listed in paragraphs (1) to (4), inclusive, of subdivision*
13 *(b) may have occurred.*

14 SEC. 5. Section 805.1 of the Business and Professions Code
15 is amended to read:

16 805.1. (a) The Medical Board of California, the Osteopathic
17 Medical Board of California, and the Dental Board of California
18 shall, ~~without subpoena,~~ be entitled to inspect and copy the
19 following ~~unredacted~~ documents in the record of any disciplinary
20 proceeding resulting in action that is required to be reported
21 pursuant to Section 805:

22 (1) Any statement of charges.

23 (2) Any document, medical chart, or exhibits in evidence.

24 (3) Any opinion, findings, or conclusions.

25 ~~(4) Any peer review minutes or reports.~~

26 (4) *Any certified copy of medical records, as permitted by other*
27 *applicable law.*

28 (b) The information so disclosed shall be kept confidential and
29 not subject to discovery, in accordance with Section 800, except
30 that it may be reviewed, as provided in subdivision (c) of Section
31 800, and may be disclosed in any subsequent disciplinary hearing
32 conducted pursuant to the Administrative Procedure Act (Chapter
33 5 (commencing with Section 11500) of Part 1 of Division 3 of
34 Title 2 of the Government Code).

35 SEC. 6. Section 805.5 of the Business and Professions Code
36 is amended to read:

37 805.5. (a) Prior to granting or renewing staff privileges for
38 any physician and surgeon, psychologist, podiatrist, or dentist, any
39 health facility licensed pursuant to Division 2 (commencing with
40 Section 1200) of the Health and Safety Code, or any health care

1 service plan or medical care foundation, or the medical staff of the
2 institution shall request a report from the Medical Board of
3 California, the Board of Psychology, the Osteopathic Medical
4 Board of California, or the Dental Board of California to determine
5 if any report has been made pursuant to Section 805 indicating
6 that the applying physician and surgeon, psychologist, podiatrist,
7 or dentist has been denied staff privileges, been removed from a
8 medical staff, or had his or her staff privileges restricted as
9 provided in Section 805. The request shall include the name and
10 California license number of the physician and surgeon,
11 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805
12 report shall not cause the 805 report to be a public record.

13 (b) Upon a request made by, or on behalf of, an institution
14 described in subdivision (a) or its medical staff, ~~which is received~~
15 ~~on or after January 1, 1980,~~ the board shall furnish a copy of any
16 report made pursuant to Section 805 *as well as any additional*
17 *exculpatory or explanatory information submitted electronically*
18 *to the board by the licensee pursuant to subdivision (f) of that*
19 *section.* However, the board shall not send a copy of a report (1)
20 if the denial, removal, or restriction was imposed solely because
21 of the failure to complete medical records, (2) if the board has
22 found the information reported is without merit, (3) if a court finds,
23 *in a final judgment,* that the peer review, as defined in Section 805,
24 resulting in the report was conducted in bad faith and the licensee
25 who is the subject of the report notifies the board of that finding,
26 or (4) if a period of three years has elapsed since the report was
27 submitted. This three-year period shall be tolled during any period
28 the licensee has obtained a judicial order precluding disclosure
29 of the report, unless the board is finally and permanently precluded
30 by judicial order from disclosing the report. If a request is received
31 by the board while the board is subject to a judicial order limiting
32 or precluding disclosure, the board shall provide a disclosure to
33 any qualified requesting party as soon as practicable after the
34 judicial order is no longer in force.

35 If the board fails to advise the institution within 30 working days
36 following its request for a report required by this section, the
37 institution may grant or renew staff privileges for the physician
38 and surgeon, psychologist, podiatrist, or dentist.

39 (c) Any institution described in subdivision (a) or its medical
40 staff that violates subdivision (a) is guilty of a misdemeanor and

1 shall be punished by a fine of not less than two hundred dollars
2 (\$200) nor more than one thousand two hundred dollars (\$1,200).

3 *SEC. 7. Section 821.4 is added to the Business and Professions*
4 *Code, to read:*

5 *821.4. (a) A peer review body, as defined in Section 805, that*
6 *reviews physicians and surgeons shall, within 15 days of initiating*
7 *a formal investigation of a physician and surgeon's ability to*
8 *practice medicine safely based upon information indicating that*
9 *the physician and surgeon may be suffering from a disabling mental*
10 *or physical condition that poses a threat to patient care, report to*
11 *the executive director of the board the name of the physician and*
12 *surgeon under investigation and the general nature of the*
13 *investigation. A peer review body that has made a report to the*
14 *executive director of the board under this section shall also notify*
15 *the executive director of the board when it has completed or closed*
16 *an investigation.*

17 *(b) The executive director of the board, upon receipt of a report*
18 *pursuant to subdivision (a), shall contact the peer review body*
19 *that made the report within 60 days in order to determine the status*
20 *of the peer review body's investigation. The executive director of*
21 *the board shall contact the peer review body periodically thereafter*
22 *to monitor the progress of the investigation. At any time, if the*
23 *executive director of the board determines that the progress of the*
24 *investigation is not adequate to protect the public, the executive*
25 *director shall notify the chief of enforcement of the board, who*
26 *shall promptly conduct an investigation of the matter. Concurrently*
27 *with notifying the chief of enforcement, the executive director of*
28 *the board shall notify the reporting peer review body and the chief*
29 *executive officer or an equivalent officer of the hospital of its*
30 *decision to refer the case for investigation by the chief of*
31 *enforcement.*

32 *(c) For purposes of this section, "board" means the Medical*
33 *Board of California.*

34 *(d) For purposes of this section, "formal investigation" means*
35 *an investigation ordered by the peer review body's medical*
36 *executive committee or its equivalent, based upon information*
37 *indicating that the physician and surgeon may be suffering from*
38 *a disabling mental or physical condition that poses a threat to*
39 *patient care. "Formal investigation" does not include the usual*
40 *activities of the well-being or assistance committee or the usual*

1 *quality assessment and improvement activities undertaken by the*
2 *medical staff of a health facility in compliance with the licensing*
3 *and certification requirements for health facilities set forth in Title*
4 *22 of the California Code of Regulations, or preliminary*
5 *deliberations or inquiries of the executive committee to determine*
6 *whether to order a formal investigation.*

7 *(e) For purposes of this section, "usual activities" of the*
8 *well-being or assistance committee are activities to assist medical*
9 *staff members who may be impaired by chemical dependency or*
10 *mental illness to obtain necessary evaluation and rehabilitation*
11 *services that do not result in referral to the medical executive*
12 *committee.*

13 *(f) Information received by the executive director of the board*
14 *pursuant to this section shall be governed by, and shall be deemed*
15 *confidential to the same extent as records under, subdivision (d)*
16 *of Section 805.01. The records shall not be further disclosed by*
17 *the executive director of the board, except as provided in*
18 *subdivision (b).*

19 *(g) Upon receipt of notice from a peer review body that an*
20 *investigation has been closed and that the peer review body has*
21 *determined that there is no need for further action to protect the*
22 *public, the executive director of the board shall purge and destroy*
23 *all records in his or her possession pertaining to the investigation*
24 *unless the executive director has referred the matter to the chief*
25 *of enforcement pursuant to subdivision (b).*

26 *(h) A peer review body that has made a report under subdivision*
27 *(a) shall not be deemed to have waived the protections of Section*
28 *1157 of the Evidence Code. It is not the intent of the Legislature*
29 *in enacting this subdivision to affect pending litigation concerning*
30 *Section 1157 or to create any new confidentiality protection except*
31 *as specified in subdivision (f).*

32 *(i) The report required by this section shall be submitted on a*
33 *short form developed by the board. The contents of the short form*
34 *shall reflect the requirements of this section.*

35 *(j) Nothing in this section shall exempt a peer review body from*
36 *submitting a report required under Section 805 or 805.01.*

37 ~~SEC. 7.~~

38 SEC. 8. Section 2027 of the Business and Professions Code is
39 amended to read:

1 2027. (a) The board shall post on the Internet the following
2 information in its possession, custody, or control regarding licensed
3 physicians and surgeons:

4 (1) With regard to the status of the license, whether or not the
5 licensee is in good standing, subject to a temporary restraining
6 order (TRO), subject to an interim suspension order (ISO), or
7 subject to any of the enforcement actions set forth in Section 803.1.

8 (2) With regard to prior discipline, whether or not the licensee
9 has been subject to discipline by the board or by the board of
10 another state or jurisdiction, as described in Section 803.1.

11 (3) Any felony convictions reported to the board after January
12 3, 1991.

13 (4) All current accusations filed by the Attorney General,
14 including those accusations that are on appeal. For purposes of
15 this paragraph, "current accusation" shall mean an accusation that
16 has not been dismissed, withdrawn, or settled, and has not been
17 finally decided upon by an administrative law judge and the
18 Medical Board of California unless an appeal of that decision is
19 pending.

20 (5) Any malpractice judgment or arbitration award reported to
21 the board after January 1, 1993.

22 (6) Any hospital disciplinary actions that resulted in the
23 termination or revocation of a licensee's hospital staff privileges
24 for a medical disciplinary cause or reason. *The posting shall also*
25 *provide a link to any additional explanatory or exculpatory*
26 *information submitted electronically by the licensee pursuant to*
27 *subdivision (f) of Section 805.*

28 (7) Any misdemeanor conviction that results in a disciplinary
29 action or an accusation that is not subsequently withdrawn or
30 dismissed.

31 (8) Appropriate disclaimers and explanatory statements to
32 accompany the above information, including an explanation of
33 what types of information are not disclosed. These disclaimers and
34 statements shall be developed by the board and shall be adopted
35 by regulation.

36 (9) Any information required to be disclosed pursuant to Section
37 803.1.

38 (b) (1) From January 1, 2003, the information described in
39 paragraphs (1) (other than whether or not the licensee is in good
40 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain

1 posted for a period of 10 years from the date the board obtains
2 possession, custody, or control of the information, and after the
3 end of that period shall be removed from being posted on the
4 board's Internet Web site. Information in the possession, custody,
5 or control of the board prior to January 1, 2003, shall be posted
6 for a period of 10 years from January 1, 2003. Settlement
7 information shall be posted as described in paragraph (2) of
8 subdivision (b) of Section 803.1.

9 (2) The information described in paragraphs (3) and (6) of
10 subdivision (a) shall not be removed from being posted on the
11 board's Internet Web site.

12 (3) Notwithstanding paragraph (2) and except as provided in
13 paragraph (4), if a licensee's hospital staff privileges are restored
14 and the licensee notifies the board of the restoration, the
15 information pertaining to the termination or revocation of those
16 privileges, as described in paragraph (6) of subdivision (a), shall
17 remain posted for a period of 10 years from the restoration date
18 of the privileges, and at the end of that period shall be removed
19 from being posted on the board's Internet Web site.

20 (4) Notwithstanding paragraph (2), if a court finds, *in a final*
21 *judgment*, that peer review resulting in a hospital disciplinary action
22 was conducted in bad faith and the licensee notifies the board of
23 that finding, the information concerning that hospital disciplinary
24 action posted pursuant to paragraph (6) of subdivision (a) shall be
25 immediately removed from the board's Internet Web site. For
26 purposes of this paragraph, "peer review" has the same meaning
27 as defined in Section 805.

28 (c) The board shall also post on the Internet a factsheet that
29 explains and provides information on the reporting requirements
30 under Section 805.

31 (d) The board shall provide links to other Web sites on the
32 Internet that provide information on board certifications that meet
33 the requirements of subdivision (b) of Section 651. The board may
34 provide links to other Web sites on the Internet that provide
35 information on health care service plans, health insurers, hospitals,
36 or other facilities. The board may also provide links to any other
37 sites that would provide information on the affiliations of licensed
38 physicians and surgeons.

O

SB 726

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 726
Author: Ashburn
Bill Date: August 20, 2009, amended
Subject: Pilot Program Authorizing Acute Care Hospitals to Employ Physicians
Sponsor: Author

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes revisions to a current pilot program administered by the Medical Board of California (Board), relating to the direct employment of physicians by certain hospitals.

This bill was amended July 15th to set forth specific definitions for "qualified health care district," to add and define "qualified rural hospital," and to specify the requirements for each to employ physicians under the pilot project. The analysis in bold below describes the changes in this bill.

Amendments taken August 20, 2009 make minor technical changes to the bill's provisions.

ANALYSIS:

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

The Board presently administers a pilot project to provide for the direct employment of physicians by qualified district hospitals; this project is set to expire on January 1, 2011. (Senate Bill 376/Chesbro, Chap. 411, Statutes of 2003). The Board supported SB 376 because the program was created as a limited pilot program, and required a final evaluation to assess whether this exemption will promote access to health care.

SB 376 was sponsored by the Association of California Healthcare Districts to enable qualified district hospitals to recruit, hire and employ physicians as full-time paid staff in a rural or underserved community meeting the criteria contained in the bill. Support for this

bill was premised upon the belief that the employment of physicians could improve the ability of district hospitals to attract the physicians required to meet the needs of those communities and also help to ensure the continued survival of healthcare district hospitals in rural and underserved communities, without any cost to the state.

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law required the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally.

The Board was challenged in evaluating the program and preparing the required report because the low number of participants did not afford us sufficient information to prepare a valid analysis of the pilot. In summary, while the Board supports the ban on the corporate practice of medicine, it also believes there may be justification to extend the pilot so that a better evaluation can be made. However, until there is sufficient data to perform a full analysis of an expanded pilot, the Board's position as spelled out in the report to the Legislature (September 10, 2008) was that the statutes governing the corporate practice of medicine should not be amended as a solution to solve the problem of access to healthcare.

The pilot provided safeguards and limitations. That program provided for the direct employment of no more than 20 physicians in California by qualified district hospitals at any time and limited the total number of physicians employed by such a hospital to no more than two at a time. The Medical Board was notified of any physicians hired under the pilot, and the contracts were limited to four years of service. Further, per the current pilot program: 1) the hospital must be located in smaller counties (a population of less than 750,000); 2) the hospital must provide a majority of care to underserved populations; 3) the hospital must notify the Board.

This bill revises the existing pilot program by:

- Allowing any general acute care hospital (instead of only certain district hospitals) to participate so long as the hospital is located in a medically underserved population, a medically underserved area, or a health professional shortage area.
- Removing the statewide limit of 20 physicians who may participate in the pilot.
- Increasing the number of physicians who may be employed at any hospital from two to five.
- Requiring physicians and hospitals to enter into a written contract, not in excess of four years, by December 31, 2011. This document, together with other

information, shall be submitted to the Board for approval, and the Board must provide written confirmation to the hospital within five working days.

- Requiring the Board to submit a report to the Legislature by October 1, 2013.
- Repealing the pilot effective on January 1, 2016 unless deleted or extended by subsequent legislation.

The author's office reports that there are 69 rural hospitals, of which 31 are owned and operated by Health Care Districts. There are then 15 District hospitals that are non-rural that would be included in the most recent amendments to this bill. In total, there are 84 hospitals statewide that would be included.

It also remains unclear what impact, if any, would be realized by removing the current limit of 20 physicians statewide or by increasing the number of physicians at each hospital from two to five. As SB 376 was being debated before the Legislature, the Board discussed the potential impact of the bill with the author's office. While recognizing that the limitations of the pilot (a statewide total of 20 participants with no more than two physicians at any one hospital) would make only a small first-step towards increasing access to healthcare, the Board anticipated that all 20 slots soon would be filled. After the Governor signed the bill and the law took effect on January 1, 2004, staff was prepared to promptly process the applications as they were submitted. The Board recognized that to have an adequate base of physicians to use in preparing a valid analysis of the pilot, as many as possible of the 20 positions would need to be filled. However, such a significant response failed to materialize. Unexpectedly, the first application was not received until six months after the pilot became operational, and that hospital elected to hire a physician for only three years instead of the four years allowed by the pilot. Further, during the years that the pilot was operational, only six physicians were hired by five eligible hospitals. So, unless there is an unexpected groundswell of interest in the revised pilot, this workload could be accomplished within existing resources. Again, expanding the pool of available positions to be filled could increase access to health care.

One issue of importance with bill is the implementation dates. If the bill is signed, the law would not become effective until January 2010. Hospitals would only have 24 months during which to hire physicians—for contracts up to four years. However, the report would be due to the Legislature only 21 months thereafter. This limited time for the pilot to be operational and for the Board to collect information is not practical for conducting a full and valuable evaluation.

Amendments to this bill add a definition for "qualified health care district" and set forth requirements for a qualified health care district to employ physicians. Qualified health care district is defined as a health care district organized and governed under the Local Health Care District Law. This may include clinics and hospitals but only the district is authorized to hire. A qualified health care district is eligible to employ physicians if:

1. It is operated by the district itself and not by another entity;
2. It is located within a medically underserved population or area;

3. The chief executive officer of the district provides certification to the board that the district has been unsuccessful in recruiting a physician to provide services for at least twelve months. This was revised from a specific 12 month period to any 12 month period prior to hiring;
4. The chief executive officer certifies to the board that the hiring of physicians shall not supplant current physicians with privileges and contracts at the hospital. This was added to address concerns that new physicians would not come into the area, that hires would not be made by robbing from the existing pool of physicians;
5. The district hires the physicians before December 31, 2017 for a term of not more than ten years;
6. The district employs no more than two physicians at one time. The Board can authorize up to three more additional hires if the hospital shows a need for more.
7. The district notifies the Board in writing that it plans to hire a licensee and the Board confirms that the district is eligible to hire (does not have more than two). The district cannot actively recruit a physician who is already employed with a federally qualified health center, a rural health center, or other community clinic not affiliated with the district.

This removes the affirmative vote needed from the medical staff and the elected trustees of the hospital that each physician's employment is in the best interests of the communities served by the hospital.

Per the sponsor, there are 46 health care district hospitals which could equate to 92 employed physicians prior to Board approval.

This bill adds and defines "qualified rural hospital" as a general acute care hospital located in an area designated as nonurban by the United States Census Bureau, a general acute care hospital located in a rural-urban commuting area code of four or greater as designated by the United States Department of Agriculture, or a rural hospital located within a medically underserved population or medically underserved area, so designated by the federal government as a Health Professional Shortage Area. A qualified rural hospital is eligible to employ physicians if:

1. The chief executive officer of the hospital provides certification to the board that the district has been unsuccessful in recruiting a physician to provide services for at least twelve continuous months (same requirement as with the districts);
2. The chief executive officer certifies to the board that the hiring of physicians shall not supplant current physicians with privileges and contracts at the hospital (same requirement as with the districts);
3. The district hires the physicians before December 31, 2017 for a term of not more than ten years (same requirement as with the districts);

4. The district employs no more than two physicians at one time. The Board can authorize additional hires up to three more if the hospital shows a need for more. This provision is very different from AB 648 that addressed rural hospitals. That bill allowed for 10 physician hires per hospital.
5. The district notifies the Board in writing that it plans to hire a licensee and the Board confirms that the district is eligible to hire (does not have more than two). The district cannot actively recruit a physician who is already employed with a federally qualified health center, a rural health center, or other community clinic not affiliated with the district.

This removes the affirmative vote needed from the medical staff and the elected trustees of the hospital that each physician's employment is in the best interests of the communities served by the hospital.

Per the sponsor, there are 38 rural hospitals that are not district hospitals. This could equate to 76 employed physicians prior to Board approval.

This bill was also amended to require the Board to include in the final report evaluating the effectiveness of the pilot project an analysis of the impact of the pilot project on the ability of nonprofit community clinics and health centers located in close proximity to participating health care district facilities and participating rural hospitals to recruit and retain physicians. This report is due to the Legislature no later than July 1, 2016.

The Board supported the concept of expanding the pilot program in some manner in one of the three bills pending in the 2009 session. This keeps the pilot reasonably small with potentially enough physicians to fully evaluate the impact of the direct employment of physicians by both district hospitals and rural hospitals.

Staff is working with the author's office on amendments to the sections of the bill that require mandatory dispute resolution for disputes directly relating to clinical practice. The Board does not have a dispute resolution process at this time. Implementing one would be costly. Staff is working to clarify this issue.

FISCAL: Within existing resources to monitor the program, potentially \$50,000 to do the evaluation study in 2016.

POSITION: Support
Recommendation: Support if amended

April 15, 2010

AMENDED IN ASSEMBLY AUGUST 20, 2009

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 726

Introduced by Senator Ashburn

(Principal coauthors: Assembly Members Chesbro and Swanson)

(Coauthors: *Senators Cox and Ducheny*)

February 27, 2009

An act to amend Sections 2401 and 2401.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Ashburn. Health care districts: rural hospitals: employment of physicians and surgeons.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals to employ a physician and surgeon if certain conditions are satisfied. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. The pilot project requires that the term of a contract with a licensee not exceed 4 years. Existing law requires the Medical Board of California to report to the Legislature not later than October 1, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to authorize the direct employment by qualified health care districts and qualified rural hospitals, as defined, of an unlimited number of physicians and surgeons under the pilot project, and would authorize such a district or hospital to employ up to 5 physicians and surgeons at a time if certain requirements are met. The bill would require that the term of a contract with a physician and surgeon not exceed 10 years and would extend the pilot project until January 1, 2018. The bill would require the board to provide a preliminary report to the Legislature not later than July 1, 2013, and a final report not later than July 1, 2016, evaluating the effectiveness of the pilot project, and would make conforming changes.

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

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

1 SECTION 1. Section 2401 of the Business and Professions
2 Code is amended to read:

3 2401. (a) Notwithstanding Section 2400, a clinic operated
4 primarily for the purpose of medical education by a public or
5 private nonprofit university medical school, which is approved by
6 the Division of Licensing or the Osteopathic Medical Board of
7 California, may charge for professional services rendered to
8 teaching patients by licensees who hold academic appointments
9 on the faculty of the university, if the charges are approved by the
10 physician and surgeon in whose name the charges are made.

11 (b) Notwithstanding Section 2400, a clinic operated under
12 subdivision (p) of Section 1206 of the Health and Safety Code
13 may employ licensees and charge for professional services rendered
14 by those licensees. However, the clinic shall not interfere with,
15 control, or otherwise direct the professional judgment of a
16 physician and surgeon in a manner prohibited by Section 2400 or
17 any other provision of law.

18 (c) Notwithstanding Section 2400, a narcotic treatment program
19 operated under Section 11876 of the Health and Safety Code and
20 regulated by the State Department of Alcohol and Drug Programs,
21 may employ licensees and charge for professional services rendered
22 by those licensees. However, the narcotic treatment program shall
23 not interfere with, control, or otherwise direct the professional

1 judgment of a physician and surgeon in a manner prohibited by
2 Section 2400 or any other provision of law.

3 (d) Notwithstanding Section 2400, a qualified health care district
4 organized and governed pursuant to Division 23 (commencing
5 with Section 32000) of the Health and Safety Code or a qualified
6 rural hospital may employ a licensee pursuant to Section 2401.1,
7 and may charge for professional services rendered by the licensee,
8 if the physician and surgeon in whose name the charges are made
9 approves the charges. However, the district or hospital shall not
10 interfere with, control, or otherwise direct the physician and
11 surgeon's professional judgment in a manner prohibited by Section
12 2400 or any other provision of law.

13 SEC. 2. Section 2401.1 of the Business and Professions Code
14 is amended to read:

15 2401.1. (a) The Legislature finds and declares as follows:

16 (1) Due to the large number of uninsured and underinsured
17 Californians, a number of California communities are having great
18 difficulty recruiting and retaining physicians and surgeons.

19 (2) In order to recruit physicians and surgeons to provide
20 medically necessary services in rural and medically underserved
21 communities, many qualified health care districts and qualified
22 rural hospitals have no viable alternative but to directly employ
23 physicians and surgeons in order to provide economic security
24 adequate for a physician and surgeon to relocate and reside in their
25 communities.

26 (3) The Legislature intends that a qualified health care district
27 or qualified rural hospital meeting the conditions set forth in this
28 section be able to employ physicians and surgeons directly, and
29 to charge for their professional services.

30 (4) The Legislature reaffirms that Section 2400 provides an
31 increasingly important protection for patients and physicians and
32 surgeons from inappropriate intrusions into the practice of
33 medicine, and further intends that a qualified health care district
34 or qualified rural hospital not interfere with, control, or otherwise
35 direct a physician and surgeon's professional judgment.

36 (b) A pilot project to provide for the direct employment of
37 physicians and surgeons by qualified health care districts and
38 qualified rural hospitals is hereby established in order to improve
39 the recruitment and retention of physicians and surgeons in rural
40 and other medically underserved areas.

1 (c) For purposes of this section, “qualified health care district”
2 means a health care district organized and governed pursuant to
3 the Local Health Care District Law (Division 23 (commencing
4 with Section 32000) of the Health and Safety Code). A qualified
5 health care district shall be eligible to employ physicians and
6 surgeons pursuant to this section if all of the following
7 requirements are met:

8 (1) The district health care facility at which the physician and
9 surgeon will provide services meets both of the following
10 requirements:

11 (A) Is operated by the district itself, and not by another entity.

12 (B) Is located within a medically underserved population or
13 medically underserved area, so designated by the federal
14 government pursuant to Section 254b or 254c-14 of Title 42 of
15 the United States Code, or within a federally designated Health
16 Professional Shortage Area.

17 (2) The chief executive officer of the district has provided
18 certification to the board that the district has been unsuccessful,
19 using commercially reasonable efforts, in recruiting a physician
20 and surgeon to provide services at the facility described in
21 paragraph (1) for at least 12 continuous months beginning on or
22 after July 1, 2008. This certification shall specify the commercially
23 reasonable efforts, ~~including, but not limited to, recruitment~~
24 ~~payments or other incentives,~~ used to recruit a physician and
25 surgeon that were unsuccessful and shall specify the reason for
26 the lack of success, if known. *In providing a certification pursuant*
27 *to this paragraph, the chief executive officer need not provide*
28 *confidential information regarding specific contract offers or*
29 *individualized recruitment incentives.*

30 (3) The chief executive officer of the district certifies to the
31 board that the hiring of a physician and surgeon pursuant to this
32 section shall not supplant physicians and surgeons with current
33 privileges or contracts with the facility described in paragraph (1).

34 (4) The district enters into or renews a written employment
35 contract with the physician and surgeon prior to December 31,
36 2017, for a term not in excess of 10 years. The contract shall
37 provide for mandatory dispute resolution under the auspices of the
38 board for disputes directly relating to the physician and surgeon’s
39 clinical practice.

(5) The total number of physicians and surgeons employed by the district does not exceed two at any time. However, the board shall authorize the district to hire no more than three additional physicians and surgeons if the district makes a showing of clear need in the community following a public hearing duly noticed to all interested parties, including, but not limited to, those involved in the delivery of medical care.

(6) The district notifies the board in writing that the district plans to enter into a written contract with the physician and surgeon, and the board has confirmed that the physician and surgeon's employment is within the maximum number permitted by this section. The board shall provide written confirmation to the district within five working days of receipt of the written notification to the board.

(7) The chief executive officer of the district certifies to the board that the district did not actively recruit or employ a physician and surgeon who, at the time, was employed by a federally qualified health center, a rural health center, or other community clinic not affiliated with the district.

(d) (1) For purposes of this section, "qualified rural hospital" means any of the following:

(A) A general acute care hospital located in an area designated as nonurban by the United States Census Bureau.

(B) A general acute care hospital located in a rural-urban commuting area code of four or greater as designated by the United States Department of Agriculture.

(C) *A small and rural hospital as defined in Section 124840 of the Health and Safety Code.*

~~(E)~~

(D) A rural hospital located within a medically underserved population or medically underserved area, so designated by the federal government pursuant to Section 254b or 254c-14 of Title 42 of the United States Code, or within a federally designated Health Professional Shortage Area.

(2) To be eligible to employ physicians and surgeons pursuant to this section, a qualified rural hospital shall meet all of the following requirements:

(A) The chief executive officer of the hospital has provided certification to the board that the hospital has been unsuccessful, using commercially reasonable efforts, in recruiting a physician

1 and surgeon for at least 12 continuous months beginning on or
2 after July 1, 2008. This certification shall specify the commercially
3 reasonable efforts, ~~including, but not limited to, recruitment~~
4 ~~payments or other incentives,~~ used to recruit a physician and
5 surgeon that were unsuccessful and shall specify the reason for
6 the lack of success, if known. *In providing a certification pursuant*
7 *to this subparagraph, the chief executive officer need not provide*
8 *confidential information regarding specific contract offers or*
9 *individualized recruitment incentives.*

10 (B) The chief executive officer of the hospital certifies to the
11 board that the hiring of a physician and surgeon pursuant to this
12 section shall not supplant physicians and surgeons with current
13 privileges or contracts with the hospital.

14 (C) The hospital enters into or renews a written employment
15 contract with the physician and surgeon prior to December 31,
16 2017, for a term not in excess of 10 years. The contract shall
17 provide for mandatory dispute resolution under the auspices of the
18 board for disputes directly relating to the physician and surgeon's
19 clinical practice.

20 (D) The total number of physicians and surgeons employed by
21 the hospital does not exceed two at any time. However, the board
22 shall authorize the hospital to hire no more than three additional
23 physicians and surgeons if the hospital makes a showing of clear
24 need in the community following a public hearing duly noticed to
25 all interested parties, including, but not limited to, those involved
26 in the delivery of medical care.

27 (E) The hospital notifies the board in writing that the hospital
28 plans to enter into a written contract with the physician and
29 surgeon, and the board has confirmed that the physician's and
30 surgeon's employment is within the maximum number permitted
31 by this section. The board shall provide written confirmation to
32 the hospital within five working days of receipt of the written
33 notification to the board.

34 (F) The chief executive officer of the hospital certifies to the
35 board that the hospital did not actively recruit ~~or employ~~ a
36 physician and surgeon who, at the time, was employed by a
37 federally qualified health center, a rural health center, or other
38 community clinic not affiliated with the hospital.

39 (e) The board shall provide a preliminary report to the
40 Legislature not later than July 1, 2013, and a final report not later

1 than July 1, 2016, evaluating the effectiveness of the pilot project
2 in improving access to health care in rural and medically
3 underserved areas and the project's impact on consumer protection
4 as it relates to intrusions into the practice of medicine. The board
5 shall include in the report an analysis of the impact of the pilot
6 project on the ability of nonprofit community clinics and health
7 centers located in close proximity to participating health care
8 district facilities and participating rural hospitals to recruit and
9 retain physicians and surgeons.

10 (f) Nothing in this section shall exempt a qualified health care
11 district or qualified rural hospital from any reporting requirements
12 or affect the board's authority to take action against a physician
13 and surgeon's license.

14 (g) This section shall remain in effect only until January 1, 2018,
15 and as of that date is repealed, unless a later enacted statute that
16 is enacted before January 1, 2018, deletes or extends that date.

SB 1031

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1031
Author: Corbett
Bill Date: April 5, 2010, amended
Subject: Medical Malpractice Insurance
Sponsor: Medical Board of California
California Medical Association

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill creates the Volunteer Insured Physicians (VIP) Program to provide medical malpractice insurance to volunteer physicians for the purpose of encouraging physicians to volunteer their services in the interests of expanding access to health care.

ANALYSIS:

Currently physicians who provide uncompensated care to patients must maintain medical malpractice insurance. For these physicians who are not receiving payment for their services, the cost of medical malpractice insurance can be a disincentive to volunteering.

With the current healthcare shortage in California, volunteer physicians are invaluable to all patients, especially those in low-income, rural, and underserved areas. If maintaining medical malpractice insurance is too costly without receiving compensation, these physicians may choose not to volunteer their services.

The Board and the California Medical Association (CMA) are pursuing this legislation to create a method of providing general malpractice insurance to these physicians who would otherwise volunteer their services if the cost of maintaining malpractice insurance were not an impediment. Currently, California is one of the seven remaining states in the U.S. that does not have a program to cover physicians who provide unpaid, voluntary services.

This bill would create the Volunteer Insured Physicians (VIP) Program pursuant to the Volunteer Insured Physicians Act for the purpose of providing a licensee who would like to provide uncompensated care to patients with insurance coverage. The services provided would be general medicine or family practice level care. This bill would establish a procedure that consists of a voluntary service agreement between the licensed physician and

Board that is initiated by application to the program. This bill provides a definition for qualified healthcare entities and creates a voluntary services contract to be executed between the physician and the hospital, clinic, or health care agency. Licensees in the VIP program must hold a full and unrestricted license in California, be in good standing, and have no record of disciplinary.

The Board and CMA believe that this bill will promote an increase in access to healthcare by encouraging physicians to volunteer their services. This bill is intended to alleviate the concern many physicians have about medical malpractice liability associated with providing uncompensated care to patients.

Amendments to this bill offered by the author and taken in committee address some of the concerns raised by interested parties. Additional amendments will be developed prior to the Senate Appropriations Committee hearing. These will include: non-government operated clinics as part of the qualified healthcare entities; clarification to the definition of volunteer physician; broadening the range of patients who can receive voluntary so that it does not limit services to a limited group of low-income patients; and providing a fiscal analysis and resource.

FISCAL: Unknown

POSITION: Sponsor/Support

April 19, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1031

Introduced by Senator Corbett

February 12, 2010

~~An act to relating to medicine.~~ *An act to add Article 17.1 (commencing with Section 2399) to Chapter 5 of Division 2 of, and to repeal Section 2399.7 of, the Business and Professions Code, relating to medicine.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1031, as amended, Corbett. Medical malpractice insurance: volunteer physicians and surgeons.

Under existing law, the Medical Practice Act, the Medical Board of California is responsible for the certification and regulation of physicians and surgeons. Existing law requires the board, in conjunction with the Health Professions Education Foundation, to study the issue of providing medical malpractice insurance to volunteer physicians and surgeons and to report its findings to the Legislature by January 1, 2008.

The bill would ~~declare the intent of the Legislature to implement the findings of that study~~ *create the Volunteer Insured Physicians Program, administered by the board, to provide specified medical malpractice insurance coverage to volunteer physicians providing uncompensated care to low-income patients pursuant to a contract with a qualified health care entity, as defined. The bill would provide unspecified funding for the program from the Contingent Fund of the Medical Board of California for a limited period of time. The bill would require annual reports to the Legislature until January 1, 2015.*

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

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

1 SECTION 1. Article 17.1 (commencing with Section 2399) is
2 added to Chapter 5 of Division 2 of the Business and Professions
3 Code, to read:

4
5 Article 17.1. Volunteer Insured Physicians Program
6

7 2399. This article shall be known and may be cited as the
8 Volunteer Insured Physicians (VIP) Act, which authorizes the
9 creation and implementation of the Volunteer Insured Physicians
10 (VIP) Program.

11 2399.1. (a) For purposes of this article, the following
12 definitions shall apply:

13 (1) "Licensee" means the holder of a physician and surgeon's
14 certificate who is engaged in the professional practice authorized
15 by the certificate under the jurisdiction of the board.

16 (2) "Volunteer physician" means a licensee under this chapter
17 who volunteers to provide primary care medical services, as
18 described in Section 2399.3, to a low-income patient, with no
19 monetary or material compensation.

20 (3) "Qualified health care entity" means a county health
21 department, hospital district, or hospital or clinic owned and
22 operated by a governmental entity.

23 (4) "Low-income patient" means a person who is without health
24 care coverage and whose family income does not exceed 200
25 percent of the federal poverty level, as defined annually by the
26 federal Office of Management and Budget.

27 (5) "Voluntary service agreement" means an agreement
28 executed pursuant to this article between the board, a licensee,
29 and a qualified health care entity that authorizes the health care
30 entity to enter into a voluntary service contract with the licensee.

31 (6) "Voluntary service application" means the written
32 application developed by the board that a licensee must complete
33 and submit in order to be considered for participation in the VIP
34 Program.

35 (7) "Voluntary service contract" means an agreement executed
36 pursuant to this article between a licensee and a qualified health
37 care entity that authorizes the licensee to deliver health care

1 *services to low-income patients as an agent of the qualified health*
2 *care entity on a volunteer, uncompensated basis.*

3 2399.2. (a) *A licensee who wants to provide voluntary,*
4 *uncompensated care to low-income patients, but who does not*
5 *have medical professional liability insurance that would include*
6 *insurance coverage for premiums, defense, and indemnity costs*
7 *for any claims arising from voluntary and uncompensated care,*
8 *may submit a voluntary service application to the board for*
9 *coverage under the VIP Program.*

10 (b) *A licensee who submits an application for a waiver of initial*
11 *and renewal licensing fees under Section 2083 or 2442 and who*
12 *also submits a voluntary service application shall be*
13 *simultaneously assessed by the board for eligibility to receive*
14 *medical professional liability insurance coverage for premiums,*
15 *defense, and indemnity costs through the VIP Program.*

16 (c) *A licensee who has standard medical professional liability*
17 *insurance coverage for his or her regular practice but who is not*
18 *covered for volunteer service may submit a voluntary service*
19 *application to participate in the VIP Program. In conjunction with*
20 *the voluntary service application, the licensee shall submit*
21 *verification from his or her medical professional liability insurance*
22 *carrier that voluntary, uncompensated care is not covered by his*
23 *or her existing medical professional liability insurance policy.*

24 (d) *The board shall review the voluntary service application to*
25 *determine if the applicant meets the criteria for VIP Program*
26 *participation. These criteria shall include both of the following:*

27 (1) *Holding an active license in good standing to practice*
28 *medicine in the State of California.*

29 (2) *No record of disciplinary action by the board or any other*
30 *regulatory board.*

31 (e) *Continued eligibility for the VIP Program shall be reassessed*
32 *by the board during each license renewal cycle.*

33 2399.3. (a) *Licensees approved by the board for participation*
34 *in the VIP Program may enter into a voluntary service agreement*
35 *with the board and a qualified health care entity that acknowledges*
36 *the terms of the VIP Program and transfers responsibility from*
37 *the volunteer physician to the state for medical professional*
38 *liability insurance, including premiums, defense, and indemnity*
39 *costs, for voluntary, uncompensated medical care that is provided*
40 *in accordance with an executed and signed voluntary service*

1 contract between the volunteer physician and the qualified health
2 care entity and that complies with the terms of the VIP Program.

3 (b) Volunteer physicians participating in the VIP Program shall
4 agree to limit the scope of the volunteer medical care to primary
5 care medical services.

6 (c) The voluntary service contract between the volunteer
7 physician and the qualified health care entity shall include all of
8 the following provisions:

9 (1) All care provided shall be both voluntary and uncompensated
10 and shall be provided to low-income patients.

11 (2) Patient selection and initial referral shall be made solely
12 by the qualified health care entity and the volunteer physician
13 shall accept all referred patients except as otherwise allowed by
14 law. However, the number of patients that must be accepted may
15 be limited by the voluntary service contract and patients may not
16 be transferred to the volunteer physician based on a violation of
17 any antidumping provisions of the Omnibus Budget Reconciliation
18 Act of 1989 (P.L. 101-239) or the Omnibus Budget Reconciliation
19 Act of 1990 (P.L. 101-508).

20 (3) The qualified health care entity shall have access to the
21 patient records of the volunteer physician delivering services under
22 the voluntary service contract.

23 (4) The volunteer physician shall be subject to supervision by
24 the qualified health care entity's standard peer review process
25 and all related laws regarding peer review, including, but not
26 limited to, the filing of reports pursuant to Section 805.

27 (5) The qualified health care entity shall utilize a quality
28 assurance program to monitor services delivered by the volunteer
29 physician under the voluntary services contract.

30 (6) The right to dismiss or terminate a volunteer physician
31 delivering services under the voluntary service contract shall be
32 retained by the qualified health care entity. If the volunteer services
33 contract is terminated, the qualified health care entity shall notify
34 the VIP Program in writing within five days.

35 2399.4. The fact that a volunteer physician is insured under
36 the VIP Program in relation to particular medical services
37 rendered shall not operate to change or affect the laws applicable
38 to any claims arising from or related to those medical services.
39 All laws applicable to a claim remain the same regardless of
40 whether a licensee is insured through the VIP Program.

1 2399.5. *If a volunteer physician covered by the VIP Program*
2 *receives notice or otherwise obtains knowledge that a claim of*
3 *professional medical negligence has been or may be filed, the*
4 *physician shall immediately notify the VIP Program or the*
5 *contracted liability carrier.*

6 2399.6. *All costs for administering the VIP Program, including*
7 *the cost of medical professional liability insurance for premiums,*
8 *defense, and indemnity coverage for program participants, shall*
9 *be paid for from the Contingent Fund of the Medical Board of*
10 *California, in an amount not to exceed ____ dollars (\$____) per*
11 *year.*

12 2399.7. (a) *The board shall report annually to the Legislature*
13 *summarizing the efficacy of access and treatment outcomes with*
14 *respect to providing health care services for low-income patients*
15 *pursuant to this article. The report shall include the numbers of*
16 *injuries and deaths reported, claims statistics for all care rendered*
17 *under the VIP Program, including the total of all premiums paid,*
18 *the number of claims made for each year of the VIP Program, the*
19 *amount of all indemnity payments made, the cost of defense*
20 *provided, and administration costs associated with all claims made*
21 *against volunteer physicians arising from voluntary and*
22 *uncompensated care provided under the VIP Program.*

23 (b) (1) *A report to be submitted pursuant to subdivision (a)*
24 *shall be submitted in compliance with Section 9795 of the*
25 *Government Code.*

26 (2) *Pursuant to Section 10231.5 of the Government Code, this*
27 *section is repealed on January 1, 2015.*

28 2399.8. *This article shall remain operative until January 1,*
29 *2016, or until another viable source of funding is identified and*
30 *adopted, whichever occurs first.*

31 ~~SECTION 1. It is the intent of the Legislature to implement~~
32 ~~the findings of the study described in Section 2023 of the Business~~
33 ~~and Professions Code, relating to providing medical malpractice~~
34 ~~insurance to physicians and surgeons who provide voluntary,~~
35 ~~unpaid services.~~

SB 1069

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1069
Author: Pavely
Bill Date: April 12, 2010, amended
Subject: Physician Assistants
Sponsor: California Academy of Physician Assistants

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize physician assistants to perform physical examinations, order durable medical equipment, and certify disability for the purpose of unemployment insurance eligibility.

ANALYSIS:

The author and the sponsor of this bill believe that allowing physician assistants to perform physical examinations and sign all corresponding forms, order durable medical equipment, and certify disability for the purpose of unemployment insurance eligibility would expand access to health care by furthering a physician's ability to delegate specified health care tasks.

FISCAL: None

POSITION: Recommendation: Support

April 15, 2010

AMENDED IN SENATE APRIL 12, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1069

Introduced by Senator Pavley
(Principal coauthor: Assembly Member Fletcher)

February 17, 2010

An act to amend Section 3501 of, and to add Sections 3502.2, 3502.3, and 3528.5 to, the Business and Professions Code, to amend Sections 44336, 49406, 49423, 49455, 87408, 87408.5, and 87408.6 of, and to add Section 49458 to, the Education Code, to amend Section 2881 of the Public Utilities Code, and to amend Section 2708 of the Unemployment Insurance Code, relating to physician assistants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, as amended, Pavley. 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 *act as the agent of the supervising physician and* may perform the physical ~~examination~~ *examinations* and other specified medical services, as defined, and ~~may~~

sign and attest to any document evidencing ~~the physical examination~~ *those examinations* and other ~~specified medical~~ services, required pursuant to specified provisions of law. 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 provisions in the Education Code, the Public Utilities Code, and the Unemployment Insurance Code with regard to the performance of those examinations and services and acceptance of those attestations. The bill would also authorize a physician assistant to perform a physical examination that is required for participation in an interscholastic athletic program, as specified.

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.

This bill would require an accusation against a physician assistant to be filed against the physician assistant within 3 years after the committee discovers, *as defined*, 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, *as specified*.

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

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

- 1 SECTION 1. Section 3501 of the Business and Professions
- 2 Code is amended to read:
- 3 3501. As used in this chapter:
- 4 (a) "Board" means the Medical Board of California.

1 (b) "Approved program" means a program for the education of
2 physician assistants that has been formally approved by the
3 committee.

4 (c) "Trainee" means a person who is currently enrolled in an
5 approved program.

6 (d) "Physician assistant" means a person who meets the
7 requirements of this chapter and is licensed by the committee.

8 (e) "Supervising physician" means a physician and surgeon
9 licensed by the board or by the Osteopathic Medical Board of
10 California who supervises one or more physician assistants, who
11 possesses a current valid license to practice medicine, and who is
12 not currently on disciplinary probation for improper use of a
13 physician assistant.

14 (f) "Supervision" means that a licensed physician and surgeon
15 oversees the activities of, and accepts responsibility for, the medical
16 services rendered by a physician assistant.

17 (g) "Committee" or "examining committee" means the Physician
18 Assistant Committee.

19 (h) "Regulations" means the rules and regulations as contained
20 in Chapter 13.8 (commencing with Section 1399.500) of Title 16
21 of the California Code of Regulations.

22 (i) "Routine visual screening" means uninvase
23 nonpharmacological simple testing for visual acuity, visual field
24 defects, color blindness, and depth perception.

25 (j) "Program manager" means the staff manager of the diversion
26 program, as designated by the executive officer of the board. The
27 program manager shall have background experience in dealing
28 with substance abuse issues.

29 (k) "Delegation of services agreement" means the writing that
30 delegates to a physician assistant from a supervising physician the
31 medical services the physician assistant is authorized to perform
32 consistent with subdivision (a) of Section 1399.540 of Title 16 of
33 the California Code of Regulations.

34 (l) "Other specified medical services" means tests or
35 examinations performed or ordered by a physician assistant
36 practicing in compliance with this chapter or regulations of the
37 board promulgated under this chapter.

38 (m) *A physician assistant acts as an agent of the supervising*
39 *physician when performing any activity authorized by this chapter*
40 *or regulations promulgated by the board under this chapter.*

1 SEC. 2. Section 3502.2 is added to the Business and Professions
2 Code, to read:

3 3502.2. Notwithstanding any other provision of law, a physician
4 assistant may perform the physical examination and any other
5 specified medical services *that are required pursuant to Section*
6 *2881 of the Public Utilities Code and Sections 44336, 49406,*
7 *49423, 49455, 87408, 87408.5, and 87408.6 of the Education*
8 *Code, practicing in compliance with this chapter,* and may sign
9 and attest to any certificate, card, form, or other documentation
10 evidencing the examination or other specified medical services
11 ~~that are required pursuant to Section 2881 of the Public Utilities~~
12 ~~Code and Sections 44336, 49406, 49423, 49455, 87408, 87408.5,~~
13 ~~and 87408.6 of the Education Code.~~

14 SEC. 3. Section 3502.3 is added to the Business and Professions
15 Code, to read:

16 3502.3. (a) Notwithstanding any other provision of law, in
17 addition to any other practices that meet the general criteria set
18 forth in this chapter or the board's regulations for inclusion in a
19 delegation of services agreement, a delegation of services
20 agreement may authorize a physician assistant to do any of the
21 following:

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

27 (2) After performance of a physical examination by the
28 physician assistant under the supervision of a physician and
29 surgeon consistent with this chapter, certify disability pursuant to
30 Section 2708 of the Unemployment Insurance Code.

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

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

38 SEC. 4. Section 3528.5 is added to the Business and Professions
39 Code, to read:

1 3528.5. (a) Except as provided in subdivisions (b), (c), (d),
2 and (e), any accusation filed against a licensee pursuant to Section
3 11503 of the Government Code shall be filed within three years
4 after the committee discovers the act or omission alleged as the
5 ground for disciplinary action, or within seven years after the act
6 or omission alleged as the ground for disciplinary action occurs,
7 whichever occurs first.

8 (b) An accusation filed against a licensee pursuant to Section
9 11503 of the Government Code alleging the procurement of a
10 license by fraud or misrepresentation is not subject to the limitation
11 provided for by subdivision (a).

12 (c) An accusation filed against a licensee pursuant to Section
13 11503 of the Government Code alleging unprofessional conduct
14 based on incompetence, gross negligence, or repeated negligent
15 acts of the licensee is not subject to the limitation provided for by
16 subdivision (a) upon proof that the licensee intentionally concealed
17 from discovery his or her incompetence, gross negligence, or
18 repeated negligent acts.

19 (d) If an alleged act or omission involves a minor, the 7-year
20 limitations period provided for by subdivision (a) and the 10-year
21 limitations period provided for by subdivision (e) shall be tolled
22 until the minor reaches the age of majority. *However, if the*
23 *committee discovers an alleged act of sexual contact with a minor*
24 *under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal*
25 *Code after the limitations periods described in this subdivision*
26 *have otherwise expired, and there is independent evidence that*
27 *corroborates the allegation, an accusation shall be filed within*
28 *three years from the date the committee discovers that alleged act.*

29 (e) An accusation filed against a licensee pursuant to Section
30 11503 of the Government Code alleging sexual misconduct shall
31 be filed within 3 years after the committee discovers the act or
32 omission alleged as the ground for disciplinary action, or within
33 10 years after the act or omission alleged as the ground for
34 disciplinary action occurs, whichever occurs first. This subdivision
35 shall apply to a complaint alleging sexual misconduct received by
36 the committee on and after January 1, 2011.

37 (f) The limitations period provided by subdivision (a) shall be
38 tolled during any period if material evidence necessary for
39 prosecuting or determining whether a disciplinary action would

1 be appropriate is unavailable to the committee due to an ongoing
2 criminal investigation.

3 (g) *For purposes of this section, "discovers" means the latest*
4 *of the occurrence of any of the following with respect to each act*
5 *or omission alleged as the basis for disciplinary action:*

6 (1) *The date the committee receives a complaint or report*
7 *describing the act or omission.*

8 (2) *The date, subsequent to the original complaint or report,*
9 *on which the committee becomes aware of any additional acts or*
10 *omissions alleged as the basis for disciplinary action against the*
11 *same individual.*

12 (3) *The date the committee receives from the complainant a*
13 *written release of information pertaining to the complainant's*
14 *diagnosis and treatment.*

15 SEC. 5. Section 44336 of the Education Code is amended to
16 read:

17 44336. When required by the commission, the application for
18 a certification document or the renewal thereof shall be
19 accompanied by a certificate in such form as shall be prescribed
20 by the commission, from a physician and surgeon licensed under
21 the provisions of the Business and Professions Code or a physician
22 assistant practicing in compliance with Chapter 7.7 (commencing
23 with Section 3500) of Division 2 of the Business and Professions
24 Code, showing that the applicant is free from any contagious and
25 communicable disease or other disabling disease or defect unfitting
26 the applicant to instruct or associate with children.

27 SEC. 6. Section 49406 of the Education Code is amended to
28 read:

29 49406. (a) Except as provided in subdivision (h), no person
30 shall be initially employed by a school district in a certificated or
31 classified position unless the person has submitted to an
32 examination within the past 60 days to determine that he or she is
33 free of active tuberculosis, by a physician and surgeon licensed
34 under Chapter 5 (commencing with Section 2000) of Division 2
35 of the Business and Professions Code or a physician assistant
36 practicing in compliance with Chapter 7.7 (commencing with
37 Section 3500) of Division 2 of the Business and Professions Code.
38 This examination shall consist of either an approved intradermal
39 tuberculin test or any other test for tuberculosis infection that is
40 recommended by the federal Centers for Disease Control and

1 Prevention (CDC) and licensed by the federal Food and Drug
2 Administration (FDA), which, if positive, shall be followed by an
3 X-ray of the lungs in accordance with subdivision (f) of Section
4 120115 of the Health and Safety Code.

5 The X-ray film may be taken by a competent and qualified X-ray
6 technician if the X-ray film is subsequently interpreted by a
7 physician and surgeon licensed under Chapter 5 (commencing
8 with Section 2000) of Division 2 of the Business and Professions
9 Code.

10 The district superintendent or his or her designee may exempt,
11 for a period not to exceed 60 days following termination of the
12 pregnancy, a pregnant employee from the requirement that a
13 positive intradermal tuberculin test be followed by an X-ray of the
14 lungs.

15 (b) Thereafter, employees who are test negative by either the
16 tuberculin skin test or any other test for tuberculosis infection
17 recommended by the CDC and licensed by the FDA shall be
18 required to undergo the foregoing examination at least once each
19 four years or more often if directed by the governing board upon
20 recommendation of the local health officer for so long as the
21 employee's test remains negative. Once an employee has a
22 documented positive test for tuberculosis infection conducted
23 pursuant to this subdivision which has been followed by an X-ray,
24 the foregoing examination is no longer required, and a referral
25 shall be made within 30 days of completion of the examination to
26 the local health officer to determine the need for followup care.

27 (c) After the examination, each employee shall cause to be on
28 file with the district superintendent of schools a certificate from
29 the examining physician and surgeon or physician assistant
30 showing the employee was examined and found free from active
31 tuberculosis. The county board of education may require, by rule,
32 that all their certificates be filed in the office of the county
33 superintendent of schools or shall require their files be maintained
34 in the office of the county superintendent of schools if a majority
35 of the governing boards of the districts within the county so petition
36 the county board of education, except that in either case a district
37 or districts with a common board having an average daily
38 attendance of 60,000 or more may elect to maintain the files for
39 its employees in that district. "Certificate," as used in this section,
40 means a certificate signed by the examining physician and surgeon

1 or physician assistant practicing in compliance with Chapter 7.7
2 (commencing with Section 3500) of Division 2 of the Business
3 and Professions Code or a notice from a public health agency or
4 unit of the American Lung Association that indicates freedom from
5 active tuberculosis. The latter, regardless of form, shall constitute
6 evidence of compliance with this section. Nothing in this section
7 shall prevent the governing board, upon recommendation of the
8 local health officer, from establishing a rule requiring a more
9 extensive or more frequent physical examination than required by
10 this section, but the rule shall provide for reimbursement on the
11 same basis as required in this section.

12 (d) This examination is a condition of initial employment and
13 the expense incident thereto shall be borne by the applicant unless
14 otherwise provided by rules of the governing board. However, the
15 board may, if an applicant is accepted for employment, reimburse
16 that person in a like manner prescribed in this section for
17 employees.

18 (e) The governing board of each district shall reimburse the
19 employee for the cost, if any, of this examination. The board may
20 provide for the examination required by this section or may
21 establish a reasonable fee for the examination that is reimbursable
22 to employees of the district complying with the provisions of this
23 section.

24 (f) At the discretion of the governing board, this section shall
25 not apply to those employees not requiring certification
26 qualifications who are employed for any period of time less than
27 a school year whose functions do not require frequent or prolonged
28 contact with pupils.

29 The governing board may, however, require an examination
30 described in subdivision (b) and may, as a contract condition,
31 require the examination of persons employed under contract, other
32 than those persons specified in subdivision (a), if the board believes
33 the presence of these persons in and around school premises would
34 constitute a health hazard to pupils.

35 (g) If the governing board of a school district determines by
36 resolution, after hearing, that the health of pupils in the district
37 would not be jeopardized thereby, this section shall not apply to
38 any employee of the district who files an affidavit stating that he
39 or she adheres to the faith or teachings of any well-recognized
40 religious sect, denomination, or organization and in accordance

1 with its creed, tenets, or principles depends for healing upon prayer
2 in the practice of religion and that to the best of his or her
3 knowledge and belief he or she is free from active tuberculosis. If
4 at any time there should be probable cause to believe that the affiant
5 is afflicted with active tuberculosis, he or she may be excluded
6 from service until the governing board of the employing district
7 is satisfied that he or she is not so afflicted.

8 (h) A person who transfers his or her employment from one
9 school or school district to another shall be deemed to meet the
10 requirements of subdivision (a) if that person can produce a
11 certificate which shows that he or she was examined within the
12 past four years and was found to be free of communicable
13 tuberculosis, or if it is verified by the school previously employing
14 him or her that it has a certificate on file which contains that
15 showing.

16 A person who transfers his or her employment from a private or
17 parochial elementary school, secondary school, or nursery school
18 to a school or school district subject to this section shall be deemed
19 to meet the requirements of subdivision (a) if that person can
20 produce a certificate as provided for in Section 121525 of the
21 Health and Safety Code that shows that he or she was examined
22 within the past four years and was found to be free of
23 communicable tuberculosis, or if it is verified by the school
24 previously employing him or her that it has a certificate on file
25 which contains that showing.

26 (i) Any governing board or county superintendent of schools
27 providing for the transportation of pupils under contract authorized
28 by Section 39800, 39801, or any other provision of law shall
29 require as a condition of the contract the examination for active
30 tuberculosis, as provided by subdivision (a), of all drivers
31 transporting these pupils, provided that private contracted drivers
32 who transport these pupils on an infrequent basis, not to exceed
33 once a month, shall be excluded from this requirement.

34 SEC. 7. Section 49423 of the Education Code is amended to
35 read:

36 49423. (a) Notwithstanding Section 49422, any pupil who is
37 required to take, during the regular schoolday, medication
38 prescribed for him or her by a physician and surgeon or ordered
39 for him or her by a physician assistant practicing in compliance
40 with Chapter 7.7 (commencing with Section 3500) of Division 2

1 of the Business and Professions Code, may be assisted by the
2 school nurse or other designated school personnel or may carry
3 and self-administer prescription auto-injectable epinephrine if the
4 school district receives the appropriate written statements identified
5 in subdivision (b).

6 (b) (1) In order for a pupil to be assisted by a school nurse or
7 other designated school personnel pursuant to subdivision (a), the
8 school district shall obtain both a written statement from the
9 physician and surgeon or physician assistant detailing the name
10 of the medication, method, amount, and time schedules by which
11 the medication is to be taken and a written statement from the
12 parent, foster parent, or guardian of the pupil indicating the desire
13 that the school district assist the pupil in the matters set forth in
14 the statement of the physician and surgeon or physician assistant.

15 (2) In order for a pupil to carry and self-administer prescription
16 auto-injectable epinephrine pursuant to subdivision (a), the school
17 district shall obtain both a written statement from the physician
18 and surgeon or physician assistant detailing the name of the
19 medication, method, amount, and time schedules by which the
20 medication is to be taken, and confirming that the pupil is able to
21 self-administer auto-injectable epinephrine, and a written statement
22 from the parent, foster parent, or guardian of the pupil consenting
23 to the self-administration, providing a release for the school nurse
24 or other designated school personnel to consult with the health
25 care provider of the pupil regarding any questions that may arise
26 with regard to the medication, and releasing the school district and
27 school personnel from civil liability if the self-administering pupil
28 suffers an adverse reaction as a result of self-administering
29 medication pursuant to this paragraph.

30 (3) The written statements specified in this subdivision shall be
31 provided at least annually and more frequently if the medication,
32 dosage, frequency of administration, or reason for administration
33 changes.

34 (c) A pupil may be subject to disciplinary action pursuant to
35 Section 48900 if that pupil uses auto-injectable epinephrine in a
36 manner other than as prescribed.

37 SEC. 8. Section 49455 of the Education Code is amended to
38 read:

39 49455. Upon first enrollment in a California school district of
40 a child at a California elementary school, and at least every third

1 year thereafter until the child has completed the eighth grade, the
2 child's vision shall be appraised by the school nurse or other
3 authorized person under Section 49452. This evaluation shall
4 include tests for visual acuity and color vision; however, color
5 vision shall be appraised once and only on male children, and the
6 results of the appraisal shall be entered in the health record of the
7 pupil. Color vision appraisal need not begin until the male pupil
8 has reached the first grade. Gross external observation of the child's
9 eyes, visual performance, and perception shall be done by the
10 school nurse and the classroom teacher. The evaluation may be
11 waived, if the child's parents so desire, by their presenting of a
12 certificate from a physician and surgeon, a physician assistant
13 practicing in compliance with Chapter 7.7 (commencing with
14 Section 3500) of Division 2 of the Business and Professions Code,
15 or an optometrist setting out the results of a determination of the
16 child's vision, including visual acuity and color vision.

17 The provisions of this section shall not apply to any child whose
18 parents or guardian file with the principal of the school in which
19 the child is enrolling, a statement in writing that they adhere to the
20 faith or teachings of any well-recognized religious sect,
21 denomination, or organization and in accordance with its creed,
22 tenets, or principles depend for healing upon prayer in the practice
23 of their religion.

24 SEC. 9. Section 49458 is added to the Education Code, to read:

25 49458. When a school district or a county superintendent of
26 schools requires a physical examination as a condition of
27 participation in an interscholastic athletic program, the physical
28 examination may be performed by a physician and surgeon or
29 physician assistant practicing in compliance with Chapter 7.7
30 (commencing with Section 3500) of Division 2 of the Business
31 and Professions Code.

32 SEC. 10. Section 87408 of the Education Code is amended to
33 read:

34 87408. (a) When a community college district wishes to
35 employ a person in an academic position and that person has not
36 previously been employed in an academic position in this state,
37 the district shall require a medical certificate showing that the
38 applicant is free from any communicable disease, including, but
39 not limited to, active tuberculosis, unfitting the applicant to instruct
40 or associate with students. The medical certificate shall be

1 submitted directly to the governing board by a physician and
2 surgeon licensed under the Business and Professions Code, a
3 physician assistant practicing in compliance with Chapter 7.7
4 (commencing with Section 3500) of Division 2 of the Business
5 and Professions Code, or a commissioned medical officer exempted
6 from licensure. The medical examination shall have been conducted
7 not more than six months before the submission of the certificate
8 and shall be at the expense of the applicant. A governing board
9 may offer a contract of employment to an applicant subject to the
10 submission of the required medical certificate. Notwithstanding
11 Section 87031, the medical certificate shall become a part of the
12 personnel record of the employee and shall be open to the employee
13 or his or her designee.

14 (b) The governing board of a community college district may
15 require academic employees to undergo a periodic medical
16 examination by a physician and surgeon licensed under the
17 Business and Professions Code, a physician assistant practicing
18 in compliance with Chapter 7.7 (commencing with Section 3500)
19 of Division 2 of the Business and Professions Code, or a
20 commissioned medical officer exempted from licensure, to
21 determine that the employee is free from any communicable
22 disease, including, but not limited to, active tuberculosis, unfitting
23 the applicant to instruct or associate with students. The periodic
24 medical examination shall be at the expense of the district. The
25 medical certificate shall become a part of the personnel record of
26 the employee and shall be open to the employee or his or her
27 designee.

28 SEC. 11. Section 87408.5 of the Education Code is amended
29 to read:

30 87408.5. (a) When a community college district wishes to
31 employ a retirant who is retired for service, and such person has
32 not been previously employed as a retirant, such district shall
33 require, as a condition of initial employment as a retirant, a medical
34 certificate showing that the retirant is free from any disabling
35 disease unfitting him or her to instruct or associate with students.
36 The medical certificate shall be completed and submitted directly
37 to the community college district by a physician and surgeon
38 licensed under the Business and Professions Code, a physician
39 assistant practicing in compliance with Chapter 7.7 (commencing
40 with Section 3500) of Division 2 of the Business and Professions

1 Code, or a commissioned medical officer exempted from licensure.
2 A medical examination shall be required for the completion of the
3 medical certificate. The examination shall be conducted not more
4 than six months before the completion and submission of the
5 certificate and shall be at the expense of the retirant. The medical
6 certificate shall become a part of the personnel record of the
7 employee and shall be open to the employee or his or her designee.

8 (b) The community college district that initially employed the
9 retirant, or any district that subsequently employs the retirant, may
10 require a periodic medical examination by a physician and surgeon
11 licensed under the Business and Professions Code, a physician
12 assistant practicing in compliance with Chapter 7.7 (commencing
13 with Section 3500) of Division 2 of the Business and Professions
14 Code, or a commissioned medical officer exempted from licensure,
15 to determine that the retirant is free from any communicable disease
16 unfitting him or her to instruct or associate with students. The
17 periodic medical examination shall be at the expense of the
18 community college district. The medical certificate shall become
19 a part of the personnel record of the retirant and shall be open to
20 the retirant or his or her designee.

21 SEC. 12. Section 87408.6 of the Education Code is amended
22 to read:

23 87408.6. (a) Except as provided in subdivision (h), no person
24 shall be initially employed by a community college district in an
25 academic or classified position unless the person has submitted to
26 an examination within the past 60 days to determine that he or she
27 is free of active tuberculosis, by a physician and surgeon licensed
28 under Chapter 5 (commencing with Section 2000) of Division 2
29 of the Business and Professions Code or a physician assistant
30 practicing in compliance with Chapter 7.7 (commencing with
31 Section 3500) of Division 2 of the Business and Professions Code.
32 This examination shall consist of an approved intradermal
33 tuberculin test or any other test for tuberculosis infection
34 recommended by the federal Centers for Disease Control and
35 Prevention (CDC) and licensed by the federal Food and Drug
36 Administration (FDA), that, if positive, shall be followed by an
37 X-ray of the lungs.

38 The X-ray film may be taken by a competent and qualified X-ray
39 technician if the X-ray film is subsequently interpreted by a
40 physician and surgeon licensed under Chapter 5 (commencing

1 with Section 2000) of Division 2 of the Business and Professions
2 Code.

3 The district superintendent, or his or her designee, may exempt,
4 for a period not to exceed 60 days following termination of the
5 pregnancy, a pregnant employee from the requirement that a
6 positive intradermal tuberculin test be followed by an X-ray of the
7 lungs.

8 (b) Thereafter, employees who are skin test negative, or negative
9 by any other test recommended by the CDC and licensed by the
10 FDA, shall be required to undergo the foregoing examination at
11 least once each four years or more often if directed by the
12 governing board upon recommendation of the local health officer
13 for so long as the employee remains test negative by either the
14 tuberculin skin test or any other test recommended by the CDC
15 and licensed by the FDA. Once an employee has a documented
16 positive skin test or any other test that has been recommended by
17 the CDC and licensed by the FDA that has been followed by an
18 X-ray, the foregoing examinations shall no longer be required, and
19 referral shall be made within 30 days of completion of the
20 examination to the local health officer to determine the need for
21 followup care.

22 (c) After the examination, each employee shall cause to be on
23 file with the district superintendent a certificate from the examining
24 physician and surgeon or physician assistant showing the employee
25 was examined and found free from active tuberculosis.
26 "Certificate," as used in this subdivision, means a certificate signed
27 by the examining physician and surgeon or physician assistant, or
28 a notice from a public health agency or unit of the American Lung
29 Association that indicates freedom from active tuberculosis. The
30 latter, regardless of form, shall constitute evidence of compliance
31 with this section.

32 (d) This examination is a condition of initial employment and
33 the expense incident thereto shall be borne by the applicant unless
34 otherwise provided by rules of the governing board. However, the
35 board may, if an applicant is accepted for employment, reimburse
36 the person in a like manner prescribed for employees in subdivision
37 (e).

38 (e) The governing board of each district shall reimburse the
39 employee for the cost, if any, of this examination. The board may
40 provide for the examination required by this section or may

1 establish a reasonable fee for the examination that is reimbursable
2 to employees of the district complying with this section.

3 (f) At the discretion of the governing board, this section shall
4 not apply to those employees not requiring certification
5 qualifications who are employed for any period of time less than
6 a college year whose functions do not require frequent or prolonged
7 contact with students.

8 The governing board may, however, require the examination
9 and may, as a contract condition, require the examination of
10 persons employed under contract, other than those persons
11 specified in subdivision (a), if the board believes the presence of
12 these persons in and around college premises would constitute a
13 health hazard to students.

14 (g) If the governing board of a community college district
15 determines by resolution, after hearing, that the health of students
16 in the district would not be jeopardized thereby, this section shall
17 not apply to any employee of the district who files an affidavit
18 stating that he or she adheres to the faith or teachings of any
19 well-recognized religious sect, denomination, or organization and
20 in accordance with its creed, tenets, or principles depends for
21 healing upon prayer in the practice of religion and that to the best
22 of his or her knowledge and belief he or she is free from active
23 tuberculosis. If at any time there should be probable cause to
24 believe that the affiant is afflicted with active tuberculosis, he or
25 she may be excluded from service until the governing board of the
26 employing district is satisfied that he or she is not so afflicted.

27 (h) A person who transfers his or her employment from one
28 campus or community college district to another shall be deemed
29 to meet the requirements of subdivision (a) if the person can
30 produce a certificate that shows that he or she was examined within
31 the past four years and was found to be free of communicable
32 tuberculosis, or if it is verified by the college previously employing
33 him or her that it has a certificate on file that contains that showing.

34 A person who transfers his or her employment from a private or
35 parochial elementary school, secondary school, or nursery school
36 to the community college district subject to this section shall be
37 deemed to meet the requirements of subdivision (a) if the person
38 can produce a certificate as provided for in Section 121525 of the
39 Health and Safety Code that shows that he or she was examined
40 within the past four years and was found to be free of

1 communicable tuberculosis, or if it is verified by the school
2 previously employing him or her that it has the certificate on file.

3 (i) Any governing board of a community college district
4 providing for the transportation of students under contract shall
5 require as a condition of the contract the examination for active
6 tuberculosis, as provided in subdivision (a), of all drivers
7 transporting the students, provided that privately contracted drivers
8 who transport the students on an infrequent basis, not to exceed
9 once a month, shall be excluded from this requirement.

10 (j) Examinations required pursuant to subdivision (i) shall be
11 made available without charge by the local health officer.

12 SEC. 13. Section 2881 of the Public Utilities Code is amended
13 to read:

14 2881. (a) The commission shall design and implement a
15 program to provide a telecommunications device capable of serving
16 the needs of individuals who are deaf or hearing impaired, together
17 with a single party line, at no charge additional to the basic
18 exchange rate, to any subscriber who is certified as an individual
19 who is deaf or hearing impaired by a licensed physician and
20 surgeon, audiologist, or a qualified state or federal agency, as
21 determined by the commission, and to any subscriber that is an
22 organization representing individuals who are deaf or hearing
23 impaired, as determined and specified by the commission pursuant
24 to subdivision (e). A licensed hearing aid dispenser may certify
25 the need of an individual to participate in the program if that
26 individual has been previously fitted with an amplified device by
27 the dispenser and the dispenser has the individual's hearing records
28 on file prior to certification. In addition, a physician assistant may
29 certify the needs of an individual who has been diagnosed by a
30 physician and surgeon as being deaf or hearing impaired to
31 participate in the program after reviewing the medical records or
32 copies of the medical records containing that diagnosis.

33 (b) The commission shall also design and implement a program
34 to provide a dual-party relay system, using third-party intervention
35 to connect individuals who are deaf or hearing impaired and offices
36 of organizations representing individuals who are deaf or hearing
37 impaired, as determined and specified by the commission pursuant
38 to subdivision (e), with persons of normal hearing by way of
39 intercommunications devices for individuals who are deaf or
40 hearing impaired and the telephone system, making available

1 reasonable access of all phases of public telephone service to
2 telephone subscribers who are deaf or hearing impaired. In order
3 to make a dual-party relay system that will meet the requirements
4 of individuals who are deaf or hearing impaired available at a
5 reasonable cost, the commission shall initiate an investigation,
6 conduct public hearings to determine the most cost-effective
7 method of providing dual-party relay service to the deaf or hearing
8 impaired when using a telecommunications device, and solicit the
9 advice, counsel, and physical assistance of statewide nonprofit
10 consumer organizations of the deaf, during the development and
11 implementation of the system. The commission shall phase in this
12 program, on a geographical basis, over a three-year period ending
13 on January 1, 1987. The commission shall apply for certification
14 of this program under rules adopted by the Federal
15 Communications Commission pursuant to Section 401 of the
16 federal Americans with Disabilities Act of 1990 (Public Law
17 101-336).

18 (c) The commission shall also design and implement a program
19 whereby specialized or supplemental telephone communications
20 equipment may be provided to subscribers who are certified to be
21 disabled at no charge additional to the basic exchange rate. The
22 certification, including a statement of visual or medical need for
23 specialized telecommunications equipment, shall be provided by
24 a licensed optometrist, physician and surgeon, or physician
25 assistant, acting within the scope of practice of his or her license,
26 or by a qualified state or federal agency as determined by the
27 commission. The commission shall, in this connection, study the
28 feasibility of, and implement, if determined to be feasible, personal
29 income criteria, in addition to the certification of disability, for
30 determining a subscriber's eligibility under this subdivision.

31 (d) The commission shall establish a rate recovery mechanism
32 through a surcharge not to exceed one-half of 1 percent uniformly
33 applied to a subscriber's intrastate telephone service, other than
34 one-way radio paging service and universal telephone service,
35 both within a service area and between service areas, to allow
36 providers of the equipment and service specified in subdivisions
37 (a), (b), and (c), to recover costs as they are incurred under this
38 section. The surcharge shall be in effect until January 1, 2014. The
39 commission shall require that the programs implemented under
40 this section be identified on subscribers' bills, and shall establish

1 a fund and require separate accounting for each of the programs
2 implemented under this section.

3 (e) The commission shall determine and specify those statewide
4 organizations representing the deaf or hearing impaired that shall
5 receive a telecommunications device pursuant to subdivision (a)
6 or a dual-party relay system pursuant to subdivision (b), or both,
7 and in which offices the equipment shall be installed in the case
8 of an organization having more than one office.

9 (f) The commission may direct any telephone corporation subject
10 to its jurisdiction to comply with its determinations and
11 specifications pursuant to this section.

12 (g) The commission shall annually review the surcharge level
13 and the balances in the funds established pursuant to subdivision
14 (d). Until January 1, 2014, the commission shall be authorized to
15 make, within the limits set by subdivision (d), any necessary
16 adjustments to the surcharge to ensure that the programs supported
17 thereby are adequately funded and that the fund balances are not
18 excessive. A fund balance which is projected to exceed six months'
19 worth of projected expenses at the end of the fiscal year is
20 excessive.

21 (h) The commission shall prepare and submit to the Legislature,
22 on or before December 31 of each year, a report on the fiscal status
23 of the programs established and funded pursuant to this section
24 and Sections 2881.1 and 2881.2. The report shall include a
25 statement of the surcharge level established pursuant to subdivision
26 (d) and revenues produced by the surcharge, an accounting of
27 program expenses, and an evaluation of options for controlling
28 those expenses and increasing program efficiency, including, but
29 not limited to, all of the following proposals:

30 (1) The establishment of a means test for persons to qualify for
31 program equipment or free or reduced charges for the use of
32 telecommunication services.

33 (2) If and to the extent not prohibited under Section 401 of the
34 federal Americans with Disabilities Act of 1990 (Public Law
35 101-336), the imposition of limits or other restrictions on maximum
36 usage levels for the relay service, which shall include the
37 development of a program to provide basic communications
38 requirements to all relay users at discounted rates, including
39 discounted toll-call rates, and, for usage in excess of those basic
40 requirements, at rates which recover the full costs of service.

1 (3) More efficient means for obtaining and distributing
2 equipment to qualified subscribers.

3 (4) The establishment of quality standards for increasing the
4 efficiency of the relay system.

5 (i) In order to continue to meet the access needs of individuals
6 with functional limitations of hearing, vision, movement,
7 manipulation, speech and interpretation of information, the
8 commission shall perform ongoing assessment of, and if
9 appropriate, expand the scope of the program to allow for
10 additional access capability consistent with evolving
11 telecommunications technology.

12 (j) The commission shall structure the programs required by
13 this section so that any charge imposed to promote the goals of
14 universal service reasonably equals the value of the benefits of
15 universal service to contributing entities and their subscribers.

16 SEC. 14. Section 2708 of the Unemployment Insurance Code
17 is amended to read:

18 2708. (a) (1) In accordance with the director's authorized
19 regulations, and except as provided in subdivision (c) and Sections
20 2708.1 and 2709, a claimant shall establish medical eligibility for
21 each uninterrupted period of disability by filing a first claim for
22 disability benefits supported by the certificate of a treating
23 physician or practitioner that establishes the sickness, injury, or
24 pregnancy of the employee, or the condition of the family member
25 that warrants the care of the employee. For subsequent periods of
26 uninterrupted disability after the period covered by the initial
27 certificate or any preceding continued claim, a claimant shall file
28 a continued claim for those benefits supported by the certificate
29 of a treating physician or practitioner. A certificate filed to establish
30 medical eligibility for the employee's own sickness, injury, or
31 pregnancy shall contain a diagnosis and diagnostic code prescribed
32 in the International Classification of Diseases, or, where no
33 diagnosis has yet been obtained, a detailed statement of symptoms.

34 (2) A certificate filed to establish medical eligibility of the
35 employee's own sickness, injury, or pregnancy shall also contain
36 a statement of medical facts including secondary diagnoses when
37 applicable, within the physician's or practitioner's knowledge,
38 based on a physical examination and a documented medical history
39 of the claimant by the physician or practitioner, indicating the
40 physician's or practitioner's conclusion as to the claimant's

1 disability, and a statement of the physician's or practitioner's
2 opinion as to the expected duration of the disability.

3 (b) An employee shall be required to file a certificate to establish
4 eligibility when taking leave to care for a family member with a
5 serious health condition. The certificate shall be developed by the
6 department. In order to establish medical eligibility of the serious
7 health condition of the family member that warrants the care of
8 the employee, the information shall be within the physician's or
9 practitioner's knowledge and shall be based on a physical
10 examination and documented medical history of the family member
11 and shall contain all of the following:

12 (1) A diagnosis and diagnostic code prescribed in the
13 International Classification of Diseases, or, where no diagnosis
14 has yet been obtained, a detailed statement of symptoms.

15 (2) The date, if known, on which the condition commenced.

16 (3) The probable duration of the condition.

17 (4) An estimate of the amount of time that the physician or
18 practitioner believes the employee is needed to care for the child,
19 parent, spouse, or domestic partner.

20 (5) (A) A statement that the serious health condition warrants
21 the participation of the employee to provide care for his or her
22 child, parent, spouse, or domestic partner.

23 (B) "Warrants the participation of the employee" includes, but
24 is not limited to, providing psychological comfort, and arranging
25 "third party" care for the child, parent, spouse, or domestic partner,
26 as well as directly providing, or participating in, the medical care.

27 (c) The department shall develop a certification form for bonding
28 that is separate and distinct from the certificate required in
29 subdivision (a) for an employee taking leave to bond with a minor
30 child within the first year of the child's birth or placement in
31 connection with foster care or adoption.

32 (d) The first and any continuing claim of an individual who
33 obtains care and treatment outside this state shall be supported by
34 a certificate of a treating physician or practitioner duly licensed
35 or certified by the state or foreign country in which the claimant
36 is receiving the care and treatment. If a physician or practitioner
37 licensed by and practicing in a foreign country is under
38 investigation by the department for filing false claims and the
39 department does not have legal remedies to conduct a criminal
40 investigation or prosecution in that country, the department may

1 suspend the processing of all further certifications until the
2 physician or practitioner fully cooperates, and continues to
3 cooperate with the investigation. A physician or practitioner
4 licensed by and practicing in a foreign country who has been
5 convicted of filing false claims with the department may not file
6 a certificate in support of a claim for disability benefits for a period
7 of five years.

8 (e) For purposes of this part:

9 (1) "Physician" has the same meaning as defined in Section
10 3209.3 of the Labor Code.

11 (2) "Practitioner" means a person duly licensed or certified in
12 California acting within the scope of his or her license or
13 certification who is a dentist, podiatrist, physician assistant, or as
14 to normal pregnancy or childbirth, a midwife, nurse midwife, or
15 nurse practitioner.

16 (f) For a claimant who is hospitalized in or under the authority
17 of a county hospital in this state, a certificate of initial and
18 continuing medical disability, if any, shall satisfy the requirements
19 of this section if the disability is shown by the claimant's hospital
20 chart, and the certificate is signed by the hospital's registrar. For
21 a claimant hospitalized in or under the care of a medical facility
22 of the United States government, a certificate of initial and
23 continuing medical disability, if any, shall satisfy the requirements
24 of this section if the disability is shown by the claimant's hospital
25 chart, and the certificate is signed by a medical officer of the
26 facility duly authorized to do so.

27 (g) Nothing in this section shall be construed to preclude the
28 department from requesting additional medical evidence to
29 supplement the first or any continued claim if the additional
30 evidence can be procured without additional cost to the claimant.
31 The department may require that the additional evidence include
32 any or all of the following:

33 (1) Identification of diagnoses.

34 (2) Identification of symptoms.

35 (3) A statement setting forth the facts of the claimant's disability.
36 The statement shall be completed by any of the following
37 individuals:

38 (A) The physician or practitioner treating the claimant.

- 1 (B) The registrar, authorized medical officer, or other duly
- 2 authorized official of the hospital or health facility treating the
- 3 claimant.
- 4 (C) An examining physician or other representative of the
- 5 department.

O

S B 1111

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1111
Author: Negrete McLeod
Bill Date: April 12, 2010, amended
Subject: Regulatory Boards
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Consumer Health Protection Enforcement Act which includes various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards.

ANALYSIS:

This bill states the legislative findings on the needs to timely investigate and prosecute licensed health care professionals who have violated the law. The legislature also indicates the importance of providing the healing arts boards with the regulatory tools and authorities needed in order for them to be able to reduce the timeframe for investigating and prosecuting violations of the law by healing arts professionals to between 12 and 18 months.

This bill sets forth numerous requirements for all healing arts boards within the Department of Consumer Affairs (DCA). Specifically this bill:

- Adds section 720.28 to the Business and Professions Code. This section requires all boards to post on the internet, the status of every license issued. This section mirrors section 2027 of the Medical Practice Act.
- Allows the Director of the DCA to audit all healing arts boards. Current law allows the DCA to audit the Medical Board and the Board of Podiatric Medicine.
- Allows an Administrative Law Judge to direct a licensee to pay the Board's costs of probation when that licensee is issued an order in resolution of a

disciplinary proceeding to be placed on probation. This authority currently exists for the Board.

- Allows a healing arts board to appoint two members to conduct hearings to hear appeals of citations decisions and assessments of fines.
- Allows healing arts boards to contract with either the Medical Board or with the Department of Justice to provide investigative services.
- Establishes within the Division of Investigations the Health Quality Enforcement Unit to focus on health care quality cases. This unit will work closely with the Attorney General's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the healing arts boards.
- Allows the Board of Registered Nursing to hire designated investigators with peace officer status and allows the Board to employ investigators who are not peace officers to provide investigative services.
- Adds section 720.2 to the Business and Professions Code which allows healing arts board to delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued. This language mirrors section 2224 of the Medical Practice Act.
- Allows healing arts boards to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed and the licensee has agreed to the revocation or surrender of his or her license.
- Allows healing arts boards to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.
- Allows the executive director of a healing arts board to petition the Director of the DCA to issue a temporary order that a licensee cease all practice and activities if there is evidence that licensee poses an imminent risk to patients.
- Defines imminent risk of serious harm to the public health, safety, or welfare as a reasonable likelihood that permitting the licensee to continue to practice will result in serious physical or emotional injury, unlawful sexual contact, or death to an individual within the next 90 days.
- Requires the automatic suspension of a licensee who is incarcerated after conviction of a felony. This is the current procedure for the Board.

- Adds section 720.10 to the Business and Professions Code. This specifies certain requirements for any applicant or licensee who is required to register as a sex offender. This language mirrors section 2232 of the Medical Practice Act.
- Specifies that requests for certified documents must be received within 10 days of the receipt of the request unless the licensee is unable to provide the records within 10 days for good cause. Specifies a definition for good cause. This requirement currently exists for the Board.
- Adds sections 720.18, 720.20, and 720.22 to the Business and Professions Code. These sections pertain to requests for certified medical records and include a definition of certified medical records. These provisions are similar in language to sections 2225.5 and 2226 of the Medical Practice Act.
- Adds section 720.24 to the Business and Professions Code. This section requires that employers of health care practitioners must report to their respective board the suspension or termination of any licensee it employs. This section defines "suspension or termination for cause" and specifies fines for noncompliance. These provisions are similar to but less extensive than those in section 805 of the Business and Professions Code having to do with peer review reporting.
- Requires healing arts boards to report annually to the DCA and to the legislature, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse. This requirement already exists for the Board.
- Requires the Attorney General's office to serve for submit to a healing arts board an accusation within 60 days from receipt, a default decision within five days following the time period allowed for filing the notice of defense, and to set hearing dates within three days of receiving notice of defense unless instructed otherwise.
- Adds section 720.32 to the Business and Professions Code. This section grants the healing arts boards the authority to deny a license, certificate or permit to an applicant who may be unable to practice safely due to mental or physical illness. The Board currently has this authority under section 820 of the Business and Professions Code.
- Adds section 720.34 to the Business and Professions Code. This section allows healing arts boards to issue a limited license to applicants who are otherwise eligible to for a license but are unable to practice some aspects of

his or her profession safely due to disability. The Board currently has this authority under section 2088 of the Medical Practice Act.

- Requires a healing arts board to report to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) on any adverse action taken against a licensee, any dismissal or closure of proceedings by reason of surrender, any loss license by the practitioner or entity, and any negative action or finding by the board regarding a licensee. This reporting is currently done by the Board.
- Requires a healing arts board to conduct a search on the NPDB or the HIPDB prior to granting or renewing a license to an applicant. Allows a board to charge a fee to cover the cost of the search.
- Establishes the Emergency Health Care Enforcement Reserve Fund in the State Treasury to be administered by the DCA. This fund shall be used to support the investigation and prosecution of healing arts board's cases. This fund will consist of moneys that will be taken from the individual board's reserve funds when those reserve funds exceed for than four months of operating expenditures.
- Adds section 734 to the Business and Professions code. These sections are identical to sections 2237, 2238, and 2239 of the Medical Practice Act, which are related to unprofessional conduct for drug related offenses.
- Adds section 737 to the Business and Professions Code. This section states that failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct. This section is similar to section 6068(i) of the Business and Professions Code.
- Amends section 802.1 of the Business and Professions Code to include all healing arts boards in the requirement for a licensee to report to their respective board when there is an indictment or information charging a felony against the licensee, or he or she has been convicted of a misdemeanor. This section already applies to the Board.
- Amends section 803.5 to require the district attorney, city attorney, or other prosecuting attorney to report to the appropriate healing arts board if a licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee or a healing arts board. The Board is already included in this section.
- Adds section 803.7 to the Business and Professions Code. This section would require the Department of Justice to provide reports within 30 days of subsequent arrests, convictions, or other updates of licensees.

- Adds a new article under the Business and Professions Code. *Article 15. Healing Arts Licensing Fees* allows the DCA to annually establish a maximum fee amount for each board. That fee will be adjusted with the California Consumer Price Index.
- Adds a new article under the Business and Professions Code. *Article 16. Unlicensed Practice* specifies that engaging in any practice, including healing arts without a current valid license is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment.
- Adds various sections to the Business and Professions Code which would establish diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians, physical therapists, registered nurses, physician assistants, pharmacists, and veterinarians whose competency may be impaired due to alcohol and drug abuse. This does not apply to the Board.
- Provides that it is the intent of the legislature that the DCA shall establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.
- Amends sections 12529, 12529.5, and 12529.6 of the Government Code to expand the use of the vertical enforcement and prosecution model for cases handled by all other healing arts boards. The Board has been utilizing the vertical enforcement model for several years.

The provisions in this bill are intended to better allow the DCA healing arts boards to investigate and prosecute consumer complaints in a more timely manner. Both the mission as well as the highest priority for all healing arts boards is the protection of the public. Improving these timeframes will better allow these boards to do so. This bill aims to provide the tools necessary for accomplish the utmost consumer protection.

FISCAL: None

POSITION: Recommendation: Support

April 21, 2010

AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1111

Introduced by Senator Negrete McLeod

February 17, 2010

An act to amend Sections 27, 116, 125.9, 155, 159.5, 160, 726, 802.1, 803, 803.5, 803.6, ~~and 1005~~, and 2715 of, to amend and repeal Section 125.3 of, to add Sections 27.5, 125.4, 734, 735, 736, 737, 802.2, 803.7, 1006, 1007, 1699.2, 2372, 2815.6, 2669.2, 2770.18, 3534.12, 4375, and 4873.2 to, to add Article 10.1 (commencing with Section 720), ~~Article 15 (commencing with Section 870)~~, and Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Article 4.7 (commencing with Section 1695) of Chapter 4 of, Article 15 (commencing with Section 2360) of Chapter 5 of, Article 5.5 (commencing with Section 2662) of Chapter 5.7 of, Article 3.1 (commencing with Section 2770) of Chapter 6 of, Article 6.5 (commencing with Section 3534) of Chapter 7.7 of, Article 21 (commencing with Section 4360) of Chapter 9 of, and Article 3.5 (commencing with Section 4860) of Chapter 11 of Division 2 of, the Business and Professions Code, to ~~amend Sections 12529, 12529.5, 12529.6, and 12529.7 of~~ add Section 12529.8 to the Government Code, and to amend Section 830.3 of the Penal Code, relating to regulatory boards, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, as amended, Negrete McLeod. Regulatory boards.

Existing law provides for the regulation of healing arts licensees by various boards within the Department of Consumer Affairs. The department is under the control of the Director of Consumer Affairs. *Existing law, the Chiropractic Act, enacted by initiative, provides for*

the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners.

(1) Existing law requires certain boards within the department to disclose on the Internet information on their respective licensees.

This bill would additionally require specified healing arts boards *and the State Board of Chiropractic Examiners* to disclose on the Internet information on their respective licensees, as specified. The bill would also declare the intent of the Legislature that the department establish an information technology system to create and update healing arts license information and track enforcement cases pertaining to these licensees.

Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the licensing authority, a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

This bill would instead authorize any entity within the department, *the State Board of Chiropractic Examiners*, or the administrative law judge to order a licensee or applicant in any penalty or disciplinary hearing to pay a sum not to exceed ~~the actual~~ *reasonable* costs of the investigation, prosecution, and enforcement of the case, *in full*, within 30 days of the effective date of an order to pay costs, *unless subject to an agreed upon payment plan*. The bill would also authorize any entity within the department to request that the administrative law judge charge a licensee on probation the costs of the monitoring of his or her probation, and would prohibit relicensure if those costs are not paid. The bill would authorize any board within the department *and the State Board of Chiropractic Examiners* to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts, *upon a final decision*, and would authorize the release of personal information, including the birth date, telephone number, and social security number of the person who owes that money to the board.

Existing law provides for the regulation of citation or administrative fine assessments issued pursuant to a citation. Hearings to contest citations or administrative fine assessments are conducted pursuant to a formal adjudication process.

This bill would authorize *a healing arts ~~boards~~ board* to proceed pursuant to an alternative adjudication process, as specified, *provided the board has adopted specified regulations.*

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, ~~would require those licensees to submit a written report,~~ and would further require a report upon the arrest of the licensee or when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state *or an agency of the federal government. The bill would also require a licensee who is arrested or charged with a misdemeanor or felony to inform law enforcement and the court that he or she is a licensee of a healing arts board.*

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licentiate.

This bill would instead make those provisions applicable to any described healing arts board. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

(2) Under existing law, healing arts licensees are regulated by various healing arts boards and these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their

laws and regulations. Existing law requires or authorizes a healing arts board to appoint an executive officer or an executive director to, among other things, perform duties delegated by the board. *Under existing law, the State Board of Chiropractic Examiners has the authority to issue, suspend, revoke a license to practice chiropractic, and to place a licensee on probation for various violations. Existing law requires the State Board of Chiropractic Examiners to employ an executive officer to carryout certain duties.*

This bill would authorize ~~the~~ *a healing arts board to delegate to its* executive officer or the executive director ~~of specified healing arts licensing boards,~~ where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense, appear at the hearing, or has agreed to *the revocation or surrender of his or her license,* to adopt a proposed default decision or a proposed settlement agreement. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant ~~prior to~~ *in lieu of* the issuance of an accusation or statement of issues against the licensee or applicant.

Upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of harm to the public health, safety, or welfare, ~~or has failed to comply with a request to inspect or copy records,~~ the bill would authorize the executive officer of the healing arts board to petition the director or his or her designee to issue a temporary order that the licensee cease all practice and activities under his or her license. The bill would require the executive officer to provide notice to the licensee of the hearing at least ~~one hour~~ *5 business days* prior to the hearing and would provide a mechanism for the presentation of evidence and oral or written arguments. The bill would allow for the permanent revocation of the license ~~if the director makes a determination that the action is necessary to protect upon a preponderance of the evidence that an imminent risk to the public health, safety, or welfare exists.~~

The bill would also provide that the license of a licensee shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous

drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a licensee.

The bill would also prohibit a licensee of healing arts boards from including certain provisions in an agreement to settle a civil dispute arising from his or her practice, as specified. The bill would make a licensee or a health care facility that fails to comply with a patient's medical record request, as specified, within ~~10~~ 15 days, *if a licensee, or 30 days, if a health care facility*, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would authorize the Attorney General and his or her investigative agents and the healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. The bill would also set forth procedures related to the inspection of patient records and patient confidentiality. The bill would require cooperation between state agencies and healing arts boards when investigating a licensee, and would require a state agency to provide to the board all records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide records to a healing arts board upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would require the healing arts boards to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total

number of licensees in diversion or on probation for alcohol or drug abuse. The bill would require the healing arts boards to ~~search~~ *submit licensee information to* specified national databases, *and to search those databases* prior to licensure of an applicant or licensee ~~who holds a license in another state~~, and would authorize a healing arts board to charge a fee for the cost of conducting the search. *The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.*

The bill would authorize the healing arts boards to refuse to issue a license to an applicant if the applicant ~~appears to~~ *may* be unable to practice safely due to mental illness or chemical dependency, subject to specified procedural requirements and medical examinations. The bill would also authorize the healing arts boards to issue limited licenses to practice to an applicant with a disability, as specified.

(3) This bill would make it a crime to violate any of the provisions of (2) above; to engage in the practice of healing arts without a current and valid license, except as specified; *or to fraudulently buy, sell, or obtain a license to practice healing arts; or to represent oneself as engaging or authorized to engage in healing arts if he or she is not authorized to do so.* *The bill would, except as otherwise specified, make the provisions of paragraph (2) applicable to licensees subject to the jurisdiction of the State Board of Chiropractic Examiners.* By creating new crimes, the bill would impose a state-mandated local program.

This bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

~~(4) Existing law requires regulatory fees to be deposited into special funds within the Professions and Vocations Fund, and certain of those special funds are continuously appropriated for those purposes. Those funds are created, and those fees are set, by the Legislature by statute or, if specified, by administrative regulation.~~

~~This bill would authorize the Department of Consumer Affairs to adjust those healing arts regulatory fees consistent with the California Consumer Price Index. By adding a new source of revenue for deposit into certain continuously appropriated funds, the bill would make an appropriation.~~

(4) Existing law provides in the State Treasury the Professions and Vocations Fund, consisting of the special funds of the healing arts boards, many of which are continuously appropriated.

This bill would establish in the State Treasury the Emergency Health Care Enforcement Reserve Fund, which would be a continuously appropriated fund, and would require that any moneys in a healing arts board fund consisting of more than 4 months operating expenditures be transferred to the fund and would authorize expenditure for specified enforcement purposes, thereby making an appropriation. The bill would require the fund to be administered by the department, and would authorize a healing arts board to loan its surplus moneys in the fund to another healing arts board, thereby making an appropriation.

Existing law requires specified agencies within the Department of Consumer Affairs with unencumbered funds equal to or more than the agency's operating budget for the next 2 fiscal years to reduce license fees in order to reduce surplus funds to an amount less than the agency's operating budget, as specified. With respect to certain other boards within the department, existing law imposes various reserve fund requirements.

Under this bill, if a healing arts board's fund reserve exceeds its statutory maximum, the bill would authorize the board to lower its fees by resolution in order to reduce its fund reserves to an amount below its statutory maximum.

The bill would also authorize the department to request that the Department of Finance augment the amount available for expenditures to pay enforcement costs for the services of the Attorney General's Office and the Office of Administrative Hearings and the bill would impose specified procedures for instances when the augmentation exceeds 20% of the board's budget for the enforcement costs for these services. The bill would make findings and statements of intent with respect to this provision.

(5) Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards and the State Board of Chiropractic Examiners to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to

contract for investigative services provided by the ~~Medical Board of California or provided by the~~ Department of Justice. The bill would also provide within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

Existing law provides that the chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California have the authority of peace officers.

This bill would include within that provision investigators of the Board of Registered Nursing and would also provide that investigators employed by the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing are not required to be employed by the division. The bill would also authorize the Board of Registered Nursing to employ nurse consultants and other personnel as it deems necessary.

(6) Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists and physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, and veterinarians and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

This bill would make the provisions establishing these diversion programs inoperative on January 1, 2013.

(7) Existing law provides in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and any committee of the board, the California *Board of Podiatric Medicine*, and the Board of Psychology.

This bill would ~~require~~ *authorize a healing arts board to utilize the services of* the Health Quality Enforcement Section ~~to provide investigative and prosecutorial services to any healing arts board, as defined, upon request by the executive officer of the board or licensing section.~~ *The If utilized, the* bill would ~~also~~ require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the ~~Health Quality Enforcement Unit~~ *licensing unit* of the Division of Investigation of the Department of Consumer Affairs, as specified.

(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.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Consumer Health Protection Enforcement Act.

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

4 (1) In recent years, it has been reported that many of the healing
5 arts boards within the Department of Consumer Affairs take, on
6 average, more than three years to investigate and prosecute
7 violations of law, a timeframe that does not adequately protect
8 consumers.

9 (2) The excessive amount of time that it takes healing arts boards
10 to investigate and prosecute licensed professionals who have
11 violated the law has been caused, in part, by legal and procedural
12 impediments to the enforcement programs.

13 (3) Both consumers and licensees have an interest in the quick
14 resolution of complaints and disciplinary actions. Consumers need
15 prompt action against licensees who do not comply with
16 professional standards, and licensees have an interest in timely
17 review of consumer complaints to keep the trust of their patients.

18 (b) It is the intent of the Legislature that the changes made by
19 this act will improve efficiency and increase accountability within
20 the healing arts boards of the Department of Consumer Affairs,
21 and will remain consistent with the long-held paramount goal of
22 consumer protection.

23 (c) It is further the intent of the Legislature that the changes
24 made by this act will provide the healing arts boards within the
25 Department of Consumer Affairs with the regulatory tools and
26 authorities necessary to reduce the average timeframe for

1 investigating and prosecuting violations of law by healing arts
2 practitioners to between 12 and 18 months.

3 SEC. 3. Section 27 of the Business and Professions Code is
4 amended to read:

5 27. (a) ~~Every~~ *Each* entity specified in ~~subdivision (b)~~
6 ~~subdivisions (b) and (c)~~ shall provide on the Internet information
7 regarding the status of every license issued by that entity, *whether*
8 *the license is current, expired, canceled, suspended, or revoked,*
9 in accordance with the California Public Records Act (Chapter 3.5
10 (commencing with Section 6250) of Division 7 of Title 1 of the
11 Government Code) and the Information Practices Act of 1977
12 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part
13 4 of Division 3 of the Civil Code). The public information to be
14 provided on the Internet shall include information on suspensions
15 and revocations of licenses issued by the entity and other related
16 enforcement action taken by the entity relative to persons,
17 businesses, or facilities subject to licensure or regulation by the
18 entity. In providing information on the Internet, each entity shall
19 comply with the Department of Consumer Affairs Guidelines for
20 Access to Public Records. The information may not include
21 personal information, including home telephone number, date of
22 birth, or social security number. Each entity shall disclose a
23 licensee's address of record. However, each entity shall allow a
24 licensee to provide a post office box number or other alternate
25 address, instead of his or her home address, as the address of
26 record. This section shall not preclude an entity from also requiring
27 a licensee, who has provided a post office box number or other
28 alternative mailing address as his or her address of record, to
29 provide a physical business address or residence address only for
30 the entity's internal administrative use and not for disclosure as
31 the licensee's address of record or disclosure on the Internet.

32 (b) Each of the following entities within the Department of
33 Consumer Affairs shall comply with the requirements of this
34 section:

35 (1) The Acupuncture Board shall disclose information on its
36 licensees.

37 (2) The Board of Behavioral Sciences shall disclose information
38 on its licensees, ~~including marriage and family therapists, licensed~~
39 ~~clinical social workers, and licensed educational psychologists.~~

1 (3) The Dental Board of California shall disclose information
2 on its licensees.

3 (4) The State Board of Optometry shall disclose information
4 regarding certificates of registration to practice optometry,
5 statements of licensure, optometric corporation registrations, branch
6 office licenses, and fictitious name permits of its licensees.

7 (5) The Board for Professional Engineers and Land Surveyors
8 shall disclose information on its registrants and licensees.

9 (6) The Structural Pest Control Board shall disclose information
10 on its licensees, including applicators, field representatives, and
11 operators in the areas of fumigation, general pest and wood
12 destroying pests and organisms, and wood roof cleaning and
13 treatment.

14 (7) The Bureau of Automotive Repair shall disclose information
15 on its licensees, including auto repair dealers, smog stations, lamp
16 and brake stations, smog check technicians, and smog inspection
17 certification stations.

18 (8) The Bureau of Electronic and Appliance Repair shall disclose
19 information on its licensees, including major appliance repair
20 dealers, combination dealers (electronic and appliance), electronic
21 repair dealers, service contract sellers, and service contract
22 administrators.

23 (9) The Cemetery and Funeral Bureau shall disclose information
24 on its licensees, including cemetery brokers, cemetery salespersons,
25 cemetery managers, crematory managers, cemetery authorities,
26 crematories, cremated remains disposers, embalmers, funeral
27 establishments, and funeral directors.

28 (10) The Professional Fiduciaries Bureau shall disclose
29 information on its licensees.

30 (11) The Contractors' State License Board shall disclose
31 information on its licensees in accordance with Chapter 9
32 (commencing with Section 7000) of Division 3. In addition to
33 information related to licenses as specified in subdivision (a), the
34 board shall also disclose information provided to the board by the
35 Labor Commissioner pursuant to Section 98.9 of the Labor Code.

36 (12) The Board of Psychology shall disclose information on its
37 licensees, including psychologists, psychological assistants, and
38 registered psychologists.

39 (13) The Bureau for Private Postsecondary Education shall
40 disclose information on private postsecondary institutions under

1 its jurisdiction, including disclosure of notices to comply issued
2 pursuant to Section 94935 of the Education Code.

3 ~~(14) The Board of Registered Nursing shall disclose information~~
4 ~~on its licensees.~~

5 ~~(15) The Board of Vocational Nursing and Psychiatric~~
6 ~~Technicians of the State of California shall disclose information~~
7 ~~on its licensees.~~

8 ~~(16) The Veterinary Medical Board shall disclose information~~
9 ~~on its licensees and registrants.~~

10 ~~(17) The Physical Therapy Board of California shall disclose~~
11 ~~information on its licensees.~~

12 ~~(18) The California State Board of Pharmacy shall disclose~~
13 ~~information on its licensees.~~

14 ~~(19) The Speech-Language Pathology and Audiology and~~
15 ~~Hearing Aid Dispensers Board shall disclose information on its~~
16 ~~licensees.~~

17 ~~(20) The Respiratory Care Board of California shall disclose~~
18 ~~information on its licensees.~~

19 ~~(21) The California Board of Occupational Therapy shall~~
20 ~~disclose information on its licensees.~~

21 ~~(22) The Naturopathic Medicine Committee of the Osteopathic~~
22 ~~Medical Board of California shall disclose information on its~~
23 ~~licensees.~~

24 ~~(23) The Physician Assistant Committee of the Medical Board~~
25 ~~of California shall disclose information on its licensees.~~

26 ~~(24) The Dental Hygiene Committee of California shall disclose~~
27 ~~information on its licensees.~~

28 *(c) The State Board of Chiropractic Examiners shall disclose*
29 *information on its licensees.*

30 ~~(e)~~

31 *(d) "Internet" for the purposes of this section has the meaning*
32 *set forth in paragraph (6) of subdivision (f) of Section 17538.*

33 *SEC. 4. Section 27.5 is added to the Business and Professions*
34 *Code, to read:*

35 *27.5. (a) Each entity specified in subdivision (b) shall provide*
36 *on the Internet information regarding the status of every license*
37 *issued by that entity, whether the license is current, expired,*
38 *canceled, suspended, or revoked, in accordance with the California*
39 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
40 *of Division 7 of Title 1 of the Government Code) and the*

1 *Information Practices Act of 1977 (Chapter 1 (commencing with*
2 *Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).*
3 *The public information to be provided on the Internet shall include*
4 *information on suspensions and revocations of licenses issued by*
5 *the entity and other related enforcement action taken by the entity*
6 *relative to persons, businesses, or facilities subject to licensure or*
7 *regulation by the entity. In providing information on the Internet,*
8 *each entity shall comply with the Department of Consumer Affairs*
9 *Guidelines for Access to Public Records. The information may not*
10 *include personal information, including home telephone number,*
11 *date of birth, or social security number. The information may not*
12 *include the licensee's address, but may include the city and county*
13 *of the licensee's address of record.*

14 *(b) Each of the following entities within the Department of*
15 *Consumer Affairs shall comply with the requirements of this*
16 *section:*

17 *(1) The Board of Registered Nursing shall disclose information*
18 *on its licensees.*

19 *(2) The Board of Vocational Nursing and Psychiatric*
20 *Technicians of the State of California shall disclose information*
21 *on its licensees.*

22 *(3) The Veterinary Medical Board shall disclose information*
23 *on its licensees and registrants.*

24 *(4) The Physical Therapy Board of California shall disclose*
25 *information on its licensees.*

26 *(5) The California State Board of Pharmacy shall disclose*
27 *information on its licensees.*

28 *(6) The Speech-Language Pathology and Audiology and Hearing*
29 *Aid Dispensers Board shall disclose information on its licensees.*

30 *(7) The Respiratory Care Board of California shall disclose*
31 *information on its licensees.*

32 *(8) The California Board of Occupational Therapy shall disclose*
33 *information on its licensees.*

34 *(9) The Naturopathic Medicine Committee within the*
35 *Osteopathic Medical Board of California shall disclose information*
36 *on its licensees.*

37 *(10) The Physician Assistant Committee of the Medical Board*
38 *of California shall disclose information on its licensees.*

39 *(11) The Dental Hygiene Committee of California shall disclose*
40 *information on its licensees.*

1 (c) "Internet" for the purposes of this section has the meaning
2 set forth in paragraph (6) of subdivision (f) of Section 17538.

3 ~~SEC. 4.~~

4 SEC. 5. Section 116 of the Business and Professions Code is
5 amended to read:

6 116. (a) The director or his or her designee may audit and
7 review, upon his or her own initiative, or upon the request of a
8 consumer or licensee, inquiries and complaints regarding licensees,
9 dismissals of disciplinary cases, the opening, conduct, or closure
10 of investigations, informal conferences, and discipline short of
11 formal accusation by any of the healing arts boards ~~defined listed~~
12 in Section 720. The director may make recommendations for
13 changes to the disciplinary system to the appropriate board, the
14 Legislature, or both, *for their consideration*.

15 (b) The director shall report to the Chairpersons of the Senate
16 Business and Professions Committee and the Assembly Health
17 Committee annually regarding his or her findings from any audit,
18 review, or monitoring and evaluation conducted pursuant to this
19 section.

20 ~~SEC. 5.~~

21 SEC. 6. Section 125.3 of the Business and Professions Code,
22 as amended by Section 2 of Chapter 223 of the Statutes of 2006,
23 is amended to read:

24 125.3. (a) (1) Except as otherwise provided by law, in any
25 order issued in resolution of a penalty or disciplinary proceeding
26 or hearing on a citation issued pursuant to Section 125.9 or
27 regulations adopted *pursuant* thereto, before any board specified
28 in Section 101, the board or the administrative law judge may
29 direct any licensee or applicant found to have committed a violation
30 or violations of law to pay to the board a sum not to exceed the
31 ~~actual~~ *reasonable* costs of the investigation, prosecution, and
32 enforcement of the case.

33 (2) In an order issued pursuant to paragraph (1) that places a
34 license on probation, the administrative law judge may direct a
35 licensee to pay the board's ~~actual~~ *reasonable* costs of monitoring
36 that licensee while he or she remains on probation, if so requested
37 by the entity bringing the proceeding. The board shall provide the
38 administrative law judge with a good faith estimate of the probation
39 monitoring costs at the time of the request.

1 (b) In the case of a disciplined licentiate that is a corporation or
2 a partnership, the order may be made against the licensed corporate
3 entity or licensed partnership.

4 (c) A certified copy of the actual costs, or a good faith estimate
5 of costs where actual costs are not available, signed by the entity
6 bringing the proceeding or its designated representative shall be
7 prima facie evidence of ~~actual~~ reasonable costs of investigation,
8 prosecution, and enforcement of the case. The costs shall include
9 the amount of investigative, prosecution, and enforcement costs
10 up to the date of the hearing, including, but not limited to, charges
11 imposed by the Attorney General.

12 (d) The administrative law judge shall make a proposed finding
13 of the amount of ~~actual~~ reasonable costs of investigation,
14 prosecution, and enforcement of the case and probation monitoring
15 costs when requested pursuant to subdivision (a). The finding of
16 the administrative law judge with regard to costs shall not be
17 reviewable by the board to increase any cost award. The board
18 may reduce or eliminate the cost award, or remand to the
19 administrative law judge if the proposed decision fails to make a
20 finding on costs requested pursuant to subdivision (a).

21 (e) *In determining reasonable costs pursuant to subdivision (a),*
22 *the administrative law judge shall only consider the public*
23 *resources expended pursuant to the investigation, prosecution,*
24 *and enforcement of the case. The administrative law judge shall*
25 *provide an explanation as to how the amount ordered for*
26 *reasonable costs was determined if the actual costs were not*
27 *ordered.*

28 ~~(e)~~

29 (f) If an order for recovery of costs is made, payment is due and
30 payable, *in full*, 30 days after the effective date of the order, *unless*
31 *the licensee and the board have agreed to a payment plan.* If timely
32 payment is not made as directed in the board's decision, the board
33 may enforce the order for repayment in any appropriate court. This
34 right of enforcement shall be in addition to any other rights the
35 board may have as to any licentiate to pay costs.

36 ~~(f)~~

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

40 ~~(g)~~

1 (h) (1) Except as provided in paragraph (2), the board shall not
2 ~~renew or reinstate the license, reinstate the license, or terminate~~
3 ~~the probation~~ of any licentiate who has failed to pay all of the costs
4 ordered under this section. *This paragraph shall not apply to an*
5 *administrative law judge when preparing a proposed decision.*

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

12 ~~(h)~~

13 (i) All costs recovered under this section shall be considered a
14 reimbursement for costs incurred and shall be deposited in the
15 fund of the board recovering the costs to be available upon
16 appropriation by the Legislature.

17 ~~(i)~~

18 (j) Nothing in this section shall preclude a board from including
19 the recovery of the costs of investigation, prosecution, and
20 enforcement of a case in any stipulated settlement.

21 ~~(j)~~

22 (k) This section does not apply to any board if a specific
23 statutory provision in that board's licensing act provides for broader
24 authority for the recovery of costs in an administrative disciplinary
25 proceeding.

26 ~~(k)~~

27 (l) Notwithstanding the provisions of this section, the Medical
28 Board of California shall not request nor obtain from a physician
29 and surgeon, investigation and prosecution costs for a disciplinary
30 proceeding against the licentiate. The board shall ensure that this
31 subdivision is revenue neutral with regard to it and that any loss
32 of revenue or increase in costs resulting from this subdivision is
33 offset by an increase in the amount of the initial license fee and
34 the biennial renewal fee, as provided in subdivision (e) of Section
35 2435.

36 ~~(l)~~

37 (m) For purposes of this chapter, costs of prosecution shall
38 include, but not be limited to, costs of attorneys, expert consultants,
39 witnesses, any administrative filing and service fees, and any other
40 cost associated with the prosecution of the case.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 125.3 of the Business and Professions Code,
3 as added by Section 1 of Chapter 1059 of the Statutes of 1992, is
4 repealed.

5 ~~SEC. 7.~~

6 *SEC. 8.* Section 125.4 is added to the Business and Professions
7 Code, to read:

8 125.4. (a) Notwithstanding any other provision of law, a board
9 may contract with a collection agency for the purpose of collecting
10 outstanding fees, fines, or cost recovery amounts from any person
11 who owes that money to the board, and, for those purposes, may
12 provide to the collection agency the personal information of that
13 person, including his or her birth date, telephone number, and
14 social security number. The contractual agreement shall provide
15 that the collection agency may use or release personal information
16 only as authorized by the contract, and shall provide safeguards
17 to ensure that the personal information is protected from
18 unauthorized disclosure. The contractual agreement shall hold the
19 collection agency liable for the unauthorized use or disclosure of
20 personal information received or collected under this section.

21 (b) *A board shall not use a collection agency to recover*
22 *outstanding fees, fines, or cost recovery amounts until the person*
23 *has exhausted all appeals and the decision is final.*

24 ~~SEC. 8.~~

25 *SEC. 9.* Section 125.9 of the Business and Professions Code
26 is amended to read:

27 125.9. (a) Except with respect to persons regulated under
28 Chapter 11 (commencing with Section 7500), and Chapter 11.6
29 (commencing with Section 7590) of Division 3, any board, bureau,
30 commission, or committee within the department, the board created
31 by the Chiropractic Initiative Act, and the Osteopathic Medical
32 Board of California, may establish, by regulation, a system for the
33 issuance to a licensee of a citation that may contain an order of
34 abatement or an order to pay an administrative fine assessed by
35 the board, bureau, commission, or committee where the licensee
36 is in violation of the applicable licensing act or any regulation
37 adopted pursuant thereto.

38 (b) The system shall contain the following provisions:

1 (1) Citations shall be in writing and shall describe with
2 particularity the nature of the violation, including specific reference
3 to the provision of law determined to have been violated.

4 (2) Whenever appropriate, the citation shall contain an order of
5 abatement fixing a reasonable time for abatement of the violation.

6 (3) In no event shall the administrative fine assessed by the
7 board, bureau, commission, or committee exceed five thousand
8 dollars (\$5,000) for each inspection or each investigation made
9 with respect to the violation, or five thousand dollars (\$5,000) for
10 each violation or count if the violation involves fraudulent billing
11 submitted to an insurance company, the Medi-Cal program, or
12 Medicare. In assessing a fine, the board, bureau, commission, or
13 committee shall give due consideration to the appropriateness of
14 the amount of the fine with respect to factors such as the gravity
15 of the violation, the good faith of the licensee, and the history of
16 previous violations.

17 (4) A citation or fine assessment issued pursuant to a citation
18 shall inform the licensee that if he or she desires a hearing to appeal
19 the finding of a violation, that hearing shall be requested by written
20 notice to the board, bureau, commission, or committee within 30
21 days of the date of issuance of the citation or assessment. If a
22 hearing is not requested pursuant to this section, payment of any
23 fine shall not constitute an admission of the violation charged.
24 Hearings shall be held pursuant to Chapter 5 (commencing with
25 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
26 Code or, at the discretion of a healing arts board, as defined *listed*
27 in Section 720, pursuant to paragraph (5).

28 ~~(5) (A) If the healing arts board is a board or committee, the~~
29 ~~executive officer and two members of that board or committee~~
30 ~~shall hear the appeal and issue a citation decision. A licensee~~
31 ~~desiring to appeal the citation decision shall file a written appeal~~
32 ~~of the citation decision with the board or committee within 30 days~~
33 ~~of issuance of the decision. The appeal shall be considered by the~~
34 ~~board or committee itself and shall issue a written decision on the~~
35 ~~appeal. The members of the board or committee who issued the~~
36 ~~citation decision shall not participate in the appeal before the board~~
37 ~~or committee unless one or both of the members are needed to~~
38 ~~establish a quorum to act on the appeal.~~

39 ~~(B) If the healing arts board is a bureau, the director shall~~
40 ~~appoint a designee to hear the appeal and issue a citation decision.~~

1 ~~A licensee desiring to appeal the citation decision shall file a~~
2 ~~written appeal of the citation decision with the bureau within 30~~
3 ~~days of issuance of the decision. The appeal shall be considered~~
4 ~~by the director or his or her designee who shall issue a written~~
5 ~~decision on the appeal.~~

6 (C) ~~The hearings specified in this paragraph are not subject to~~
7 ~~the provisions of Chapter 5 (commencing with Section 11500) of~~
8 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~

9 (D) ~~A healing arts board may adopt regulations to implement~~
10 ~~this paragraph, which may include the use of telephonic hearings.~~

11 (5) (A) *If the healing arts board is a board or committee, two*
12 *members of that board or committee shall hear the appeal and*
13 *issue a citation decision. One of the two members shall be a*
14 *licensee of the board.*

15 (B) *If the healing arts board is a bureau, the director shall*
16 *appoint a designee to hear the appeal and issue a citation decision.*

17 (C) *A hearing held pursuant to this paragraph is not subject to*
18 *the provisions of Chapter 5 (commencing with Section 11500) of*
19 *Part 1 of Division 3 of Title 2 of the Government Code.*

20 (D) *A board or committee choosing to utilize the provisions of*
21 *this paragraph shall first have adopted regulations providing for*
22 *notice and opportunity to be heard. The regulations shall provide*
23 *the licensee with due process and describe, in detail, the process*
24 *for that hearing. Appeal of the citation decision may be made*
25 *through the filing of a petition for writ of mandate.*

26 (E) *A healing arts board may permit the use of telephonic*
27 *hearings. The decision to have a telephonic hearing shall be at*
28 *the discretion of the licensee subject to the citation.*

29 (6) *Failure of a licensee to pay a fine within 30 days of the date*
30 *of assessment, unless the citation is being appealed, may result in*
31 *disciplinary action being taken by the board, bureau, commission,*
32 *or committee. Where a citation is not contested and a fine is not*
33 *paid, the full amount of the assessed fine shall be added to the fee*
34 *for renewal of the license. A license shall not be renewed without*
35 *payment of the renewal fee and fine.*

36 (c) *The system may contain the following provisions:*

37 (1) *A citation may be issued without the assessment of an*
38 *administrative fine.*

39 (2) *Assessment of administrative fines may be limited to only*
40 *particular violations of the applicable licensing act.*

1 (d) Notwithstanding any other provision of law, if a fine is paid
2 to satisfy an assessment based on the finding of a violation,
3 payment of the fine shall be represented as satisfactory resolution
4 of the matter for purposes of public disclosure.

5 (e) Administrative fines collected pursuant to this section shall
6 be deposited in the special fund of the particular board, bureau,
7 commission, or committee.

8 ~~SEC. 9.~~

9 *SEC. 10.* Section 155 of the Business and Professions Code is
10 amended to read:

11 155. (a) In accordance with Section 159.5, the director may
12 employ such investigators, inspectors, and deputies as are necessary
13 to properly to investigate and prosecute all violations of any law,
14 the enforcement of which is charged to the department or to any
15 board, agency, or commission in the department.

16 (b) It is the intent of the Legislature that inspectors used by
17 boards, bureaus, or commissions in the department shall not be
18 required to be employees of the Division of Investigation, but may
19 either be employees of, or under contract to, the boards, bureaus,
20 or commissions. Contracts for services shall be consistent with
21 Article 4.5 (commencing with Section 19130) of Chapter 6 of Part
22 2 of Division 5 of Title 2 of the Government Code. All civil service
23 employees currently employed as inspectors whose functions are
24 transferred as a result of this section shall retain their positions,
25 status, and rights in accordance with Section 19994.10 of the
26 Government Code and the State Civil Service Act (Part 2
27 (commencing with Section 18500) of Division 5 of Title 2 of the
28 Government Code).

29 (c) Investigators used by any healing arts board, as ~~defined~~ *listed*
30 in Section 720, shall not be required to be employees of the
31 Division of Investigation and the healing arts board may contract
32 for investigative services provided by ~~the Medical Board of~~
33 ~~California or provided by~~ the Department of Justice.

34 (d) Nothing in this section limits the authority of, or prohibits,
35 investigators in the Division of Investigation in the conduct of
36 inspections or investigations of any licensee, or in the conduct of
37 investigations of any officer or employee of a board or the
38 department at the specific request of the director or his or her
39 designee.

1 ~~SEC. 10.~~

2 ~~SEC. 11.~~ Section 159.5 of the Business and Professions Code
3 is amended to read:

4 159.5. There is in the department the Division of Investigation.
5 The division is in the charge of a person with the title of chief of
6 the division. There is in the division the Health Quality
7 Enforcement Unit. The primary responsibility of the unit is to
8 investigate complaints against licensees and applicants within the
9 jurisdiction of the healing arts boards ~~specified~~ *listed* in Section
10 720.

11 Except as provided in Section 16 of Chapter 1394 of the Statutes
12 of 1970, all positions for the personnel necessary to provide
13 investigative services, as specified in Section 160 of this code and
14 in subdivision (b) of Section 830.3 of the Penal Code, shall be in
15 the division and the personnel shall be appointed by the director.

16 ~~SEC. 11.~~

17 ~~SEC. 12.~~ Section 160 of the Business and Professions Code is
18 amended to read:

19 160. (a) The Chief and designated investigators of the Division
20 of Investigation of the department, designated investigators of the
21 Medical Board of California, designated investigators of the Dental
22 Board of California, and designated investigators of the Board of
23 Registered Nursing have the authority of peace officers while
24 engaged in exercising the powers granted or performing the duties
25 imposed upon them or the division in investigating the laws
26 administered by the various boards comprising the department or
27 commencing directly or indirectly any criminal prosecution arising
28 from any investigation conducted under these laws. All persons
29 herein referred to shall be deemed to be acting within the scope
30 of employment with respect to all acts and matters in this section
31 set forth.

32 (b) The Division of Investigation, the Medical Board of
33 California, the Dental Board of California, and the Board of
34 Registered Nursing may employ investigators who are not peace
35 officers to provide investigative services.

36 ~~SEC. 12.~~

37 ~~SEC. 13.~~ Article 10.1 (commencing with Section 720) is added
38 to Chapter 1 of Division 2 of the Business and Professions Code,
39 to read:

Article 10.1. Healing Arts Licensing Enforcement

720. (a) Unless otherwise provided, as used in this article, the term “healing arts board” shall include all of the following:

- (1) The Dental Board of California.
- (2) The Medical Board of California.
- (3) The State Board of Optometry.
- (4) The California State Board of Pharmacy.
- (5) The Board of Registered Nursing.
- (6) The Board of Behavioral Sciences.
- (7) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
- (8) The Respiratory Care Board of California.
- (9) The Acupuncture Board.
- (10) The Board of Psychology.
- (11) The California Board of Podiatric Medicine.
- (12) The Physical Therapy Board of California.
- (13) The Physician Assistant Committee of the Medical Board of California.
- (14) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
- (15) The California Board of Occupational Therapy.
- (16) The Osteopathic Medical Board of California.
- (17) The Naturopathic Medicine Committee ~~of within~~ the Osteopathic Medical Board of California.
- (18) The Dental Hygiene Committee of California.
- (19) The Veterinary Medical Board.

(b) Unless otherwise provided, as used in this article, “board” means all healing arts boards described under subdivision (a) and “licensee” means a licensee of a healing arts board described in subdivision (a).

720.2. (a) ~~The~~ *A healing arts board may delegate to its executive officer or executive director of a healing arts board may the authority to* adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) ~~The~~ *A healing arts board may delegate to its executive officer or executive director of a healing arts board may the*

1 *authority to adopt a proposed settlement agreement where an*
2 *administrative action to revoke a license has been filed by the*
3 *healing arts board and the licensee has agreed to ~~surrender the~~*
4 *~~revocation or surrender of~~ his or her license.*

5 720.4. (a) Notwithstanding Section 11415.60 of the
6 Government Code, a healing arts board may enter into a settlement
7 with a licensee or applicant ~~prior to the board's~~ *in lieu of the*
8 *issuance of an accusation or statement of issues against that*
9 *licensee or applicant, as applicable.*

10 (b) *The settlement shall include language identifying the factual*
11 *basis for the action being taken and a list of the statutes or*
12 *regulations violated.*

13 ~~(b) No~~

14 (c) *A person who enters a settlement pursuant to this section*
15 *~~may petition~~ is not precluded from filing a petition, in the*
16 *timeframe permitted by law, to modify the terms of the settlement*
17 *or petition for early termination of probation, if probation is part*
18 *of the settlement.*

19 ~~(c) Any settlement~~

20 (d) *Any settlement against a licensee executed pursuant to this*
21 *section shall be considered discipline and a public record and shall*
22 *be posted on the applicable board's Internet Web site. Any*
23 *settlement against an applicant executed pursuant to this section*
24 *shall be considered a public record and shall be posted on the*
25 *applicable board's Internet Web site.*

26 720.6. (a) Notwithstanding any other provision of law, upon
27 receipt of evidence that a licensee of a healing arts board has
28 engaged in conduct that poses an imminent risk of serious harm
29 to the public health, safety, or welfare, ~~or has failed to comply~~
30 ~~with a request to inspect or copy records made pursuant to Section~~
31 ~~720.16;~~ the executive officer of that board may petition the director
32 to issue a temporary order that the licensee cease all practice and
33 activities that require a license by that board.

34 (b) (1) The executive officer of the healing arts board shall, to
35 the extent practicable, provide telephonic, electronic mail, message,
36 or facsimile written notice to the licensee of a hearing on the
37 petition at least ~~24 hours~~ *five business days* prior to the hearing.
38 The licensee and his or her counsel and the executive officer or
39 his or her designee shall have the opportunity to present oral or
40 written argument before the director. After presentation of the

1 evidence and consideration of any arguments presented, the director
2 may issue an order that the licensee cease all practice and activities
3 that require a license by that board when, in the opinion of the
4 director, the action is necessary to protect the public health, safety,
5 or welfare., *if, in the director's opinion, the petitioner has*
6 *established by a preponderance of the evidence that an imminent*
7 *risk of serious harm to the public health, safety, or welfare exists,*
8 *the director may issue an order that the licensee cease all practice*
9 *and activities that require a license by that board.*

10 (2) The hearing specified in this subdivision shall not be subject
11 to the provisions of Chapter 5 (commencing with Section 11500)
12 of Part 1 of Division 3 of Title 2 of the Government Code.

13 (c) Any order to cease practice issued pursuant to this section
14 shall automatically be vacated within ~~120~~ 90 days of issuance, or
15 until the healing arts board, pursuant to Section 494, files a petition
16 *files a petition pursuant to Section 494* for an interim suspension
17 order and the petition is denied or granted, whichever occurs first.

18 (d) A licensee who fails or refuses to comply with an order of
19 the director to cease practice pursuant to this section is subject to
20 disciplinary action to revoke or suspend his or her license by ~~his~~
21 ~~or her~~ the respective healing arts board and an administrative fine
22 assessed by the board not to exceed twenty-five thousand dollars
23 (\$25,000). The remedies provided herein are in addition to any
24 other authority of the healing arts board to sanction a licensee for
25 practicing or engaging in activities subject to the jurisdiction of
26 the board without proper legal authority.

27 (e) Upon receipt of new information, the executive officer for
28 the healing arts board who requested the temporary suspension
29 order shall review the basis for the license suspension to determine
30 if the grounds for the suspension continue to exist. The executive
31 officer shall immediately notify the director if the executive officer
32 believes that the licensee no longer poses an imminent risk of
33 serious harm to the public health, safety, or welfare ~~or that the~~
34 ~~licensee has complied with the request to inspect or copy records~~
35 ~~pursuant to Section 720.16.~~ The director shall review the
36 information from the executive officer and may vacate the
37 suspension order, if he or she believes that the suspension is no
38 longer necessary to protect the public health, safety, or welfare.

39 (f) Any petition and order to cease practice shall be displayed
40 on the Internet Web site of the applicable healing arts board, except

1 that if the petition is not granted or the director vacates the
2 suspension order pursuant to subdivision (e), the petition and order
3 shall be removed from the respective board's Internet Web site.

4 (g) If the position of director is vacant, the chief deputy director
5 of the department shall fulfill the duties of this section.

6 (h) Temporary suspension orders shall be subject to judicial
7 review pursuant to Section 1094.5 of the Code of Civil Procedure
8 and shall be heard only in the superior court in, and for, the
9 Counties of Sacramento, San Francisco, Los Angeles, or San
10 Diego.

11 (i) *For the purposes of this section, "imminent risk of serious*
12 *harm to the public health, safety, or welfare" means that there is*
13 *a reasonable likelihood that allowing the licensee to continue to*
14 *practice will result in serious physical or emotional injury,*
15 *unlawful sexual contact, or death to an individual or individuals*
16 *within the next 90 days.*

17 720.8. (a) The license of a licensee of a healing arts board
18 shall be suspended automatically during any time that the licensee
19 is incarcerated after conviction of a felony, regardless of whether
20 the conviction has been appealed. The healing arts board shall,
21 immediately upon receipt of the certified copy of the record of
22 conviction, determine whether the license of the licensee has been
23 automatically suspended by virtue of his or her incarceration, and
24 if so, the duration of that suspension. The healing arts board shall
25 notify the licensee *in writing* of the license suspension and of his
26 or her right to elect to have the issue of penalty heard as provided
27 in subdivision (d).

28 (b) Upon receipt of the certified copy of the record of conviction,
29 if after a hearing before an administrative law judge from the Office
30 of Administrative ~~Law~~ *Hearings* it is determined that the felony
31 for which the licensee was convicted was substantially related to
32 the qualifications, functions, or duties of a licensee, the board shall
33 suspend the license until the time for appeal has elapsed, if no
34 appeal has been taken, or until the judgment of conviction has been
35 affirmed on appeal or has otherwise become final, and until further
36 order of the healing arts board.

37 (c) Notwithstanding subdivision (b), a conviction of a charge
38 of violating any federal statute or regulation or any statute or
39 regulation of this state, regulating dangerous drugs or controlled
40 substances, or a conviction of Section 187, 261, 262, or 288 of the

1 Penal Code, shall be conclusively presumed to be substantially
2 related to the qualifications, functions, or duties of a licensee and
3 no hearing shall be held on this issue. However, upon its own
4 motion or for good cause shown, the healing arts board may decline
5 to impose or may set aside the suspension when it appears to be
6 in the interest of justice to do so, with due regard to maintaining
7 the integrity of, and confidence in, the practice regulated by the
8 healing arts board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the laws and regulations of the healing arts board
11 when the time for appeal has elapsed, the judgment of conviction
12 has been affirmed on appeal, or an order granting probation is
13 made suspending the imposition of sentence, irrespective of a
14 subsequent order under Section 1203.4 of the Penal Code allowing
15 the person to withdraw his or her plea of guilty and to enter a plea
16 of not guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

18 (2) The issue of penalty shall be heard by an administrative law
19 judge from the Office of Administrative ~~Law~~ *Hearings*. The
20 hearing shall not be had until the judgment of conviction has
21 become final or, irrespective of a subsequent order under Section
22 1203.4 of the Penal Code, an order granting probation has been
23 made suspending the imposition of sentence; except that a licensee
24 may, at his or her option, elect to have the issue of penalty decided
25 before those time periods have elapsed. Where the licensee so
26 elects, the issue of penalty shall be heard in the manner described
27 in subdivision (b) at the hearing to determine whether the
28 conviction was substantially related to the qualifications, functions,
29 or duties of a licensee. If the conviction of a licensee who has made
30 this election is overturned on appeal, any discipline ordered
31 pursuant to this section shall automatically cease. Nothing in this
32 subdivision shall prohibit the healing arts board from pursuing
33 disciplinary action based on any cause other than the overturned
34 conviction.

35 (e) The record of the proceedings resulting in a conviction,
36 including a transcript of the testimony in those proceedings, may
37 be received in evidence.

38 (f) Any other provision of law setting forth a procedure for the
39 suspension or revocation of a license issued by a healing arts board
40 shall not apply to proceedings conducted pursuant to this section.

1 720.10. Except as otherwise provided, any proposed decision
2 or decision issued under this article in accordance with the
3 procedures set forth in Chapter 5 (commencing with Section 11500)
4 of Part 1 of Division 3 of Title 2 of the Government Code, that
5 contains any finding of fact that the licensee or registrant engaged
6 in any act of sexual contact, as defined in subdivision (c) of Section
7 729, with a patient, or has committed an act or been convicted of
8 a sex offense as defined in Section 44010 of the Education Code,
9 shall contain an order of revocation. The revocation shall not be
10 stayed by the administrative law judge. ~~Unless otherwise provided~~
11 ~~in the laws and regulations of the healing arts board, the patient~~
12 ~~shall no longer be considered a patient of the licensee when the~~
13 ~~order for medical services and procedures provided by the licensee~~
14 ~~is terminated, discontinued, or not renewed by the prescribing~~
15 ~~physician and surgeon.~~

16 720.12. (a) Except as otherwise provided, with regard to an
17 individual who is required to register as a sex offender pursuant
18 to Section 290 of the Penal Code, or the equivalent in another state
19 or territory, under military law, or under federal law, the healing
20 arts board shall be subject to the following requirements:

21 (1) The healing arts board shall deny an application by the
22 individual for licensure in accordance with the procedures set forth
23 in Chapter 5 (commencing with Section 11500) of Part 1 of
24 Division 3 of Title 2 of the Government Code.

25 (2) If the individual is licensed under this division, the healing
26 arts board shall promptly revoke the license of the individual in
27 accordance with the procedures set forth in Chapter 5 (commencing
28 with Section 11500) of Part 1 of Division 3 of Title 2 of the
29 Government Code. The healing arts board shall not stay the
30 revocation and place the license on probation.

31 (3) The healing arts board shall not reinstate or reissue the
32 individual's license. The healing arts board shall not issue a stay
33 of license denial ~~and~~ *nor* place the license on probation.

34 (b) This section shall not apply to any of the following:

35 (1) An individual who has been relieved under Section 290.5
36 of the Penal Code of his or her duty to register as a sex offender,
37 or whose duty to register has otherwise been formally terminated
38 under California law or the law of the jurisdiction that requires his
39 or her registration as a sex offender.

1 (2) An individual who is required to register as a sex offender
2 pursuant to Section 290 of the Penal Code solely because of a
3 misdemeanor conviction under Section 314 of the Penal Code.
4 However, nothing in this paragraph shall prohibit the healing arts
5 board from exercising its discretion to discipline a licensee under
6 any other provision of state law based upon the licensee's
7 conviction under Section 314 of the Penal Code.

8 (3) Any administrative adjudication proceeding under Chapter
9 5 (commencing with Section 11500) of Part 1 of Division 3 of
10 Title 2 of the Government Code that is fully adjudicated prior to
11 January 1, 2008. A petition for reinstatement of a revoked or
12 surrendered license shall be considered a new proceeding for
13 purposes of this paragraph, and the prohibition against reinstating
14 a license to an individual who is required to register as a sex
15 offender shall be applicable.

16 720.14. (a) A licensee of a healing arts board shall not include
17 or permit to be included any of the following provisions in an
18 agreement to settle a civil dispute arising from his or her practice,
19 whether the agreement is made before or after the filing of an
20 action:

21 (1) A provision that prohibits another party to the dispute from
22 contacting or cooperating with the healing arts board.

23 (2) A provision that prohibits another party to the dispute from
24 filing a complaint with the healing arts board.

25 (3) A provision that requires another party to the dispute to
26 withdraw a complaint he or she has filed with the healing arts
27 board.

28 (b) A provision described in subdivision (a) is void as against
29 public policy.

30 (c) A violation of this section constitutes unprofessional conduct
31 and may subject the licensee to disciplinary action.

32 (d) If a board complies with Section 2220.7, that board shall
33 not be subject to the requirements of this section.

34 720.16. (a) Notwithstanding any other provision of law making
35 a communication between a licensee of a healing arts board and
36 his or her patients a privileged communication, those provisions
37 shall not apply to investigations or proceedings conducted by a
38 healing arts board. Members of a healing arts board, deputies,
39 employees, agents, the office of the Attorney General, and
40 representatives of the board shall keep in confidence during the

1 course of investigations the names of any patients whose records
2 are reviewed and may not disclose or reveal those names, except
3 as is necessary during the course of an investigation, unless and
4 until proceedings are instituted. The authority under this
5 subdivision to examine records of patients in the office of a licensee
6 is limited to records of patients who have complained to the healing
7 arts board about that licensee.

8 (b) Notwithstanding any other provision of law, the Attorney
9 General and his or her investigative agents, and a healing arts board
10 and its investigators and representatives may inquire into any
11 alleged violation of the laws under the jurisdiction of the healing
12 arts board or any other federal or state law, regulation, or rule
13 relevant to the practice regulated by the healing arts board,
14 whichever is applicable, and may inspect documents relevant to
15 those investigations in accordance with the following procedures:

16 (1) Any document relevant to an investigation may be inspected,
17 and copies may be obtained, where patient consent is given.

18 (2) Any document relevant to the business operations of a
19 licensee, and not involving medical records attributable to
20 identifiable patients, may be inspected and copied where relevant
21 to an investigation of a licensee.

22 (c) In all cases where documents are inspected or copies of those
23 documents are received, their acquisition or review shall be
24 arranged so as not to unnecessarily disrupt the medical and business
25 operations of the licensee or of the facility where the records are
26 kept or used.

27 (d) Where certified documents are lawfully requested from
28 licensees in accordance with this section by the Attorney General
29 or his or her agents or deputies, or investigators of any board, the
30 documents shall be provided within 10 business days of receipt of
31 the request, unless the licensee is unable to provide the certified
32 documents within this time period for good cause, including, but
33 not limited to, physical inability to access the records in the time
34 allowed due to illness or travel. Failure to produce requested
35 certified documents or copies thereof, after being informed of the
36 required deadline, shall constitute unprofessional conduct. A
37 healing arts board may use its authority to cite and fine a licensee
38 for any violation of this section. This remedy is in addition to any
39 other authority of the healing arts board to sanction a licensee for
40 a delay in producing requested records.

1 (e) Searches conducted of the office or medical facility of any
2 licensee shall not interfere with the recordkeeping format or
3 preservation needs of any licensee necessary for the lawful care
4 of patients.

5 (f) The licensee shall cooperate with the healing arts board in
6 furnishing information or assistance as may be required, including,
7 but not limited to, participation in an interview with investigators
8 or representatives of the healing arts board.

9 (g) If a board complies with Section 2225, that board shall not
10 be subject to the requirements of this section.

11 (h) *This section shall not apply to a licensee who does not have*
12 *access to, and control over, certified medical records.*

13 720.18. (a) (1) Notwithstanding any other provision of law,
14 a licensee who fails or refuses to comply with a request for the
15 certified medical records of a patient, that is accompanied by that
16 patient's written authorization for release of records to a healing
17 arts board, within ~~10~~ 15 days of receiving the request and
18 authorization, shall pay to the healing arts board a civil penalty of
19 *up to* one thousand dollars (\$1,000) per day for each day that the
20 documents have not been produced after the ~~10th~~ 15th day, up to
21 ~~one hundred thousand dollars (\$100,000)~~ *ten thousand dollars*
22 *(\$10,000)*, unless the licensee is unable to provide the documents
23 within this time period for good cause.

24 (2) A health care facility shall comply with a request for the
25 certified medical records of a patient that is accompanied by that
26 patient's written authorization for release of records to a healing
27 arts board together with a notice citing this section and describing
28 the penalties for failure to comply with this section. Failure to
29 provide the authorizing patient's certified medical records to the
30 healing arts board within ~~10~~ 30 days of receiving the request,
31 authorization, and notice shall subject the health care facility to a
32 civil penalty, payable to the healing arts board, of up to one
33 thousand dollars (\$1,000) per day for each day that the documents
34 have not been produced after the ~~10th~~ 30th day, up to ~~one hundred~~
35 ~~thousand dollars (\$100,000)~~ *ten thousand dollars (\$10,000)*, unless
36 the health care facility is unable to provide the documents within
37 this time period for good cause. This paragraph shall not require
38 health care facilities to assist a healing arts board in obtaining the
39 patient's authorization. A healing arts board shall pay the
40 reasonable costs of copying the certified medical records, but shall

1 not be required to make that payment prior to the production of
2 the medical records.

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

14 (2) Any licensee who fails or refuses to comply with a court
15 order, issued in the enforcement of a subpoena, mandating the
16 release of records to a board is guilty of a misdemeanor punishable
17 by a fine payable to the board not to exceed five thousand dollars
18 (\$5,000). The fine shall be added to the licensee's renewal fee if
19 it is not paid by the next succeeding renewal date. Any statute of
20 limitations applicable to the filing of an accusation by a healing
21 arts board shall be tolled during the period the licensee is out of
22 compliance with the court order and during any related appeals.

23 (3) A health care facility that fails or refuses to comply with a
24 court order, issued in the enforcement of a subpoena, mandating
25 the release of patient records to a healing arts board, that is
26 accompanied by a notice citing this section and describing the
27 penalties for failure to comply with this section, shall pay to the
28 healing arts board a civil penalty of up to one thousand dollars
29 (\$1,000) per day for each day that the documents have not been
30 produced, ~~up to one hundred thousand dollars (\$100,000)~~ *ten*
31 *thousand dollars (\$10,000)*, after the date by which the court order
32 requires the documents to be produced, unless it is determined that
33 the order is unlawful or invalid. Any statute of limitations
34 applicable to the filing of an accusation by the board against a
35 licensee shall be tolled during the period the health care facility is
36 out of compliance with the court order and during any related
37 appeals.

38 (4) Any health care facility that fails or refuses to comply with
39 a court order, issued in the enforcement of a subpoena, mandating
40 the release of records to a healing arts board is guilty of a

1 misdemeanor punishable by a fine payable to the board not to
2 exceed five thousand dollars (\$5,000). Any statute of limitations
3 applicable to the filing of an accusation by the healing arts board
4 against a licensee shall be tolled during the period the health care
5 facility is out of compliance with the court order and during any
6 related appeals.

7 (c) Multiple acts by a licensee in violation of subdivision (b)
8 shall be punishable by a fine not to exceed five thousand dollars
9 (\$5,000) or by imprisonment in a county jail not exceeding six
10 months, or by both that fine and imprisonment. Multiple acts by
11 a health care facility in violation of subdivision (b) shall be
12 punishable by a fine not to exceed five thousand dollars (\$5,000),
13 shall be reported to the State Department of Public Health, and
14 shall be considered as grounds for disciplinary action with respect
15 to licensure, including suspension or revocation of the license or
16 certificate.

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

22 (e) Imposition of the civil penalties authorized by this section
23 shall be in accordance with the Administrative Procedure Act
24 (Chapter 5 (commencing with Section 11500) of Division 3 of
25 Title 2 of the Government Code). Any civil penalties paid to, or
26 received by, a healing arts board pursuant to this section shall be
27 deposited into the fund administered by the healing arts board.

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

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

36 (h) If a board complies with ~~Section 1684.5~~ 1684.1, 2225.5, or
37 2969, that board shall not be subject to the requirements of this
38 section.

39 (i) This section shall not apply to a licensee who does not have
40 access to, or control over, certified medical records.

1 720.20. (a) Notwithstanding any other provision of law, a state
2 agency shall, upon receiving a request in writing from a healing
3 arts board *for records*, immediately provide to the healing arts
4 board all records in the custody of the state agency, including, but
5 not limited to, confidential records, medical records, and records
6 related to closed or open investigations.

7 (b) If a state agency has knowledge that a person it is
8 investigating is licensed by a healing arts board, the state agency
9 shall notify the healing arts board that it is conducting an
10 investigation against one of its licentiates. The notification of
11 investigation to the healing arts board ~~is to~~ *shall* include the name,
12 address, and, if known, the professional ~~license~~ *license* type and
13 license number of the person being investigated and the name and
14 address or telephone number of a person who can be contacted for
15 further information about the investigation. The state agency shall
16 cooperate with the healing arts board in providing any requested
17 information.

18 720.22. Notwithstanding any other provision of law, all local
19 and state law enforcement agencies, state and local governments,
20 state agencies, licensed health care facilities, and employers of a
21 licensee of a healing arts board shall provide records to the healing
22 arts board upon request prior to receiving payment from the board
23 *for the cost of providing the records*.

24 720.24. (a) ~~Any~~ *Notwithstanding any other provision of law,*
25 *any* employer of a health care licensee shall report to the board the
26 suspension or termination for cause, or any resignation in lieu of
27 suspension or termination for cause, of any health care licensee in
28 its employ within ~~five~~ *15* business days. The report shall not be
29 made until after the conclusion of the review process specified in
30 Section 52.3 of Title 2 of the California Code of Regulations and
31 *Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194*, for public
32 employees. This required reporting shall not constitute a waiver
33 of confidentiality of medical records. The information reported or
34 disclosed shall be kept confidential except as provided in
35 subdivision (c) of Section 800 and shall not be subject to discovery
36 in civil cases.

37 (b) For purposes of the section, "suspension or termination for
38 cause" ~~is defined as suspension or~~ *"resignation in lieu of*
39 *suspension or termination for cause" is defined as resignation,*

1 *suspension*, or termination from employment for any of the
2 following reasons:

3 (1) Use of controlled substances or alcohol to the extent that it
4 impairs the licensee's ability to safely practice.

5 (2) Unlawful sale of a controlled substance or other prescription
6 items.

7 (3) Patient or client abuse, neglect, physical harm, or sexual
8 contact with a patient or client.

9 ~~(4) Falsification of medical records.~~

10 ~~(5)~~

11 (4) Gross negligence or incompetence.

12 ~~(6)~~

13 (5) Theft from a patient or client, any other employee, or the
14 employer.

15 ~~(e) Failure of an employer to make a report required by this~~
16 ~~section is punishable by an administrative fine not to exceed one~~
17 ~~hundred thousand dollars (\$100,000) per violation.~~

18 ~~(d) Pursuant to Section 43.8 of the Civil Code, no person shall~~
19 ~~incur any civil penalty as a result of making any report required~~
20 ~~by this chapter.~~

21 ~~(e) This section shall not apply to any of the reporting~~
22 ~~requirements under Section 805.~~

23 *(c) As used in this section, the following definitions apply:*

24 (1) "Gross negligence" means a substantial departure from the
25 standard of care, which, under similar circumstances, would have
26 ordinarily been exercised by a competent licensee, and which has
27 or could have resulted in harm to the consumer. An exercise of so
28 slight a degree of care as to justify the belief that there was a
29 conscious disregard or indifference for the health, safety, or
30 welfare of the consumer shall be considered a substantial departure
31 from the standard of care.

32 (2) "Incompetence" means the lack of possession of and the
33 failure to exercise that degree of learning, skill, care, and
34 experience ordinarily possessed by a responsible licensee.

35 (3) "Willful" means a knowing and intentional violation of a
36 known legal duty.

37 *(d) (1) Willful failure of an employer to make a report required*
38 *by this section is punishable by an administrative fine not to exceed*
39 *one hundred thousand dollars (\$100,000) per violation.*

1 (2) Any failure of an employer, other than willful failure, to
2 make a report required by this section is punishable by an
3 administrative fine not to exceed fifty thousand dollars (\$50,000).

4 (e) Pursuant to Section 43.8 of the Civil Code, no person shall
5 incur any civil penalty as a result of making any report required
6 by this article.

7 (f) No report is required under this section where a report of
8 the action taken is already required under Section 805.

9 720.26. (a) Each healing arts board shall report annually to
10 the department and the Legislature, not later than October 1 of
11 each year, the following information:

12 (1) The total number of consumer calls received by the board
13 and the number of consumer calls or letters designated as
14 discipline-related complaints.

15 (2) The total number of complaint forms received by the board.

16 (3) The total number of reports received by the board pursuant
17 to Sections 801, 801.01, and 803, as applicable.

18 (4) The total number of coroner reports received by the board.

19 (5) The total number of convictions reported to the board.

20 (6) The total number of criminal filings reported to the board.

21 (7) If the board is authorized to receive reports pursuant to
22 Section 805, the total number of Section 805 reports received by
23 the board, by the type of peer review body reporting and, where
24 applicable, the type of health care facility involved, and the total
25 number and type of administrative or disciplinary actions taken
26 by the board with respect to the reports, and their disposition.

27 (8) The total number of complaints closed or resolved without
28 discipline, prior to accusation.

29 (9) The total number of complaints and reports referred for
30 formal investigation.

31 (10) The total number of accusations filed and the final
32 disposition of accusations through the board and court review,
33 respectively.

34 (11) The total number of citations issued, with fines and without
35 fines, and the number of public letters of reprimand, letters of
36 admonishment, or other similar action issued, if applicable.

37 (12) The total number of final licensee disciplinary actions
38 taken, by category.

1 (13) The total number of cases in process for more than six
2 months, more than 12 months, more than 18 months, and more
3 than 24 months, from receipt of a complaint by the board.

4 (14) The average and median time in processing complaints,
5 from original receipt of the complaint by the board, for all cases,
6 at each stage of the disciplinary process and court review,
7 respectively.

8 (15) The total number of licensees in diversion or on probation
9 for alcohol or drug abuse or mental disorder, and the number of
10 licensees successfully completing diversion programs or probation,
11 and failing to do so, respectively.

12 (16) The total number of probation violation reports and
13 probation revocation filings, and their dispositions.

14 (17) The total number of petitions for reinstatement, and their
15 dispositions.

16 (18) The total number of caseloads of investigators for original
17 cases and for probation cases, respectively.

18 (b) "Action," for purposes of this section, includes proceedings
19 brought by, or on behalf of, the healing arts board against licensees
20 for unprofessional conduct that have not been finally adjudicated,
21 as well as disciplinary actions taken against licensees.

22 (c) ~~If a board~~ *A board* that complies with Section 2313, ~~that~~
23 ~~board~~ shall not be subject to the requirements of this section.

24 720.28. Unless otherwise provided, on or after July 1, 2013,
25 every healing arts board shall post on the Internet the following
26 information in its possession, custody, or control regarding every
27 licensee for which the board licenses:

28 (a) With regard to the status of every healing arts license,
29 whether or not the licensee *or former licensee* is in good standing,
30 subject to a temporary restraining order, subject to an interim
31 suspension order, subject to a restriction or cease practice ordered
32 pursuant to Section 23 of the Penal Code, or subject to any of the
33 enforcement actions described in Section 803.1.

34 (b) With regard to prior discipline of a licensee, whether or not
35 the licensee *or former licensee* has been subject to discipline by
36 the healing arts board or by the board of another state or
37 jurisdiction, as described in Section 803.1.

38 (c) Any felony conviction of a licensee reported to the healing
39 arts board ~~after January 3, 1991~~.

1 (d) All current accusations filed by the Attorney General,
2 including those accusations that are on appeal. For purposes of
3 this paragraph, "current accusation" means an accusation that has
4 not been dismissed, withdrawn, or settled, and has not been finally
5 decided upon by an administrative law judge and the board unless
6 an appeal of that decision is pending.

7 (e) Any malpractice judgment or arbitration award imposed
8 against a licensee and reported to the healing arts board ~~after~~
9 ~~January 1, 1993.~~

10 (f) Any hospital disciplinary action imposed against a licensee
11 that resulted in the termination or revocation of a licensee's hospital
12 staff privileges for a medical disciplinary cause or reason pursuant
13 to Section 720.18 or 805.

14 (g) Any misdemeanor conviction of a licensee that results in a
15 disciplinary action or an accusation that is not subsequently
16 withdrawn or dismissed.

17 (h) Appropriate disclaimers and explanatory statements to
18 accompany the above information, including an explanation of
19 what types of information are not disclosed. These disclaimers and
20 statements shall be developed by the healing arts board and shall
21 be adopted by regulation.

22 720.30. (a) The office of the Attorney General shall serve, or
23 submit to a healing arts board for service, an accusation within 60
24 calendar days of receipt from the healing arts board.

25 (b) The office of the Attorney General shall serve, or submit to
26 a healing arts board for service, a default decision within five days
27 following the time period allowed for the filing of a notice of
28 defense.

29 (c) The office of the Attorney General shall set a hearing date
30 within three days of receiving a notice of defense, unless the
31 healing arts board gives the office of the Attorney General
32 instruction otherwise.

33 720.32. (a) Whenever it appears that an applicant for a license,
34 certificate, or permit from a healing arts board may be unable to
35 practice his or her profession safely because the applicant's ability
36 to practice ~~would~~ *may* be impaired due to mental illness, or physical
37 illness affecting competency, the healing arts board may order the
38 applicant to be examined by one or more physicians and surgeons
39 or psychologists designated by the healing arts board. The report
40 of the examiners shall be made available to the applicant and may

1 be received as direct evidence in proceedings conducted pursuant
2 to Chapter 2 (commencing with Section 480) of Division 1.5.

3 (b) An applicant's failure to comply with an order issued under
4 subdivision (a) shall authorize the board to deny an applicant a
5 license, certificate, or permit.

6 (c) A healing arts board shall not grant a license, certificate, or
7 permit until it has received competent evidence of the absence or
8 control of the condition that caused its action and until it is satisfied
9 that with due regard for the public health and safety the person
10 may safely practice the profession for which he or she seeks
11 licensure.

12 720.34. (a) An applicant for a license, certificate, or permit
13 from a healing arts board who is otherwise eligible for that license
14 but is unable to practice some aspects of his or her profession
15 safely due to a disability may receive a limited license if he or she
16 does both of the following:

17 (1) Pays the initial licensure fee.

18 (2) Signs an agreement on a form prescribed by the healing arts
19 board in which the applicant agrees to limit his or her practice in
20 the manner prescribed by the healing arts board.

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

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

28 720.35. (a) ~~Each~~ Each healing arts board listed in Section 720
29 shall report to the National Practitioner Data Bank and the
30 Healthcare Integrity and Protection Data Bank the following
31 information on each of its licensees:

32 (1) Any adverse action taken by the board as a result of any
33 disciplinary proceeding, including any revocation or suspension
34 of a license and the length of that suspension, or any reprimand,
35 censure, or probation.

36 (2) Any dismissal or closure of a disciplinary proceeding by
37 reason of a licensee surrendering his or her license or leaving the
38 state.

39 (3) Any other loss of the license of a licensee, whether by
40 operation of law, voluntary surrender, or otherwise.

1 (4) Any negative action or finding by the board regarding a
2 licensee.

3 (b) Each healing arts board shall conduct a search on the
4 National Practitioner Data Bank and the Healthcare Integrity and
5 Protection Data Bank prior to granting or renewing a license,
6 certificate, or permit to an applicant ~~who is licensed by another~~
7 ~~state.~~

8 (b)

9 (c) A healing arts board may charge a fee to cover the actual
10 cost to conduct the search specified in subdivision ~~(a)~~ (b).

11 720.36. (a) Unless otherwise provided, if a licensee possesses
12 a license or is otherwise authorized to practice in any state other
13 than California or by any agency of the federal government and
14 that license or authority is suspended or revoked outright and is
15 reported to the National Practitioner Data Bank, the California
16 license of the licensee shall be suspended automatically for the
17 duration of the suspension or revocation, unless terminated or
18 rescinded as provided in subdivision (c). The healing arts board
19 shall notify the licensee of the license suspension and of his or her
20 right to have the issue of penalty heard as provided in this section.

21 (b) Upon its own motion or for good cause shown, a healing
22 arts board may decline to impose or may set aside the suspension
23 when it appears to be in the interest of justice to do so, with due
24 regard to maintaining the integrity of, and confidence in, the
25 specific healing art.

26 (c) The issue of penalty shall be heard by an administrative law
27 judge sitting alone or with a panel of the board, in the discretion
28 of the board. A licensee may request a hearing on the penalty and
29 that hearing shall be held within 90 days from the date of the
30 request. If the order suspending or revoking the license or authority
31 to practice is overturned on appeal, any discipline ordered
32 pursuant to this section shall automatically cease. Upon a showing
33 to the administrative law judge or panel by the licensee that the
34 out-of-state action is not a basis for discipline in California, the
35 suspension shall be rescinded. If an accusation for permanent
36 discipline is not filed within 90 days of the suspension imposed
37 pursuant to this section, the suspension shall automatically
38 terminate.

39 (d) The record of the proceedings that resulted in the suspension
40 or revocation of the licensee's out-of-state license or authority to

1 practice, including a transcript of the testimony therein, may be
2 received in evidence.

3 (e) This section shall not apply to a licensee who maintains his
4 or her primary practice in California, as evidenced by having
5 maintained a practice in this state for not less than one year
6 immediately preceding the date of suspension or revocation.
7 Nothing in this section shall preclude a licensee's license from
8 being suspended pursuant to any other provision of law.

9 (f) This section shall not apply to a licensee whose license has
10 been surrendered, whose only discipline is a medical staff
11 disciplinary action at a federal hospital and not for medical
12 disciplinary cause or reason as that term is defined in Section 805,
13 or whose revocation or suspension has been stayed, even if the
14 licensee remains subject to terms of probation or other discipline.

15 (g) This section shall not apply to a suspension or revocation
16 imposed by a state that is based solely on the prior discipline of
17 the licensee by another state.

18 (h) The other provisions of this article setting forth a procedure
19 for the suspension or revocation of a licensee's license or
20 certificate shall not apply to summary suspensions issued pursuant
21 to this section. If a summary suspension has been issued pursuant
22 to this section, the licensee may request that the hearing on the
23 penalty conducted pursuant to subdivision (c) be held at the same
24 time as a hearing on the accusation.

25 (i) A board that complies with Section 2310 shall not be subject
26 to the requirements of this section.

27 ~~720.36. Unless it is~~

28 720.37. Unless otherwise expressly provided, any person,
29 whether licensed pursuant to this division or not, who violates any
30 provision of this article is guilty of a misdemeanor and shall be
31 punished by a fine of not less than two hundred dollars (\$200) nor
32 more than one thousand two hundred dollars (\$1,200), or by
33 imprisonment in a county jail for a term of not less than 60 days
34 nor no more than 180 days, or by both the fine and imprisonment.

35 720.38. (a) The Emergency Health Care Enforcement Reserve
36 Fund is hereby established in the State Treasury, to be
37 administered by the department. Notwithstanding Section 13340
38 of the Government Code, all moneys in the fund are hereby
39 continuously appropriated and shall be used to support the
40 investigation and prosecution of any matter within the authority

1 of any of the healing arts boards. The department, upon direction
2 of a healing arts board, shall pay out the funds or approve such
3 payments as deemed necessary from those funds as have been
4 designated for the purpose of this section.

5 (b) Notwithstanding any other law, the funds of the Emergency
6 Health Care Enforcement Reserve Fund are those moneys from
7 the healing arts board's individual funds, which shall be deposited
8 into the Emergency Health Care Enforcement Reserve Fund when
9 the amount within those funds exceeds more than four months
10 operating expenditures of the healing arts board.

11 (c) Notwithstanding any other law, the department, with
12 approval of a healing arts board, may loan to any other board
13 moneys necessary for the purpose of this section when it has been
14 established that insufficient funds exist for that board, provided
15 that the moneys will be repaid.

16 720.40. Notwithstanding any other provision of law, if a healing
17 arts board's fund reserve exceeds its statutory maximum, the board
18 may lower its fees by resolution in order to reduce its reserves to
19 an amount below its maximum.

20 720.42. (a) The Legislature finds that there are occasions
21 when a healing arts board, as listed in Section 720, urgently
22 requires additional expenditure authority in order to fund
23 unanticipated enforcement and litigation activities. Without
24 sufficient expenditure authority to obtain the necessary additional
25 resources for urgent litigation and enforcement matters, the board
26 is unable to adequately protect the public. Therefore, it is the intent
27 of the Legislature that, apart from, and in addition to, the
28 expenditure authority that may otherwise be established, the
29 healing arts boards, as listed in Section 720, shall be given the
30 increase in its expenditure authority in any given current fiscal
31 year that is authorized by the Department of Finance pursuant to
32 the provisions of subdivision (b) of this section, for costs and
33 services in urgent litigation and enforcement matters, including,
34 but not limited to, costs for the services of the Attorney General
35 and the Office of Administrative Hearings.

36 (b) Notwithstanding any other provision of law, upon the request
37 of the department, the Department of Finance may augment the
38 amount available for expenditures to pay enforcement costs for
39 the services of the Attorney General's Office and the Office of
40 Administrative Hearings. If an augmentation exceeds 20% of the

1 *board's budget for the Attorney General, it may be made no sooner*
2 *than 30 days after notification in writing to chairpersons of the*
3 *committees in each house of the Legislature that consider*
4 *appropriations and the Chairperson of the Joint Legislative Budget*
5 *Committee, or no sooner than whatever lesser time the chairperson*
6 *of the Joint Legislative Budget Committee may in each instance*
7 *determine.*

8 ~~SEC. 13.~~

9 *SEC. 14.* Section 726 of the Business and Professions Code is
10 amended to read:

11 726. (a) The commission of any act of sexual abuse,
12 misconduct, or relations with a patient, client, or customer
13 constitutes unprofessional conduct and grounds for disciplinary
14 action for any person licensed under this division, and under any
15 initiative act referred to in this division.

16 (b) For purposes of Division 1.5 (commencing with Section
17 475), ~~and the licensing laws and regulations of a healing arts board,~~
18 ~~as defined in Section 720,~~ the commission of, and conviction for,
19 any act of sexual abuse, sexual misconduct, or attempted sexual
20 misconduct, whether or not with a patient, or conviction of a felony
21 requiring registration pursuant to Section 290 of the Penal Code
22 shall be considered a crime substantially related to the
23 qualifications, functions, or duties of a licensee of a healing arts
24 board *listed in Section 720.*

25 (c) This section shall not apply to sexual contact between a
26 physician and surgeon and his or her spouse or person in an
27 equivalent domestic relationship when that physician and surgeon
28 provides medical treatment, other than psychotherapeutic treatment,
29 to his or her spouse or person in an equivalent domestic
30 relationship.

31 ~~SEC. 14.~~

32 *SEC. 15.* Section 734 is added to the Business and Professions
33 Code, to read:

34 734. (a) The conviction of a charge of violating any federal
35 statute or regulation or any statute or regulation of this state
36 regulating dangerous drugs or controlled substances constitutes
37 unprofessional conduct. The record of the conviction is conclusive
38 evidence of the unprofessional conduct. A plea or verdict of guilty
39 or a conviction following a plea of nolo contendere is deemed to
40 be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

~~SEC. 15.~~

SEC. 16. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

~~SEC. 16.~~

SEC. 17. Section 736 is added to the Business and Professions Code, to read:

736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of

1 not guilty, or setting aside the verdict of guilty, or dismissing the
2 accusation, complaint, information, or indictment.

3 (c) A violation of subdivision (a) is a misdemeanor punishable
4 by a fine of up to ten thousand dollars (\$10,000), imprisonment
5 in the county jail of up to six months, or both the fine and
6 imprisonment.

7 ~~SEC. 17.~~

8 *SEC. 18.* Section 737 is added to the Business and Professions
9 Code, to read:

10 737. It shall be unprofessional conduct for any licensee of a
11 healing arts board to fail to comply with the following:

12 (a) Furnish information in a timely manner to the healing arts
13 board or the board's investigators or representatives if ~~legally~~
14 requested by the board.

15 (b) Cooperate and participate in any ~~disciplinary~~ investigation
16 or other regulatory or disciplinary proceeding pending against
17 ~~himself or herself~~ the licensee. However, this subdivision shall not
18 be construed to deprive a licensee of any privilege guaranteed by
19 the Fifth Amendment to the Constitution of the United States, or
20 any other constitutional or statutory privileges. This subdivision
21 shall not be construed to require a licensee to cooperate with a
22 request that requires him or her to waive any constitutional or
23 statutory privilege or to comply with a request for information or
24 other matters within an unreasonable period of time in light of the
25 time constraints of the licensee's practice. Any exercise by a
26 licensee of any constitutional or statutory privilege shall not be
27 used against the licensee in a regulatory or disciplinary proceeding
28 against ~~him or her~~ the licensee.

29 ~~SEC. 18.~~

30 *SEC. 19.* Section 802.1 of the Business and Professions Code
31 is amended to read:

32 802.1. (a) (1) A licensee of a healing arts board ~~defined under~~
33 ~~Section 720 shall submit a written report of listed in Section 720~~
34 *shall report* any of the following to the entity that issued his or her
35 license:

36 (A) The bringing of an indictment or information charging a
37 felony against the licensee.

38 (B) The arrest of the licensee.

1 (C) The conviction of the licensee, including any verdict of
2 guilty, or plea of guilty or no contest, of any felony or
3 misdemeanor.

4 (D) Any disciplinary action taken by another licensing entity
5 or authority of this state or of another state *or an agency of the*
6 *federal government.*

7 (2) The report required by this subdivision shall be made in
8 writing within 30 days of the date of the bringing of the indictment
9 or the charging of a felony, the arrest, the conviction, or the
10 disciplinary action.

11 (b) Failure to make a report required by this section shall be a
12 public offense punishable by a fine not to exceed five thousand
13 ~~dollars—(\$5,000).~~ *dollars (\$5,000) and shall constitute*
14 *unprofessional conduct.*

15 *SEC. 20. Section 802.2 is added to the Business and Professions*
16 *Code, to read:*

17 *802.2. A licensee of a healing arts board listed in Section 720*
18 *shall identify himself or herself as a licensee of the board to law*
19 *enforcement and the court upon being arrested or charged with a*
20 *misdemeanor or felony. The healing arts boards shall inform its*
21 *licensees of this requirement.*

22 ~~SEC. 19:~~

23 *SEC. 21. Section 803 of the Business and Professions Code is*
24 *amended to read:*

25 803. (a) Except as provided in subdivision (b), within 10 days
26 after a judgment by a court of this state that a person who holds a
27 license, certificate, or other similar authority from a healing arts
28 board ~~defined~~ *listed* in Section 720, has committed a crime, or is
29 liable for any death or personal injury resulting in a judgment for
30 an amount in excess of thirty thousand dollars (\$30,000) caused
31 by his or her negligence, error or omission in practice, or his or
32 her rendering unauthorized professional services, the clerk of the
33 court that rendered the judgment shall report that fact to the agency
34 that issued the license, certificate, or other similar authority.

35 (b) For purposes of a physician and surgeon, osteopathic
36 physician and surgeon, or doctor of podiatric medicine, who is
37 liable for any death or personal injury resulting in a judgment of
38 any amount caused by his or her negligence, error or omission in
39 practice, or his or her rendering unauthorized professional services,

1 the clerk of the court that rendered the judgment shall report that
2 fact to the board that issued the license.

3 ~~SEC. 20.~~

4 *SEC. 22.* Section 803.5 of the Business and Professions Code
5 is amended to read:

6 803.5. (a) The district attorney, city attorney, or other
7 prosecuting agency shall notify the *appropriate* healing arts board
8 defined ~~listed~~ in Section 720 and the clerk of the court in which
9 the charges have been filed, of any filings against a licensee of
10 that board charging a felony immediately upon obtaining
11 information that the defendant is a licensee of the board. The notice
12 shall identify the licensee and describe the crimes charged and the
13 facts alleged. The prosecuting agency shall also notify the clerk
14 of the court in which the action is pending that the defendant is a
15 licensee, and the clerk shall record prominently in the file that the
16 defendant holds a license from one of the boards described above.

17 (b) The clerk of the court in which a licensee of one of the
18 boards is convicted of a crime shall, within 48 hours after the
19 conviction, transmit a certified copy of the record of conviction
20 to the applicable board.

21 ~~SEC. 21.~~ Section 803.6 of the Business and Professions Code
22 is amended to read:

23 ~~803.6. (a) The clerk of the court shall transmit any felony~~
24 ~~preliminary hearing transcript concerning a defendant licensee to~~
25 ~~the appropriate healing arts boards defined in Section 720 where~~
26 ~~the total length of the transcript is under 800 pages and shall notify~~
27 ~~the appropriate board of any proceeding where the transcript~~
28 ~~exceeds that length.~~

29 ~~(b) In any case where a probation report on a licensee is prepared~~
30 ~~for a court pursuant to Section 1203 of the Penal Code, a copy of~~
31 ~~that report shall be transmitted by the probation officer to the~~
32 ~~appropriate board.~~

33 *SEC. 23.* Section 803.6 of the Business and Professions Code
34 is amended to read:

35 803.6. (a) The clerk of the court shall transmit any felony
36 preliminary hearing transcript concerning a defendant licensee to
37 the Medical Board of California, the Osteopathic Medical Board
38 of California, the California Board of Podiatric Medicine, or other
39 appropriate allied health board, as applicable, *appropriate healing*
40 *arts board listed in Section 720* where the total length of the

1 transcript is under 800 pages and shall notify the appropriate board
2 of any proceeding where the transcript exceeds that length.

3 (b) In any case where a probation report on a licensee is prepared
4 for a court pursuant to Section 1203 of the Penal Code, a copy of
5 that report shall be transmitted by the probation officer to the
6 *appropriate healing arts board*.

7 ~~SEC. 22.~~

8 *SEC. 24.* Section 803.7 is added to the Business and Professions
9 Code, to read:

10 803.7. The Department of Justice shall ensure that subsequent
11 reports authorized to be issued to any board identified in Section
12 101 are submitted to that board within 30 days from notification
13 of subsequent arrests, convictions, or other updates.

14 ~~SEC. 23.~~ Article 15 (commencing with Section 870) is added
15 to Chapter 1 of Division 2 of the Business and Professions Code,
16 to read:

17
18 Article 15. Healing Arts Licensing Fees
19

20 870. (a) ~~Notwithstanding any provision of law establishing a~~
21 ~~fee or a fee range in this division, the department may annually~~
22 ~~establish a maximum fee amount for each healing arts board, as~~
23 ~~defined in Section 720, adjusted consistent with the California~~
24 ~~Consumer Price Index.~~

25 (b) ~~The department shall promulgate regulations pursuant to~~
26 ~~the Administrative Procedures Act to establish the maximum fee~~
27 ~~amount calculated pursuant to subdivision (a).~~

28 (c) ~~A healing arts board, as defined in Section 720, shall~~
29 ~~establish, through regulations, the specific amount of all fees~~
30 ~~authorized by statute at a level that is at or below the amount~~
31 ~~established pursuant to subdivision (b).~~

32 ~~SEC. 24.~~

33 *SEC. 25.* Article 16 (commencing with Section 880) is added
34 to Chapter 1 of Division 2 of the Business and Professions Code,
35 to read:

36
37 Article 16. Unlicensed Practice
38

39 880. (a) (1) It is a public offense, punishable by a fine not to
40 exceed one hundred thousand dollars (\$100,000), by imprisonment

1 in a county jail not to exceed one year, or by both that fine and
2 imprisonment, ~~for a person to do any of the following: for:~~

3 (A) Any person who does not hold a current and valid license
4 to practice a healing art under this division who engages in that
5 practice.

6 (B) Any person who fraudulently buys, sells, or obtains a license
7 to practice any healing art in this division or to violate any
8 provision of this division.

9 ~~(C) Any person who represents himself or herself as engaging
10 or authorized to engage in a healing art of this division who is not
11 authorized to do so.~~

12 (2) Subparagraph (A) of paragraph (1) shall not apply to any
13 person who is already being charged with a crime under the specific
14 healing arts licensing provisions for which he or she engaged in
15 unauthorized practice.

16 (b) Notwithstanding any other provision of law, any person who
17 is licensed under this division, but ~~who is not authorized to provide
18 some or all services of another healing art, who practices or
19 supervises the practice of those unauthorized services~~ *any person
20 who does not hold a current and valid license to practice a healing
21 art under this division*, is guilty of a public crime, punishable by
22 a fine not to exceed one hundred thousand dollars (\$100,000), by
23 imprisonment in a county jail not to exceed one year, or by both
24 that fine and imprisonment.

25 *SEC. 26. Section 1005 of the Business and Professions Code
26 is amended to read:*

27 1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35,
28 104, 114, 115, 119, 121, 121.5, 125, ~~125.3, 125.4, 125.6, 125.9,~~
29 136, 137, 140, 141, 143, ~~155,~~ 163.5, 461, 462, 475, 480, 484, 485,
30 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512,
31 701, 702, 703, 704, 710, 716, 720.2, 720.4, 720.8, 720.10, 720.12,
32 720.14, 720.16, 720.18, 720.20, 720.22, 720.24, 720.28, 720.30,
33 720.32, 720.35, 720.36, 730.5, 731, ~~and 734,~~ 735, 736, 737, 802.1,
34 803, 803.5, 803.6, 803.7, 851, ~~and 880~~ are applicable to persons
35 licensed by the State Board of Chiropractic Examiners under the
36 Chiropractic Act.

37 *SEC. 27. Section 1006 is added to the Business and Professions
38 Code, to read:*

39 1006. (a) Notwithstanding any other provision of law, upon
40 receipt of evidence that a licensee of the State Board of

1 Chiropractic Examiners has engaged in conduct that poses an
2 imminent risk of serious harm to the public health, safety, or
3 welfare, the executive officer may issue a temporary order that
4 the licensee cease all practice and activities that require a license
5 by the board.

6 (b) Before the executive officer may take any action pursuant
7 to this section, the board shall delegate to the executive officer
8 authority to issue a temporary cease practice order as specified
9 in subdivision (a). The board may, by affirmative vote, rescind the
10 executive officer's authority to issue cease temporary practice
11 orders pursuant to subdivision (a).

12 (c) A licensee may appeal the temporary cease practice order
13 decision pursuant to the provisions of Chapter 5 (commencing
14 with Section 11500) of Part 1 of Division 3 of Title 2 of the
15 Government Code.

16 (d) Any temporary order to cease practice issued pursuant to
17 this section shall automatically be vacated within 90 days of
18 issuance, or until the board files a petition pursuant to Section
19 494 for an interim suspension order and the petition is denied or
20 granted, whichever occurs first.

21 (e) A licensee who fails or refuses to comply with a temporary
22 order of the executive officer to cease practice pursuant to this
23 section shall be subject to disciplinary action to revoke or suspend
24 his or her license and by the board and an administrative fine
25 assessed by the board not to exceed twenty-five thousand dollars
26 (\$25,000). The remedies provided herein are in addition to any
27 other authority of the board to sanction a licensee for practicing
28 or engaging in activities subject to the jurisdiction of the board
29 without proper legal authority.

30 (f) Upon receipt of new information, the executive officer shall
31 review the basis for the interim license suspension order pursuant
32 to subdivision (d) to determine if the grounds for the suspension
33 continue to exist. The executive officer may vacate the suspension
34 order, if he or she believes that the suspension is no longer
35 necessary to protect the public health, safety, or welfare as
36 described in subdivision (a) of Section 494.

37 (g) Any order to cease practice including an order pursuant to
38 Section 494 shall be displayed on the board's Internet Web site,
39 except that if the executive officer vacates the suspension order

1 pursuant to subdivision (e), the petition and order shall be removed
2 from the respective board's Internet Web site.

3 (h) Temporary suspension orders shall be subject to judicial
4 review pursuant to Section 1094.5 of the Code of Civil Procedure
5 and shall be heard only in the superior court in, and for, the
6 Counties of Sacramento, San Francisco, Los Angeles, or San
7 Diego.

8 (i) For the purposes of this section, "imminent risk of serious
9 harm to the public health, safety, or welfare" means that there is
10 a reasonable likelihood that permitting the licensee to continue to
11 practice will result in serious physical or emotional injury,
12 unlawful sexual contact, or death to an individual or individuals
13 within the next 90 days.

14 SEC. 28. Section 1007 is added to the Business and Professions
15 Code, to read:

16 1007. (a) The State Board of Chiropractic Examiners shall
17 report annually to the Legislature, not later than October 1 of
18 each year, the following information:

19 (1) The total number of consumer calls received by the board
20 and the number of consumer calls or letters designated as
21 discipline-related complaints.

22 (2) The total number of complaint forms received by the board.

23 (3) The total number of reports received by the board pursuant
24 to Sections 801, 801.01, and 803, as applicable.

25 (4) The total number of coroner reports received by the board.

26 (5) The total number of convictions reported to the board.

27 (6) The total number of criminal filings reported to the board.

28 (7) The total number of complaints closed or resolved without
29 discipline, prior to accusation.

30 (8) The total number of complaints and reports referred for
31 formal investigation.

32 (9) The total number of accusations filed and the final
33 disposition of accusations through the board and court review,
34 respectively.

35 (10) The total number of citations issued, with fines and without
36 fines, and the number of public letters of reprimand, letters of
37 admonishment, or other similar action issued, if applicable.

38 (11) The total number of final licensee disciplinary actions
39 taken, by category.

1 (12) *The total number of cases in process for more than six*
2 *months, more than 12 months, more than 18 months, and more*
3 *than 24 months, from receipt of a complaint by the board.*

4 (13) *The average and median time in processing complaints,*
5 *from original receipt of the complaint by the board, for all cases,*
6 *at each stage of the disciplinary process and court review,*
7 *respectively.*

8 (14) *The total number of licensees in diversion or on probation*
9 *for alcohol or drug abuse or mental disorder, and the number of*
10 *licensees successfully completing diversion programs or probation,*
11 *and failing to do so, respectively.*

12 (15) *The total number of probation violation reports and*
13 *probation revocation filings, and their dispositions.*

14 (16) *The total number of petitions for reinstatement, and their*
15 *dispositions.*

16 (17) *The total number of caseloads of investigators for original*
17 *cases and for probation cases, respectively.*

18 (b) *"Action," for purposes of this section, includes proceedings*
19 *brought by, or on behalf of, the board against licensees for*
20 *unprofessional conduct that have not been finally adjudicated, as*
21 *well as disciplinary actions taken against licensees.*

22 ~~SEC. 25.~~

23 SEC. 29. Section 1699.2 is added to the Business and
24 Professions Code, to read:

25 1699.2. This article shall remain in effect only until January
26 1, 2013, and as of that date is repealed, unless a later enacted
27 statute, that is enacted before January 1, 2013, deletes or extends
28 that date.

29 ~~SEC. 26.~~

30 SEC. 30. Section 2372 is added to the Business and Professions
31 Code, to read:

32 2372. This article shall remain in effect only until January 1,
33 2013, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2013, deletes or extends that date.

35 ~~SEC. 27.~~

36 SEC. 31. Section 2669.2 is added to the Business and
37 Professions Code, to read:

38 2669.2. This article shall remain in effect only until January
39 1, 2013, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2013, deletes or extends
2 that date.

3 ~~SEC. 28.~~

4 *SEC. 32.* Section 2715 of the Business and Professions Code
5 is amended to read:

6 2715. The board shall prosecute all persons guilty of violating
7 the provisions of this chapter.

8 The board, in accordance with the provisions of the Civil Service
9 Law, may employ investigators, nurse consultants, and other
10 personnel as it deems necessary to carry into effect the provisions
11 of this chapter. Investigators employed by the board shall be
12 provided special training in investigating *alleged* nursing practice
13 *activities violations*.

14 The board shall have and use a seal bearing the name "Board of
15 Registered Nursing." The board may adopt, amend, or repeal, in
16 accordance with the provisions of Chapter 4.5 (commencing with
17 Section 11371) of Part 1 of Division 3 of Title 2 of the Government
18 Code, such rules and regulations as may be reasonably necessary
19 to enable it to carry into effect the provisions of this chapter.

20 ~~SEC. 29.~~

21 *SEC. 33.* Section 2770.18 is added to the Business and
22 Professions Code, to read:

23 2770.18. This article shall remain in effect only until January
24 1, 2013, and as of that date is repealed, unless a later enacted
25 statute, that is enacted before January 1, 2013, deletes or extends
26 that date.

27 *SEC. 34. Section 2815.6 is added to the Business and*
28 *Professions Code, to read:*

29 2815.6. (a) *It is the intent of the Legislature that,*
30 *notwithstanding Section 128.5, in order to maintain an appropriate*
31 *fund reserve, and in setting fees pursuant to this chapter, the Board*
32 *of Registered Nursing shall seek to maintain a reserve in the Board*
33 *of Registered Nursing Fund of not less than three and no more*
34 *than six months' operating expenditures.*

35 ~~SEC. 30.~~

36 *SEC. 35.* Section 3534.12 is added to the Business and
37 Professions Code, to read:

38 3534.12. This article shall remain in effect only until January
39 1, 2013, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2013, deletes or extends
2 that date.

3 ~~SEC. 31.~~

4 ~~SEC. 36.~~ Section 4375 is added to the Business and Professions
5 Code, to read:

6 4375. This article shall remain in effect only until January 1,
7 2013, and as of that date is repealed, unless a later enacted statute,
8 that is enacted before January 1, 2013, deletes or extends that date.

9 ~~SEC. 32.~~

10 ~~SEC. 37.~~ Section 4873.2 is added to the Business and
11 Professions Code, to read:

12 4873.2. This article shall remain in effect only until January
13 1, 2013, and as of that date is repealed, unless a later enacted
14 statute, that is enacted before January 1, 2013, deletes or extends
15 that date.

16 ~~SEC. 33.~~ Section 12529 of the Government Code, as amended
17 by Section 8 of Chapter 505 of the Statutes of 2009, is amended
18 to read:

19 12529. (a) ~~There is in the Department of Justice the Health~~
20 ~~Quality Enforcement Section. The primary responsibility of the~~
21 ~~section is to investigate and prosecute proceedings against licensees~~
22 ~~and applicants within the jurisdiction of the Medical Board of~~
23 ~~California, the California Board of Podiatric Medicine, the Board~~
24 ~~of Psychology, any committee under the jurisdiction of the Medical~~
25 ~~Board of California, or any other healing arts board, as defined in~~
26 ~~Section 720 of the Business and Professions Code, as requested~~
27 ~~by the executive officer of that board.~~

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

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

1 (d) Funding for the Health Quality Enforcement Section shall
2 be budgeted in consultation with the Attorney General from the
3 special funds financing the operations of the Medical Board of
4 California, the California Board of Podiatric Medicine, the Board
5 of Psychology, the committees under the jurisdiction of the Medical
6 Board of California, and any other healing arts board, as defined
7 in Section 720 of the Business and Professions Code, with the
8 intent that the expenses be proportionally shared as to services
9 rendered.

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

13 SEC. 34. Section 12529 of the Government Code, as amended
14 by Section 9 of Chapter 505 of the Statutes of 2009, is amended
15 to read:

16 12529. (a) There is in the Department of Justice the Health
17 Quality Enforcement Section. The primary responsibility of the
18 section is to prosecute proceedings against licensees and applicants
19 within the jurisdiction of the Medical Board of California, the
20 California Board of Podiatric Medicine, the Board of Psychology,
21 any committee under the jurisdiction of the Medical Board of
22 California, or any other healing arts board, as defined in Section
23 720 of the Business and Professions Code, as requested by the
24 executive officer of that board, and to provide ongoing review of
25 the investigative activities conducted in support of those
26 prosecutions, as provided in subdivision (b) of Section 12529.5.

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

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

1 (d) Funding for the Health Quality Enforcement Section shall
2 be budgeted in consultation with the Attorney General from the
3 special funds financing the operations of the Medical Board of
4 California, the California Board of Podiatric Medicine, the Board
5 of Psychology, the committees under the jurisdiction of the Medical
6 Board of California, and any other healing arts board, as defined
7 in Section 720 of the Business and Professions Code, with the
8 intent that the expenses be proportionally shared as to services
9 rendered.

10 (e) This section shall become operative January 1, 2013.

11 SEC. 35. Section 12529.5 of the Government Code, as amended
12 by Section 10 of Chapter 505 of the Statutes of 2009, is amended
13 to read:

14 12529.5. (a) All complaints or relevant information concerning
15 licensees that are within the jurisdiction of the Medical Board of
16 California, the California Board of Podiatric Medicine, or the
17 Board of Psychology shall be made available to the Health Quality
18 Enforcement Section. Complaints or relevant information may be
19 referred to the Health Quality Enforcement Section as determined
20 by the executive officer of any other healing arts board, as defined
21 in Section 720 of the Business and Professions Code.

22 (b) The Senior Assistant Attorney General of the Health Quality
23 Enforcement Section shall assign attorneys to work on location at
24 the intake unit of the Medical Board of California, the California
25 Board of Podiatric Medicine, or the Board of Psychology, and
26 shall assign attorneys to work on location at the Health Quality
27 Enforcement Unit of the Division of Investigation of the
28 Department of Consumer Affairs to assist in evaluating and
29 screening complaints and to assist in developing uniform standards
30 and procedures for processing complaints.

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

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

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

4 ~~SEC. 36. Section 12529.5 of the Government Code, as amended~~
5 ~~by Section 11 of Chapter 505 of the Statutes of 2009, is amended~~
6 ~~to read:~~

7 ~~12529.5. (a) All complaints or relevant information concerning~~
8 ~~licensees that are within the jurisdiction of the Medical Board of~~
9 ~~California, the California Board of Podiatric Medicine, or the~~
10 ~~Board of Psychology shall be made available to the Health Quality~~
11 ~~Enforcement Section. Complaints or relevant information may be~~
12 ~~referred to the Health Quality Enforcement Section as determined~~
13 ~~by the executive officer of any other healing arts board, as defined~~
14 ~~in Section 720 of the Business and Professions Code.~~

15 ~~(b) The Senior Assistant Attorney General of the Health Quality~~
16 ~~Enforcement Section shall assign attorneys to assist the boards in~~
17 ~~intake and investigations, shall assign attorneys to work on location~~
18 ~~at the Health Quality Enforcement Unit of the Division of~~
19 ~~Investigation of the Department of Consumer Affairs, and to direct~~
20 ~~discipline-related prosecutions. Attorneys shall be assigned to~~
21 ~~work closely with each major intake and investigatory unit of the~~
22 ~~boards, to assist in the evaluation and screening of complaints from~~
23 ~~receipt through disposition and to assist in developing uniform~~
24 ~~standards and procedures for the handling of complaints and~~
25 ~~investigations.~~

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

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

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

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

6 ~~SEC. 37. Section 12529.6 of the Government Code is amended~~
7 ~~to read:~~

8 ~~12529.6. (a) The Legislature finds and declares that the healing~~
9 ~~arts boards, as defined in Section 720 of the Business and~~
10 ~~Professions Code, by ensuring the quality and safety of health care,~~
11 ~~perform one of the most critical functions of state government.~~
12 ~~Because of the critical importance of a board's public health and~~
13 ~~safety function, the complexity of cases involving alleged~~
14 ~~misconduct by health care practitioners, and the evidentiary burden~~
15 ~~in a healing arts board's disciplinary cases, the Legislature finds~~
16 ~~and declares that using a vertical enforcement and prosecution~~
17 ~~model for those investigations is in the best interests of the people~~
18 ~~of California.~~

19 ~~(b) Notwithstanding any other provision of law, each complaint~~
20 ~~that is referred to a district office of the Medical Board of~~
21 ~~California, the California Board of Podiatric Medicine, the Board~~
22 ~~of Psychology, or the Health Quality Enforcement Unit for~~
23 ~~investigation shall be simultaneously and jointly assigned to an~~
24 ~~investigator and to the deputy attorney general in the Health Quality~~
25 ~~Enforcement Section responsible for prosecuting the case if the~~
26 ~~investigation results in the filing of an accusation. The joint~~
27 ~~assignment of the investigator and the deputy attorney general~~
28 ~~shall exist for the duration of the disciplinary matter. During the~~
29 ~~assignment, the investigator so assigned shall, under the direction~~
30 ~~but not the supervision of the deputy attorney general, be~~
31 ~~responsible for obtaining the evidence required to permit the~~
32 ~~Attorney General to advise the board on legal matters such as~~
33 ~~whether the board should file a formal accusation, dismiss the~~
34 ~~complaint for a lack of evidence required to meet the applicable~~
35 ~~burden of proof, or take other appropriate legal action.~~

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

1 ~~(d) This section does not affect the requirements of Section~~
2 ~~12529.5 as applied to the Medical Board of California where~~
3 ~~complaints that have not been assigned to a field office for~~
4 ~~investigation are concerned.~~

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

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

11 ~~(2) Establish and implement a plan to collocate, when feasible,~~
12 ~~its enforcement staff and the staff of the Health Quality~~
13 ~~Enforcement Section, in order to carry out the intent of the vertical~~
14 ~~enforcement and prosecution model.~~

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

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

22 ~~SEC. 38. Section 12529.7 of the Government Code is amended~~
23 ~~to read:~~

24 ~~12529.7. By March 1, 2012, the Department of Consumer~~
25 ~~Affairs, in consultation with the healing arts boards, as defined in~~
26 ~~Section 720 of the Business and Professions Code, and the~~
27 ~~Department of Justice, shall report and make recommendations to~~
28 ~~the Governor and the Legislature on the vertical enforcement and~~
29 ~~prosecution model created under Section 12529.6.~~

30 ~~SEC. 38. Section 12529.8 is added to the Government Code,~~
31 ~~to read:~~

32 *12529.8. (a) Any healing arts board listed in Section 720 of*
33 *the Business and Professions Code may utilize the model*
34 *prescribed in Sections 12529 to 12529.6, inclusive, for the*
35 *investigation and prosecution of some or all of its enforcement*
36 *actions and may utilize the services of the Department of Justice*
37 *Health Quality Enforcement Section or the licensing section. If a*
38 *board elects to proceed pursuant to this section and utilizes the*
39 *services of the licensing section, the Department of Justice shall*

1 *assign attorneys to work on location at the licensing unit of the*
2 *Division of Investigation of the Department of Consumer Affairs.*

3 *(b) The report requirements contained in Section 12529.7 shall*
4 *apply to any healing arts board that utilizes those provisions for*
5 *enforcement.*

6 *(c) This section shall not apply to any healing arts board listed*
7 *in subdivision (a) of Section 12529.*

8 SEC. 39. Section 830.3 of the Penal Code is amended to read:

9 830.3. The following persons are peace officers whose authority
10 extends to any place in the state for the purpose of performing
11 their primary duty or when making an arrest pursuant to Section
12 836 of the Penal Code as to any public offense with respect to
13 which there is immediate danger to person or property, or of the
14 escape of the perpetrator of that offense, or pursuant to Section
15 8597 or 8598 of the Government Code. These peace officers may
16 carry firearms only if authorized and under those terms and
17 conditions as specified by their employing agencies:

18 (a) Persons employed by the Division of Investigation of the
19 Department of Consumer Affairs and investigators of the Medical
20 Board of California, the Dental Board of California, and the Board
21 of Registered Nursing who are designated by the Director of
22 Consumer Affairs, provided that the primary duty of these peace
23 officers shall be the enforcement of the law as that duty is set forth
24 in Section 160 of the Business and Professions Code.

25 (b) Voluntary fire wardens designated by the Director of
26 Forestry and Fire Protection pursuant to Section 4156 of the Public
27 Resources Code, provided that the primary duty of these peace
28 officers shall be the enforcement of the law as that duty is set forth
29 in Section 4156 of that code.

30 (c) Employees of the Department of Motor Vehicles designated
31 in Section 1655 of the Vehicle Code, provided that the primary
32 duty of these peace officers shall be the enforcement of the law as
33 that duty is set forth in Section 1655 of that code.

34 (d) Investigators of the California Horse Racing Board
35 designated by the board, provided that the primary duty of these
36 peace officers shall be the enforcement of Chapter 4 (commencing
37 with Section 19400) of Division 8 of the Business and Professions
38 Code and Chapter 10 (commencing with Section 330) of Title 9
39 of Part 1 of this code.

1 (e) The State Fire Marshal and assistant or deputy state fire
2 marshals appointed pursuant to Section 13103 of the Health and
3 Safety Code, provided that the primary duty of these peace officers
4 shall be the enforcement of the law as that duty is set forth in
5 Section 13104 of that code.

6 (f) Inspectors of the food and drug section designated by the
7 chief pursuant to subdivision (a) of Section 106500 of the Health
8 and Safety Code, provided that the primary duty of these peace
9 officers shall be the enforcement of the law as that duty is set forth
10 in Section 106500 of that code.

11 (g) All investigators of the Division of Labor Standards
12 Enforcement designated by the Labor Commissioner, provided
13 that the primary duty of these peace officers shall be the
14 enforcement of the law as prescribed in Section 95 of the Labor
15 Code.

16 (h) All investigators of the State Departments of Health Care
17 Services, Public Health, Social Services, Mental Health, and
18 Alcohol and Drug Programs, the Department of Toxic Substances
19 Control, the Office of Statewide Health Planning and Development,
20 and the Public Employees' Retirement System, provided that the
21 primary duty of these peace officers shall be the enforcement of
22 the law relating to the duties of his or her department or office.
23 Notwithstanding any other provision of law, investigators of the
24 Public Employees' Retirement System shall not carry firearms.

25 (i) The Chief of the Bureau of Fraudulent Claims of the
26 Department of Insurance and those investigators designated by the
27 chief, provided that the primary duty of those investigators shall
28 be the enforcement of Section 550.

29 (j) Employees of the Department of Housing and Community
30 Development designated under Section 18023 of the Health and
31 Safety Code, provided that the primary duty of these peace officers
32 shall be the enforcement of the law as that duty is set forth in
33 Section 18023 of that code.

34 (k) Investigators of the office of the Controller, provided that
35 the primary duty of these investigators shall be the enforcement
36 of the law relating to the duties of that office. Notwithstanding any
37 other law, except as authorized by the Controller, the peace officers
38 designated pursuant to this subdivision shall not carry firearms.

39 (l) Investigators of the Department of Corporations designated
40 by the Commissioner of Corporations, provided that the primary

1 duty of these investigators shall be the enforcement of the
2 provisions of law administered by the Department of Corporations.
3 Notwithstanding any other provision of law, the peace officers
4 designated pursuant to this subdivision shall not carry firearms.

5 (m) Persons employed by the Contractors' State License Board
6 designated by the Director of Consumer Affairs pursuant to Section
7 7011.5 of the Business and Professions Code, provided that the
8 primary duty of these persons shall be the enforcement of the law
9 as that duty is set forth in Section 7011.5, and in Chapter 9
10 (commencing with Section 7000) of Division 3, of that code. The
11 Director of Consumer Affairs may designate as peace officers not
12 more than three persons who shall at the time of their designation
13 be assigned to the special investigations unit of the board.
14 Notwithstanding any other provision of law, the persons designated
15 pursuant to this subdivision shall not carry firearms.

16 (n) The Chief and coordinators of the Law Enforcement Division
17 of the Office of Emergency Services.

18 (o) Investigators of the office of the Secretary of State designated
19 by the Secretary of State, provided that the primary duty of these
20 peace officers shall be the enforcement of the law as prescribed
21 in Chapter 3 (commencing with Section 8200) of Division 1 of
22 Title 2 of, and Section 12172.5 of, the Government Code.
23 Notwithstanding any other provision of law, the peace officers
24 designated pursuant to this subdivision shall not carry firearms.

25 (p) The Deputy Director for Security designated by Section
26 8880.38 of the Government Code, and all lottery security personnel
27 assigned to the California State Lottery and designated by the
28 director, provided that the primary duty of any of those peace
29 officers shall be the enforcement of the laws related to ~~assuring~~
30 *ensuring* the integrity, honesty, and fairness of the operation and
31 administration of the California State Lottery.

32 (q) Investigators employed by the Investigation Division of the
33 Employment Development Department designated by the director
34 of the department, provided that the primary duty of those peace
35 officers shall be the enforcement of the law as that duty is set forth
36 in Section 317 of the Unemployment Insurance Code.

37 Notwithstanding any other provision of law, the peace officers
38 designated pursuant to this subdivision shall not carry firearms.

39 (r) The chief and assistant chief of museum security and safety
40 of the California Science Center, as designated by the executive

1 director pursuant to Section 4108 of the Food and Agricultural
2 Code, provided that the primary duty of those peace officers shall
3 be the enforcement of the law as that duty is set forth in Section
4 4108 of the Food and Agricultural Code.

5 (s) Employees of the Franchise Tax Board designated by the
6 board, provided that the primary duty of these peace officers shall
7 be the enforcement of the law as set forth in Chapter 9
8 (commencing with Section 19701) of Part 10.2 of Division 2 of
9 the Revenue and Taxation Code.

10 (t) Notwithstanding any other provision of this section, a peace
11 officer authorized by this section shall not be authorized to carry
12 firearms by his or her employing agency until that agency has
13 adopted a policy on the use of deadly force by those peace officers,
14 and until those peace officers have been instructed in the employing
15 agency's policy on the use of deadly force.

16 Every peace officer authorized pursuant to this section to carry
17 firearms by his or her employing agency shall qualify in the use
18 of the firearms at least every six months.

19 (u) Investigators of the Department of Managed Health Care
20 designated by the Director of the Department of Managed Health
21 Care, provided that the primary duty of these investigators shall
22 be the enforcement of the provisions of laws administered by the
23 Director of the Department of Managed Health Care.
24 Notwithstanding any other provision of law, the peace officers
25 designated pursuant to this subdivision shall not carry firearms.

26 (v) The Chief, Deputy Chief, supervising investigators, and
27 investigators of the Office of Protective Services of the State
28 Department of Developmental Services, provided that the primary
29 duty of each of those persons shall be the enforcement of the law
30 relating to the duties of his or her department or office.

31 SEC. 40. (a) It is the intent of the Legislature that the
32 Department of Consumer Affairs shall, on or before December
33 31, 2012, establish an enterprise information technology system
34 necessary to electronically create and update healing arts license
35 information, track enforcement cases, and allocate enforcement
36 efforts pertaining to healing arts licensees. The Legislature intends
37 the system to be designed as an integrated system to support all
38 business automation requirements of the department's licensing
39 and enforcement functions.

1 (b) The Legislature also intends the department to enter into
2 contracts for telecommunication, programming, data analysis, data
3 processing, and other services necessary to develop, operate, and
4 maintain the enterprise information technology system.

5 SEC. 41. No reimbursement is required by this act pursuant
6 to Section 6 of Article XIII B of the California Constitution for
7 certain costs that may be incurred by a local agency or school
8 district because, in that regard, this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 However, if the Commission on State Mandates determines that
15 this act contains other costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

SB 1150

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1150
Author: Negrete McLeod
Bill Date: February 18, 2010, introduced
Subject: Healing Arts: advertisements
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would impose various requirements relating to healthcare practitioner advertising, cosmetic surgery, outpatient settings, and accreditation.

ANALYSIS:

This bill contains various requirements relating to advertising and cosmetic surgery and is essentially the same as last year's SB 674 that the Board supported. Specifically this bill:

- Requires all healthcare practitioners to include specific professional designation following his or her name on all advertising. This will increase consumer awareness and protection.
- Specifies the definition of advertising as it relates to healthcare practitioners to be virtually any promotional communications not including insurance provider directories, billing statements, or appointment reminders. This will ensure that all materials used to solicit consumers will disclose the professional designations.
- Requires the Board to adopt regulations by January 1, 2012 on the appropriate level of physician availability necessary within clinics in which laser or intense pulse light devices are used for elective cosmetic surgery. Three public forums were held in 2008 to study this issue. The forums determined that current law and regulations were sufficient related to supervision; it was a lack of enforcement that was contributing to the problems occurring in the use of lasers and intense pulse light devices. These forums did not address physician

availability. The Board has established its own committee on physician responsibility with its first formal meeting at the April 2010 Board meeting.

- Specifies that the requirement to include professional designations following the healthcare practitioner's name on all advertisements would not apply until January 1, 2012 for any advertising that is published annually and prior to January 1, 2011. This provides for a physician to revise their advertisements in order to comply with the law.
- Requires the Board to post on its internet website a factsheet to educate consumers about cosmetic surgery and procedures, including the risks. The fact sheet must include a comprehensive list of questions for patients to ask their physicians prior to having cosmetic surgery. This will enhance consumer awareness and protection.
- Adds to the definition of "outpatient settings" facilities the offer in vitro fertilization. This will enhance consumer protection in that these clinics will be required to be accredited.
- Requires the Board to adopt standards for outpatient settings to be able to offer in vitro fertilization. These standards could be different than the existing standards for current outpatient settings. This will enhance consumer protection.
- Requires outpatient settings submit for approval a detailed plan, standardized procedures and protocols to be followed in the event of serious complications or side effects from surgery at the time of accreditation.
- Requires the Board to disclose to the public whether an outpatient setting is accredited, certified, or licensed, whether the accreditation has been revoked or suspended, and if the setting has been reprimanded by the accrediting agency. This will allow the public access to the status of all outpatient settings.
- Requires an accrediting agency to immediately report to the Board if an outpatient setting's certification or accreditation is denied. This will alert the Board of an issue that may need action.
- Requires the Board to ensure that outpatient settings are inspected by the accrediting agencies no less than once every three years and as often as needed to ensure the quality of care provided. The Board may also inspect outpatient settings. Reports of the inspections are to be kept on file with the Board or the accrediting agency along with a plan of correction. All reports of inspections and plans of correction of open to the public. This will help settings remain in compliance with the law.

- Removes the requirement that the Board or accrediting agency give reasonable prior notice and present proper identification prior to an inspection. This will improve the ongoing accountability for compliance in the outpatient settings.
- Requires the Board to evaluate the performance of an approved accrediting agency no less than every three years. This will help to keep the accrediting agencies accountable and efficient.
- Requires outpatient settings to agree to, and post conspicuously, a plan of correction and a list of deficiencies in a clinic location accessible to the public. This will increase public awareness of possible harm.
- Allows the Board to issue a citation to the accrediting agency if it is not meeting the criteria set by the Board. This will further the accountability for accrediting agencies.

This bill aims to improve the regulation and oversight of outpatient settings, surgery centers, and fertility clinics by ensuring that quality of care standards are in place and evaluated regularly. With the number of cosmetic procedures being performed in the United States quickly increasing and the recent issues of women giving birth to large numbers of multiples, there is great need for state oversight of clinic operations. Clinics that assist women in any reproductive technology should operate under specified standards and guidelines.

Advertising for these cosmetic and fertility procedures has also increased and needs to be restricted to health care professionals. Consumers need to be educated when considering cosmetic surgeries and being solicited by advertising.

FISCAL: Unknown but could be substantial if the Board does the inspections.

POSITION: Support

April 21, 2010

Introduced by Senator Negrete McLeod

February 18, 2010

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.

(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

an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accreditation agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified, and would specify that it may also be inspected by the board, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

Existing law authorizes the Medical Board of California to terminate approval of an accreditation agency if the agency is not meeting the criteria set by the board.

This bill would also authorize the board to issue a citation to the agency, including an administrative fine, in accordance with a specified system established by the board.

Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(5) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would state the intent of the Legislature that the department, as part of its periodic inspections of acute care hospitals, inspect the peer review process utilized by those hospitals.

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

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

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

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

1 SECTION 1. Section 651 of the Business and Professions Code
2 is amended to read:

3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely
8 to induce, directly or indirectly, the rendering of professional
9 services or furnishing of products in connection with the
10 professional practice or business for which he or she is licensed.
11 A "public communication" as used in this section includes, but is
12 not limited to, communication by means of mail, television, radio,
13 motion picture, newspaper, book, list or directory of healing arts
14 practitioners, Internet, or other electronic communication.

15 (b) A false, fraudulent, misleading, or deceptive statement,
16 claim, or image includes a statement or claim that does any of the
17 following:

18 (1) Contains a misrepresentation of fact.

19 (2) Is likely to mislead or deceive because of a failure to disclose
20 material facts.

21 (3) (A) Is intended or is likely to create false or unjustified
22 expectations of favorable results, including the use of any
23 photograph or other image that does not accurately depict the
24 results of the procedure being advertised or that has been altered
25 in any manner from the image of the actual subject depicted in the
26 photograph or image.

27 (B) Use of any photograph or other image of a model without
28 clearly stating in a prominent location in easily readable type the
29 fact that the photograph or image is of a model is a violation of
30 subdivision (a). For purposes of this paragraph, a model is anyone

1 other than an actual patient, who has undergone the procedure
2 being advertised, of the licensee who is advertising for his or her
3 services.

4 (C) Use of any photograph or other image of an actual patient
5 that depicts or purports to depict the results of any procedure, or
6 presents “before” and “after” views of a patient, without specifying
7 in a prominent location in easily readable type size what procedures
8 were performed on that patient is a violation of subdivision (a).
9 Any “before” and “after” views (i) shall be comparable in
10 presentation so that the results are not distorted by favorable poses,
11 lighting, or other features of presentation, and (ii) shall contain a
12 statement that the same “before” and “after” results may not occur
13 for all patients.

14 (4) Relates to fees, other than a standard consultation fee or a
15 range of fees for specific types of services, without fully and
16 specifically disclosing all variables and other material factors.

17 (5) Contains other representations or implications that in
18 reasonable probability will cause an ordinarily prudent person to
19 misunderstand or be deceived.

20 (6) Makes a claim either of professional superiority or of
21 performing services in a superior manner, unless that claim is
22 relevant to the service being performed and can be substantiated
23 with objective scientific evidence.

24 (7) Makes a scientific claim that cannot be substantiated by
25 reliable, peer reviewed, published scientific studies.

26 (8) Includes any statement, endorsement, or testimonial that is
27 likely to mislead or deceive because of a failure to disclose material
28 facts.

29 (c) Any price advertisement shall be exact, without the use of
30 phrases, including, but not limited to, “as low as,” “and up,”
31 “lowest prices,” or words or phrases of similar import. Any
32 advertisement that refers to services, or costs for services, and that
33 uses words of comparison shall be based on verifiable data
34 substantiating the comparison. Any person so advertising shall be
35 prepared to provide information sufficient to establish the accuracy
36 of that comparison. Price advertising shall not be fraudulent,
37 deceitful, or misleading, including statements or advertisements
38 of bait, discount, premiums, gifts, or any statements of a similar
39 nature. In connection with price advertising, the price for each
40 product or service shall be clearly identifiable. The price advertised

1 for products shall include charges for any related professional
2 services, including dispensing and fitting services, unless the
3 advertisement specifically and clearly indicates otherwise.

4 (d) Any person so licensed shall not compensate or give anything
5 of value to a representative of the press, radio, television, or other
6 communication medium in anticipation of, or in return for,
7 professional publicity unless the fact of compensation is made
8 known in that publicity.

9 (e) Any person so licensed may not use any professional card,
10 professional announcement card, office sign, letterhead, telephone
11 directory listing, medical list, medical directory listing, or a similar
12 professional notice or device if it includes a statement or claim
13 that is false, fraudulent, misleading, or deceptive within the
14 meaning of subdivision (b).

15 (f) Any person so licensed who violates this section is guilty of
16 a misdemeanor. A bona fide mistake of fact shall be a defense to
17 this subdivision, but only to this subdivision.

18 (g) Any violation of this section by a person so licensed shall
19 constitute good cause for revocation or suspension of his or her
20 license or other disciplinary action.

21 (h) Advertising by any person so licensed may include the
22 following:

23 (1) A statement of the name of the practitioner.

24 (2) A statement of addresses and telephone numbers of the
25 offices maintained by the practitioner.

26 (3) A statement of office hours regularly maintained by the
27 practitioner.

28 (4) A statement of languages, other than English, fluently spoken
29 by the practitioner or a person in the practitioner's office.

30 (5) (A) A statement that the practitioner is certified by a private
31 or public board or agency or a statement that the practitioner limits
32 his or her practice to specific fields.

33 (i) For the purposes of this section, a dentist licensed under
34 Chapter 4 (commencing with Section 1600) may not hold himself
35 or herself out as a specialist, or advertise membership in or
36 specialty recognition by an accrediting organization, unless the
37 practitioner has completed a specialty education program approved
38 by the American Dental Association and the Commission on Dental
39 Accreditation, is eligible for examination by a national specialty
40 board recognized by the American Dental Association, or is a

1 diplomate of a national specialty board recognized by the American
2 Dental Association.

3 (ii) A dentist licensed under Chapter 4 (commencing with
4 Section 1600) shall not represent to the public or advertise
5 accreditation either in a specialty area of practice or by a board
6 not meeting the requirements of clause (i) unless the dentist has
7 attained membership in or otherwise been credentialed by an
8 accrediting organization that is recognized by the board as a bona
9 fide organization for that area of dental practice. In order to be
10 recognized by the board as a bona fide accrediting organization
11 for a specific area of dental practice other than a specialty area of
12 dentistry authorized under clause (i), the organization shall
13 condition membership or credentialing of its members upon all of
14 the following:

15 (I) Successful completion of a formal, full-time advanced
16 education program that is affiliated with or sponsored by a
17 university based dental school and is beyond the dental degree at
18 a graduate or postgraduate level.

19 (II) Prior didactic training and clinical experience in the specific
20 area of dentistry that is greater than that of other dentists.

21 (III) Successful completion of oral and written examinations
22 based on psychometric principles.

23 (iii) Notwithstanding the requirements of clauses (i) and (ii), a
24 dentist who lacks membership in or certification, diplomate status,
25 other similar credentials, or completed advanced training approved
26 as bona fide either by an American Dental Association recognized
27 accrediting organization or by the board, may announce a practice
28 emphasis in any other area of dental practice only if the dentist
29 incorporates in capital letters or some other manner clearly
30 distinguishable from the rest of the announcement, solicitation, or
31 advertisement that he or she is a general dentist.

32 (iv) A statement of certification by a practitioner licensed under
33 Chapter 7 (commencing with Section 3000) shall only include a
34 statement that he or she is certified or eligible for certification by
35 a private or public board or parent association recognized by that
36 practitioner's licensing board.

37 (B) A physician and surgeon licensed under Chapter 5
38 (commencing with Section 2000) by the Medical Board of
39 California may include a statement that he or she limits his or her
40 practice to specific fields, but shall not include a statement that he

1 or she is certified or eligible for certification by a private or public
2 board or parent association, including, but not limited to, a
3 multidisciplinary board or association, unless that board or
4 association is (i) an American Board of Medical Specialties
5 member board, (ii) a board or association with equivalent
6 requirements approved by that physician and surgeon's licensing
7 board, or (iii) a board or association with an Accreditation Council
8 for Graduate Medical Education approved postgraduate training
9 program that provides complete training in that specialty or
10 subspecialty. A physician and surgeon licensed under Chapter 5
11 (commencing with Section 2000) by the Medical Board of
12 California who is certified by an organization other than a board
13 or association referred to in clause (i), (ii), or (iii) shall not use the
14 term "board certified" in reference to that certification, unless the
15 physician and surgeon is also licensed under Chapter 4
16 (commencing with Section 1600) and the use of the term "board
17 certified" in reference to that certification is in accordance with
18 subparagraph (A). A physician and surgeon licensed under Chapter
19 5 (commencing with Section 2000) by the Medical Board of
20 California who is certified by a board or association referred to in
21 clause (i), (ii), or (iii) shall not use the term "board certified" unless
22 the full name of the certifying board is also used and given
23 comparable prominence with the term "board certified" in the
24 statement.

25 For purposes of this subparagraph, a "multidisciplinary board
26 or association" means an educational certifying body that has a
27 psychometrically valid testing process, as determined by the
28 Medical Board of California, for certifying medical doctors and
29 other health care professionals that is based on the applicant's
30 education, training, and experience.

31 For purposes of the term "board certified," as used in this
32 subparagraph, the terms "board" and "association" mean an
33 organization that is an American Board of Medical Specialties
34 member board, an organization with equivalent requirements
35 approved by a physician and surgeon's licensing board, or an
36 organization with an Accreditation Council for Graduate Medical
37 Education approved postgraduate training program that provides
38 complete training in a specialty or subspecialty.

39 The Medical Board of California shall adopt regulations to
40 establish and collect a reasonable fee from each board or

1 association applying for recognition pursuant to this subparagraph.
2 The fee shall not exceed the cost of administering this
3 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
4 Statutes of 1990, this subparagraph shall become operative July
5 1, 1993. However, an administrative agency or accrediting
6 organization may take any action contemplated by this
7 subparagraph relating to the establishment or approval of specialist
8 requirements on and after January 1, 1991.

9 (C) A doctor of podiatric medicine licensed under Chapter 5
10 (commencing with Section 2000) by the Medical Board of
11 California may include a statement that he or she is certified or
12 eligible or qualified for certification by a private or public board
13 or parent association, including, but not limited to, a
14 multidisciplinary board or association, if that board or association
15 meets one of the following requirements: (i) is approved by the
16 Council on Podiatric Medical Education, (ii) is a board or
17 association with equivalent requirements approved by the
18 California Board of Podiatric Medicine, or (iii) is a board or
19 association with the Council on Podiatric Medical Education
20 approved postgraduate training programs that provide training in
21 podiatric medicine and podiatric surgery. A doctor of podiatric
22 medicine licensed under Chapter 5 (commencing with Section
23 2000) by the Medical Board of California who is certified by a
24 board or association referred to in clause (i), (ii), or (iii) shall not
25 use the term "board certified" unless the full name of the certifying
26 board is also used and given comparable prominence with the term
27 "board certified" in the statement. A doctor of podiatric medicine
28 licensed under Chapter 5 (commencing with Section 2000) by the
29 Medical Board of California who is certified by an organization
30 other than a board or association referred to in clause (i), (ii), or
31 (iii) shall not use the term "board certified" in reference to that
32 certification.

33 For purposes of this subparagraph, a "multidisciplinary board
34 or association" means an educational certifying body that has a
35 psychometrically valid testing process, as determined by the
36 California Board of Podiatric Medicine, for certifying doctors of
37 podiatric medicine that is based on the applicant's education,
38 training, and experience. For purposes of the term "board certified,"
39 as used in this subparagraph, the terms "board" and "association"
40 mean an organization that is a Council on Podiatric Medical

1 Education approved board, an organization with equivalent
2 requirements approved by the California Board of Podiatric
3 Medicine, or an organization with a Council on Podiatric Medical
4 Education approved postgraduate training program that provides
5 training in podiatric medicine and podiatric surgery.

6 The California Board of Podiatric Medicine shall adopt
7 regulations to establish and collect a reasonable fee from each
8 board or association applying for recognition pursuant to this
9 subparagraph, to be deposited in the State Treasury in the Podiatry
10 Fund, pursuant to Section 2499. The fee shall not exceed the cost
11 of administering this subparagraph.

12 (6) A statement that the practitioner provides services under a
13 specified private or public insurance plan or health care plan.

14 (7) A statement of names of schools and postgraduate clinical
15 training programs from which the practitioner has graduated,
16 together with the degrees received.

17 (8) A statement of publications authored by the practitioner.

18 (9) A statement of teaching positions currently or formerly held
19 by the practitioner, together with pertinent dates.

20 (10) A statement of his or her affiliations with hospitals or
21 clinics.

22 (11) A statement of the charges or fees for services or
23 commodities offered by the practitioner.

24 (12) A statement that the practitioner regularly accepts
25 installment payments of fees.

26 (13) Otherwise lawful images of a practitioner, his or her
27 physical facilities, or of a commodity to be advertised.

28 (14) A statement of the manufacturer, designer, style, make,
29 trade name, brand name, color, size, or type of commodities
30 advertised.

31 (15) An advertisement of a registered dispensing optician may
32 include statements in addition to those specified in paragraphs (1)
33 to (14), inclusive, provided that any statement shall not violate
34 subdivision (a), (b), (c), or (e) or any other section of this code.

35 (16) A statement, or statements, providing public health
36 information encouraging preventative or corrective care.

37 (17) Any other item of factual information that is not false,
38 fraudulent, misleading, or likely to deceive.

39 (i) (1) *Advertising by the following licensees shall include the*
40 *designations as follows:*

1 (A) Advertising by a chiropractor licensed under Chapter 2
2 (commencing with Section 1000) shall include the designation
3 "DC" or the word "chiropractor" immediately following the
4 chiropractor's name.

5 (B) Advertising by a dentist licensed under Chapter 4
6 (commencing with Section 1600) shall include the designation
7 "DDS" or "DMD" immediately following the dentist's name.

8 (C) Advertising by a physician and surgeon licensed under
9 Chapter 5 (commencing with Section 2000) shall include the
10 designation "MD" immediately following the physician and
11 surgeon's name.

12 (D) Advertising by an osteopathic physician and surgeon
13 certified under Article 21 (commencing with Section 2450) shall
14 include the designation "DO" immediately following the
15 osteopathic physician and surgeon's name.

16 (E) Advertising by a podiatrist certified under Article 22
17 (commencing with Section 2460) of Chapter 5 shall include the
18 designation "DPM" immediately following the podiatrist's name.

19 (F) Advertising by a registered nurse licensed under Chapter
20 6 (commencing with Section 2700) shall include the designation
21 "RN" immediately following the registered nurse's name.

22 (G) Advertising by a licensed vocational nurse under Chapter
23 6.5 (commencing with Section 2840) shall include the designation
24 "LVN" immediately following the licensed vocational nurse's
25 name.

26 (H) Advertising by a psychologist licensed under Chapter 6.6
27 (commencing with Section 2900) shall include the designation
28 "Ph.D." immediately following the psychologist's name.

29 (I) Advertising by an optometrist licensed under Chapter 7
30 (commencing with Section 3000) shall include the applicable
31 designation or word described in Section 3098 immediately
32 following the optometrist's name.

33 (J) Advertising by a physician assistant licensed under Chapter
34 7.7 (commencing with Section 3500) shall include the designation
35 "PA" immediately following the physician assistant's name.

36 (K) Advertising by a naturopathic doctor licensed under Chapter
37 8.2 (commencing with Section 3610) shall include the designation
38 "ND" immediately following the naturopathic doctor's name.
39 However, if the naturopathic doctor uses the term or designation

1 "Dr." in an advertisement, he or she shall further identify himself
2 by any of the terms listed in Section 3661.

3 (2) For purposes of this subdivision, "advertisement" includes
4 communication by means of mail, television, radio, motion picture,
5 newspaper, book, directory, Internet, or other electronic
6 communication.

7 (3) Advertisements do not include any of the following:

8 (A) A medical directory released by a health care service plan
9 or a health insurer.

10 (B) A billing statement from a health care practitioner to a
11 patient.

12 (C) An appointment reminder from a health care practitioner
13 to a patient.

14 (4) This subdivision shall not apply until January 1, 2012, to
15 any advertisement that is published annually and prior to July 1,
16 2011.

17 (5) This subdivision shall not apply to any advertisement or
18 business card disseminated by a health care service plan that is
19 subject to the requirements of Section 1367.26 of the Health and
20 Safety Code.

21 (i)

22 (j) Each of the healing arts boards and examining committees
23 within Division 2 shall adopt appropriate regulations to enforce
24 this section in accordance with Chapter 3.5 (commencing with
25 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
26 Code.

27 Each of the healing arts boards and committees and examining
28 committees within Division 2 shall, by regulation, define those
29 efficacious services to be advertised by businesses or professions
30 under their jurisdiction for the purpose of determining whether
31 advertisements are false or misleading. Until a definition for that
32 service has been issued, no advertisement for that service shall be
33 disseminated. However, if a definition of a service has not been
34 issued by a board or committee within 120 days of receipt of a
35 request from a licensee, all those holding the license may advertise
36 the service. Those boards and committees shall adopt or modify
37 regulations defining what services may be advertised, the manner
38 in which defined services may be advertised, and restricting
39 advertising that would promote the inappropriate or excessive use
40 of health services or commodities. A board or committee shall not,

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.*

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.*

1 ~~(b) "Division of Medical Quality" means the Division of~~
2 ~~Medical Quality of the Medical Board of California.~~

3 ~~(c)~~

4 ~~(b) (1) "Outpatient setting" means any facility, clinic,~~
5 ~~unlicensed clinic, center, office, or other setting that is not part of~~
6 ~~a general acute care facility, as defined in Section 1250, and where~~
7 ~~anesthesia, except local anesthesia or peripheral nerve blocks, or~~
8 ~~both, is used in compliance with the community standard of~~
9 ~~practice, in doses that, when administered have the probability of~~
10 ~~placing a patient at risk for loss of the patient's life-preserving~~
11 ~~protective reflexes.~~

12 ~~(2) "Outpatient setting" also means facilities that offer in vitro~~
13 ~~fertilization, as defined in subdivision (b) of Section 1374.55.~~

14 ~~"Outpatient~~

15 ~~(3) "Outpatient setting" does not include, among other settings,~~
16 ~~any setting where anxiolytics and analgesics are administered,~~
17 ~~when done so in compliance with the community standard of~~
18 ~~practice, in doses that do not have the probability of placing the~~
19 ~~patient at risk for loss of the patient's life-preserving protective~~
20 ~~reflexes.~~

21 ~~(d)~~

22 ~~(c) "Accreditation agency" means a public or private~~
23 ~~organization that is approved to issue certificates of accreditation~~
24 ~~to outpatient settings by the ~~division~~ board pursuant to Sections~~
25 ~~1248.15 and 1248.4.~~

26 SEC. 5. Section 1248.15 of the Health and Safety Code is
27 amended to read:

28 1248.15. (a) ~~The ~~division~~ board~~ shall adopt standards for
29 accreditation and, in approving accreditation agencies to perform
30 accreditation of outpatient settings, shall ensure that the
31 certification program shall, at a minimum, include standards for
32 the following aspects of the settings' operations:

33 (1) Outpatient setting allied health staff shall be licensed or
34 certified to the extent required by state or federal law.

35 (2) (A) Outpatient settings shall have a system for facility safety
36 and emergency training requirements.

37 (B) There shall be onsite equipment, medication, and trained
38 personnel to facilitate handling of services sought or provided and
39 to facilitate handling of any medical emergency that may arise in
40 connection with services sought or provided.

1 (C) In order for procedures to be performed in an outpatient
2 setting as defined in Section 1248, the outpatient setting shall do
3 one of the following:

4 (i) Have a written transfer agreement with a local accredited or
5 licensed acute care hospital, approved by the facility's medical
6 staff.

7 (ii) Permit surgery only by a licensee who has admitting
8 privileges at a local accredited or licensed acute care hospital, with
9 the exception that licensees who may be precluded from having
10 admitting privileges by their professional classification or other
11 administrative limitations, shall have a written transfer agreement
12 with licensees who have admitting privileges at local accredited
13 or licensed acute care hospitals.

14 ~~(iii) Submit~~

15 (D) *The outpatient setting shall submit for approval by an*
16 *accrediting agency a detailed procedural plan for handling medical*
17 *emergencies that shall be reviewed at the time of accreditation.*
18 *No reasonable plan shall be disapproved by the accrediting agency.*

19 (E) *The outpatient setting shall submit for approval by an*
20 *accreditation agency at the time accreditation of a detailed plan,*
21 *standardized procedures, and protocols to be followed in the event*
22 *of serious complications or side effects from surgery that would*
23 *place a patient at high risk for injury or harm and to govern*
24 *emergency and urgent care situations.*

25 ~~(F)~~

26 (F) All physicians and surgeons transferring patients from an
27 outpatient setting shall agree to cooperate with the medical staff
28 peer review process on the transferred case, the results of which
29 shall be referred back to the outpatient setting, if deemed
30 appropriate by the medical staff peer review committee. If the
31 medical staff of the acute care facility determines that inappropriate
32 care was delivered at the outpatient setting, the acute care facility's
33 peer review outcome shall be reported, as appropriate, to the
34 accrediting body, the Health Care Financing Administration, the
35 State Department of ~~Health Services~~ *Public Health*, and the
36 appropriate licensing authority.

37 (3) The outpatient setting shall permit surgery by a dentist acting
38 within his or her scope of practice under Chapter 4 (commencing
39 with Section 1600) of *Division 2 of the Business and Professions*
40 *Code* or physician and surgeon, osteopathic physician and surgeon,

1 or podiatrist acting within his or her scope of practice under
2 Chapter 5 (commencing with Section 2000) of *Division 2* of the
3 Business and Professions Code or the Osteopathic Initiative Act.
4 The outpatient setting may, in its discretion, permit anesthesia
5 service by a certified registered nurse anesthetist acting within his
6 or her scope of practice under Article 7 (commencing with Section
7 2825) of Chapter 6 of *Division 2* of the Business and Professions
8 Code.

9 (4) Outpatient settings shall have a system for maintaining
10 clinical records.

11 (5) Outpatient settings shall have a system for patient care and
12 monitoring procedures.

13 (6) (A) Outpatient settings shall have a system for quality
14 assessment and improvement.

15 (B) Members of the medical staff and other practitioners who
16 are granted clinical privileges shall be professionally qualified and
17 appropriately credentialed for the performance of privileges
18 granted. The outpatient setting shall grant privileges in accordance
19 with recommendations from qualified health professionals, and
20 credentialing standards established by the outpatient setting.

21 (C) Clinical privileges shall be periodically reappraised by the
22 outpatient setting. The scope of procedures performed in the
23 outpatient setting shall be periodically reviewed and amended as
24 appropriate.

25 (7) Outpatient settings regulated by this chapter that have
26 multiple service locations governed by the same standards may
27 elect to have all service sites surveyed on any accreditation survey.
28 Organizations that do not elect to have all sites surveyed shall have
29 a sample, not to exceed 20 percent of all service sites, surveyed.
30 The actual sample size shall be determined by the ~~division~~ board.
31 The accreditation agency shall determine the location of the sites
32 to be surveyed. Outpatient settings that have five or fewer sites
33 shall have at least one site surveyed. When an organization that
34 elects to have a sample of sites surveyed is approved for
35 accreditation, all of the organizations' sites shall be automatically
36 accredited.

37 (8) Outpatient settings shall post the certificate of accreditation
38 in a location readily visible to patients and staff.

1 (9) Outpatient settings shall post the name and telephone number
2 of the accrediting agency with instructions on the submission of
3 complaints in a location readily visible to patients and staff.

4 (10) Outpatient settings shall have a written discharge criteria.

5 (b) Outpatient settings shall have a minimum of two staff
6 persons on the premises, one of whom shall either be a licensed
7 physician and surgeon or a licensed health care professional with
8 current certification in advanced cardiac life support (ACLS), as
9 long as a patient is present who has not been discharged from
10 supervised care. Transfer to an unlicensed setting of a patient who
11 does not meet the discharge criteria adopted pursuant to paragraph
12 (10) of subdivision (a) shall constitute unprofessional conduct.

13 (c) An accreditation agency may include additional standards
14 in its determination to accredit outpatient settings if these are
15 approved by the ~~division~~ board to protect the public health and
16 safety.

17 (d) No accreditation standard adopted or approved by the
18 ~~division~~ board, and no standard included in any certification
19 program of any accreditation agency approved by the ~~division~~
20 board, shall serve to limit the ability of any allied health care
21 practitioner to provide services within his or her full scope of
22 practice. Notwithstanding this or any other provision of law, each
23 outpatient setting may limit the privileges, or determine the
24 privileges, within the appropriate scope of practice, that will be
25 afforded to physicians and allied health care practitioners who
26 practice at the facility, in accordance with credentialing standards
27 established by the outpatient setting in compliance with this
28 chapter. Privileges may not be arbitrarily restricted based on
29 category of licensure.

30 (e) *The board shall adopt standards that it deems necessary for*
31 *outpatient settings that offer in vitro fertilization.*

32 SEC. 6. Section 1248.2 of the Health and Safety Code is
33 amended to read:

34 1248.2. (a) Any outpatient setting may apply to an
35 accreditation agency for a certificate of accreditation. Accreditation
36 shall be issued by the accreditation agency solely on the basis of
37 compliance with its standards as approved by the ~~division~~ board
38 under this chapter.

39 (b) The ~~division~~ board shall obtain and maintain a list of all
40 accredited, certified, and licensed outpatient settings from the

1 information provided by the accreditation, certification, and
2 licensing agencies approved by the ~~division board~~, and shall notify
3 the public, ~~upon inquiry~~, whether a setting is accredited, certified,
4 or licensed, or ~~whether~~ the setting's accreditation, certification, or
5 license has been revoked, *suspended, or placed on probation, or*
6 *the setting has received a reprimand by the accreditation agency.*

7 SEC. 7. Section 1248.25 of the Health and Safety Code is
8 amended to read:

9 1248.25. If an outpatient setting does not meet the standards
10 approved by the ~~division board~~, accreditation shall be denied by
11 the accreditation agency, which shall provide the outpatient setting
12 notification of the reasons for the denial. An outpatient setting may
13 reapply for accreditation at any time after receiving notification
14 of the denial. *The accreditation agency shall immediately report*
15 *to the board if the outpatient setting's certificate for accreditation*
16 *has been denied.*

17 SEC. 8. Section 1248.35 of the Health and Safety Code is
18 amended to read:

19 1248.35. (a) *Every outpatient setting which is accredited shall*
20 *be inspected by the accreditation agency and may also be inspected*
21 *by the Medical Board of California. The Medical Board of*
22 *California shall ensure that accreditation agencies inspect*
23 *outpatient settings.*

24 (b) *Unless otherwise specified, the following requirements apply*
25 *to inspections described in subdivision (a).*

26 (1) *The frequency of inspection shall depend upon the type and*
27 *complexity of the outpatient setting to be inspected.*

28 (2) *Inspections shall be conducted no less often than once every*
29 *three years by the accreditation agency and as often as necessary*
30 *by the Medical Board of California to ensure the quality of care*
31 *provided.*

32 (a)

33 (3) ~~The Division of Medical Quality or an accreditation agency~~
34 ~~may, upon reasonable prior notice and presentation of proper~~
35 ~~identification, Medical Board of California or the accreditation~~
36 ~~agency may enter and inspect any outpatient setting that is~~
37 ~~accredited by an accreditation agency at any reasonable time to~~
38 ~~ensure compliance with, or investigate an alleged violation of, any~~
39 ~~standard of the accreditation agency or any provision of this~~
40 ~~chapter.~~

1 ~~(b)~~

2 (c) If an accreditation agency determines, as a result of its
3 inspection, that an outpatient setting is not in compliance with the
4 standards under which it was approved, the accreditation agency
5 may do any of the following:

6 (1) Issue a reprimand.

7 (2) Place the outpatient setting on probation, during which time
8 the setting shall successfully institute and complete a plan of
9 correction, approved by the ~~division~~ board or the accreditation
10 agency, to correct the deficiencies.

11 (3) Suspend or revoke the outpatient setting's certification of
12 accreditation.

13 ~~(c)~~

14 (d) Except as is otherwise provided in this subdivision, before
15 suspending or revoking a certificate of accreditation under this
16 chapter, the accreditation agency shall provide the outpatient setting
17 with notice of any deficiencies and *the outpatient setting shall*
18 *agree with the accreditation agency on a plan of correction that*
19 *shall give the outpatient setting reasonable time to supply*
20 *information demonstrating compliance with the standards of the*
21 *accreditation agency in compliance with this chapter, as well as*
22 *the opportunity for a hearing on the matter upon the request of the*
23 *outpatient center. During that allotted time, a list of deficiencies*
24 *and the plan of correction shall be conspicuously posted in a clinic*
25 *location accessible to public view. The accreditation agency may*
26 *immediately suspend the certificate of accreditation before*
27 *providing notice and an opportunity to be heard, but only when*
28 *failure to take the action may result in imminent danger to the*
29 *health of an individual. In such cases, the accreditation agency*
30 *shall provide subsequent notice and an opportunity to be heard.*

31 ~~(d)~~

32 (e) If the ~~division~~ board determines that deficiencies found
33 during an inspection suggests that the accreditation agency does
34 not comply with the standards approved by the ~~division~~ board, the
35 ~~division~~ board may conduct inspections, as described in this
36 section, of other settings accredited by the accreditation agency to
37 determine if the agency is accrediting settings in accordance with
38 Section 1248.15.

39 (f) *Reports on the results of any inspection conducted pursuant*
40 *to subdivision (a) shall be kept on file with the board or the*

1 accreditation agency along with the plan of correction and the
2 outpatient setting comments. The inspection report may include a
3 recommendation for reinspection. All inspection reports, lists of
4 deficiencies, and plans of correction shall be public records open
5 to public inspection.

6 (g) The accreditation agency shall immediately report to the
7 board if the outpatient setting has been issued a reprimand or if
8 the outpatient setting's certification of accreditation has been
9 suspended or revoked or if the outpatient setting has been placed
10 on probation.

11 SEC. 9. Section 1248.5 of the Health and Safety Code is
12 amended to read:

13 1248.5. ~~The division may~~ board shall evaluate the performance
14 of an approved accreditation agency no less than every three years,
15 or in response to complaints against an agency, or complaints
16 against one or more outpatient settings accreditation by an agency
17 that indicates noncompliance by the agency with the standards
18 approved by the ~~division~~ board.

19 SEC. 10. Section 1248.55 of the Health and Safety Code is
20 amended to read:

21 1248.55. (a) If the accreditation agency is not meeting the
22 criteria set by the ~~division~~ board, the ~~division~~ board may terminate
23 approval of the agency or may issue a citation to the agency in
24 accordance with the system established under subdivision (b).

25 (b) The board may establish, by regulation, a system for the
26 issuance of a citation to an accreditation agency that is not meeting
27 the criteria set by the board. This system shall meet the
28 requirements of Section 125.9 of the Business and Professions
29 Code, as applicable, except that both of the following shall apply:

30 (1) Failure of an agency to pay an administrative fine assessed
31 pursuant to a citation within 30 days of the date of the assessment,
32 unless the citation is being appealed, may result in the board's
33 termination of approval of the agency. Where a citation is not
34 contested and a fine is not paid, the full amount of the assessed
35 fine shall be added to the renewal fee established under Section
36 1248.6. Approval of an agency shall not be renewed without
37 payment of the renewal fee and fine.

38 (2) Administrative fines collected pursuant to the system shall
39 be deposited in the Outpatient Setting Fund of the Medical Board
40 of California established under Section 1248.6.

1 (b)

2 (c) Before terminating approval of an accreditation agency, the
3 ~~division board~~ shall provide the accreditation agency with notice
4 of any deficiencies and reasonable time to supply information
5 demonstrating compliance with the requirements of this chapter,
6 as well as the opportunity for a hearing on the matter in compliance
7 with Chapter 5 (commencing with Section 11500) of Part 1 of
8 Division 3 of Title 2 of the Government Code.

9 (e)

10 (d) (1) If approval of the accreditation agency is terminated by
11 the ~~division board~~, outpatient settings accredited by that agency
12 shall be notified by the ~~division board~~ and, except as provided in
13 paragraph (2), shall be authorized to continue to operate for a
14 period of 12 months in order to seek accreditation through an
15 approved accreditation agency, unless the time is extended by the
16 ~~division board~~ for good cause.

17 (2) The ~~division board~~ may require that an outpatient setting,
18 that has been accredited by an accreditation agency whose approval
19 has been terminated by the ~~division board~~, cease operations
20 immediately ~~in the event that the division if the board~~ is in
21 possession of information indicating that continued operation poses
22 an imminent risk of harm to the health of an individual. In such
23 cases, the ~~division board~~ shall provide the outpatient setting with
24 notice of its action, the reason underlying it, and a subsequent
25 opportunity for a hearing on the matter. An outpatient setting that
26 is ordered to cease operations under this paragraph may reapply
27 for a certificate of accreditation after six months and shall notify
28 the ~~division board~~ promptly of its reapplication.

29 SEC. 11. Section 1279 of the Health and Safety Code is
30 amended to read:

31 1279. (a) Every health facility for which a license or special
32 permit has been issued shall be periodically inspected by the
33 department, or by another governmental entity under contract with
34 the department. The frequency of inspections shall vary, depending
35 upon the type and complexity of the health facility or special
36 service to be inspected, unless otherwise specified by state or
37 federal law or regulation. The inspection shall include participation
38 by the California Medical Association consistent with the manner
39 in which it participated in inspections, as provided in Section 1282
40 prior to September 15, 1992.

1 (b) Except as provided in subdivision (c), inspections shall be
2 conducted no less than once every two years and as often as
3 necessary to ensure the quality of care being provided.

4 (c) For a health facility specified in subdivision (a), (b), or (f)
5 of Section 1250, inspections shall be conducted no less than once
6 every three years, and as often as necessary to ensure the quality
7 of care being provided.

8 (d) During the inspection, the representative or representatives
9 shall offer such advice and assistance to the health facility as they
10 deem appropriate.

11 (e) For acute care hospitals of 100 beds or more, the inspection
12 team shall include at least a physician, registered nurse, and persons
13 experienced in hospital administration and sanitary inspections.
14 During the inspection, the team shall offer advice and assistance
15 to the hospital as it deems appropriate.

16 (f) The department shall ensure that a periodic inspection
17 conducted pursuant to this section is not announced in advance of
18 the date of inspection. An inspection may be conducted jointly
19 with inspections by entities specified in Section 1282. However,
20 if the department conducts an inspection jointly with an entity
21 specified in Section 1282 that provides notice in advance of the
22 periodic inspection, the department shall conduct an additional
23 periodic inspection that is not announced or noticed to the health
24 facility.

25 (g) Notwithstanding any other provision of law, the department
26 shall inspect for compliance with provisions of state law and
27 regulations during a state periodic inspection or at the same time
28 as a federal periodic inspection, including, but not limited to, an
29 inspection required under this section. If the department inspects
30 for compliance with state law and regulations at the same time as
31 a federal periodic inspection, the inspection shall be done consistent
32 with the guidance of the federal Centers for Medicare and Medicaid
33 Services for the federal portion of the inspection.

34 (h) The department shall emphasize consistency across the state
35 and *in* its district offices when conducting licensing and
36 certification surveys and complaint investigations, including the
37 selection of state or federal enforcement remedies in accordance
38 with Section 1423. The department may issue federal deficiencies
39 and recommend federal enforcement actions in those circumstances
40 where they provide more rigorous enforcement action.

1 *(i) It is the intent of the Legislature that the department, pursuant*
2 *to its existing regulations, inspect the peer review process utilized*
3 *by acute care hospitals as part of its periodic inspection of those*
4 *hospitals pursuant to this section.*

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

SB 1172

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1172
Author: Negrete McLeod
Bill Date: April 12, 2010, amended
Subject: Diversion Programs
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require all healing arts boards under the Department of Consumer Affairs (DCA) to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. This bill allows a healing arts board to adopt regulations authorizing the board to order a licensee to cease practice for major violations or when ordered to undergo a clinical diagnostic evaluation.

ANALYSIS:

Senate Bill 1441 (Ridley-Thomas, 2008) established the Substance Abuse Coordination Committee within the DCA. This committee was responsible for formulating uniform and specific standards in specified areas for each healing arts board must use in dealing with substance-abusing licensees. These sixteen standards are required whether or not a board chooses to have a formal diversion program.

Many of the uniform standards established under SB 1441 do not require statutes for implementation, however, current law does not give all boards the authority to order a cease practice. Therefore this authority needs to be codified in law in order to fully implement the uniform standards established by the Substance Abuse Coordination Committee.

This bill would require all healing arts boards to order a licensee to cease practice if he or she tests positive for alcohol or any dangerous drugs. This bill also allows a healing arts board to adopt regulations authorizing the board to order a licensee to cease practice for major violations or when ordered to undergo a clinical diagnostic evaluation. The requirement to order a licensee to cease practice is regardless of whether or not the board has a diversion program.

The Board is prohibited from disclosing to the public that a licensee is participating in a board diversion program unless participation was ordered as a term of probation. Any restrictions placed on a licensee's practice are to be disclosed to the public.

This bill contains provisions requiring an external audit of the DCA's services relating to the treatment and rehabilitation of impaired physicians and other board's licensees to be performed once every three years. The audit must be performed by a qualified, independent review team from outside the DCA. The report of the audit is to be submitted to the legislature, as well as the DCA and the boards within the DCA, by June 30 of each year an audit is performed.

FISCAL: None

POSITION: Recommendation: Support

April 21, 2010

AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1172

Introduced by Senator Negrete McLeod

February 18, 2010

~~An act to amend Sections 156, 1695, 2360, 2662, 2770, 3534, 4360, and 4860 of the Business and Professions Code, relating to regulatory boards. An act to amend Section 156.1 of, and to add Sections 315.2, 315.4, and 315.6 to, the Business and Professions Code, relating to regulatory boards.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Negrete McLeod. ~~Regulatory boards; boards; diversion programs.~~

Existing

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. ~~The department is under the control of the Director of Consumer Affairs. Existing law authorizes the director to enter into contracts for and on behalf of any board within the department. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

This bill would specify that those records and documents shall be kept for 3 years and are not subject to discovery or subpoena unless otherwise expressly provided by law and would prohibit the licentiate from waiving confidentiality. The bill would require the department or board contracting for those services to have an audit conducted at least once every 3 years by a specified independent reviewer or review team, would require that reviewer or review team to prepare an audit report and to submit it to the Legislature, the department, and the board by June 30 every 3 years, with the first report due in 2013, and would require the department, the contract vendor, and the board to respond to the report, as specified.

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

~~This bill would, with respect to those programs, revise references to alcohol and drug abuse to include other substances.~~

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. Except as provided, the bill would prohibit a healing arts board from disclosing to the public that a licensee is participating in a board diversion program.

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

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

1 *SECTION 1. Section 156.1 of the Business and Professions*
2 *Code is amended to read:*

3 156.1. (a) Notwithstanding any other provision of law,
4 individuals or entities contracting with the department or any board
5 within the department for the provision of services relating to the
6 treatment and rehabilitation of licentiates impaired by alcohol or
7 dangerous drugs; shall retain all records and documents pertaining
8 to those services until such time as these records and documents
9 have been reviewed for audit ~~by the department pursuant to~~
10 ~~subdivision (c).~~ These records and documents shall be retained for
11 ~~a maximum of three years from the date of the last treatment or~~
12 ~~service rendered to that licentiate, or until such time as the records~~
13 ~~pertaining to treatment or services rendered to that licentiate are~~
14 ~~audited, whichever occurs first,~~ after which time the records and
15 documents may be purged and destroyed by the contract vendor.
16 This provision shall supersede any other provision of law relating
17 to the purging or destruction of records pertaining to those
18 treatment and rehabilitation programs.

19 ~~(b) Notwithstanding any other provision of law, all~~ Unless
20 ~~otherwise expressly provided by statute or regulation, all~~ records
21 and documents pertaining to services for the treatment and
22 rehabilitation of licentiates impaired by alcohol or dangerous drugs
23 provided by any contract vendor to the department or to any board
24 within the department shall be kept confidential and are not subject
25 to discovery or subpoena. *A licentiate may not waive confidentiality*
26 *pursuant to this subdivision.*

27 (c) (1) *An external independent audit of an individual or entity*
28 *contracting with the department pursuant to subdivision (a) shall*
29 *be conducted at least once every three years by a qualified,*
30 *independent reviewer or review team from outside the department*
31 *with no real or apparent conflict of interest with the contractor*
32 *providing the services. The independent reviewer or review team*
33 *shall be competent in the professional practice of internal auditing*
34 *and assessment processes.*

35 (2) *The independent reviewer or review team shall prepare an*
36 *audit report that assesses the contractor's performance in adhering*
37 *to any standards established by the department or the board and*
38 *shall submit that report to the Legislature, the department, and*

1 the board by June 30 every three years, with the first report due
2 in 2013. The audit report shall make findings and identify any
3 material inadequacies, deficiencies, irregularities, or any other
4 noncompliance with the terms of the contract.

5 (3) The department, contract vendor, and the board shall
6 respond to the assessment and findings in the audit report prior
7 to submission to the Legislature.

8 (e)

9 (d) With respect to all other contracts for services with the
10 department or any board within the department other than those
11 set forth in subdivision (a), the director or chief deputy director
12 may request an examination and audit by the department's internal
13 auditor of all performance under the contract. For this purpose, all
14 documents and records of the contract vendor in connection with
15 such performance shall be retained by such vendor for a period of
16 three years after final payment under the contract. Nothing in this
17 section shall affect the authority of the State Auditor to conduct
18 any examination or audit under the terms of Section 8546.7 of the
19 Government Code.

20 SEC. 2. Section 315.2 is added to the Business and Professions
21 Code, to read:

22 315.2. (a) A board, as described in Section 315, shall order
23 a licensee of the board to cease practice if the licensee tests positive
24 for any substance that is prohibited under the terms of the
25 licensee's probation or diversion program.

26 (b) An order to cease practice under this section shall not be
27 governed by the provisions of Chapter 5 (commencing with Section
28 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

29 (c) A cease practice order under this section shall not constitute
30 disciplinary action.

31 (d) A licensee may petition to return to practice pursuant to the
32 uniform and specific standards adopted and authorized under
33 Section 315.

34 SEC. 3. Section 315.4 is added to the Business and Professions
35 Code, to read:

36 315.4. (a) A board, as described in Section 315, may adopt
37 regulations authorizing the board to order a licensee on probation
38 or in a diversion program to cease practice for major violations
39 and when the board orders a licensee to undergo a clinical

1 *diagnostic evaluation pursuant to the uniform and specific*
2 *standards adopted and authorized under Section 315.*

3 *(b) An order to cease practice under this section shall not be*
4 *governed by the provisions of Chapter 5 (commencing with Section*
5 *11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

6 *(c) A cease practice order under this section shall not constitute*
7 *disciplinary action.*

8 *(d) The regulations shall also include provisions for a licensee*
9 *to petition to return to practice pursuant to the uniform and specific*
10 *standards adopted and authorized under Section 315.*

11 *SEC. 4. Section 315.6 is added to the Business and Professions*
12 *Code, to read:*

13 *315.6. Unless otherwise authorized by statute or regulation,*
14 *a board, as described in Section 315, shall not disclose to the*
15 *public that a licensee is participating in a board diversion program*
16 *unless participation was ordered as a term of probation. However,*
17 *a board shall disclose to the public any restrictions that are placed*
18 *on a licensee's practice as a result of the licensee's participation*
19 *in a board diversion program provided that the disclosure does*
20 *not contain information linking the restriction to the licensee's*
21 *participation in the board's diversion program.*

22 *SECTION 1. Section 156 of the Business and Professions Code*
23 *is amended to read:*

24 *156. (a) The director may, for the department and at the request*
25 *and with the consent of a board or bureau within the department*
26 *on whose behalf the contract is to be made, enter into contracts*
27 *pursuant to Chapter 3 (commencing with Section 11250) of Part*
28 *1 of Division 3 of Title 2 of the Government Code or Chapter 2*
29 *(commencing with Section 10290) of Part 2 of Division 2 of the*
30 *Public Contract Code for and on behalf of any board or bureau*
31 *within the department.*

32 *(b) In accordance with subdivision (a), the director may, in his*
33 *or her discretion, negotiate and execute contracts for examination*
34 *purposes that include provisions that hold harmless a contractor*
35 *where liability resulting from a contract between a board in the*
36 *department and the contractor is traceable to the state or its officers,*
37 *agents, or employees.*

38 *SEC. 2. Section 1695 of the Business and Professions Code is*
39 *amended to read:*

1 ~~1695. It is the intent of the Legislature that the Dental Board~~
2 ~~of California seek ways and means to identify and rehabilitate~~
3 ~~licensees whose competency may be impaired due to abuse of~~
4 ~~dangerous drugs or alcohol or other substances, so that licensees~~
5 ~~so afflicted may be treated and returned to the practice of dentistry~~
6 ~~in a manner that will not endanger the public health and safety. It~~
7 ~~is also the intent of the Legislature that the Dental Board of~~
8 ~~California shall implement this legislation in part by establishing~~
9 ~~a diversion program as a voluntary alternative approach to~~
10 ~~traditional disciplinary actions.~~

11 ~~SEC. 3. Section 2360 of the Business and Professions Code is~~
12 ~~amended to read:~~

13 ~~2360. It is the intent of the Legislature that the Osteopathic~~
14 ~~Medical Board of California seek ways and means to identify and~~
15 ~~rehabilitate osteopathic physicians and surgeons whose competency~~
16 ~~may be impaired due to abuse of dangerous drugs or alcohol or~~
17 ~~other substances, so that osteopathic physicians and surgeons so~~
18 ~~afflicted may be treated and returned to the practice of medicine~~
19 ~~in a manner that will not endanger the public health and safety. It~~
20 ~~is also the intent of the Legislature that the Osteopathic Medical~~
21 ~~Board of California shall implement this legislation by establishing~~
22 ~~a diversion program as a voluntary alternative approach to~~
23 ~~traditional disciplinary actions.~~

24 ~~SEC. 4. Section 2662 of the Business and Professions Code is~~
25 ~~amended to read:~~

26 ~~2662. It is the intent of the Legislature that the board shall seek~~
27 ~~ways and means to identify and rehabilitate physical therapists~~
28 ~~and physical therapist assistants whose competency is impaired~~
29 ~~due to abuse of dangerous drugs or alcohol or other substances so~~
30 ~~that they may be treated and returned to the practice of physical~~
31 ~~therapy in a manner that will not endanger the public health and~~
32 ~~safety.~~

33 ~~SEC. 5. Section 2770 of the Business and Professions Code is~~
34 ~~amended to read:~~

35 ~~2770. It is the intent of the Legislature that the Board of~~
36 ~~Registered Nursing seek ways and means to identify and~~
37 ~~rehabilitate registered nurses whose competency may be impaired~~
38 ~~due to abuse of alcohol or drugs or other substances, or due to~~
39 ~~mental illness so that registered nurses so afflicted may be~~
40 ~~rehabilitated and returned to the practice of nursing in a manner~~

1 that will not endanger the public health and safety. It is also the
2 intent of the Legislature that the Board of Registered Nursing shall
3 implement this legislation by establishing a diversion program as
4 a voluntary alternative to traditional disciplinary actions.

5 SEC. 6. Section 3534 of the Business and Professions Code is
6 amended to read:

7 3534. (a) It is the intent of the Legislature that the examining
8 committee shall seek ways and means to identify and rehabilitate
9 physician assistants whose competency is impaired due to abuse
10 of dangerous drugs or alcohol or other substances so that they may
11 be treated and returned to the practice of medicine in a manner
12 that will not endanger the public health and safety.

13 SEC. 7. Section 4360 of the Business and Professions Code is
14 amended to read:

15 4360. The board shall operate a pharmacists recovery program
16 to rehabilitate pharmacists and intern pharmacists whose
17 competency may be impaired due to abuse of alcohol or other
18 substances, drug use, or mental illness. The intent of the
19 pharmacists recovery program is to return these pharmacists and
20 intern pharmacists to the practice of pharmacy in a manner that
21 will not endanger the public health and safety.

22 SEC. 8. Section 4860 of the Business and Professions Code is
23 amended to read:

24 4860. It is the intent of the Legislature that the Veterinary
25 Medical Board seek ways and means to identify and rehabilitate
26 veterinarians and registered veterinary technicians with impairment
27 due to abuse of dangerous drugs or alcohol or other substances,
28 affecting competency so that veterinarians and registered veterinary
29 technicians so afflicted may be treated and returned to the practice
30 of veterinary medicine in a manner that will not endanger the public
31 health and safety.

SB 1410

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1410
Author: Cedillo
Bill Date: February 19, 2010, introduced
Subject: Physician Assistants
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would delete the limitation that an applicant for licensure may only make four attempts to obtain a passing score on Step III of the United States Medical Licensing Examination (USMLE).

This bill has an urgency clause and would take effect immediately upon passage. This bill also contains provisions to make the removal of the limitation of attempts retroactive to January 1, 2007.

ANALYSIS:

Currently, applicants for licensure are required to pass Step III within four attempts in order to be eligible to be licensed as a physician in California. This bill would give applicants an unlimited number of attempts to take and pass the examination.

The limitation was established in 2006 by AB 1796 (Bermudez, Chapter 843) which was sponsored by the Board. In the interests of furthering the Board's mission of consumer protection, this limitation was deemed necessary to allow the Board to better assess applicants' ability to practice medicine safely. The requirement to pass Step III within four attempts was designed to assure that physicians who are issued full and unrestricted licenses are current in their medical knowledge at the time they receive their initial license.

Subsequent legislation, SB 1048 (Chapter 588, 2007), included provisions to allow an applicant who obtains a passing score on Step III of the USMLE in more than four attempts to be considered for licensure if the applicant has been licensed in another state for at least four years. This bill would repeal these provisions as well as they would be unnecessary if applicants have unlimited attempts to pass the exam.

Previous study of the issue of physicians' ability to practice medicine safely with regard to the number of attempts needed to pass Step III of the USMLE indicate that there is a correlation between the number of times a physician has to take the exam to obtain a passing score and his or her competency as a physician. Of the physicians found to have taken Step III of the USMLE more than four times in order to pass, there were a large number found to be substandard by the report submitted to the Federation of State Medical Boards.

Allowing applicants for licensure unlimited attempts to pass Step III of the USMLE allows for substandard physicians to be practicing in California and puts patients at risk. The number of attempts needed to pass required exams is not disclosed to the public. Consumers do not know they are being treated by a physician who had to take the very exam that indicates their ability and readiness to treat them multiple times before they were considered adequate for licensure. In the interests of patient protection, the competency of a physician should be evaluated and questioned when that physician continues to retake Step III of the USMLE without any limitation. The current requirement of licensure in another state for four years with a clear record and board certification provides this consumer protection.

FISCAL: None

POSITION: Recommendation: Oppose

April 21, 2010

Introduced by Senator CedilloFebruary 19, 2010

An act to amend Section 2177 of, and to add Sections 2177.5 and 2177.7 to, the Business and Professions Code, relating to medicine, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1410, as introduced, Cedillo. Medicine: licensure examinations.

Existing law, the Medical Practice Act, requires the Medical Board of California to issue a physician's and surgeon's certificate to a qualified applicant. Under the act, an applicant for a physician's and surgeon's certificate is required to include specified information with his or her application and to obtain a passing score on an entire examination or on each part of an examination. Existing law authorizes applicants to take the written examinations conducted or accepted by the board in separate parts. Existing law requires an applicant to obtain a passing score on Part III of the United States Medical Licensing Examination within not more than 4 attempts of taking that part of the examination.

This bill would delete the prohibition on taking Part III of the United States Medical Licensing Examination more than 4 times, and would make that change retroactive to January 1, 2007. The bill would also require the board to accept as a passing score from an applicant the passing score that was adopted by the board and in effect on the date the applicant registered for that examination or part of the examination, and would make that requirement retroactive to January 1, 2007. The bill would further require the board to adopt a formal process for determining whether to adopt recommended passing scores from the Federation of State Medical Boards.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Under Section 2177 of the Business and Professions Code,
- 4 an applicant who is seeking a physician's and surgeon's certificate
- 5 in California must obtain a passing score on Part III of the United
- 6 States Medical Licensing Examination (USMLE) within not more
- 7 than four attempts in order to be eligible for a certificate. The
- 8 examination has three parts. However, only Part III has a limit on
- 9 the number of times that an applicant may attempt to pass the part.
- 10 (b) The USMLE is administered by the Federation of State
- 11 Medical Boards (FSMB), a national nonprofit entity. Periodically,
- 12 the FSMB recommends passing scores to the various state medical
- 13 boards. It is left to the discretion of each state board to determine
- 14 whether to adopt the recommended score. Historically, the Medical
- 15 Board of California (MBC) has not had a formal procedure
- 16 regarding adoption of the FSMB recommended passing score.
- 17 (c) When an applicant registers for the USMLE, he or she has
- 18 an eligibility period of three months in which to take the
- 19 examination. Multiple examination dates are available within the
- 20 three-month period. The lack of a formal adoption process within
- 21 the MBC combined with a three-month window to take the
- 22 examination after registration has created some confusion as the
- 23 MBC may increase the accepted passing score at any time without
- 24 public record, input, or notification to applicants that have already
- 25 registered for the examination. In fact, there is an instance where
- 26 an applicant registered for the USMLE under one passing score
- 27 and found out after her examination date that the accepted passing
- 28 score had been increased without her knowledge. This applicant
- 29 would have passed the examination under the criteria in place
- 30 when she registered for the examination but because the passing
- 31 score was increased between the time she registered and sat for
- 32 the examination, she did not pass.

1 (d) Furthermore, prior to the enactment of Chapter 843 of the
2 Statutes of 2006 (AB 1796), California did not limit the number
3 of times an applicant may take any part of the USMLE. Under the
4 new law, which places an arbitrary limit of attempts on Part III of
5 the examination, highly qualified and much needed physicians and
6 surgeons are being denied a license to practice medicine in
7 California. Their only option is to move to another state, become
8 licensed and practice there, and return four years later.

9 (e) Failing to pass the USMLE under an arbitrary cap on the
10 number of attempts does not translate into a lack of competency
11 in providing high-quality medical care. Furthermore, existing law
12 does not take into consideration learning disabilities, a history of
13 poor performance on standardized tests, hardships, or other
14 variables that may impede the ability of an individual to pass the
15 examination, essentially discriminating against certain applicants.

16 (f) Twenty-eight states in the United States and one territory
17 have more lenient policies regarding the USMLE, which may
18 include having no cap or allowing for more attempts than
19 California. Those states and the one territory include AL, AZ, CO,
20 CT, DE, FL, GU, HI, IA, IL, KS, MA, MI, MN, MS, MT, NM,
21 NV, NJ, NY, NC, ND, OH, OK, PA, TN, VA, VI, and WY. In
22 fact, AZ, CO, CT, DE, GU, HI, IA, KS, MA, MI, MN, MS, MT,
23 NJ, NY, NC, ND, OH, PA, TN, VI, VA, and WY have no limit
24 on the number of times an applicant may take the examination.

25 (g) Lastly, even though AB 1796 was signed by the Governor,
26 he expressed concerns with the measure. The Governor issued a
27 signing message stating that AB 1796 failed to provide the
28 appropriate exceptions to the requirement that physicians and
29 surgeons applying for licensure pass Part III of the USMLE within
30 four attempts, and that AB 1796 may have unintended
31 consequences. The Governor requested that the MBC address his
32 concerns. Subsequently, the MBC requested that language be added
33 to Section 2177 of the Business and Professions Code that would
34 cross-reference Section 2135.5 of the Business and Professions
35 Code to exempt from the four-attempt limitation an applicant who
36 holds an unlimited and restricted license as a physician and surgeon
37 in another state and who has held that license continuously for a
38 minimum of four years prior to the date of application. This
39 amendment was added by Chapter 588 of the Statutes of 2007 (SB

1 1048), which was an omnibus bill for the Senate Committee on
2 Business and Professions.

3 (h) The inclusion of those changes by SB 1048 has proven to
4 be an inadequate approach to addressing the need for flexibility
5 and consideration of other factors that may contribute to an
6 individual failing to pass Part III of the USMLE within four
7 attempts. It is now viewed by the Legislature as unreasonable to
8 require an individual to leave the state, go through all the steps
9 necessary to obtain licensure in another state, and then return to
10 California after four years to obtain a license to practice medicine.

11 (i) It is further unreasonable for the MBC to change the passing
12 score for an examination once an applicant has registered for that
13 examination without any formal procedure or notification to the
14 applicant.

15 SEC. 2. Section 2177 of the Business and Professions Code is
16 amended to read:

17 2177. (a) A passing score is required for an entire examination
18 or for each part of an examination, as established by resolution of
19 the ~~Division of Licensing~~ board.

20 (b) Applicants may elect to take the written examinations
21 conducted or accepted by the ~~division~~ board in separate parts.

22 (c) ~~(1)~~ An applicant shall have obtained a passing score on Part
23 III of the United States Medical Licensing Examination ~~within not~~
24 ~~more than four attempts~~ in order to be eligible for a physician's
25 and surgeon's certificate.

26 ~~(2) Notwithstanding paragraph (1), an applicant who obtains~~
27 ~~a passing score on Part III of the United States Medical Licensing~~
28 ~~Examination in more than four attempts and who meets the~~
29 ~~requirements of Section 2135.5 shall be eligible to be considered~~
30 ~~for issuance of a physician's and surgeon's certificate.~~

31 *(d) The changes made to subdivision (c) by the act adding this*
32 *subdivision shall apply retroactively to January 1, 2007.*

33 SEC. 3. Section 2177.5 is added to the Business and Professions
34 Code, to read:

35 2177.5. (a) Notwithstanding subdivision (a) of Section 2177,
36 the board shall accept as a passing score on an examination or part
37 of an examination from an applicant the passing score that was
38 adopted by the board and in effect on the date the applicant
39 registered for that examination or part of the examination.

40 (b) This section shall apply retroactively to January 1, 2007.

1 SEC. 4. Section 2177.7 is added to the Business and Professions
2 Code, to read:

3 2177.7. The board shall adopt a formal process for determining
4 whether to adopt recommended passing scores from the Federation
5 of State Medical Boards.

6 SEC. 5. This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety within
8 the meaning of Article IV of the Constitution and shall go into
9 immediate effect. The facts constituting the necessity are:

10 In order to allow for the licensure of competent physicians and
11 surgeons at the earliest possible time, it is necessary that this act
12 take effect immediately.

SB 1489

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1489
Author: Committee on Business, Professions, and Economic Development
Bill Date: April 5, 2010, amended
Subject: Omnibus
Sponsor: Committee

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act.

The provisions relating to the Medical Board are in the Business and Professions Code and are as follows (only these sections of the bill are attached):

- **2062 & 2177** – Deletes obsolete references to licensing exams. The Board no longer administers exams
- **2096 & 2102** – Reinstates postgraduate training requirement for licensure.
- **2184** – Allows the Board to consider good cause or reason, or time spent in various training programs when addressing the validity of the written examination scores require for licensure.
- **2516** – Clarifies provisions related to the reporting requirements for licensed midwives.

The Board's Midwifery provision, clarifying certain provisions in the reporting statute, is expected to be placed into the bill when it is amended.

FISCAL: None to MBC

POSITION: Support MBC Provisions

April 17, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1489

**Introduced by Committee on Business, Professions and Economic
Development (Senators Negrete McLeod (Chair), Aanestad,
Calderon, Correa, Florez, Oropeza, Walters, Wyland, and Yee)**

March 11, 2010

An act to amend Sections 2065, 2096, 2102, 2103, 2177, 2184, ~~2397~~, 2570.19, 3025.1, 3046, 3057.5, 3147, 3147.6, 3147.7, 4017, 4028, 4037, 4052.3, 4059, 4072, 4101, 4119, 4127.1, 4169, 4181, 4191, 4196, 4425, 4426, 4980.40.5, 4980.43, 4980.80, 4982.25, 4984.8, 4989.54, 4990.02, 4990.12, 4990.18, 4990.22, 4990.30, 4990.38, 4992.36, 4996.17, 4996.23, 4999.46, 4999.58, and 4999.90 of, to add Section 4200.1 to, to add and repeal Sections 4999.57 and 4999.59 of, to repeal Sections 2026, 4980.07, 4982.2, and 4984.6 of, and to repeal Article 3 (commencing with Section 4994) of Chapter 14 of Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1489, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California ~~and for the licensure and regulation of podiatrists by the California Board of Podiatric Medicine within the Medical Board of California~~. Existing law ~~exempts a licensee of either of those boards from liability for civil damages for acts or omissions by the licensee in rendering specified emergency care and for injury or death caused in an emergency situation occurring in the licensee's office or a hospital on account of a failure to inform a patient of the possible consequences~~

of a medical procedure, as specified. Existing law prohibits construing these provisions to authorize a podiatrist to act beyond certain scope of practice limitations.

~~This bill would delete that prohibition.~~

~~Existing~~

law requires an applicant for a physician's and surgeon's certificate whose professional instruction was acquired in a country other than the United States or Canada to provide evidence satisfactory to the board of, among other things, satisfactory completion of at least one year of specified postgraduate training.

This bill would require the applicant to instead complete at least 2 years of that postgraduate training.

Existing law requires an applicant for a physician's and surgeon's certificate to obtain a passing score on the written examination designated by the board and makes passing scores on a written examination valid for 10 years from the month of the examination for purposes of qualification for a license. Existing law authorizes the board to extend this period of validity for good cause or for time spent in a postgraduate training program.

This bill would limit this 10-year period of validity to passing scores obtained on Step 3 of the United States Medical Licensing Examination and would also authorize the board to extend that period for applicants who hold a valid, unlimited license as a physician and surgeon in another state or a Canadian province and have actively practiced medicine in that state or province.

(2) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. Existing law authorizes the renewal of an expired license within 3 years after its expiration if the licensee files an application for renewal and pays all accrued and unpaid renewal fees and the delinquency fee prescribed by the board.

This bill would also require the licensee to submit proof of completion of the required hours of continuing education for the last 2 years.

Existing law authorizes the restoration of a license that is not renewed within 3 years after its expiration if the holder of the expired license, among other requirements, passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and pays a restoration fee equal to the renewal fee in effect on the last regular renewal date for licenses.

This bill would instead require the holder of the expired license to take the National Board of Examiners in Optometry's Clinical Skills examination, or other clinical examination approved by the board, and to also pay any delinquency fees prescribed by the board.

Existing law alternatively authorizes the restoration of a license that is not renewed within 3 years after its expiration if the person provides proof that he or she holds an active license from another state, files an application for renewal, and pays the accrued and unpaid renewal fees and the delinquency fee prescribed by the board.

This bill would also require the person to submit proof of completion of the required hours of continuing education for the last 2 years and take and satisfactorily pass the board's jurisprudence examination. The bill would also require that the person not have committed specified crimes or acts constituting grounds for licensure denial.

(3) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and requires an applicant for a license to pass a national licensure examination and the board's jurisprudence examination. Existing law prohibits boards in the Department of Consumer Affairs from restricting an applicant who failed a licensure examination from taking the examination again, except as specified.

This bill would authorize an applicant for a pharmacist license to take the licensure examination and the jurisprudence examination 4 times each. The bill would also authorize the applicant to take those examinations 4 additional times each if additional pharmacy coursework is completed, as specified.

(4) Existing law provides for the licensure and regulation of marriage and family therapists, licensed clinical social workers, educational psychologists, and professional clinical counselors by the Board of Behavioral Sciences. Existing law authorizes a licensed marriage and family therapist, licensed clinical social worker, or licensed educational psychologist whose license has been revoked, suspended, or placed on probation to petition the board for reinstatement or modification of the penalty, as specified. Existing law also authorizes the board to deny an application or suspend or revoke those licenses due to the revocation, suspension, or restriction by the board of a license to practice as a clinical social worker, marriage and family therapist, or educational psychologist.

This bill would make those provisions apply with respect to licensed professional clinical counseling, as specified.

Existing law requires an applicant applying for a marriage and family therapist license to complete a minimum of 3,000 hours of experience during a period of at least 104 weeks. Existing law requires that this experience consist of at least 500 hours of experience in diagnosing and treating couples, families, and children, and requires that an applicant be credited with 2 hours of experience for each hour of therapy provided for the first 150 hours of treating couples and families in conjoint therapy.

This bill would instead require that an applicant receive that 2-hour credit for up to 150 hours of treating couples and families in conjoint therapy.

Existing law requires an applicant for a professional clinical counselor license to complete a minimum of 3,000 hours of clinical mental health experience under the supervision of an approved supervisor and prohibits a supervisor from supervising more than 2 interns.

This bill would prohibit the board from crediting an applicant for experience obtained under the supervision of a spouse or relative by blood or marriage, or a person with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision. The bill would also delete the provision prohibiting a supervisor from supervising more than 2 interns.

Existing law requires an intern to receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting and authorizes an intern working in a governmental entity, a school, college, or university, or a nonprofit and charitable institution to obtain up to 30 hours of the required weekly direct supervisor contact via two-way, real time videoconferencing.

This bill would delete that 30-hour limit and would require an intern to receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy, as defined, is performed in each setting in which experience is obtained.

Existing law imposes specified requirements with respect to persons who apply for a professional clinical counselor license between January 1, 2011, and December 31, 2013, inclusive. With respect to those applicants, existing law authorizes the board to accept experience gained outside of California if it is substantially equivalent to that required by the Licensed Professional Clinical Counselor Act and if the applicant has gained a minimum of 250 hours of supervised clinical experience

in direct counseling in California while registered as an intern with the board.

This bill would eliminate that 250-hour requirement with respect to persons with a counseling license in another jurisdiction, as specified, who have held that license for at least 2 years immediately prior to applying with the board.

Existing law authorizes the board to refuse to issue or suspend or revoke a professional clinical counselor license or intern registration if the licensee or registrant has been guilty of unprofessional conduct, as specified.

This bill would specify that unprofessional conduct includes (1) engaging in conduct that subverts a licensing examination, (2) revocation, suspension, or restriction by the board of a license to practice as a clinical social worker, educational psychologist, or marriage and family therapist, and (3) conduct in the supervision of an associate clinical social worker that violates the profession's governing professional clinical counseling or regulations of the board.

The bill would make other technical, nonsubstantive changes in various provisions governing the healing arts and would delete certain obsolete and duplicative language.

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

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

- 1 SECTION 1. Section 2026 of the Business and Professions
- 2 Code is repealed.
- 3 2026. The California Research Bureau (CRB) of the California
- 4 State Library shall study the role of public disclosure in the public
- 5 protection mandate of the board. The ensuing CRB report shall
- 6 include, but not be limited to, considering whether the public is
- 7 adequately informed about physician misconduct by the current
- 8 laws and regulations providing for disclosure. The study shall
- 9 present policy options for improving public access. The board shall
- 10 work cooperatively with the CRB, providing cost-free access and
- 11 reproduction assistance to the board's records while protecting the
- 12 identity and privacy of all persons involved in any complaint. The
- 13 provision of confidential data, information, and case files by the
- 14 board to the CRB shall not constitute a waiver of any exemption
- 15 from disclosure or discovery or of any confidentiality protection

1 ~~or privilege otherwise provided by law that is applicable to the~~
2 ~~data, information, or case files. Data will be presented in aggregate~~
3 ~~categories. This study shall be commenced as soon as possible and~~
4 ~~a report to the Legislature completed no later than July 1, 2008.~~

5 ~~SECTION 1.~~

6 *SEC. 2.* Section 2065 of the Business and Professions Code is
7 amended to read:

8 2065. Unless otherwise provided by law, no postgraduate
9 trainee, intern, resident, postdoctoral fellow, or instructor may
10 engage in the practice of medicine, or receive compensation
11 therefor, or offer to engage in the practice of medicine unless he
12 or she holds a valid, unrevoked, and unsuspended physician's and
13 surgeon's certificate issued by the board. However, a graduate of
14 an approved medical school, who is registered with the board and
15 who is enrolled in a postgraduate training program approved by
16 the board, may engage in the practice of medicine whenever and
17 wherever required as a part of the program under the following
18 conditions:

19 (a) A graduate enrolled in an approved first-year postgraduate
20 training program may so engage in the practice of medicine for a
21 period not to exceed one year whenever and wherever required as
22 a part of the training program, and may receive compensation for
23 that practice.

24 (b) A graduate who has completed the first year of postgraduate
25 training may, in an approved residency or fellowship, engage in
26 the practice of medicine whenever and wherever required as part
27 of that residency or fellowship, and may receive compensation for
28 that practice. The resident or fellow shall qualify for, take, and
29 pass the next succeeding written examination for licensure, or shall
30 qualify for and receive a physician's and surgeon's certificate by
31 one of the other methods specified in this chapter. If the resident
32 or fellow fails to receive a license to practice medicine under this
33 chapter within one year from the commencement of the residency
34 or fellowship or if the board denies his or her application for
35 licensure, all privileges and exemptions under this section shall
36 automatically cease.

37 ~~SEC. 2.~~

38 *SEC. 3.* Section 2096 of the Business and Professions Code is
39 amended to read:

1 2096. (a) In addition to other requirements of this chapter,
2 before a physician's and surgeon's license may be issued, each
3 applicant, including an applicant applying pursuant to Article 5
4 (commencing with Section 2100), except as provided in subdivision
5 (b), shall show by evidence satisfactory to the board that he or she
6 has satisfactorily completed at least one year of postgraduate
7 training.

8 (b) An applicant applying pursuant to Section 2102 shall show
9 by evidence satisfactory to the board that he or she has
10 satisfactorily completed at least two years of postgraduate training.

11 (c) The postgraduate training required by this section shall
12 include at least four months of general medicine and shall be
13 obtained in a postgraduate training program approved by the
14 Accreditation Council for Graduate Medical Education (ACGME)
15 or the Royal College of Physicians and Surgeons of Canada
16 (RCPSC).

17 (d) The amendments made to this section at the 1987 portion
18 of the 1987-88 session of the Legislature shall not apply to
19 applicants who completed their one year of postgraduate training
20 on or before July 1, 1990.

21 ~~SEC. 3.~~

22 *SEC. 4.* Section 2102 of the Business and Professions Code is
23 amended to read:

24 2102. An applicant whose professional instruction was acquired
25 in a country other than the United States or Canada shall provide
26 evidence satisfactory to the board of compliance with the following
27 requirements to be issued a physician's and surgeon's certificate:

28 (a) Completion in a medical school or schools of a resident
29 course of professional instruction equivalent to that required by
30 Section 2089 and issuance to the applicant of a document
31 acceptable to the board that shows final and successful completion
32 of the course. However, nothing in this section shall be construed
33 to require the board to evaluate for equivalency any coursework
34 obtained at a medical school disapproved by the board pursuant
35 to this section.

36 (b) Certification by the Educational Commission for Foreign
37 Medical Graduates, or its equivalent, as determined by the board.
38 This subdivision shall apply to all applicants who are subject to
39 this section and who have not taken and passed the written
40 examination specified in subdivision (d) prior to June 1, 1986.

1 (c) Satisfactory completion of the postgraduate training required
2 under subdivision (b) of Section 2096. An applicant shall be
3 required to have substantially completed the professional
4 instruction required in subdivision (a) and shall be required to
5 make application to the board and have passed steps 1 and 2 of
6 the written examination relating to biomedical and clinical sciences
7 prior to commencing any postgraduate training in this state. In its
8 discretion, the board may authorize an applicant who is deficient
9 in any education or clinical instruction required by Sections 2089
10 and 2089.5 to make up any deficiencies as a part of his or her
11 postgraduate training program, but that remedial training shall be
12 in addition to the postgraduate training required for licensure.

13 (d) Passage of the written examination as provided under Article
14 9 (commencing with Section 2170). An applicant shall be required
15 to meet the requirements specified in subdivision (b) prior to being
16 admitted to the written examination required by this subdivision.

17 (e) Nothing in this section prohibits the board from disapproving
18 a foreign medical school or from denying an application if, in the
19 opinion of the board, the professional instruction provided by the
20 medical school or the instruction received by the applicant is not
21 equivalent to that required in Article 4 (commencing with Section
22 2080).

23 ~~SEC. 4.~~

24 *SEC. 5.* Section 2103 of the Business and Professions Code is
25 amended to read:

26 2103. An applicant who is a citizen of the United States shall
27 be eligible for a physician's and surgeon's certificate if he or she
28 has completed the following requirements:

29 (a) Submitted official evidence satisfactory to the board of
30 completion of a resident course or professional instruction
31 equivalent to that required in Section 2089 in a medical school
32 located outside the United States or Canada. However, nothing in
33 this section shall be construed to require the board to evaluate for
34 equivalency any coursework obtained at a medical school
35 disapproved by the board pursuant to Article 4 (commencing with
36 Section 2080).

37 (b) Submitted official evidence satisfactory to the board of
38 completion of all formal requirements of the medical school for
39 graduation, except the applicant shall not be required to have
40 completed an internship or social service or be admitted or licensed

1 to practice medicine in the country in which the professional
2 instruction was completed.

3 (c) Attained a score satisfactory to an approved medical school
4 on a qualifying examination acceptable to the board.

5 (d) Successfully completed one academic year of supervised
6 clinical training in a program approved by the board pursuant to
7 Section 2104. The board shall also recognize as compliance with
8 this subdivision the successful completion of a one-year supervised
9 clinical medical internship operated by a medical school pursuant
10 to Chapter 85 of the Statutes of 1972 and as amended by Chapter
11 888 of the Statutes of 1973 as the equivalent of the year of
12 supervised clinical training required by this section.

13 (1) Training received in the academic year of supervised clinical
14 training approved pursuant to Section 2104 shall be considered as
15 part of the total academic curriculum for purposes of meeting the
16 requirements of Sections 2089 and 2089.5.

17 (2) An applicant who has passed the basic science and English
18 language examinations required for certification by the Educational
19 Commission for Foreign Medical Graduates may present evidence
20 of those passing scores along with a certificate of completion of
21 one academic year of supervised clinical training in a program
22 approved by the board pursuant to Section 2104 in satisfaction of
23 the formal certification requirements of subdivision (b) of Section
24 2102.

25 (e) Satisfactorily completed the postgraduate training required
26 under Section 2096.

27 (f) Passed the written examination required for certification as
28 a physician and surgeon under this chapter.

29 ~~SEC. 5.~~

30 *SEC. 6.* Section 2177 of the Business and Professions Code is
31 amended to read:

32 2177. (a) A passing score is required for an entire examination
33 or for each part of an examination, as established by resolution of
34 the board.

35 (b) Applicants may elect to take the written examinations
36 conducted or accepted by the board in separate parts.

37 (c) (1) An applicant shall have obtained a passing score on Step
38 3 of the United States Medical Licensing Examination within not
39 more than four attempts in order to be eligible for a physician's
40 and surgeon's certificate.

(2) Notwithstanding paragraph (1), an applicant who obtains a passing score on Step 3 of the United States Medical Licensing Examination in more than four attempts and who meets the requirements of Section 2135.5 shall be eligible to be considered for issuance of a physician's and surgeon's certificate.

~~SEC. 6.~~

SEC. 7. Section 2184 of the Business and Professions Code is amended to read:

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

(b) (1) Passing scores on Step 3 of the United States Medical Licensing Examination shall be valid for a period of 10 years from the month of the examination for purposes of qualification for licensure in California.

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

(A) For good cause.

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

(C) For an applicant who holds a valid, unlimited license as a physician and surgeon in another state or a Canadian province and has actively practiced medicine in that state or province.

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

~~SEC. 7. Section 2397 of the Business and Professions Code is amended to read:~~

~~2397. (a) A licensee shall not be liable for civil damages for injury or death caused in an emergency situation occurring in the licensee's office or in a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following:~~

~~(1) The patient was unconscious.~~

~~(2) The medical procedure was undertaken without the consent of the patient because the licensee reasonably believed that a~~

1 ~~medical procedure should be undertaken immediately and that~~
2 ~~there was insufficient time to fully inform the patient.~~

3 ~~(3) A medical procedure was performed on a person legally~~
4 ~~incapable of giving consent, and the licensee reasonably believed~~
5 ~~that a medical procedure should be undertaken immediately and~~
6 ~~that there was insufficient time to obtain the informed consent of~~
7 ~~a person authorized to give such consent for the patient.~~

8 ~~(b) This section is applicable only to actions for damages for~~
9 ~~injuries or death arising because of a licensee's failure to inform,~~
10 ~~and not to actions for damages arising because of a licensee's~~
11 ~~negligence in rendering or failing to render treatment.~~

12 ~~(c) As used in this section:~~

13 ~~(1) "Hospital" means a licensed general acute care hospital as~~
14 ~~defined in subdivision (a) of Section 1250 of the Health and Safety~~
15 ~~Code.~~

16 ~~(2) "Emergency situation occurring in the licensee's office"~~
17 ~~means a situation occurring in an office, other than a hospital, used~~
18 ~~by a licensee for the examination or treatment of patients, requiring~~
19 ~~immediate services for alleviation of severe pain, or immediate~~
20 ~~diagnosis and treatment of unforeseeable medical conditions,~~
21 ~~which, if not immediately diagnosed and treated, would lead to~~
22 ~~serious disability or death.~~

23 ~~(3) "Emergency situation occurring in a hospital" means a~~
24 ~~situation occurring in a hospital, whether or not it occurs in an~~
25 ~~emergency room, requiring immediate services for alleviation of~~
26 ~~severe pain, or immediate diagnosis and treatment of unforeseeable~~
27 ~~medical conditions, which, if not immediately diagnosed and~~
28 ~~treated, would lead to serious disability or death.~~

29 SEC. 8. Section 2570.19 of the Business and Professions Code
30 is amended to read:

31 2570.19. (a) There is hereby created a California Board of
32 Occupational Therapy, hereafter referred to as the board. The board
33 shall enforce and administer this chapter.

34 (b) The members of the board shall consist of the following:

35 (1) Three occupational therapists who shall have practiced
36 occupational therapy for five years.

37 (2) One occupational therapy assistant who shall have assisted
38 in the practice of occupational therapy for five years.

39 (3) Three public members who shall not be licentiates of the
40 board or of any board referred to in Section 1000 or 3600.

1 (c) The Governor shall appoint the three occupational therapists
2 and one occupational therapy assistant to be members of the board.
3 The Governor, the Senate Committee on Rules, and the Speaker
4 of the Assembly shall each appoint a public member. Not more
5 than one member of the board shall be appointed from the full-time
6 faculty of any university, college, or other educational institution.

7 (d) All members shall be residents of California at the time of
8 their appointment. The occupational therapist and occupational
9 therapy assistant members shall have been engaged in rendering
10 occupational therapy services to the public, teaching, or research
11 in occupational therapy for at least five years preceding their
12 appointments.

13 (e) The public members may not be or have ever been
14 occupational therapists or occupational therapy assistants or in
15 training to become occupational therapists or occupational therapy
16 assistants. The public members may not be related to, or have a
17 household member who is, an occupational therapist or an
18 occupational therapy assistant, and may not have had, within two
19 years of the appointment, a substantial financial interest in a person
20 regulated by the board.

21 (f) The Governor shall appoint two board members for a term
22 of one year, two board members for a term of two years, and one
23 board member for a term of three years. Appointments made
24 thereafter shall be for four-year terms, but no person shall be
25 appointed to serve more than two consecutive terms. Terms shall
26 begin on the first day of the calendar year and end on the last day
27 of the calendar year or until successors are appointed, except for
28 the first appointed members who shall serve through the last
29 calendar day of the year in which they are appointed, before
30 commencing the terms prescribed by this section. Vacancies shall
31 be filled by appointment for the unexpired term. The board shall
32 annually elect one of its members as president.

33 (g) The board shall meet and hold at least one regular meeting
34 annually in the Cities of Sacramento, Los Angeles, and San
35 Francisco. The board may convene from time to time until its
36 business is concluded. Special meetings of the board may be held
37 at any time and place designated by the board.

38 (h) Notice of each meeting of the board shall be given in
39 accordance with the Bagley-Keene Open Meeting Act (Article 9

1 (commencing with Section 11120) of Chapter 1 of Part 1 of
2 Division 3 of Title 2 of the Government Code).

3 (i) Members of the board shall receive no compensation for
4 their services, but shall be entitled to reasonable travel and other
5 expenses incurred in the execution of their powers and duties in
6 accordance with Section 103.

7 (j) The appointing power shall have the power to remove any
8 member of the board from office for neglect of any duty imposed
9 by state law, for incompetency, or for unprofessional or
10 dishonorable conduct.

11 (k) This section shall become inoperative on July 1, 2013, and,
12 as of January 1, 2014, is repealed, unless a later enacted statute
13 that is enacted before January 1, 2014, deletes or extends the dates
14 on which it becomes inoperative and is repealed. The repeal of
15 this section renders the board subject to the review required by
16 Division 1.2 (commencing with Section 473).

17 SEC. 9. Section 3025.1 of the Business and Professions Code
18 is amended to read:

19 3025.1. The board may adopt rules and regulations that are, in
20 its judgment, reasonable and necessary to ensure that optometrists
21 have the knowledge to adequately protect the public health and
22 safety by establishing educational requirements for admission to
23 the examinations for licensure.

24 SEC. 10. Section 3046 of the Business and Professions Code
25 is amended to read:

26 3046. In order to obtain a license to practice optometry in
27 California, an applicant shall have graduated from an accredited
28 school of optometry, passed the required examinations for
29 licensure, and not have met any of the grounds for denial
30 established in Section 480. The proceedings under this section
31 shall be in accordance with Chapter 5 (commencing with Section
32 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

33 SEC. 11. Section 3057.5 of the Business and Professions Code
34 is amended to read:

35 3057.5. Notwithstanding any other provision of this chapter,
36 the board shall permit a person who meets all of the following
37 requirements to take the examinations for a certificate of
38 registration as an optometrist:

39 (a) Is over the age of 18 years.

40 (b) Is not subject to denial of a certificate under Section 480.

1 (c) Has a degree as a doctor of optometry issued by a university
2 located outside of the United States.

3 SEC. 12. Section 3147 of the Business and Professions Code
4 is amended to read:

5 3147. Except as otherwise provided by Section 114, an expired
6 license may be renewed at any time within three years after its
7 expiration by filing an application for renewal on a form prescribed
8 by the board, paying all accrued and unpaid renewal fees, paying
9 any delinquency fees prescribed by the board, and submitting proof
10 of completion of the required number of hours of continuing
11 education for the last two years, as prescribed by the board pursuant
12 to Section 3159. Renewal under this section shall be effective on
13 the date on which all of those requirements are satisfied. If so
14 renewed, the license shall continue as provided in Sections 3146
15 and 3147.5.

16 SEC. 13. Section 3147.6 of the Business and Professions Code
17 is amended to read:

18 3147.6. Except as otherwise provided by Section 114, a license
19 that is not renewed within three years after its expiration may be
20 restored thereafter, if no fact, circumstance, or condition exists
21 that, if the license were restored, would justify its revocation or
22 suspension, provided all of the following conditions are met:

23 (a) The holder of the expired license is not subject to denial of
24 a license under Section 480.

25 (b) The holder of the expired license applies in writing for its
26 restoration on a form prescribed by the board.

27 (c) The holder of the expired license pays the fee or fees as
28 would be required of him or her if he or she were then applying
29 for a license for the first time.

30 (d) The holder of the expired license satisfactorily passes both
31 of the following examinations:

32 (1) The National Board of Examiners in Optometry's Clinical
33 Skills examination or other clinical examination approved by the
34 board.

35 (2) The board's jurisprudence examination.

36 (e) After taking and satisfactorily passing the examinations
37 identified in subdivision (d), the holder of the expired license pays
38 a restoration fee equal to the sum of the license renewal fee in
39 effect on the last regular renewal date for licenses and any
40 delinquency fees prescribed by the board.

1 SEC. 14. Section 3147.7 of the Business and Professions Code
2 is amended to read:

3 3147.7. The provisions of Section 3147.6 shall not apply to a
4 person holding a license that has not been renewed within three
5 years of expiration, if the person provides satisfactory proof that
6 he or she holds an active license from another state and meets all
7 of the following conditions:

8 (a) Is not subject to denial of a license under Section 480.

9 (b) Applies in writing for restoration of the license on a form
10 prescribed by the board.

11 (c) Pays all accrued and unpaid renewal fees and any
12 delinquency fees prescribed by the board.

13 (d) Submits proof of completion of the required number of hours
14 of continuing education for the last two years.

15 (e) Takes and satisfactorily passes the board's jurisprudence
16 examination.

17 SEC. 15. Section 4017 of the Business and Professions Code
18 is amended to read:

19 4017. "Authorized officers of the law" means inspectors of the
20 California State Board of Pharmacy, inspectors of the Food and
21 Drug Branch of the State Department of Public Health, and
22 investigators of the department's Division of Investigation or peace
23 officers engaged in official investigations.

24 SEC. 16. Section 4028 of the Business and Professions Code
25 is amended to read:

26 4028. "Licensed hospital" means an institution, place, building,
27 or agency that maintains and operates organized facilities for one
28 or more persons for the diagnosis, care, and treatment of human
29 illnesses to which persons may be admitted for overnight stay, and
30 includes any institution classified under regulations issued by the
31 State Department of Public Health as a general or specialized
32 hospital, as a maternity hospital, or as a tuberculosis hospital, but
33 does not include a sanitarium, rest home, a nursing or convalescent
34 home, a maternity home, or an institution for treating alcoholics.

35 SEC. 17. Section 4037 of the Business and Professions Code
36 is amended to read:

37 4037. (a) "Pharmacy" means an area, place, or premises
38 licensed by the board in which the profession of pharmacy is
39 practiced and where prescriptions are compounded. "Pharmacy"
40 includes, but is not limited to, any area, place, or premises

1 described in a license issued by the board wherein controlled
2 substances, dangerous drugs, or dangerous devices are stored,
3 possessed, prepared, manufactured, derived, compounded, or
4 repackaged, and from which the controlled substances, dangerous
5 drugs, or dangerous devices are furnished, sold, or dispensed at
6 retail.

7 (b) "Pharmacy" shall not include any area in a facility licensed
8 by the State Department of Public Health where floor supplies,
9 ward supplies, operating room supplies, or emergency room
10 supplies of dangerous drugs or dangerous devices are stored or
11 possessed solely for treatment of patients registered for treatment
12 in the facility or for treatment of patients receiving emergency care
13 in the facility.

14 SEC. 18. Section 4052.3 of the Business and Professions Code
15 is amended to read:

16 4052.3. (a) Notwithstanding any other provision of law, a
17 pharmacist may furnish emergency contraception drug therapy in
18 accordance with either of the following:

19 (1) Standardized procedures or protocols developed by the
20 pharmacist and an authorized prescriber who is acting within his
21 or her scope of practice.

22 (2) Standardized procedures or protocols developed and
23 approved by both the board and the Medical Board of California
24 in consultation with the American College of Obstetricians and
25 Gynecologists, the California Pharmacist Association, and other
26 appropriate entities. Both the board and the Medical Board of
27 California shall have authority to ensure compliance with this
28 clause, and both boards are specifically charged with the
29 enforcement of this provision with respect to their respective
30 licensees. Nothing in this clause shall be construed to expand the
31 authority of a pharmacist to prescribe any prescription medication.

32 (b) Prior to performing a procedure authorized under this
33 paragraph, a pharmacist shall complete a training program on
34 emergency contraception that consists of at least one hour of
35 approved continuing education on emergency contraception drug
36 therapy.

37 (c) A pharmacist, pharmacist's employer, or pharmacist's agent
38 may not directly charge a patient a separate consultation fee for
39 emergency contraception drug therapy services initiated pursuant
40 to this paragraph, but may charge an administrative fee not to

1 exceed ten dollars (\$10) above the retail cost of the drug. Upon an
2 oral, telephonic, electronic, or written request from a patient or
3 customer, a pharmacist or pharmacist's employee shall disclose
4 the total retail price that a consumer would pay for emergency
5 contraception drug therapy. As used in this subparagraph, total
6 retail price includes providing the consumer with specific
7 information regarding the price of the emergency contraception
8 drugs and the price of the administrative fee charged. This
9 limitation is not intended to interfere with other contractually
10 agreed-upon terms between a pharmacist, a pharmacist's employer,
11 or a pharmacist's agent, and a health care service plan or insurer.
12 Patients who are insured or covered and receive a pharmacy benefit
13 that covers the cost of emergency contraception shall not be
14 required to pay an administrative fee. These patients shall be
15 required to pay copayments pursuant to the terms and conditions
16 of their coverage. The provisions of this subparagraph shall cease
17 to be operative for dedicated emergency contraception drugs when
18 these drugs are reclassified as over-the-counter products by the
19 federal Food and Drug Administration.

20 (d) A pharmacist may not require a patient to provide
21 individually identifiable medical information that is not specified
22 in Section 1707.1 of Title 16 of the California Code of Regulations
23 before initiating emergency contraception drug therapy pursuant
24 to this section.

25 (e) For each emergency contraception drug therapy initiated
26 pursuant to this section, the pharmacist shall provide the recipient
27 of the emergency contraception drugs with a standardized factsheet
28 that includes, but is not limited to, the indications for use of the
29 drug, the appropriate method for using the drug, the need for
30 medical followup, and other appropriate information. The board
31 shall develop this form in consultation with the State Department
32 of Public Health, the American College of Obstetricians and
33 Gynecologists, the California Pharmacists Association, and other
34 health care organizations. The provisions of this section do not
35 preclude the use of existing publications developed by nationally
36 recognized medical organizations.

37 SEC. 19. Section 4059 of the Business and Professions Code
38 is amended to read:

39 4059. (a) A person may not furnish any dangerous drug, except
40 upon the prescription of a physician, dentist, podiatrist, optometrist,

1 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
2 person may not furnish any dangerous device, except upon the
3 prescription of a physician, dentist, podiatrist, optometrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

5 (b) This section does not apply to the furnishing of any
6 dangerous drug or dangerous device by a manufacturer, wholesaler,
7 or pharmacy to each other or to a physician, dentist, podiatrist,
8 optometrist, veterinarian, or naturopathic doctor pursuant to Section
9 3640.7, or to a laboratory under sales and purchase records that
10 correctly give the date, the names and addresses of the supplier
11 and the buyer, the drug or device, and its quantity. This section
12 does not apply to the furnishing of any dangerous device by a
13 manufacturer, wholesaler, or pharmacy to a physical therapist
14 acting within the scope of his or her license under sales and
15 purchase records that correctly provide the date the device is
16 provided, the names and addresses of the supplier and the buyer,
17 a description of the device, and the quantity supplied.

18 (c) A pharmacist, or a person exempted pursuant to Section
19 4054, may distribute dangerous drugs and dangerous devices
20 directly to dialysis patients pursuant to regulations adopted by the
21 board. The board shall adopt any regulations as are necessary to
22 ensure the safe distribution of these drugs and devices to dialysis
23 patients without interruption thereof. A person who violates a
24 regulation adopted pursuant to this subdivision shall be liable upon
25 order of the board to surrender his or her personal license. These
26 penalties shall be in addition to penalties that may be imposed
27 pursuant to Section 4301. If the board finds any dialysis drugs or
28 devices distributed pursuant to this subdivision to be ineffective
29 or unsafe for the intended use, the board may institute immediate
30 recall of any or all of the drugs or devices distributed to individual
31 patients.

32 (d) Home dialysis patients who receive any drugs or devices
33 pursuant to subdivision (c) shall have completed a full course of
34 home training given by a dialysis center licensed by the State
35 Department of Public Health. The physician prescribing the dialysis
36 products shall submit proof satisfactory to the manufacturer or
37 wholesaler that the patient has completed the program.

38 (e) A pharmacist may furnish a dangerous drug authorized for
39 use pursuant to Section 2620.3 to a physical therapist. A record
40 containing the date, name and address of the buyer, and name and

1 quantity of the drug shall be maintained. This subdivision shall
2 not be construed to authorize the furnishing of a controlled
3 substance.

4 (f) A pharmacist may furnish electroneuromyographic needle
5 electrodes or hypodermic needles used for the purpose of placing
6 wire electrodes for kinesiological electromyographic testing to
7 physical therapists who are certified by the Physical Therapy Board
8 of California to perform tissue penetration in accordance with
9 Section 2620.5.

10 (g) Nothing in this section shall be construed as permitting a
11 licensed physical therapist to dispense or furnish a dangerous
12 device without a prescription of a physician, dentist, podiatrist,
13 optometrist, or veterinarian.

14 (h) A veterinary food-animal drug retailer shall dispense, furnish,
15 transfer, or sell veterinary food-animal drugs only to another
16 veterinary food-animal drug retailer, a pharmacy, a veterinarian,
17 or to a veterinarian's client pursuant to a prescription from the
18 veterinarian for food-producing animals.

19 SEC. 20. Section 4072 of the Business and Professions Code
20 is amended to read:

21 4072. (a) Notwithstanding any other provision of law, a
22 pharmacist, registered nurse, licensed vocational nurse, licensed
23 psychiatric technician, or other healing arts licentiate, if so
24 authorized by administrative regulation, who is employed by or
25 serves as a consultant for a licensed skilled nursing, intermediate
26 care, or other health care facility, may orally or electronically
27 transmit to the furnisher a prescription lawfully ordered by a person
28 authorized to prescribe drugs or devices pursuant to Sections 4040
29 and 4070. The furnisher shall take appropriate steps to determine
30 that the person who transmits the prescription is authorized to do
31 so and shall record the name of the person who transmits the order.
32 This section shall not apply to orders for Schedule II controlled
33 substances.

34 (b) In enacting this section, the Legislature recognizes and
35 affirms the role of the State Department of Public Health in
36 regulating drug order processing requirements for licensed health
37 care facilities as set forth in Title 22 of the California Code of
38 Regulations as they may be amended from time to time.

39 SEC. 21. Section 4101 of the Business and Professions Code
40 is amended to read:

1 4101. (a) A pharmacist may take charge of and act as the
2 pharmacist-in-charge of a pharmacy upon application by the
3 pharmacy and approval by the board. Any pharmacist-in-charge
4 who ceases to act as the pharmacist-in-charge of the pharmacy
5 shall notify the board in writing within 30 days of the date of that
6 change in status.

7 (b) A designated representative or a pharmacist may take charge
8 of, and act as, the designated representative-in-charge of a
9 wholesaler or veterinary food-animal drug retailer upon application
10 by the wholesaler or veterinary food-animal drug retailer and
11 approval by the board. Any designated representative-in-charge
12 who ceases to act as the designated representative-in-charge at that
13 entity shall notify the board in writing within 30 days of the date
14 of that change in status.

15 SEC. 22. Section 4119 of the Business and Professions Code
16 is amended to read:

17 4119. (a) Notwithstanding any other provision of law, a
18 pharmacy may furnish a dangerous drug or dangerous device to a
19 licensed health care facility for storage in a secured emergency
20 pharmaceutical supplies container maintained within the facility
21 in accordance with facility regulations of the State Department of
22 Public Health set forth in Title 22 of the California Code of
23 Regulations and the requirements set forth in Section 1261.5 of
24 the Health and Safety Code. These emergency supplies shall be
25 approved by the facility's patient care policy committee or
26 pharmaceutical service committee and shall be readily available
27 to each nursing station. Section 1261.5 of the Health and Safety
28 Code limits the number of oral dosage form or suppository form
29 drugs in these emergency supplies to 24.

30 (b) Notwithstanding any other provision of law, a pharmacy
31 may furnish a dangerous drug or a dangerous device to an approved
32 service provider within an emergency medical services system for
33 storage in a secured emergency pharmaceutical supplies container,
34 in accordance with the policies and procedures of the local
35 emergency medical services agency, if all of the following are
36 met:

37 (1) The dangerous drug or dangerous device is furnished
38 exclusively for use in conjunction with services provided in an
39 ambulance, or other approved emergency medical services service
40 provider, that provides prehospital emergency medical services.

1 (2) The requested dangerous drug or dangerous device is within
2 the licensed or certified emergency medical technician's scope of
3 practice as established by the Emergency Medical Services
4 Authority and set forth in Title 22 of the California Code of
5 Regulations.

6 (3) The approved service provider within an emergency medical
7 services system provides a written request that specifies the name
8 and quantity of dangerous drugs or dangerous devices.

9 (4) The approved emergency medical services provider
10 administers dangerous drugs and dangerous devices in accordance
11 with the policies and procedures of the local emergency medical
12 services agency.

13 (5) The approved emergency medical services provider
14 documents, stores, and restocks dangerous drugs and dangerous
15 devices in accordance with the policies and procedures of the local
16 emergency medical services agency.

17 Records of each request by, and dangerous drugs or dangerous
18 devices furnished to, an approved service provider within an
19 emergency medical services system, shall be maintained by both
20 the approved service provider and the dispensing pharmacy for a
21 period of at least three years.

22 The furnishing of controlled substances to an approved
23 emergency medical services provider shall be in accordance with
24 the California Uniform Controlled Substances Act.

25 SEC. 23. Section 4127.1 of the Business and Professions Code
26 is amended to read:

27 4127.1. (a) A pharmacy shall not compound injectable sterile
28 drug products in this state unless the pharmacy has obtained a
29 license from the board pursuant to this section. The license shall
30 be renewed annually and is not transferable.

31 (b) A license to compound injectable sterile drug products may
32 only be issued for a location that is licensed as a pharmacy.
33 Furthermore, the license to compound injectable sterile drug
34 products may only be issued to the owner of the pharmacy license
35 at that location. A license to compound injectable sterile drug
36 products may not be issued until the location is inspected by the
37 board and found in compliance with this article and regulations
38 adopted by the board.

39 (c) A license to compound injectable sterile drug products may
40 not be renewed until the location has been inspected by the board

1 and found to be in compliance with this article and regulations
2 adopted by the board.

3 (d) Pharmacies operated by entities that are licensed by either
4 the board or the State Department of Public Health and that have
5 current accreditation from the Joint Commission on Accreditation
6 of Healthcare Organizations, or other private accreditation agencies
7 approved by the board, are exempt from the requirement to obtain
8 a license pursuant to this section.

9 (e) The reconstitution of a sterile powder shall not require a
10 license pursuant to this section if both of the following are met:

11 (1) The sterile powder was obtained from a manufacturer.

12 (2) The drug is reconstituted for administration to patients by
13 a health care professional licensed to administer drugs by injection
14 pursuant to this division.

15 SEC. 24. Section 4169 of the Business and Professions Code
16 is amended to read:

17 4169. (a) A person or entity may not do any of the following:

18 (1) Purchase, trade, sell, or transfer dangerous drugs or
19 dangerous devices at wholesale with a person or entity that is not
20 licensed with the board as a wholesaler or pharmacy.

21 (2) Purchase, trade, sell, or transfer dangerous drugs that the
22 person knew or reasonably should have known were adulterated,
23 as set forth in Article 2 (commencing with Section 111250) of
24 Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

25 (3) Purchase, trade, sell, or transfer dangerous drugs that the
26 person knew or reasonably should have known were misbranded,
27 as defined in Section 111335 of the Health and Safety Code.

28 (4) Purchase, trade, sell, or transfer dangerous drugs or
29 dangerous devices after the beyond use date on the label.

30 (5) Fail to maintain records of the acquisition or disposition of
31 dangerous drugs or dangerous devices for at least three years.

32 (b) Notwithstanding any other provision of law, a violation of
33 this section or of subdivision (c) or (d) of Section 4163 may subject
34 the person or entity that has committed the violation to a fine not
35 to exceed the amount specified in Section 125.9 for each
36 occurrence, pursuant to a citation issued by the board.

37 (c) Amounts due from any person under this section shall be
38 offset as provided under Section 12419.5 of the Government Code.
39 Amounts received by the board under this section shall be deposited
40 into the Pharmacy Board Contingent Fund.

1 (d) This section shall not apply to a pharmaceutical manufacturer
2 licensed by the Food and Drug Administration or by the State
3 Department of Public Health.

4 SEC. 25. Section 4181 of the Business and Professions Code
5 is amended to read:

6 4181. (a) Prior to the issuance of a clinic license authorized
7 under Section 4180, the clinic shall comply with all applicable
8 laws and regulations of the State Department of Public Health
9 relating to the drug distribution service to ensure that inventories,
10 security procedures, training, protocol development, recordkeeping,
11 packaging, labeling, dispensing, and patient consultation occur in
12 a manner that is consistent with the promotion and protection of
13 the health and safety of the public. The policies and procedures to
14 implement the laws and regulations shall be developed and
15 approved by the consulting pharmacist, the professional director,
16 and the clinic administrator.

17 (b) The dispensing of drugs in a clinic shall be performed only
18 by a physician, a pharmacist, or other person lawfully authorized
19 to dispense drugs, and only in compliance with all applicable laws
20 and regulations.

21 SEC. 26. Section 4191 of the Business and Professions Code
22 is amended to read:

23 4191. (a) Prior to the issuance of a clinic license authorized
24 under this article, the clinic shall comply with all applicable laws
25 and regulations of the State Department of Public Health and the
26 board relating to drug distribution to ensure that inventories,
27 security procedures, training, protocol development, recordkeeping,
28 packaging, labeling, dispensing, and patient consultation are carried
29 out in a manner that is consistent with the promotion and protection
30 of the health and safety of the public. The policies and procedures
31 to implement the laws and regulations shall be developed and
32 approved by the consulting pharmacist, the professional director,
33 and the clinic administrator.

34 (b) The dispensing of drugs in a clinic that has received a license
35 under this article shall be performed only by a physician, a
36 pharmacist, or other person lawfully authorized to dispense drugs,
37 and only in compliance with all applicable laws and regulations.

38 SEC. 27. Section 4196 of the Business and Professions Code
39 is amended to read:

1 4196. (a) No person shall conduct a veterinary food-animal
2 drug retailer in the State of California unless he or she has obtained
3 a license from the board. A license shall be required for each
4 veterinary food-animal drug retailer owned or operated by a
5 specific person. A separate license shall be required for each of
6 the premises of any person operating a veterinary food-animal
7 drug retailer in more than one location. The license shall be
8 renewed annually and shall not be transferable.

9 (b) The board may issue a temporary license, upon conditions
10 and for periods of time as the board determines to be in the public
11 interest. A temporary license fee shall be fixed by the board at an
12 amount not to exceed the annual fee for renewal of a license to
13 conduct a veterinary food-animal drug retailer.

14 (c) No person other than a pharmacist, an intern pharmacist, a
15 designated representative, an authorized officer of the law, or a
16 person authorized to prescribe, shall be permitted in that area,
17 place, or premises described in the permit issued by the board
18 pursuant to Section 4041, wherein veterinary food-animal drugs
19 are stored, possessed, or repacked. A pharmacist or designated
20 representative shall be responsible for any individual who enters
21 the veterinary food-animal drug retailer for the purpose of
22 performing clerical, inventory control, housekeeping, delivery,
23 maintenance, or similar functions relating to the veterinary
24 food-animal drug retailer.

25 (d) Every veterinary food-animal drug retailer shall be
26 supervised or managed by a designated representative-in-charge.
27 The designated representative-in-charge shall be responsible for
28 the veterinary food-animal drug retailer's compliance with state
29 and federal laws governing veterinary food-animal drug retailers.
30 As part of its initial application for a license, and for each renewal,
31 each veterinary food-animal drug retailer shall, on a form designed
32 by the board, provide identifying information and the California
33 license number for a designated representative or pharmacist
34 proposed to serve as the designated representative-in-charge. The
35 proposed designated representative-in-charge shall be subject to
36 approval by the board. The board shall not issue or renew a
37 veterinary food-animal drug retailer license without identification
38 of an approved designated representative-in-charge for the
39 veterinary food-animal drug retailer.

1 (e) Every veterinary food-animal drug retailer shall notify the
2 board in writing, on a form designed by the board, within 30 days
3 of the date when a designated representative-in-charge who ceases
4 to act as the designated representative-in-charge, and shall on the
5 same form propose another designated representative or pharmacist
6 to take over as the designated representative-in-charge. The
7 proposed replacement designated representative-in-charge shall
8 be subject to approval by the board. If disapproved, the veterinary
9 food-animal drug retailer shall propose another replacement within
10 15 days of the date of disapproval, and shall continue to name
11 proposed replacements until a designated representative-in-charge
12 is approved by the board.

13 (f) For purposes of this section, designated
14 representative-in-charge means a person granted a designated
15 representative license pursuant to Section 4053, or a registered
16 pharmacist, who is the supervisor or manager of the facility.

17 SEC. 28. Section 4200.1 is added to the Business and
18 Professions Code, to read:

19 4200.1. (a) Notwithstanding Section 135, an applicant may
20 take the North American Pharmacist Licensure Examination four
21 times, and may take the California Practice Standards and
22 Jurisprudence Examination for Pharmacists four times.

23 (b) Notwithstanding Section 135, an applicant may take the
24 North American Pharmacist Licensure Examination and the
25 California Practice Standards and Jurisprudence Examination for
26 Pharmacists four additional times each if he or she successfully
27 completes, at a minimum, 16 additional semester units of education
28 in pharmacy as approved by the board.

29 (c) The applicant shall comply with the requirements of Section
30 4200 for each application for reexamination made pursuant to
31 subdivision (b).

32 (d) An applicant may use the same coursework to satisfy the
33 additional educational requirement for each examination under
34 subdivision (b), if the coursework was completed within 12 months
35 of the date of his or her application for reexamination.

36 (e) For purposes of this section, the board shall treat each failing
37 score on the pharmacist licensure examination administered by
38 the board prior to January 1, 2004, as a failing score on both the
39 North American Pharmacist Licensure Examination and the

1 California Practice Standards and Jurisprudence Examination for
2 Pharmacists.

3 SEC. 29. Section 4425 of the Business and Professions Code
4 is amended to read:

5 4425. (a) As a condition for the participation of a pharmacy
6 in the Medi-Cal program pursuant to Chapter 7 (commencing with
7 Section 14000) of Division 9 of the Welfare and Institutions Code,
8 the pharmacy, upon presentation of a valid prescription for the
9 patient and the patient's Medicare card, shall charge Medicare
10 beneficiaries a price that does not exceed the Medi-Cal
11 reimbursement rate for prescription medicines, and an amount, as
12 set by the State Department of Health Care Services to cover
13 electronic transmission charges. However, Medicare beneficiaries
14 shall not be allowed to use the Medi-Cal reimbursement rate for
15 over-the-counter medications or compounded prescriptions.

16 (b) The State Department of Health Care Services shall provide
17 a mechanism to calculate and transmit the price to the pharmacy,
18 but shall not apply the Medi-Cal drug utilization review process
19 for purposes of this section.

20 (c) The State Department of Health Care Services shall monitor
21 pharmacy participation with the requirements of subdivision (a).

22 (d) The State Department of Health Care Services shall conduct
23 an outreach program to inform Medicare beneficiaries of their
24 right to participate in the program described in subdivision (a),
25 including, but not limited to, the following:

26 (1) Including on its Internet Web site the Medi-Cal
27 reimbursement rate for, at minimum, 200 of the most commonly
28 prescribed medicines and updating this information monthly.

29 (2) Providing a sign to participating pharmacies that the
30 pharmacies shall prominently display at the point of service and
31 at the point of sale, reminding the Medicare beneficiaries to ask
32 that the charge for their prescription be the same amount as the
33 Medi-Cal reimbursement rate and providing the department's
34 telephone number, e-mail address, and Internet Web site address
35 to access information about the program.

36 (e) If prescription drugs are added to the scope of benefits
37 available under the federal Medicare program, the Senate Office
38 of Research shall report that fact to the appropriate committees of
39 the Legislature. It is the intent of the Legislature to evaluate the

1 need to continue the implementation of this article under those
2 circumstances.

3 (f) This section shall not apply to a prescription that is covered
4 by insurance.

5 SEC. 30. Section 4426 of the Business and Professions Code
6 is amended to read:

7 4426. The State Department of Health Care Services shall
8 conduct a study of the adequacy of Medi-Cal pharmacy
9 reimbursement rates including the cost of providing prescription
10 drugs and services.

11 SEC. 31. Section 4980.07 of the Business and Professions
12 Code is repealed.

13 SEC. 32. Section 4980.40.5 of the Business and Professions
14 Code is amended to read:

15 4980.40.5. (a) A doctor's or master's degree in marriage,
16 family, and child counseling, marital and family therapy,
17 psychology, clinical psychology, counseling psychology, or
18 counseling with an emphasis in either marriage, family, and child
19 counseling, or marriage and family therapy, obtained from a school,
20 college, or university approved by the Bureau for Private
21 Postsecondary and Vocational Education as of June 30, 2007, shall
22 be considered by the board to meet the requirements necessary for
23 licensure as a marriage and family therapist and for registration
24 as a marriage and family therapist intern provided that the degree
25 is conferred on or before July 1, 2010.

26 (b) As an alternative to meeting the qualifications specified in
27 subdivision (a) of Section 4980.40, the board shall accept as
28 equivalent degrees those doctor's or master's degrees that otherwise
29 meet the requirements of this chapter and are conferred by
30 educational institutions accredited by any of the following
31 associations:

32 (1) Northwest Commission on Colleges and Universities.

33 (2) Middle States Association of Colleges and Secondary
34 Schools.

35 (3) New England Association of Schools and Colleges.

36 (4) North Central Association of Colleges and Secondary
37 Schools.

38 (5) Southern Association of Colleges and Schools.

39 SEC. 33. Section 4980.43 of the Business and Professions
40 Code is amended to read:

1 4980.43. (a) Prior to applying for licensure examinations, each
2 applicant shall complete experience that shall comply with the
3 following:

4 (1) A minimum of 3,000 hours completed during a period of at
5 least 104 weeks.

6 (2) Not more than 40 hours in any seven consecutive days.

7 (3) Not less than 1,700 hours of supervised experience
8 completed subsequent to the granting of the qualifying master's
9 or doctor's degree.

10 (4) Not more than 1,300 hours of supervised experience obtained
11 prior to completing a master's or doctor's degree.

12 The applicant shall not be credited with more than 750 hours of
13 counseling and direct supervisor contact prior to completing the
14 master's or doctor's degree.

15 (5) No hours of experience may be gained prior to completing
16 either 12 semester units or 18 quarter units of graduate instruction
17 and becoming a trainee except for personal psychotherapy.

18 (6) No hours of experience gained more than six years prior to
19 the date the application for examination eligibility was filed, except
20 that up to 500 hours of clinical experience gained in the supervised
21 practicum required by subdivision (c) of Section 4980.37 and
22 subparagraph (B) of paragraph (1) of subdivision (d) of Section
23 4980.36 shall be exempt from this six-year requirement.

24 (7) Not more than a combined total of 1,250 hours of experience
25 in the following:

26 (A) Direct supervisor contact.

27 (B) Professional enrichment activities. For purposes of this
28 chapter, "professional enrichment activities" include the following:

29 (i) Workshops, seminars, training sessions, or conferences
30 directly related to marriage and family therapy attended by the
31 applicant that are approved by the applicant's supervisor. An
32 applicant shall have no more than 250 hours of verified attendance
33 at these workshops, seminars, training sessions, or conferences.

34 (ii) Participation by the applicant in personal psychotherapy,
35 which includes group, marital or conjoint, family, or individual
36 psychotherapy by an appropriately licensed professional. An
37 applicant shall have no more than 100 hours of participation in
38 personal psychotherapy. The applicant shall be credited with three
39 hours of experience for each hour of personal psychotherapy.

40 (C) Client centered advocacy.

1 (8) Not more than 500 hours of experience providing group
2 therapy or group counseling.

3 (9) Not more than 250 hours of experience administering and
4 evaluating psychological tests, writing clinical reports, writing
5 progress notes, or writing process notes.

6 (10) Not less than 500 total hours of experience in diagnosing
7 and treating couples, families, and children. For up to 150 hours
8 of treating couples and families in conjoint therapy, the applicant
9 shall be credited with two hours of experience for each hour of
10 therapy provided.

11 (11) Not more than 375 hours of experience providing personal
12 psychotherapy, crisis counseling, or other counseling services via
13 telemedicine in accordance with Section 2290.5.

14 (b) All applicants, trainees, and registrants shall be at all times
15 under the supervision of a supervisor who shall be responsible for
16 ensuring that the extent, kind, and quality of counseling performed
17 is consistent with the training and experience of the person being
18 supervised, and who shall be responsible to the board for
19 compliance with all laws, rules, and regulations governing the
20 practice of marriage and family therapy. Supervised experience
21 shall be gained by interns and trainees either as an employee or as
22 a volunteer. The requirements of this chapter regarding gaining
23 hours of experience and supervision are applicable equally to
24 employees and volunteers. Experience shall not be gained by
25 interns or trainees as an independent contractor.

26 (1) If employed, an intern shall provide the board with copies
27 of the corresponding W-2 tax forms for each year of experience
28 claimed upon application for licensure.

29 (2) If volunteering, an intern shall provide the board with a letter
30 from his or her employer verifying the intern's employment as a
31 volunteer upon application for licensure.

32 (c) Supervision shall include at least one hour of direct
33 supervisor contact in each week for which experience is credited
34 in each work setting, as specified:

35 (1) A trainee shall receive an average of at least one hour of
36 direct supervisor contact for every five hours of client contact in
37 each setting.

38 (2) An individual supervised after being granted a qualifying
39 degree shall receive at least one additional hour of direct supervisor
40 contact for every week in which more than 10 hours of client

1 contact is gained in each setting. No more than five hours of
2 supervision, whether individual or group, shall be credited during
3 any single week.

4 (3) For purposes of this section, “one hour of direct supervisor
5 contact” means one hour per week of face-to-face contact on an
6 individual basis or two hours per week of face-to-face contact in
7 a group.

8 (4) Direct supervisor contact shall occur within the same week
9 as the hours claimed.

10 (5) Direct supervisor contact provided in a group shall be
11 provided in a group of not more than eight supervisees and in
12 segments lasting no less than one continuous hour.

13 (6) Notwithstanding paragraph (3), an intern working in a
14 governmental entity, a school, a college, or a university, or an
15 institution that is both nonprofit and charitable may obtain the
16 required weekly direct supervisor contact via two-way, real-time
17 videoconferencing. The supervisor shall be responsible for ensuring
18 that client confidentiality is upheld.

19 (7) All experience gained by a trainee shall be monitored by the
20 supervisor as specified by regulation.

21 (d) (1) A trainee may be credited with supervised experience
22 completed in any setting that meets all of the following:

23 (A) Lawfully and regularly provides mental health counseling
24 or psychotherapy.

25 (B) Provides oversight to ensure that the trainee’s work at the
26 setting meets the experience and supervision requirements set forth
27 in this chapter and is within the scope of practice for the profession
28 as defined in Section 4980.02.

29 (C) Is not a private practice owned by a licensed marriage and
30 family therapist, a licensed psychologist, a licensed clinical social
31 worker, a licensed physician and surgeon, or a professional
32 corporation of any of those licensed professions.

33 (2) Experience may be gained by the trainee solely as part of
34 the position for which the trainee volunteers or is employed.

35 (e) (1) An intern may be credited with supervised experience
36 completed in any setting that meets both of the following:

37 (A) Lawfully and regularly provides mental health counseling
38 or psychotherapy.

39 (B) Provides oversight to ensure that the intern’s work at the
40 setting meets the experience and supervision requirements set forth

1 in this chapter and is within the scope of practice for the profession
2 as defined in Section 4980.02.

3 (2) An applicant shall not be employed or volunteer in a private
4 practice, as defined in subparagraph (C) of paragraph (1) of
5 subdivision (d), until registered as an intern.

6 (3) While an intern may be either a paid employee or a
7 volunteer, employers are encouraged to provide fair remuneration
8 to interns.

9 (4) Except for periods of time during a supervisor's vacation or
10 sick leave, an intern who is employed or volunteering in private
11 practice shall be under the direct supervision of a licensee that has
12 satisfied the requirements of subdivision (g) of Section 4980.03.
13 The supervising licensee shall either be employed by and practice
14 at the same site as the intern's employer, or shall be an owner or
15 shareholder of the private practice. Alternative supervision may
16 be arranged during a supervisor's vacation or sick leave if the
17 supervision meets the requirements of this section.

18 (5) Experience may be gained by the intern solely as part of the
19 position for which the intern volunteers or is employed.

20 (f) Except as provided in subdivision (g), all persons shall
21 register with the board as an intern in order to be credited for
22 postdegree hours of supervised experience gained toward licensure.

23 (g) Except when employed in a private practice setting, all
24 postdegree hours of experience shall be credited toward licensure
25 so long as the applicant applies for the intern registration within
26 90 days of the granting of the qualifying master's or doctor's
27 degree and is thereafter granted the intern registration by the board.

28 (h) Trainees, interns, and applicants shall not receive any
29 remuneration from patients or clients, and shall only be paid by
30 their employers.

31 (i) Trainees, interns, and applicants shall only perform services
32 at the place where their employers regularly conduct business,
33 which may include performing services at other locations, so long
34 as the services are performed under the direction and control of
35 their employer and supervisor, and in compliance with the laws
36 and regulations pertaining to supervision. Trainees and interns
37 shall have no proprietary interest in their employers' businesses
38 and shall not lease or rent space, pay for furnishings, equipment
39 or supplies, or in any other way pay for the obligations of their
40 employers.

1 (j) Trainees, interns, or applicants who provide volunteered
2 services or other services, and who receive no more than a total,
3 from all work settings, of five hundred dollars (\$500) per month
4 as reimbursement for expenses actually incurred by those trainees,
5 interns, or applicants for services rendered in any lawful work
6 setting other than a private practice shall be considered an
7 employee and not an independent contractor. The board may audit
8 applicants who receive reimbursement for expenses, and the
9 applicants shall have the burden of demonstrating that the payments
10 received were for reimbursement of expenses actually incurred.

11 (k) Each educational institution preparing applicants for
12 licensure pursuant to this chapter shall consider requiring, and
13 shall encourage, its students to undergo individual, marital or
14 conjoint, family, or group counseling or psychotherapy, as
15 appropriate. Each supervisor shall consider, advise, and encourage
16 his or her interns and trainees regarding the advisability of
17 undertaking individual, marital or conjoint, family, or group
18 counseling or psychotherapy, as appropriate. Insofar as it is deemed
19 appropriate and is desired by the applicant, the educational
20 institution and supervisors are encouraged to assist the applicant
21 in locating that counseling or psychotherapy at a reasonable cost.

22 SEC. 34. Section 4980.80 of the Business and Professions
23 Code is amended to read:

24 4980.80. (a) This section applies to persons who apply for
25 licensure between January 1, 2010, and December 31, 2013,
26 inclusive.

27 (b) The board may issue a license to a person who, at the time
28 of application, holds a valid license issued by a board of marriage
29 counselor examiners, marriage therapist examiners, or
30 corresponding authority of any state, if all of the following
31 requirements are satisfied:

32 (1) The person has held that license for at least two years
33 immediately preceding the date of application.

34 (2) The education and supervised experience requirements are
35 substantially the equivalent of this chapter.

36 (3) The person complies with Section 4980.76, if applicable.

37 (4) The person successfully completes the board administered
38 licensing examinations as specified by subdivision (d) of Section
39 4980.40 and pays the fees specified.

1 (5) The person completes all of the following coursework or
2 training:

3 (A) (i) An applicant who completed a two semester or three
4 quarter unit course in law and professional ethics for marriage and
5 family therapists that included areas of study as specified in Section
6 4980.41 as part of his or her qualifying degree shall complete an
7 18-hour course in California law and professional ethics that
8 includes, but is not limited to, the following subjects: advertising,
9 scope of practice, scope of competence, treatment of minors,
10 confidentiality, dangerous patients, psychotherapist-patient
11 privilege, recordkeeping, patient access to records, requirements
12 of the Health Insurance Portability and Accountability Act of 1996,
13 dual relationships, child abuse, elder and dependent adult abuse,
14 online therapy, insurance reimbursement, civil liability, disciplinary
15 actions and unprofessional conduct, ethics complaints and ethical
16 standards, termination of therapy, standards of care, relevant family
17 law, and therapist disclosures to patients.

18 (ii) An applicant who has not completed a two semester or three
19 quarter unit course in law and professional ethics for marriage and
20 family therapists that included areas of study as specified in Section
21 4980.41 as part of his or her qualifying degree, shall complete a
22 two semester or three quarter unit course in California law and
23 professional ethics that includes, at minimum, the areas of study
24 specified in Section 4980.41.

25 (B) A minimum of seven contact hours of training or coursework
26 in child abuse assessment and reporting as specified in Section 28
27 and any regulations promulgated thereunder.

28 (C) A minimum of 10 contact hours of training or coursework
29 in human sexuality as specified in Section 25 and any regulations
30 promulgated thereunder.

31 (D) A minimum of 15 contact hours of training or coursework
32 in alcoholism and other chemical substance dependency as
33 specified by regulation.

34 (E) (i) Instruction in spousal or partner abuse assessment,
35 detection, and intervention. This instruction may be taken either
36 in fulfillment of other requirements for licensure or in a separate
37 course.

38 (ii) A minimum of 15 contact hours of coursework or training
39 in spousal or partner abuse assessment, detection, and intervention
40 strategies.

1 (F) A minimum of a two semester or three quarter unit survey
2 course in psychological testing. This course may be taken either
3 in fulfillment of other requirements for licensure or in a separate
4 course.

5 (G) A minimum of a two semester or three quarter unit survey
6 course in psychopharmacology. This course may be taken either
7 in fulfillment of other requirements for licensure or in a separate
8 course.

9 (H) With respect to human sexuality, alcoholism and other
10 chemical substance dependency, spousal or partner abuse
11 assessment, detection, and intervention, psychological testing, and
12 psychopharmacology, the board may accept training or coursework
13 acquired out of state.

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

17 SEC. 35. Section 4982.2 of the Business and Professions Code
18 is repealed.

19 SEC. 36. Section 4982.25 of the Business and Professions
20 Code is amended to read:

21 4982.25. The board may deny an application, or may suspend
22 or revoke a license or registration issued under this chapter, for
23 any of the following:

24 (a) Denial of licensure, revocation, suspension, restriction, or
25 any other disciplinary action imposed by another state or territory
26 or possession of the United States, or by any other governmental
27 agency, on a license, certificate, or registration to practice marriage
28 and family therapy, or any other healing art, shall constitute
29 unprofessional conduct. A certified copy of the disciplinary action
30 decision or judgment shall be conclusive evidence of that action.

31 (b) Revocation, suspension, or restriction by the board of a
32 license, certificate, or registration to practice as a clinical social
33 worker, professional clinical counselor, or educational psychologist
34 shall also constitute grounds for disciplinary action for
35 unprofessional conduct against the licensee or registrant under this
36 chapter.

37 SEC. 37. Section 4984.6 of the Business and Professions Code
38 is repealed.

39 SEC. 38. Section 4984.8 of the Business and Professions Code
40 is amended to read:

1 4984.8. (a) A licensee may apply to the board to request that
2 his or her license be placed on inactive status.

3 (b) A licensee on inactive status shall be subject to this chapter
4 and shall not engage in the practice of marriage and family therapy
5 in this state.

6 (c) A licensee who holds an inactive license shall pay a biennial
7 fee in the amount of one-half of the standard renewal fee and shall
8 be exempt from continuing education requirements.

9 (d) A licensee on inactive status who has not committed an act
10 or crime constituting grounds for denial of licensure may, upon
11 request, restore his or her license to practice marriage and family
12 therapy to active status.

13 (1) A licensee requesting to restore his or her license to active
14 status between renewal cycles shall pay the remaining one-half of
15 his or her renewal fee.

16 (2) A licensee requesting to restore his or her license to active
17 status, whose license will expire less than one year from the date
18 of the request, shall complete 18 hours of continuing education as
19 specified in Section 4980.54.

20 (3) A licensee requesting to restore his or her license to active
21 status, whose license will expire more than one year from the date
22 of the request, shall complete 36 hours of continuing education as
23 specified in Section 4980.54.

24 SEC. 39. Section 4989.54 of the Business and Professions
25 Code is amended to read:

26 4989.54. The board may deny a license or may suspend or
27 revoke the license of a licensee if he or she has been guilty of
28 unprofessional conduct. Unprofessional conduct includes, but is
29 not limited to, the following:

30 (a) Conviction of a crime substantially related to the
31 qualifications, functions, and duties of an educational psychologist.

32 (1) The record of conviction shall be conclusive evidence only
33 of the fact that the conviction occurred.

34 (2) The board may inquire into the circumstances surrounding
35 the commission of the crime in order to fix the degree of discipline
36 or to determine if the conviction is substantially related to the
37 qualifications, functions, or duties of a licensee under this chapter.

38 (3) A plea or verdict of guilty or a conviction following a plea
39 of nolo contendere made to a charge substantially related to the
40 qualifications, functions, or duties of a licensee under this chapter

1 shall be deemed to be a conviction within the meaning of this
2 section.

3 (4) The board may order a license suspended or revoked, or
4 may decline to issue a license when the time for appeal has elapsed,
5 or the judgment of conviction has been affirmed on appeal, or
6 when an order granting probation is made suspending the
7 imposition of sentence, irrespective of a subsequent order under
8 Section 1203.4 of the Penal Code allowing the person to withdraw
9 a plea of guilty and enter a plea of not guilty or setting aside the
10 verdict of guilty or dismissing the accusation, information, or
11 indictment.

12 (b) Securing a license by fraud, deceit, or misrepresentation on
13 an application for licensure submitted to the board, whether
14 engaged in by an applicant for a license or by a licensee in support
15 of an application for licensure.

16 (c) Administering to himself or herself a controlled substance
17 or using any of the dangerous drugs specified in Section 4022 or
18 an alcoholic beverage to the extent, or in a manner, as to be
19 dangerous or injurious to himself or herself or to any other person
20 or to the public or to the extent that the use impairs his or her ability
21 to safely perform the functions authorized by the license. The board
22 shall deny an application for a license or revoke the license of any
23 person, other than one who is licensed as a physician and surgeon,
24 who uses or offers to use drugs in the course of performing
25 educational psychology.

26 (d) Failure to comply with the consent provisions in Section
27 2290.5.

28 (e) Advertising in a manner that is false, fraudulent, misleading,
29 or deceptive, as defined in Section 651.

30 (f) Violating, attempting to violate, or conspiring to violate any
31 of the provisions of this chapter or any regulation adopted by the
32 board.

33 (g) Commission of any dishonest, corrupt, or fraudulent act
34 substantially related to the qualifications, functions, or duties of a
35 licensee.

36 (h) Denial of licensure, revocation, suspension, restriction, or
37 any other disciplinary action imposed by another state or territory
38 or possession of the United States or by any other governmental
39 agency, on a license, certificate, or registration to practice
40 educational psychology or any other healing art. A certified copy

1 of the disciplinary action, decision, or judgment shall be conclusive
2 evidence of that action.

3 (i) Revocation, suspension, or restriction by the board of a
4 license, certificate, or registration to practice as a clinical social
5 worker, professional clinical counselor, or marriage and family
6 therapist.

7 (j) Failure to keep records consistent with sound clinical
8 judgment, the standards of the profession, and the nature of the
9 services being rendered.

10 (k) Gross negligence or incompetence in the practice of
11 educational psychology.

12 (l) Misrepresentation as to the type or status of a license held
13 by the licensee or otherwise misrepresenting or permitting
14 misrepresentation of his or her education, professional
15 qualifications, or professional affiliations to any person or entity.

16 (m) Intentionally or recklessly causing physical or emotional
17 harm to any client.

18 (n) Engaging in sexual relations with a client or a former client
19 within two years following termination of professional services,
20 soliciting sexual relations with a client, or committing an act of
21 sexual abuse or sexual misconduct with a client or committing an
22 act punishable as a sexually related crime, if that act or solicitation
23 is substantially related to the qualifications, functions, or duties of
24 a licensed educational psychologist.

25 (o) Prior to the commencement of treatment, failing to disclose
26 to the client or prospective client the fee to be charged for the
27 professional services or the basis upon which that fee will be
28 computed.

29 (p) Paying, accepting, or soliciting any consideration,
30 compensation, or remuneration, whether monetary or otherwise,
31 for the referral of professional clients.

32 (q) Failing to maintain confidentiality, except as otherwise
33 required or permitted by law, of all information that has been
34 received from a client in confidence during the course of treatment
35 and all information about the client that is obtained from tests or
36 other means.

37 (r) Performing, holding himself or herself out as being able to
38 perform, or offering to perform any professional services beyond
39 the scope of the license authorized by this chapter or beyond his

1 or her field or fields of competence as established by his or her
2 education, training, or experience.

3 (s) Reproducing or describing in public, or in any publication
4 subject to general public distribution, any psychological test or
5 other assessment device the value of which depends in whole or
6 in part on the naivete of the subject in ways that might invalidate
7 the test or device. An educational psychologist shall limit access
8 to the test or device to persons with professional interests who can
9 be expected to safeguard its use.

10 (t) Aiding or abetting an unlicensed person to engage in conduct
11 requiring a license under this chapter.

12 (u) When employed by another person or agency, encouraging,
13 either orally or in writing, the employer's or agency's clientele to
14 utilize his or her private practice for further counseling without
15 the approval of the employing agency or administration.

16 (v) Failing to comply with the child abuse reporting
17 requirements of Section 11166 of the Penal Code.

18 (w) Failing to comply with the elder and adult dependent abuse
19 reporting requirements of Section 15630 of the Welfare and
20 Institutions Code.

21 (x) Willful violation of Chapter 1 (commencing with Section
22 123100) of Part 1 of Division 106 of the Health and Safety Code.

23 (y) (1) Engaging in an act described in Section 261, 286, 288a,
24 or 289 of the Penal Code with a minor or an act described in
25 Section 288 or 288.5 of the Penal Code regardless of whether the
26 act occurred prior to or after the time the registration or license
27 was issued by the board. An act described in this subdivision
28 occurring prior to the effective date of this subdivision shall
29 constitute unprofessional conduct and shall subject the licensee to
30 refusal, suspension, or revocation of a license under this section.

31 (2) The Legislature hereby finds and declares that protection of
32 the public, and in particular minors, from sexual misconduct by a
33 licensee is a compelling governmental interest, and that the ability
34 to suspend or revoke a license for sexual conduct with a minor
35 occurring prior to the effective date of this section is equally
36 important to protecting the public as is the ability to refuse a license
37 for sexual conduct with a minor occurring prior to the effective
38 date of this section.

1 (z) Engaging in any conduct that subverts or attempts to subvert
2 any licensing examination or the administration of the examination
3 as described in Section 123.

4 (aa) Impersonation of another by any licensee or applicant for
5 a license, or, in the case of a licensee, allowing any other person
6 to use his or her license.

7 (ab) Permitting a person under his or her supervision or control
8 to perform, or permitting that person to hold himself or herself out
9 as competent to perform, professional services beyond the level
10 of education, training, or experience of that person.

11 SEC. 40. Section 4990.02 of the Business and Professions
12 Code is amended to read:

13 4990.02. "Board," as used in this chapter, Chapter 13
14 (commencing with Section 4980), Chapter 13.5 (commencing with
15 Section 4989.10), Chapter 14 (commencing with Section 4991),
16 and Chapter 16 (commencing with Section 4999.10) means the
17 Board of Behavioral Sciences.

18 SEC. 41. Section 4990.12 of the Business and Professions
19 Code is amended to read:

20 4990.12. The duty of administering and enforcing this chapter,
21 Chapter 13 (commencing with Section 4980), Chapter 13.5
22 (commencing with Section 4989.10), Chapter 14 (commencing
23 with Section 4991), and Chapter 16 (commencing with Section
24 4999.10) is vested in the board and the executive officer subject
25 to, and under the direction of, the board. In the performance of
26 this duty, the board and the executive officer have all the powers
27 and are subject to all the responsibilities vested in, and imposed
28 upon, the head of a department by Chapter 2 (commencing with
29 Section 11150) of Part 1 of Division 3 of Title 2 of the Government
30 Code.

31 SEC. 42. Section 4990.18 of the Business and Professions
32 Code is amended to read:

33 4990.18. It is the intent of the Legislature that the board employ
34 its resources for each and all of the following functions:

35 (a) The licensure of marriage and family therapists, clinical
36 social workers, professional clinical counselors, and educational
37 psychologists.

38 (b) The development and administration of licensure
39 examinations and examination procedures consistent with
40 prevailing standards for the validation and use of licensing and

1 certification tests. Examinations shall measure knowledge and
2 abilities demonstrably important to the safe, effective practice of
3 the profession.

4 (c) Enforcement of laws designed to protect the public from
5 incompetent, unethical, or unprofessional practitioners.

6 (d) Consumer education.

7 SEC. 43. Section 4990.22 of the Business and Professions
8 Code is amended to read:

9 4990.22. (a) The Behavioral Sciences Fund shall be used for
10 the purposes of carrying out and enforcing the provisions of this
11 chapter and the chapters listed in Section 4990.12. All moneys in
12 the fund shall be expended by the board for the purposes of the
13 programs under its jurisdiction.

14 (b) The board shall keep records that reasonably ensure that
15 funds expended in the administration of each licensure or
16 registration category shall bear a reasonable relation to the revenue
17 derived from each category and report to the department no later
18 than May 31 of each year on those expenditures.

19 (c) Surpluses, if any, may be used by the board in a manner that
20 bears a reasonable relation to the revenue derived from each
21 licensure or registration category and may include, but not be
22 limited to, expenditures for education and research related to each
23 of the licensing or registration categories.

24 SEC. 44. Section 4990.30 of the Business and Professions
25 Code is amended to read:

26 4990.30. (a) A licensed marriage and family therapist, marriage
27 and family therapist intern, licensed clinical social worker,
28 associate clinical social worker, licensed professional clinical
29 counselor, professional clinical counselor intern, or licensed
30 educational psychologist whose license or registration has been
31 revoked, suspended, or placed on probation, may petition the board
32 for reinstatement or modification of the penalty, including
33 modification or termination of probation. The petition shall be on
34 a form provided by the board and shall state any facts and
35 information as may be required by the board including, but not
36 limited to, proof of compliance with the terms and conditions of
37 the underlying disciplinary order. The petition shall be verified by
38 the petitioner who shall file an original and sufficient copies of
39 the petition, together with any supporting documents, for the

1 members of the board, the administrative law judge, and the
2 Attorney General.

3 (b) The licensee or registrant may file the petition on or after
4 the expiration of the following timeframes, each of which
5 commences on the effective date of the decision ordering the
6 disciplinary action or, if the order of the board, or any portion of
7 it, is stayed by the board itself or by the superior court, from the
8 date the disciplinary action is actually implemented in its entirety:

9 (1) Three years for reinstatement of a license or registration that
10 was revoked for unprofessional conduct, except that the board
11 may, in its sole discretion, specify in its revocation order that a
12 petition for reinstatement may be filed after two years.

13 (2) Two years for early termination of any probation period of
14 three years or more.

15 (3) One year for modification of a condition, reinstatement of
16 a license or registration revoked for mental or physical illness, or
17 termination of probation of less than three years.

18 (c) The petition may be heard by the board itself or the board
19 may assign the petition to an administrative law judge pursuant to
20 Section 11512 of the Government Code.

21 (d) The petitioner may request that the board schedule the
22 hearing on the petition for a board meeting at a specific city where
23 the board regularly meets.

24 (e) The petitioner and the Attorney General shall be given timely
25 notice by letter of the time and place of the hearing on the petition
26 and an opportunity to present both oral and documentary evidence
27 and argument to the board or the administrative law judge.

28 (f) The petitioner shall at all times have the burden of production
29 and proof to establish by clear and convincing evidence that he or
30 she is entitled to the relief sought in the petition.

31 (g) The board, when it is hearing the petition itself, or an
32 administrative law judge sitting for the board, may consider all
33 activities of the petitioner since the disciplinary action was taken,
34 the offense for which the petitioner was disciplined, the petitioner's
35 activities during the time his or her license or registration was in
36 good standing, and the petitioner's rehabilitative efforts, general
37 reputation for truth, and professional ability.

38 (h) The hearing may be continued from time to time as the board
39 or the administrative law judge deems appropriate but in no case

1 may the hearing on the petition be delayed more than 180 days
2 from its filing without the consent of the petitioner.

3 (i) The board itself, or the administrative law judge if one is
4 designated by the board, shall hear the petition and shall prepare
5 a written decision setting forth the reasons supporting the decision.
6 In a decision granting a petition reinstating a license or modifying
7 a penalty, the board itself, or the administrative law judge, may
8 impose any terms and conditions that the agency deems reasonably
9 appropriate, including those set forth in Sections 823 and 4990.40.
10 If a petition is heard by an administrative law judge sitting alone,
11 the administrative law judge shall prepare a proposed decision and
12 submit it to the board. The board may take action with respect to
13 the proposed decision and petition as it deems appropriate.

14 (j) The petitioner shall pay a fingerprinting fee and provide a
15 current set of his or her fingerprints to the board. The petitioner
16 shall execute a form authorizing release to the board or its designee,
17 of all information concerning the petitioner's current physical and
18 mental condition. Information provided to the board pursuant to
19 the release shall be confidential and shall not be subject to
20 discovery or subpoena in any other proceeding, and shall not be
21 admissible in any action, other than before the board, to determine
22 the petitioner's fitness to practice as required by Section 822.

23 (k) The board may delegate to its executive officer authority to
24 order investigation of the contents of the petition.

25 (l) No petition shall be considered while the petitioner is under
26 sentence for any criminal offense, including any period during
27 which the petitioner is on court-imposed probation or parole or
28 the petitioner is required to register pursuant to Section 290 of the
29 Penal Code. No petition shall be considered while there is an
30 accusation or petition to revoke probation pending against the
31 petitioner.

32 (m) Except in those cases where the petitioner has been
33 disciplined for violation of Section 822, the board may in its
34 discretion deny without hearing or argument any petition that is
35 filed pursuant to this section within a period of two years from the
36 effective date of a prior decision following a hearing under this
37 section.

38 SEC. 45. Section 4990.38 of the Business and Professions
39 Code is amended to read:

1 4990.38. The board may deny an application or may suspend
2 or revoke a license or registration issued under the chapters it
3 administers and enforces for any disciplinary action imposed by
4 another state or territory or possession of the United States, or by
5 a governmental agency on a license, certificate or registration to
6 practice marriage and family therapy, clinical social work,
7 educational psychology, professional clinical counseling, or any
8 other healing art. The disciplinary action, which may include denial
9 of licensure or revocation or suspension of the license or imposition
10 of restrictions on it, constitutes unprofessional conduct. A certified
11 copy of the disciplinary action decision or judgment shall be
12 conclusive evidence of that action.

13 SEC. 46. Section 4992.36 of the Business and Professions
14 Code is amended to read:

15 4992.36. The board may deny an application, or may suspend
16 or revoke a license or registration issued under this chapter, for
17 any of the following:

18 (a) Denial of licensure, revocation, suspension, restriction, or
19 any other disciplinary action imposed by another state or territory
20 of the United States, or by any other governmental agency, on a
21 license, certificate, or registration to practice clinical social work
22 or any other healing art shall constitute grounds for disciplinary
23 action for unprofessional conduct. A certified copy of the
24 disciplinary action decision or judgment shall be conclusive
25 evidence of that action.

26 (b) Revocation, suspension, or restriction by the board of a
27 license, certificate, or registration to practice marriage and family
28 therapy, professional clinical counseling, or educational psychology
29 against a licensee or registrant shall also constitute grounds for
30 disciplinary action for unprofessional conduct under this chapter.

31 SEC. 47. Article 3 (commencing with Section 4994) of Chapter
32 14 of Division 2 of the Business and Professions Code is repealed.

33 SEC. 48. Section 4996.17 of the Business and Professions
34 Code is amended to read:

35 4996.17. (a) Experience gained outside of California shall be
36 accepted toward the licensure requirements if it is substantially
37 the equivalent of the requirements of this chapter.

38 (b) The board may issue a license to any person who, at the time
39 of application, holds a valid active clinical social work license
40 issued by a board of clinical social work examiners or

1 corresponding authority of any state, if the person passes the board
2 administered licensing examinations as specified in Section 4996.1
3 and pays the required fees. Issuance of the license is conditioned
4 upon all of the following:

5 (1) The applicant has supervised experience that is substantially
6 the equivalent of that required by this chapter. If the applicant has
7 less than 3,200 hours of qualifying supervised experience, time
8 actively licensed as a clinical social worker shall be accepted at a
9 rate of 100 hours per month up to a maximum of 1,200 hours.

10 (2) Completion of the following coursework or training in or
11 out of this state:

12 (A) A minimum of seven contact hours of training or coursework
13 in child abuse assessment and reporting as specified in Section 28,
14 and any regulations promulgated thereunder.

15 (B) A minimum of 10 contact hours of training or coursework
16 in human sexuality as specified in Section 25, and any regulations
17 promulgated thereunder.

18 (C) A minimum of 15 contact hours of training or coursework
19 in alcoholism and other chemical substance dependency, as
20 specified by regulation.

21 (D) A minimum of 15 contact hours of coursework or training
22 in spousal or partner abuse assessment, detection, and intervention
23 strategies.

24 (3) The applicant's license is not suspended, revoked, restricted,
25 sanctioned, or voluntarily surrendered in any state.

26 (4) The applicant is not currently under investigation in any
27 other state, and has not been charged with an offense for any act
28 substantially related to the practice of social work by any public
29 agency, entered into any consent agreement or been subject to an
30 administrative decision that contains conditions placed by an
31 agency upon an applicant's professional conduct or practice,
32 including any voluntary surrender of license, or been the subject
33 of an adverse judgment resulting from the practice of social work
34 that the board determines constitutes evidence of a pattern of
35 incompetence or negligence.

36 (5) The applicant shall provide a certification from each state
37 where he or she holds a license pertaining to licensure, disciplinary
38 action, and complaints pending.

39 (6) The applicant is not subject to denial of licensure under
40 Section 480, 4992.3, 4992.35, or 4992.36.

1 (c) The board may issue a license to any person who, at the time
2 of application, holds a valid, active clinical social work license
3 issued by a board of clinical social work examiners or a
4 corresponding authority of any state, if the person has held that
5 license for at least four years immediately preceding the date of
6 application, the person passes the board administered licensing
7 examinations as specified in Section 4996.1, and the person pays
8 the required fees. Issuance of the license is conditioned upon all
9 of the following:

10 (1) Completion of the following coursework or training in or
11 out of state:

12 (A) A minimum of seven contact hours of training or coursework
13 in child abuse assessment and reporting as specified in Section 28,
14 and any regulations promulgated thereunder.

15 (B) A minimum of 10 contact hours of training or coursework
16 in human sexuality as specified in Section 25, and any regulations
17 promulgated thereunder.

18 (C) A minimum of 15 contact hours of training or coursework
19 in alcoholism and other chemical substance dependency, as
20 specified by regulation.

21 (D) A minimum of 15 contact hours of coursework or training
22 in spousal or partner abuse assessment, detection, and intervention
23 strategies.

24 (2) The applicant has been licensed as a clinical social worker
25 continuously for a minimum of four years prior to the date of
26 application.

27 (3) The applicant's license is not suspended, revoked, restricted,
28 sanctioned, or voluntarily surrendered in any state.

29 (4) The applicant is not currently under investigation in any
30 other state, and has not been charged with an offense for any act
31 substantially related to the practice of social work by any public
32 agency, entered into any consent agreement or been subject to an
33 administrative decision that contains conditions placed by an
34 agency upon an applicant's professional conduct or practice,
35 including any voluntary surrender of license, or been the subject
36 of an adverse judgment resulting from the practice of social work
37 that the board determines constitutes evidence of a pattern of
38 incompetence or negligence.

1 (5) The applicant provides a certification from each state where
2 he or she holds a license pertaining to licensure, disciplinary action,
3 and complaints pending.

4 (6) The applicant is not subject to denial of licensure under
5 Section 480, 4992.3, 4992.35, or 4992.36.

6 SEC. 49. Section 4996.23 of the Business and Professions
7 Code is amended to read:

8 4996.23. The experience required by subdivision (c) of Section
9 4996.2 shall meet the following criteria:

10 (a) All persons registered with the board on and after January
11 1, 2002, shall have at least 3,200 hours of post-master's degree
12 supervised experience providing clinical social work services as
13 permitted by Section 4996.9. At least 1,700 hours shall be gained
14 under the supervision of a licensed clinical social worker. The
15 remaining required supervised experience may be gained under
16 the supervision of a licensed mental health professional acceptable
17 to the board as defined by a regulation adopted by the board. This
18 experience shall consist of the following:

19 (1) A minimum of 2,000 hours in clinical psychosocial
20 diagnosis, assessment, and treatment, including psychotherapy or
21 counseling.

22 (2) A maximum of 1,200 hours in client-centered advocacy,
23 consultation, evaluation, and research.

24 (3) Of the 2,000 clinical hours required in paragraph (1), no less
25 than 750 hours shall be face-to-face individual or group
26 psychotherapy provided to clients in the context of clinical social
27 work services.

28 (4) A minimum of two years of supervised experience is required
29 to be obtained over a period of not less than 104 weeks and shall
30 have been gained within the six years immediately preceding the
31 date on which the application for licensure was filed.

32 (5) Experience shall not be credited for more than 40 hours in
33 any week.

34 (b) "Supervision" means responsibility for, and control of, the
35 quality of clinical social work services being provided.
36 Consultation or peer discussion shall not be considered to be
37 supervision.

38 (c) (1) Prior to the commencement of supervision, a supervisor
39 shall comply with all requirements enumerated in Section 1870 of
40 Title 16 of the California Code of Regulations and shall sign under

1 penalty of perjury the “Responsibility Statement for Supervisors
2 of an Associate Clinical Social Worker” form.

3 (2) Supervised experience shall include at least one hour of
4 direct supervisor contact for a minimum of 104 weeks. For
5 purposes of this subdivision, “one hour of direct supervisor contact”
6 means one hour per week of face-to-face contact on an individual
7 basis or two hours of face-to-face contact in a group conducted
8 within the same week as the hours claimed.

9 (3) An associate shall receive an average of at least one hour of
10 direct supervisor contact for every week in which more than 10
11 hours of face-to-face psychotherapy is performed in each setting
12 in which experience is gained. No more than five hours of
13 supervision, whether individual or group, shall be credited during
14 any single week.

15 (4) Group supervision shall be provided in a group of not more
16 than eight supervisees and shall be provided in segments lasting
17 no less than one continuous hour.

18 (5) Of the 104 weeks of required supervision, 52 weeks shall
19 be individual supervision, and of the 52 weeks of required
20 individual supervision, not less than 13 weeks shall be supervised
21 by a licensed clinical social worker.

22 (6) Notwithstanding paragraph (2), an associate clinical social
23 worker working for a governmental entity, school, college, or
24 university, or an institution that is both a nonprofit and charitable
25 institution, may obtain the required weekly direct supervisor
26 contact via live two-way videoconferencing. The supervisor shall
27 be responsible for ensuring that client confidentiality is preserved.

28 (d) The supervisor and the associate shall develop a supervisory
29 plan that describes the goals and objectives of supervision. These
30 goals shall include the ongoing assessment of strengths and
31 limitations and the assurance of practice in accordance with the
32 laws and regulations. The associate shall submit to the board the
33 initial original supervisory plan upon application for licensure.

34 (e) Experience shall only be gained in a setting that meets both
35 of the following:

36 (1) Lawfully and regularly provides clinical social work, mental
37 health counseling, or psychotherapy.

38 (2) Provides oversight to ensure that the associate’s work at the
39 setting meets the experience and supervision requirements set forth

1 in this chapter and is within the scope of practice for the profession
2 as defined in Section 4996.9.

3 (f) Experience shall not be gained until the applicant has been
4 registered as an associate clinical social worker.

5 (g) Employment in a private practice as defined in subdivision
6 (h) shall not commence until the applicant has been registered as
7 an associate clinical social worker.

8 (h) A private practice setting is a setting that is owned by a
9 licensed clinical social worker, a licensed marriage and family
10 therapist, a licensed psychologist, a licensed physician and surgeon,
11 or a professional corporation of any of those licensed professions.

12 (i) If volunteering, the associate shall provide the board with a
13 letter from his or her employer verifying his or her voluntary status
14 upon application for licensure.

15 (j) If employed, the associate shall provide the board with copies
16 of his or her W-2 tax forms for each year of experience claimed
17 upon application for licensure.

18 (k) While an associate may be either a paid employee or
19 volunteer, employers are encouraged to provide fair remuneration
20 to associates.

21 (l) An associate shall not do the following:

22 (1) Receive any remuneration from patients or clients and shall
23 only be paid by his or her employer.

24 (2) Have any proprietary interest in the employer's business.

25 (3) Lease or rent space, pay for furnishings, equipment, or
26 supplies, or in any other way pay for the obligations of his or her
27 employer.

28 (m) An associate, whether employed or volunteering, may obtain
29 supervision from a person not employed by the associate's
30 employer if that person has signed a written agreement with the
31 employer to take supervisory responsibility for the associate's
32 social work services.

33 (n) Notwithstanding any other provision of law, associates and
34 applicants for examination shall receive a minimum of one hour
35 of supervision per week for each setting in which he or she is
36 working.

37 SEC. 50. Section 4999.46 of the Business and Professions
38 Code is amended to read:

1 4999.46. (a) To qualify for licensure, applicants shall complete
2 clinical mental health experience under the general supervision of
3 an approved supervisor as defined in Section 4999.12.

4 (b) The experience shall include a minimum of 3,000 postdegree
5 hours of supervised clinical mental health experience related to
6 the practice of professional clinical counseling, performed over a
7 period of not less than two years (104 weeks) which shall include:

8 (1) Not more than 40 hours in any seven consecutive days.

9 (2) Not less than 1,750 hours of direct counseling with
10 individuals or groups in a clinical mental health counseling setting
11 using a variety of psychotherapeutic techniques and recognized
12 counseling interventions within the scope of practice of licensed
13 professional clinical counselors.

14 (3) Not more than 500 hours of experience providing group
15 therapy or group counseling.

16 (4) Not more than 250 hours of experience providing counseling
17 or crisis counseling on the telephone.

18 (5) Not less than 150 hours of clinical experience in a hospital
19 or community mental health setting.

20 (6) Not more than a combined total of 1,250 hours of experience
21 in the following related activities:

22 (A) Direct supervisor contact.

23 (B) Client centered advocacy.

24 (C) Not more than 250 hours of experience administering tests
25 and evaluating psychological tests of clients, writing clinical
26 reports, writing progress notes, or writing process notes.

27 (D) Not more than 250 hours of verified attendance at
28 workshops, training sessions, or conferences directly related to
29 professional clinical counseling that are approved by the applicant's
30 supervisor.

31 (c) No hours of clinical mental health experience may be gained
32 more than six years prior to the date the application for examination
33 eligibility was filed.

34 (d) An applicant shall register with the board as an intern in
35 order to be credited for postdegree hours of experience toward
36 licensure. Postdegree hours of experience shall be credited toward
37 licensure, provided that the applicant applies for intern registration
38 within 90 days of the granting of the qualifying degree and is
39 registered as an intern by the board.

1 (e) All applicants and interns shall be at all times under the
2 supervision of a supervisor who shall be responsible for ensuring
3 that the extent, kind, and quality of counseling performed is
4 consistent with the training and experience of the person being
5 supervised, and who shall be responsible to the board for
6 compliance with all laws, rules, and regulations governing the
7 practice of professional clinical counseling.

8 (f) Experience obtained under the supervision of a spouse or
9 relative by blood or marriage shall not be credited toward the
10 required hours of supervised experience. Experience obtained
11 under the supervision of a supervisor with whom the applicant has
12 had or currently has a personal, professional, or business
13 relationship that undermines the authority or effectiveness of the
14 supervision shall not be credited toward the required hours of
15 supervised experience.

16 (g) Supervision shall include at least one hour of direct
17 supervisor contact in each week for which experience is credited
18 in each work setting.

19 (1) No more than five hours of supervision, whether individual
20 or group, shall be credited during any single week.

21 (2) An intern shall receive at least one additional hour of direct
22 supervisor contact for every week in which more than 10 hours of
23 face-to-face psychotherapy is performed in each setting in which
24 experience is gained.

25 (3) For purposes of this section, "one hour of direct supervisor
26 contact" means one hour of face-to-face contact on an individual
27 basis or two hours of face-to-face contact in a group of not more
28 than eight persons in segments lasting no less than one continuous
29 hour.

30 (4) Notwithstanding paragraph (3), an intern working in a
31 governmental entity, a school, a college, or a university, or an
32 institution that is both nonprofit and charitable, may obtain the
33 required weekly direct supervisor contact via two-way, real-time
34 videoconferencing. The supervisor shall be responsible for ensuring
35 that client confidentiality is upheld.

36 SEC. 51. Section 4999.57 is added to the Business and
37 Professions Code, to read:

38 4999.57. (a) This section applies to a person who applies for
39 examination eligibility or registration between January 1, 2011,

1 and December 31, 2013, inclusive, who does not hold a license
2 described in subdivision (a) of Section 4999.58.

3 (b) Experience gained outside of California shall be accepted
4 toward the licensure requirements if it is substantially equivalent
5 to that required by this chapter, if the applicant complies with
6 Section 4999.40, if applicable, and if the applicant has gained a
7 minimum of 250 hours of supervised experience in direct
8 counseling within California while registered as an intern with the
9 board.

10 (c) Education gained while residing outside of California shall
11 be accepted toward the licensure requirements if it is substantially
12 equivalent to the education requirements of this chapter, if the
13 applicant has completed the training or coursework required under
14 subdivision (e) of Section 4999.32, and if the applicant completes,
15 in addition to the course described in subparagraph (I) of paragraph
16 (1) of subdivision (c) of Section 4999.32, an 18-hour course in
17 California law and professional ethics that includes, but is not
18 limited to, instruction in advertising, scope of practice, scope of
19 competence, treatment of minors, confidentiality, dangerous clients,
20 psychotherapist-client privilege, recordkeeping, client access to
21 records, the Health Insurance Portability and Accountability Act,
22 dual relationships, child abuse, elder and dependent adult abuse,
23 online therapy, insurance reimbursement, civil liability, disciplinary
24 actions and unprofessional conduct, ethics complaints and ethical
25 standards, termination of therapy, standards of care, relevant family
26 law, and therapist disclosures to clients.

27 (d) For purposes of this section, the board may, in its discretion,
28 accept education as substantially equivalent if the applicant's
29 education meets the requirements of Section 4999.32. If the
30 applicant's degree does not contain the content or the overall units
31 required by Section 4999.32, the board may, in its discretion, accept
32 the applicant's education as substantially equivalent if the following
33 criteria are satisfied:

34 (1) The applicant's degree contains the required number of
35 practicum units under paragraph (3) of subdivision (c) of Section
36 4999.32.

37 (2) The applicant remediates his or her specific deficiency by
38 completing the course content and units required by Section
39 4999.32.

40 (3) The applicant's degree otherwise complies with this section.

(e) This section shall become inoperative on January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date.

~~SEC. 52. Section 4999.58 of the Business and Professions Code is amended to read:~~

~~4999.58. (a) This section applies to a person who applies for examination eligibility between January 1, 2011, and December 31, 2013, inclusive, who meets both of the following requirements:~~

~~(1) At the time of application, holds a valid license as a professional clinical counselor, or other counseling license that allows the applicant to independently provide clinical mental health services, in another jurisdiction of the United States.~~

~~(2) Has held the license described in paragraph (1) for at least two years immediately preceding the date of application.~~

~~(b) The board may issue a license to a person described in subdivision (a) if all of the following requirements are satisfied:~~

~~(1) The education and supervised experience requirements of the other jurisdiction are substantially the equivalent of this chapter, as described in subdivision (c) and in Section 4999.46.~~

~~(2) The person complies with subdivision (b) of Section 4999.40, if applicable.~~

~~(3) The person successfully completes the examinations required by the board pursuant to paragraph (3) of subdivision (a) of Section 4999.50.~~

~~(4) The person pays the required fees.~~

~~(e) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to that required by this chapter. The board shall consider hours of experience obtained in another state during the six-year period immediately preceding the applicant's initial licensure by that state as a licensed professional clinical counselor.~~

~~(d) Education gained while residing outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, if the applicant has completed the training or coursework required under subdivision (c) of Section 4999.32, and if the applicant completes, in addition to the course described in subparagraph (I) of paragraph (1) of subdivision (c) of Section 4999.32, an 18-hour course in California law and professional ethics that includes, but is not limited to, instruction in advertising, scope of practice, scope of~~

1 competence, treatment of minors, confidentiality, dangerous clients,
2 psychotherapist-client privilege, recordkeeping, client access to
3 records, the Health Insurance Portability and Accountability Act,
4 dual relationships, child abuse, elder and dependent adult abuse,
5 online therapy, insurance reimbursement, civil liability, disciplinary
6 actions and unprofessional conduct, ethics complaints and ethical
7 standards, termination of therapy, standards of care, relevant family
8 law, and therapist disclosures to clients.

9 (e) For purposes of this section, the board may, in its discretion,
10 accept education as substantially equivalent if the applicant's
11 education meets the requirements of Section 4999.32. If the
12 applicant's degree does not contain the content or the overall units
13 required by Section 4999.32, the board may, in its discretion, accept
14 the applicant's education as substantially equivalent if the following
15 criteria are satisfied:

16 (1) The applicant's degree contains the required number of
17 practicum units under paragraph (3) of subdivision (c) of Section
18 4999.32.

19 (2) The applicant remediates his or her specific deficiency by
20 completing the course content and units required by Section
21 4999.32.

22 (3) The applicant's degree otherwise complies with this section.

23 (f) This section shall become inoperative on January 1, 2014,
24 and as of that date is repealed, unless a later enacted statute, which
25 is enacted before January 1, 2014, deletes or extends that date.

26 SEC. 52. Section 4999.58 of the Business and Professions Code
27 is amended to read:

28 4999.58. (a) This section applies to ~~persons who apply a~~
29 ~~person who applies~~ for examination eligibility between January
30 1, 2011, and December 31, 2013, ~~inclusive. inclusive, and who~~
31 ~~meets both of the following requirements:~~

32 (1) ~~At the time of application, holds a valid license as a~~
33 ~~professional clinical counselor, or other counseling license that~~
34 ~~allows the applicant to independently provide clinical mental~~
35 ~~health services, in another jurisdiction of the United States.~~

36 (2) ~~Has held the license described in paragraph (1) for at least~~
37 ~~two years immediately preceding the date of application.~~

38 (b) The board may issue a license to a person ~~who, at the time~~
39 ~~of application, has held for at least two years, a valid license as a~~
40 ~~professional clinical counselor, or other counseling license that~~

1 allows the applicant to independently provide clinical mental health
2 services, in another jurisdiction of the United States, if the
3 described in subdivision (a) if all of the following requirements
4 are satisfied:

5 (1) The education and supervised experience requirements of
6 the other jurisdiction are substantially the equivalent of this
7 chapter, as described in subdivision (e) and in Section 4999.46;
8 the.

9 (2) The person complies with subdivision (b) of Section 4999.40,
10 if applicable; the.

11 (3) The person successfully completes the examinations required
12 by the board pursuant to paragraph (3) of subdivision (a) of Section
13 4999.50; and the.

14 (4) The person pays the required fees.

15 (c) Experience gained outside of California shall be accepted
16 toward the licensure requirements if it is substantially equivalent
17 to that required by this chapter and if the applicant has gained a
18 minimum of 250 hours of supervised clinical experience in direct
19 counseling within California while registered as an intern with the
20 board. The board shall consider hours of experience obtained in
21 another state during the six-year period immediately preceding the
22 applicant's initial licensure by that state as a licensed professional
23 clinical counselor.

24 (d) Education gained while residing outside of California shall
25 be accepted toward the licensure requirements if it is substantially
26 equivalent to the education requirements of this chapter, if the
27 applicant has completed the training or coursework required under
28 subdivision (e) of Section 4999.32, and if the applicant completes,
29 in addition to the course described in subparagraph (I) of paragraph
30 (1) of subdivision (c) of Section 4999.32, an 18-hour course in
31 California law and professional ethics that includes, but is not
32 limited to, instruction in advertising, scope of practice, scope of
33 competence, treatment of minors, confidentiality, dangerous clients,
34 psychotherapist-client privilege, recordkeeping, client access to
35 records, the Health Insurance Portability and Accountability Act,
36 dual relationships, child abuse, elder and dependent adult abuse,
37 online therapy, insurance reimbursement, civil liability, disciplinary
38 actions and unprofessional conduct, ethics complaints and ethical
39 standards, termination of therapy, standards of care, relevant family
40 law, and therapist disclosures to clients.

1 (e) For purposes of this section, the board may, in its discretion,
2 accept education as substantially equivalent if the applicant's
3 education meets the requirements of Section 4999.32. If the
4 applicant's degree does not contain the content or the overall units
5 required by Section 4999.32, the board may, in its discretion, accept
6 the applicant's education as substantially equivalent if the following
7 criteria are satisfied:

8 (1) The applicant's degree contains the required number of
9 practicum units under paragraph (3) of subdivision (c) of Section
10 4999.32.

11 (2) The applicant remediates his or her specific deficiency by
12 completing the course content and units required by Section
13 4999.32.

14 (3) The applicant's degree otherwise complies with this section.

15 (f) This section shall become inoperative on January 1, 2014,
16 and as of that date is repealed, unless a later enacted statute, which
17 is enacted before January 1, 2014, deletes or extends that date.

18 SEC. 53. Section 4999.59 is added to the Business and
19 Professions Code, to read:

20 4999.59. (a) This section applies to a person who applies for
21 examination eligibility or registration between January 1, 2011,
22 and December 31, 2013, inclusive, who meets both of the following
23 requirements:

24 (1) At the time of application, holds a valid license described
25 in paragraph (1) of subdivision (a) of Section 4999.58.

26 (2) Has held the license described in paragraph (1) for less than
27 two years immediately preceding the date of application.

28 (b) Experience gained outside of California shall be accepted
29 toward the licensure requirements if it is substantially equivalent
30 to that required by this chapter, if the applicant complies with
31 Section 4999.40, if applicable, and if the applicant has gained a
32 minimum of 250 hours of supervised experience in direct
33 counseling within California while registered as an intern with the
34 board. The board shall consider hours of experience obtained in
35 another state during the six-year period immediately preceding the
36 applicant's initial licensure in that state as a professional clinical
37 counselor.

38 (c) Education gained while residing outside of California shall
39 be accepted toward the licensure requirements if it is substantially
40 equivalent to the education requirements of this chapter, if the

1 applicant has completed the training or coursework required under
2 subdivision (e) of Section 4999.32, and if the applicant completes,
3 in addition to the course described in subparagraph (I) of paragraph
4 (1) of subdivision (c) of Section 4999.32, an 18-hour course in
5 California law and professional ethics that includes, but is not
6 limited to, instruction in advertising, scope of practice, scope of
7 competence, treatment of minors, confidentiality, dangerous clients,
8 psychotherapist-client privilege, recordkeeping, client access to
9 records, the Health Insurance Portability and Accountability Act,
10 dual relationships, child abuse, elder and dependent adult abuse,
11 online therapy, insurance reimbursement, civil liability, disciplinary
12 actions and unprofessional conduct, ethics complaints and ethical
13 standards, termination of therapy, standards of care, relevant family
14 law, and therapist disclosures to clients.

15 (d) For purposes of this section, the board may, in its discretion,
16 accept education as substantially equivalent if the applicant's
17 education meets the requirements of Section 4999.32. If the
18 applicant's degree does not contain the content or the overall units
19 required by Section 4999.32, the board may, in its discretion, accept
20 the applicant's education as substantially equivalent if the following
21 criteria are satisfied:

22 (1) The applicant's degree contains the required number of
23 practicum units under paragraph (3) of subdivision (c) of Section
24 4999.32.

25 (2) The applicant remediates his or her specific deficiency by
26 completing the course content and units required by Section
27 4999.32.

28 (3) The applicant's degree otherwise complies with this section.

29 (e) This section shall become inoperative on January 1, 2014,
30 and as of that date is repealed, unless a later enacted statute, which
31 is enacted before January 1, 2014, deletes or extends that date.

32 SEC. 54. Section 4999.90 of the Business and Professions
33 Code is amended to read:

34 4999.90. The board may refuse to issue any registration or
35 license, or may suspend or revoke the registration or license of
36 any intern or licensed professional clinical counselor, if the
37 applicant, licensee, or registrant has been guilty of unprofessional
38 conduct. Unprofessional conduct includes, but is not limited to,
39 the following:

1 (a) The conviction of a crime substantially related to the
2 qualifications, functions, or duties of a licensee or registrant under
3 this chapter. The record of conviction shall be conclusive evidence
4 only of the fact that the conviction occurred. The board may inquire
5 into the circumstances surrounding the commission of the crime
6 in order to fix the degree of discipline or to determine if the
7 conviction is substantially related to the qualifications, functions,
8 or duties of a licensee or registrant under this chapter. A plea or
9 verdict of guilty or a conviction following a plea of nolo contendere
10 made to a charge substantially related to the qualifications,
11 functions, or duties of a licensee or registrant under this chapter
12 shall be deemed to be a conviction within the meaning of this
13 section. The board may order any license or registration suspended
14 or revoked, or may decline to issue a license or registration when
15 the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal, or, when an order granting probation is
17 made suspending the imposition of sentence, irrespective of a
18 subsequent order under Section 1203.4 of the Penal Code allowing
19 the person to withdraw a plea of guilty and enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the
21 accusation, information, or indictment.

22 (b) Securing a license or registration by fraud, deceit, or
23 misrepresentation on any application for licensure or registration
24 submitted to the board, whether engaged in by an applicant for a
25 license or registration, or by a licensee in support of any application
26 for licensure or registration.

27 (c) Administering to himself or herself any controlled substance
28 or using any of the dangerous drugs specified in Section 4022, or
29 any alcoholic beverage to the extent, or in a manner, as to be
30 dangerous or injurious to the person applying for a registration or
31 license or holding a registration or license under this chapter, or
32 to any other person, or to the public, or, to the extent that the use
33 impairs the ability of the person applying for or holding a
34 registration or license to conduct with safety to the public the
35 practice authorized by the registration or license, or the conviction
36 of more than one misdemeanor or any felony involving the use,
37 consumption, or self-administration of any of the substances
38 referred to in this subdivision, or any combination thereof. The
39 board shall deny an application for a registration or license or
40 revoke the license or registration of any person, other than one

1 who is licensed as a physician and surgeon, who uses or offers to
2 use drugs in the course of performing licensed professional clinical
3 counseling services.

4 (d) Gross negligence or incompetence in the performance of
5 licensed professional clinical counseling services.

6 (e) Violating, attempting to violate, or conspiring to violate any
7 of the provisions of this chapter or any regulation adopted by the
8 board.

9 (f) Misrepresentation as to the type or status of a license or
10 registration held by the person, or otherwise misrepresenting or
11 permitting misrepresentation of his or her education, professional
12 qualifications, or professional affiliations to any person or entity.

13 (g) Impersonation of another by any licensee, registrant, or
14 applicant for a license or registration, or, in the case of a licensee
15 or registrant, allowing any other person to use his or her license
16 or registration.

17 (h) Aiding or abetting, or employing, directly or indirectly, any
18 unlicensed or unregistered person to engage in conduct for which
19 a license or registration is required under this chapter.

20 (i) Intentionally or recklessly causing physical or emotional
21 harm to any client.

22 (j) The commission of any dishonest, corrupt, or fraudulent act
23 substantially related to the qualifications, functions, or duties of a
24 licensee or registrant.

25 (k) Engaging in sexual relations with a client, or a former client
26 within two years following termination of therapy, soliciting sexual
27 relations with a client, or committing an act of sexual abuse, or
28 sexual misconduct with a client, or committing an act punishable
29 as a sexually related crime, if that act or solicitation is substantially
30 related to the qualifications, functions, or duties of a licensed
31 professional clinical counselor.

32 (l) Performing, or holding oneself out as being able to perform,
33 or offering to perform, or permitting any clinical counselor trainee
34 or intern under supervision to perform, any professional services
35 beyond the scope of the license authorized by this chapter.

36 (m) Failure to maintain confidentiality, except as otherwise
37 required or permitted by law, of all information that has been
38 received from a client in confidence during the course of treatment
39 and all information about the client which is obtained from tests
40 or other means.

1 (n) Prior to the commencement of treatment, failing to disclose
2 to the client or prospective client the fee to be charged for the
3 professional services, or the basis upon which that fee will be
4 computed.

5 (o) Paying, accepting, or soliciting any consideration,
6 compensation, or remuneration, whether monetary or otherwise,
7 for the referral of professional clients. All consideration,
8 compensation, or remuneration shall be in relation to professional
9 clinical counseling services actually provided by the licensee.
10 Nothing in this subdivision shall prevent collaboration among two
11 or more licensees in a case or cases. However, no fee shall be
12 charged for that collaboration, except when disclosure of the fee
13 has been made in compliance with subdivision (n).

14 (p) Advertising in a manner that is false, fraudulent, misleading,
15 or deceptive, as defined in Section 651.

16 (q) Reproduction or description in public, or in any publication
17 subject to general public distribution, of any psychological test or
18 other assessment device, the value of which depends in whole or
19 in part on the naivete of the subject, in ways that might invalidate
20 the test or device.

21 (r) Any conduct in the supervision of a registered intern,
22 associate clinical social worker, or clinical counselor trainee by
23 any licensee that violates this chapter or any rules or regulations
24 adopted by the board.

25 (s) Performing or holding oneself out as being able to perform
26 professional services beyond the scope of one's competence, as
27 established by one's education, training, or experience. This
28 subdivision shall not be construed to expand the scope of the
29 license authorized by this chapter.

30 (t) Permitting a clinical counselor trainee or intern under one's
31 supervision or control to perform, or permitting the clinical
32 counselor trainee or intern to hold himself or herself out as
33 competent to perform, professional services beyond the clinical
34 counselor trainee's or intern's level of education, training, or
35 experience.

36 (u) The violation of any statute or regulation of the standards
37 of the profession, and the nature of the services being rendered,
38 governing the gaining and supervision of experience required by
39 this chapter.

1 (v) Failure to keep records consistent with sound clinical
2 judgment, the standards of the profession, and the nature of the
3 services being rendered.

4 (w) Failure to comply with the child abuse reporting
5 requirements of Section 11166 of the Penal Code.

6 (x) Failing to comply with the elder and dependent adult abuse
7 reporting requirements of Section 15630 of the Welfare and
8 Institutions Code.

9 (y) Repeated acts of negligence.

10 (z) (1) Engaging in an act described in Section 261, 286, 288a,
11 or 289 of the Penal Code with a minor or an act described in
12 Section 288 or 288.5 of the Penal Code regardless of whether the
13 act occurred prior to or after the time the registration or license
14 was issued by the board. An act described in this subdivision
15 occurring prior to the effective date of this subdivision shall
16 constitute unprofessional conduct and shall subject the licensee to
17 refusal, suspension, or revocation of a license under this section.

18 (2) The Legislature hereby finds and declares that protection of
19 the public, and in particular minors, from sexual misconduct by a
20 licensee is a compelling governmental interest, and that the ability
21 to suspend or revoke a license for sexual conduct with a minor
22 occurring prior to the effective date of this section is equally
23 important to protecting the public as is the ability to refuse a license
24 for sexual conduct with a minor occurring prior to the effective
25 date of this section.

26 (aa) Engaging in any conduct that subverts or attempts to subvert
27 any licensing examination or the administration of an examination
28 as described in Section 123.

29 (ab) Revocation, suspension, or restriction by the board of a
30 license, certificate, or registration to practice as a clinical social
31 worker, educational psychologist, or marriage and family therapist.

Tracker III

Medical Board of California
Tracker II - Legislative Bills
4/22/2010

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|-------------|---------------|--|----------------------|----------------|
| AB 52 | Portantino | Umbillical 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 417 | Beall | Medi-Cal Drug Treatment Program: buprenorphine | Sen. Approps. - susp | 03/15/10 |
| 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 | Dentistry Diversion Program | 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 | Asm. B&P | 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 | 03/25/10 |
| AB 1140 | Niello | Diagnostic Imaging Services | Sen. Health | 04/14/09 |
| 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 |

**Medical Board of California
Tracker II - Legislative Bills
4/22/2010**

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|-------------|-----------------|---|---------------|----------------|
| AB 1478 | Ammiano | Written Acknowledgment: medical nutrition therapy | Asm. B&P | |
| AB 1487 | Hill | Tissue Donation | Sen. Health | 03/02/10 |
| AB 1518 | Anderson | State Government: Boards, Commissions, Committees, repeal | Sen. Rules | 04/08/10 |
| AB 1542 | Health Comm. | Medical Records: centralized location | Sen. Health | 07/01/09 |
| AB 1659 | Huber | State Government: agency repeals | Asm. Approps. | 04/07/10 |
| AB 1916 | Davis | Pharmacies: prescriptions: reports | Asm. B&P | 04/08/10 |
| AB 1938 | Fletcher | Dentistry | Asm. B&P | |
| AB 1940 | Fletcher | Physician Assistants | Asm. B&P | 04/05/10 |
| AB 1994 | Skinner | Hospital employees: presumption | Asm. Approps. | 03/23/10 |
| AB 2028 | Hernandez | Confidentiality of Medical Information: disclosure | Asm. Approps. | 04/13/10 |
| AB 2093 | V. Manual Perez | Immunizations for Children: reimbursement of physicians | Asm. Approps. | |
| AB 2104 | Hayashi | California State Board of Pharmacy | Asm. Approps. | 04/08/10 |
| AB 2130 | Huber | Professions and Vocations: sunset review | Asm. Approps. | |
| AB 2254 | Ammiano | Marijuana Control, Regulation, and Education Act | Asm. Pub. S. | |
| AB 2268 | Chesbro | Alcohol and Drug Abuse | Asm. Floor | 04/20/10 |
| AB 2292 | Lownethal | Pharmacy: clinics | Asm. Approps | |
| AB 2386 | Gilmore | Armed Forces: medical personnel | Asm. Health | 04/14/10 |
| AB 2548 | Block | Prescription Drug Monitoring Program | Asm. Approps. | |
| AB 2551 | Hernandez | Health Professions Development: loan repayment | Asm. B&P | |
| AB 2667 | Hill | Vehicles: child passenger restraint systems | Asm. B&P | |
| AB 2699 | Bass | Healing Arts: licensing exemption | Asm. Floor | 04/14/10 |
| AB 2707 | Berryhill | Department of Consumer Affairs: regulatory boards | Introduced | |

Medical Board of California
Tracker II - Legislative Bills
4/22/2010

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|-------------|----------------|--|---------------|----------------|
| 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 refill requirements | Sen. Health | 04/23/09 |
| SB 294 | Negrete McLeod | Healing Arts | Asm. Floor | 09/04/09 |
| SB 341 | DeSaulnier | Pharmaceuticals: adverse drug reactions | Sen. Approps. | 05/14/09 |
| SB 395 | Wyland | Medical Practice | Sen Rules | |
| SB 442 | Ducheny | Clinic Corporation: licensing | Asm. Health | 01/12/10 |
| SB 484 | Wright | Ephedrine and Pseudoephedrine: classification as Schedule V | Asm. Approps. | 05/12/09 |
| SB 502 | Walters | State Agency Web Sites: information posting: expenditures | Sen. G.O. | |
| SB 638 | Negrete McLeod | Regulatory boards: operations | Sen. Rules | |
| 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 |
| SB 953 | Walters | Podiatrists: liability for emergency services | Sen. Jud. | 03/16/10 |
| SB 1050 | Yee | Osteopathic Medical Board of California: Naturopathic Medicine | Sen. Approps. | 04/07/10 |
| SB 1051 | Huff | Emergency Medical Assistance: administration of disasters | Sen. Health | 04/21/10 |
| SB 1071 | DeSaulnier | Controlled Substance | Sen. Health | 04/16/10 |
| SB 1083 | Correa | Health Facilities: licensure | Sen. Approps. | 04/21/10 |
| SB 1094 | Aanestad | Healing Arts: peer review | Sen. B&P | |
| SB 1132 | Negrete McLeod | Healing Arts | Sen. Rules | |
| SB 1171 | Negrete McLeod | Regulatory boards: operations | Sen. Rules | 04/05/10 |

**Medical Board of California
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4/22/2010**

| BILL | AUTHOR | TITLE | STATUS | AMENDED |
|-------------|----------------|--|---------------|----------------|
| SB 1246 | Negrete McLeod | Naturopathic Medicine | Sen. Approps. | 04/15/10 |
| SB 1281 | Padilla | Emergency Medical Services: defibrillators | Sen. Jud. | |
| SB 1390 | Corbett | Prescription drug labels | Sen. Approps. | 04/05/10 |
| SB 1490 | B&P Comm. | Professions and Vocations | Sen. Approps. | 04/12/10 |
| SB 1491 | B&P Comm. | Professions and Vocations | Sen. Approps. | |
| SBX8 53 | Calderon | Medical Marijuana Act | Sen. Rules | |
| SJR 14 | Leno | Medical Marijuana | Asm. Health | |
| SJR 15 | Leno | Public Health Laboratories | Asm. Health | 08/17/09 |