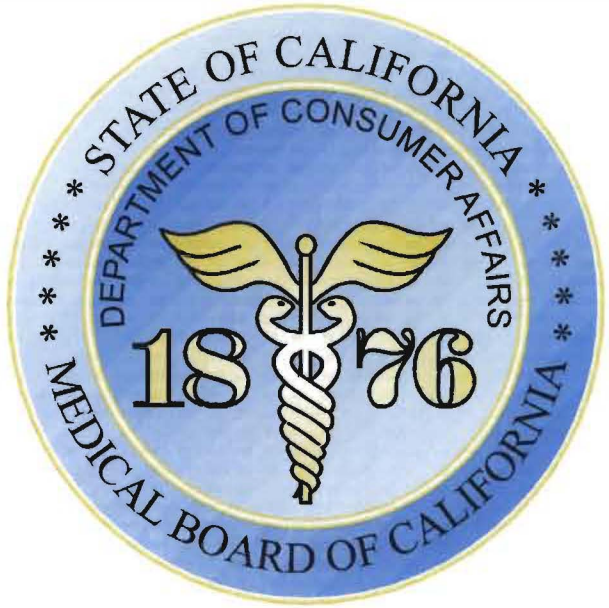
LEGISLATIVE PACKET



MEDICAL BOARD MEETING

JULY 30, 2010
SACRAMENTO, CA

Medical Board of California
Tracker - Legislative Bill File
7/19/2010

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. Health - **Dead**	Support in Concept	4/13/2010
AB 648	Chesbro	Rural Hospitals: physician employment	Sen. B&P - **Dead**	Support in Concept	5/28/2009
AB 933	Fong	Workers' Compensation: utilization review	Sen. Approps.	Support	6/14/2010
AB 977	Skinner	Pharmacists: immunizations	Sen. B&P - **Dead**	Support (ltr. 6/3)	6/1/2010
AB 1310	Hernandez	Healing Arts: database	Sen. Approps. - susp	Support	6/29/2009
AB 1767	Hill	Expert Reviewers & HPEF Sunset Extension	Sen. 3rd Reading	Sponsor/Support (ltr. 6/3)	6/7/2010
AB 2148	Tran	Personal Income Tax: charitable deductions	Asm. Approps. - **Dead**	Support (ltr. 5/10)	5/18/2010
AB 2386	Gilmore	Armed Forces: Medical Personnel	Asm. Concurrence	**Rec: Neutral**	5/28/2010
AB 2566	Carter	Cosmetic surgery: employment of physicians	Sen. Approps.	Support (ltr. 6/3)	
AB 2600	Ma	Continuing Education Requirements	Sen. Approps.	Neutral	3/25/2010
AB 2699	Bass	Healing Arts: Licensure Exemption	Sen. Approps.	**Rec: Neutral if Amended**	7/15/2010
SB 294	Negrete McLeod	DCA: Regulatory Boards - Sunset Dates	Asm. Approps.	**Rec: No Position Required**	6/16/2010
SB 700	Negrete McLeod	Peer Review	Asm. Approps.	Support (ltr. 5/10)	1/26/2010
SB 726	Ashburn	Hospitals: employment of physician; pilot project revision	Senate Floor	Support in Concept (ltr. 5/10)	8/20/2009
SB 1031	Corbett	Medical Malpractice Insurance	Asm. B&P - **Dead**	Sponsor/Support (ltr. 5/10)	5/28/2010
SB 1069	Pavley	Physician Assistants	Asm. Approps.	Support (ltr. 5/10)	5/5/2010
SB 1111	Negrete McLeod	Regulatory Boards	Sen. B&P - **Dead**		4/12/2010
SB 1150	Negrete McLeod	Healing Arts: advertisements	Asm. Approps.	Support (ltr. 5/10)	
SB 1172	Negrete McLeod	Diversion Programs	Asm. Approps.	Support (ltr. 5/10)	6/22/2010
SB 1410	Cedillo	Medicine: licensure examinations	Asm. Approps.	Oppose (ltr.5/10)	6/23/2010
SB 1489	B&P Comm.	Omnibus	Asm. Approps.	Support MBC Provisions (ltr. 4/6)	6/17/2010

Pink - Sponsored Bill; Blue - Position Needed; Gold - Bill Amended; Green - No Position Required; Grey - Dead Bill

AB 526

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

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

July 15, 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:

SECTION 1. The Legislature hereby finds and declares that:

(a) California has long valued high quality medical care for its citizens and, through its regulatory and enforcement system, protects health care consumers through the proper licensing and regulation of physicians and surgeons to promote access to quality medical care. The protection of the public from harm by physicians

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

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

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

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

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

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

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

Article 14. Public Protection and Physician Health Program

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

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

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

~~(b)~~

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

~~(c)~~

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

~~(d)~~

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

~~(e)~~

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

~~(f)~~

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

~~(g)~~

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

~~(h)~~

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

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

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

~~(j)~~

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

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

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

~~(i)~~

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

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

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

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

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

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

~~(B)~~

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

~~(C)~~

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

~~(D)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Worksite monitoring requirements and standards.

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

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

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

(9) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Report annually to the committee statistics, including 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~~ *by the physician health program pursuant to subdivision (c) of Section 2345*; provided, however, that in making that report, the physician health program shall not disclose any personally identifiable information relating to any physician and surgeon participating in a voluntary agreement as provided in this article.

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

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

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

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

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

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

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

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

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

(2) (A) Each participant, prior to entering into the voluntary agreement described in paragraph (1), shall 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. For those purposes, the committee shall regularly monitor recent accusations filed against physicians and surgeons and shall compare the names of physicians and surgeons subject to accusation with the names of program participants.

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

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

(A) In addition to complying with any other duty imposed by law, report to the committee the name of and results of any contact or information received regarding a physician and surgeon 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.

(B) Report to the committee if the physician and surgeon 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.

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

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

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

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

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

2347. (a) A physician and surgeon participating in a voluntary agreement shall 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 surgeon and the physician health program.

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

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

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

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

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

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

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

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

(d) A copy of the audit shall be made available to the public by posting a link to the audit on the ~~agency's~~ *committee's* Internet Web site homepage no less than 10 business days after publication of the audit. Copies of the audit shall also be provided to the Assembly and Senate Committees on Business and Professions and the Assembly and Senate Committees on Health within 10 business days of its publication.

2349. This article shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

O

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
Board Position:	Support

STATUS OF BILL:

This bill is in the Senate 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: Support

July 15, 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

care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

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

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

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

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

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

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

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

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

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

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

O

AB 648

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 648
Author: Chesbro
Bill Date: May 28, 2009
Subject: Authorizing Rural Hospitals to Employ Physicians
Sponsor: California Hospital Association
Board Position: Support in Concept

STATUS OF BILL:

This bill is currently in the Senate Business and Professions Committee; it is no longer active.

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

July 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:

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

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

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

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

~~(c)~~

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

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

~~(d)~~

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

~~(e)~~

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

~~(f)~~

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

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

CHAPTER 6.5. RURAL HOSPITAL PHYSICIAN AND SURGEON SERVICES DEMONSTRATION PROJECT

124871. For purposes of this chapter, a rural hospital means all 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 4 or greater as designated by the United States Department of Agriculture.

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

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

a medically underserved population, or that has been federally designated as a health professional shortage area may employ one or more physicians and surgeons, not to exceed 10 physicians and surgeons at one time, except as provided in subdivision (c), to provide medical services at the rural hospital or other health facility, as defined in Section 1250, that the rural hospital owns or operates. The rural hospital may retain all or part of the income generated by the physician and surgeon 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.

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

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

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

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

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

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

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

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

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

(c) The signed statement required by subdivision (b) 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 Medical Board of California within 10 working days after the statement is signed by the physician and surgeon.

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

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

124874. (a) Not later than January 1, 2019, the board shall deliver a report to the Legislature regarding the demonstration project established pursuant to this chapter. The report shall include an evaluation of the effectiveness of the demonstration project in improving access to health care in rural and medically underserved areas and the demonstration project's impact on consumer protection as it relates to intrusions into the practice of medicine.

(b) This chapter shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

O

AB 933

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 933
Author:	Fong
Bill Date:	June 14, 2010
Subject:	Workers' Compensation: medical treatment
Sponsor:	American Federation of State, County, and Municipal Employees California Society of Industrial Medicine and Surgery California Society of Physical Medicine and Rehabilitation Union of American Physicians and Dentists
Board Position:	Support

STATUS OF BILL:

This bill is in the Senate Appropriations Committee and will be heard on August 2, 2010.

DESCRIPTION OF CURRENT LEGISLATION:

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

Amendments recently taken are minor and technical in nature and do not impact the Medical Board.

ANALYSIS:

Current law does not require physicians who perform utilization reviews of workers' compensation claims to be license 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 by California state law.

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

Amendments to this bill taken June 14, 2010, are minor and technical in nature and do not impact the Board's support position.

FISCAL: None to the Board

POSITION: Support

July 15, 2010

AMENDED IN SENATE JUNE 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 933

Introduced by Assembly Member Fong

February 26, 2009

An act to amend Sections 3209.3 ~~and 4610~~, *3762, 4610, and 4616* of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 933, as amended, Fong. Workers' compensation: ~~utilization review.~~ *medical treatment.*

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.

Existing law authorizes an employer or insurer to establish or modify a medical provider network for the provision of medical treatment to injured employees, and to submit a medical provider network plan to the administrative director for approval.

This bill would require reapproval of a medical provider network plan every 3 years. This bill would also require a medical provider network plan approved before January 1, 2011, to be resubmitted to the administrative director for approval, as specified. This bill would permit an employer or insurer to submit a statement signed under penalty of perjury attesting that there have been no changes to a plan since it was last approved by the administrative director. By expanding the scope of a crime, this bill would impose a state-mandated local program.

This bill would also require by April 1, 2011, the administrative director to require that procedures be established to ensure that a list of the medical providers made available for selection to provide treatment to an injured employee is accurate and updated semiannually.

Existing law requires every employer except the state to secure the payment of workers' compensation either by being insured against liability by one or more insurers duly authorized to write compensation insurance in this state or by securing a certificate of consent to self-insure from the Director of Industrial Relations. Existing law requires an insurer, with certain exceptions, to discuss all elements of a workers' compensation claim file that affect the employer's premium with the employer, and to supply copies of the documents that affect the premium at the employer's expense during reasonable business hours.

This bill would expressly provide that specified items are elements of a claim file that affect the employer's premium.

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: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

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

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

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

(b) "Psychologist" means a psychologist licensed by California state law with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, 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.

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

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

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

SEC. 2. Section 3762 of the Labor Code is amended to read:

3762. (a) Except as provided in subdivisions (b) and (c), the insurer shall discuss all elements of the claim file that affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium at the employer's expense during reasonable business hours. *Elements of the claim file that affect the employer's premium include, but are not limited to, a loss adjustment expense paid as a result of medical cost*

containment services ordered by the insurer, if the medical cost containment services ordered by the insurer were provided by a third party, the name of the third party, and whether a portion of the loss adjustment expense was retained, rebated, or reimbursed to the insurer or an entity in which the insurer has a financial interest.

(b) The right provided by this section shall not extend to any document that the insurer is prohibited from disclosing to the employer under the attorney-client privilege, any other applicable privilege, or statutory prohibition upon disclosure, or under Section 1877.4 of the Insurance Code.

(c) An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows:

(1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed and the treatment provided for this condition.

(2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

~~SEC. 2.~~

SEC. 3. Section 4610 of the Labor Code is amended to read:

4610. (a) For purposes of this section, "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

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

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

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

(e) No person other than a physician licensed by California state law 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.

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

(1) Developed with involvement from actively practicing physicians.

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

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

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

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

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

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

(2) When the employee's condition is such that the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, delay,

or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

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

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or

self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees shall be levied upon insurers or self-insured employers making reports required by this section.

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

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

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

(i) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The

administrative penalties shall not be deemed to be an exclusive remedy for the administrative director. These penalties shall be deposited in the Workers' Compensation Administration Revolving Fund.

SEC. 4. Section 4616 of the Labor Code is amended to read:

4616. (a) (1) On or after January 1, 2005, an insurer or employer may establish or modify a medical provider network for the provision of medical treatment to injured employees. The network shall include physicians primarily engaged in the treatment of occupational injuries and physicians primarily engaged in the treatment of nonoccupational injuries. The goal shall be at least 25 percent of physicians primarily engaged in the treatment of nonoccupational injuries. The administrative director shall encourage the integration of occupational and nonoccupational providers. The number *and the office locations* of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner. The provider network shall include an adequate number and type of physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the ~~employees are employed~~ *employee is employed and resides*.

(2) Medical treatment for injuries shall be readily available at reasonable times to all employees. ~~To the extent feasible, all~~ *All* medical treatment for injuries shall be readily accessible to all employees. With respect to availability and accessibility of treatment, the administrative director shall consider the needs of rural areas, specifically those in which health facilities are located at least 30 miles apart.

(b) *(1)* The employer or insurer shall submit a plan for the medical provider network to the administrative director for approval. ~~The administrative director shall approve the plan if he or she determines that the plan meets the requirements of this section. If the administrative director does not act on the plan within 60 days of submitting the plan, it shall be deemed approved.~~

(2) A medical provider network plan submitted pursuant to this subdivision shall have a three-year approval term.

(3) An employer or insurer seeking renewal of its medical provider network plan shall resubmit its plan at least 60 days prior

to the anniversary of the plan's three-year approval term. The employer or insurer shall include information as may be required by the administrative director at the time of resubmission so that the administrative director may determine that the plan meets the requirements of this section. If there have been no changes to the plan since it was last approved by the administrative director, the employer or insurer may submit a statement signed under penalty of perjury attesting that there have been no changes, and the administrative director shall approve the resubmitted plan for a new three-year term of approval.

(4) A plan that was approved before January 1, 2011, shall be resubmitted to the administrative director for approval as follows:

(A) A plan that was approved before January 1, 2009, shall be resubmitted to the administrative director for approval by April 1, 2012.

(B) A plan that was approved on or after January 1, 2009, shall be resubmitted to the administrative director at least 60 days prior to the three-year anniversary of the plan's approval.

(5) The administrative director shall approve the plan submitted by an employer or insurer if the administrative director determines that the plan meets the requirements of this section. If the administrative director does not act on the plan within 60 days of submission, it shall be deemed approved.

(c) Physician compensation may not be structured in order to achieve the goal of reducing, delaying, or denying medical treatment or restricting access to medical treatment.

(d) If the employer or insurer meets the requirements of this section, the administrative director may not withhold approval or disapprove an employer's or insurer's medical provider network based solely on the selection of providers. In developing a medical provider network, an employer or insurer shall have the exclusive right to determine the members of their network.

(e) All treatment provided shall be provided in accordance with the medical treatment utilization schedule established pursuant to Section 5307.27~~ or the American College of Occupational Medicine's Occupational Medicine Practice Guidelines, as appropriate~~.

(f) No person other than a~~ licensed~~ physician *licensed by California state law* who is competent to evaluate the specific clinical issues involved in the medical treatment services, when

these services are within the scope of the physician's practice, may modify, delay, or deny requests for authorization of medical treatment.

(g) By April 1, 2011, the administrative director shall require that procedures be established to ensure that a list of the medical providers made available for selection to provide treatment to an injured employee pursuant to this section is accurate and updated semiannually.

~~(g)~~

(h) On or before November 1, 2004, the administrative director, in consultation with the Department of Managed Health Care, shall adopt regulations implementing this article. The administrative director shall develop regulations that establish procedures for purposes of making medical provider network modifications.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

AB 2386

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2386
Author: Gilmore
Bill Date: May 28, 2010
Subject: Armed Forces: medical personnel
Sponsor: Author

STATUS OF BILL:

This bill is on the Assembly Floor for concurrence in Senate amendments.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow a hospital to enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant (PA), or a registered nurse (RN) to provide medical care in the hospital under specified conditions.

ANALYSIS:

Current law allows physicians and surgeons who are not licensed in California to engage in the practice of medicine in a military health facility in California as part of their residency, fellowship, or clinical training program if they are a commissioned officer on active duty in the medical corps of any branch of the armed forces of the United States, if they meet specified conditions, including registering with the Medical Board of California (the Board).

This bill would allow non-military hospitals to enter into an agreement with the Armed Forces of the United States to authorize a physician, PA, or RN to provide medical care if the following applies:

- The physician, PA, or RN holds a valid license in good standing in any state or territory in the United States.
- The medical care is provided as part of a training or educational program designed to promote combat readiness.
- The agreement complies with federal law.

This bill also contains consumer protection provisions. This bill requires the physician, PA, or RN while working in the hospital to wear a name tag that includes, in at least 18 point type, his or her name and license status, his or her state of licensure, and a statement that he or she is a member of the Armed Forces of the United States. This bill also requires the physician, PA, or RN to register with the board that licenses his or her respective health care profession in California, on a form provided by that Board; the Medical Board already has this form available.

The author believes this bill will help military health care professionals to improve their skills prior to being deployed to war. The California Academy of Physician Assistants believes this bill will improve access to appropriately trained health care providers.

FISCAL: None to the Board

POSITION: **Recommendation:** Neutral

July 15, 2010

AMENDED IN SENATE MAY 28, 2010

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2386

Introduced by Assembly Members Gilmore and Cook

February 19, 2010

An act to add and repeal Section 714 of the Business and Professions Code, relating to the Armed Forces.

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, as amended, Gilmore. Armed Forces: medical personnel.

Existing federal law authorizes a health care professional, as defined, to practice his or her health profession in any state or territory without licensure by that state if he or she has a current license to practice the health profession and is performing authorized duties for the Department of Defense.

Existing state law provides that no board that licenses dentists, physicians and surgeons, podiatrists, or nurses may require a person to obtain a California license to practice his or her profession in this state if the person is employed by, or has a contract with, the federal government and is rendering services in a facility of the government or the person is practicing as part of a program or project conducted by the federal government which, by federal statute, exempts persons in the program from state licensure, as specified.

This bill, until January 1, 2016, would authorize a hospital to enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant, or registered

nurse to provide medical care in the hospital if the health care professional holds a valid license in good standing in another state or territory, the medical care is provided as part of a training or educational program designed to promote the combat readiness of the health care professional, and the agreement complies with federal law. The bill would exempt those health care professionals from licensure or relicensure by the State of California while practicing under an agreement, *but would require those health care professionals to register with the board that licenses that health care profession in this state and to wear a specified name tag while working.*

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

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

SECTION 1. Section 714 is added to the Business and Professions Code, to read:

714. (a) A hospital may enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant, or registered nurse to provide medical care in the hospital if all of the following apply:

(1) The physician and surgeon, physician assistant, or registered nurse holds a valid license in good standing to provide medical care in the District of Columbia or any state or territory of the United States.

(2) The medical care is provided as part of a training or educational program designed to promote the combat readiness of the physician and surgeon, physician assistant, or registered nurse.

(3) The agreement complies with Section 1094 of Title 10 of the United States Code and any regulations or guidelines adopted pursuant to that section.

(b) A physician and surgeon, physician assistant, or registered nurse who is authorized to practice pursuant to subdivision (a) shall disclose, while working, on a name tag in at least 18-point type, his or her name and license status, his or her state of licensure, and a statement that he or she is a member of the Armed Forces of the United States.

~~(b)~~

(c) (1) If an agreement is entered into pursuant to subdivision (a), no board under this division that licenses physicians and

surgeons, physician assistants, or registered nurses may require a person under subdivision (a) to obtain or maintain any license to practice his or her profession or render services in the State of California.

(2) Notwithstanding paragraph (1), a physician and surgeon, physician assistant, or registered nurse who enters into an agreement pursuant to subdivision (a) shall register with the board that licenses his or her respective health care profession in this state on a form provided by that board.

~~(e)~~

(d) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

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AB 583

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

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

July 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O

AB 1310

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

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

July 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:

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

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

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

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

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

~~(4)~~

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

~~(5)~~

(2) Birth date and place of birth.

~~(6)~~

(3) Sex.

~~(7)~~

(4) Race and ethnicity.

~~(8)~~

(5) Location of high school.

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

~~(10)~~

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

~~(11)~~

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

~~(12)~~

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

~~(13)~~

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

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

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

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

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

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

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

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

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

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

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

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

(1) The Acupuncture Board.

(2) The Dental Hygiene Committee of California.

(3) The Dental Board of California.

(4) The Medical Board of California.

(5) The Bureau of Naturopathic Medicine.

(6) The California Board of Occupational Therapy.

(7) The State Board of Optometry.

(8) The Osteopathic Medical Board of California.

(9) The California State Board of Pharmacy.

(10) The Physical Therapy Board of California.

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

(12) The California Board of Podiatric Medicine.

(13) The Board of Psychology.

(14) The Board of Registered Nursing.

(15) The Respiratory Care Board of California.

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

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

(18) The Board of Behavioral Sciences.

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

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

Development Division and the Department of Consumer Affairs, select a database and shall add the data collected pursuant to Section 857 of the Business and Professions Code to that database.

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

O

AB 1767

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1767
Author:	Hill
Bill Date:	June 7, 2010
Subject:	Healing Arts: Expert Reviewers and HPEF sunset extension
Sponsor:	Medical Board of California
Board Position:	Sponsor/Support

STATUS OF BILL:

This bill is on the Senate 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.

This bill was amended to specify that with Medical Board approval, the Attorney General would provide the representation to the expert reviewer in the disciplinary proceeding that is a direct result of providing expertise to the Board.

This bill was also amended to extend the sunset date of the two members of the Health Professions Education Foundation (HPEF) that are appointed by the Medical Board of California, from January 1, 2011, to January 1, 2016.

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.

The amendments taken June 7, 2010, are clarifying amendments requested by the Department of Consumer Affairs. The amendments clarify that the Office of the Attorney General would provide the representation, if the Board approves them to do so, and that representation would only be provided for disciplinary proceedings that are a direct result of a physician providing expertise to the Board.

The amendments taken June 7, 2010 also extend the sunset date of the two HPEF members appointed by the Medical Board for five years, until January 1, 2016. The Medical Board funds the Loan Repayment Program in the HPEF through a $25 fee on physician initial licensure and renewals. The two members appointed by the Medical Board represent the 125,000 California physician licensees who help support the loan repayment program.

FISCAL: Minimal and Absorbable

POSITION: Sponsor/Support

AMENDED IN SENATE JUNE 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1767

Introduced by Assembly Member Hill

February 9, 2010

An act to add Section 2316 to the Business and Professions Code, *and to amend Section 128335 of the Health and Safety Code,* relating to ~~physicians and surgeons~~ *healing arts*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as amended, Hill. ~~Physicians and surgeons: expert testimony.~~ *Healing arts.*

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 *Office of the Attorney General, with approval by 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.

Existing law requires the Office of Statewide Health Planning and Development to establish a nonprofit public benefit corporation known as the Health Professions Education Foundation to perform various duties with respect to implementing health professions scholarship and loan programs. Under existing law, the foundation is governed by 13 members, including, until January 1, 2011, 2 members of the Medical Board of California appointed by the board.

This bill would extend the 2 foundation board appointments to January 1, 2016.

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

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

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

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

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

2316. If a licensed physician and surgeon who provides expertise to the board in the evaluation of an applicant or a licensee is, as a result of providing that expertise, the subject of a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member, ~~the board shall provide representation for the physician and surgeon in that disciplinary proceeding.~~ *with board approval, the Office of the Attorney General shall represent the physician and surgeon in that disciplinary proceeding regarding any allegation brought against the physician and surgeon as a direct result of providing that expertise to the board.*

SEC. 3. Section 128335 of the Health and Safety Code, as amended by Section 3 of Chapter 317 of the Statutes of 2005, is amended to read:

128335. (a) The office shall establish a nonprofit public benefit corporation, to be known as the Health Professions Education Foundation, that shall be governed by a board consisting of a total of 13 members, nine members appointed by the Governor, one member appointed by the Speaker of the Assembly, one member appointed by the Senate Committee on Rules, and two members of the Medical Board of California appointed by the Medical Board of California. The members of the foundation board appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules may include representatives of minority groups that are underrepresented in the health professions, persons employed as health professionals, and other appropriate members of health or related professions. All persons considered for appointment shall have an interest in health programs, an interest in health educational opportunities for underrepresented groups, and the ability and desire to solicit funds for the purposes of this article as determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

(b) The Governor shall appoint the president of the board of trustees from among those members appointed by the Governor, the Speaker of the Assembly, the Senate Committee on Rules, and the Medical Board of California.

(c) The director, after consultation with the president of the board, may appoint a council of advisers comprised of up to nine members. The council shall advise the director and the board on

technical matters and programmatic issues related to the Health Professions Education Foundation Program.

(d) Members of the board and members of the council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the board or the council. Members appointed by the Medical Board of California shall serve without compensation, but shall be reimbursed by the Medical Board of California for any actual and necessary expenses incurred in connection with their duties as members of the foundation board.

(e) Notwithstanding any provision of law relating to incompatible activities, no member of the foundation board shall be considered to be engaged in activities inconsistent and incompatible with his or her duties solely as a result of membership on the Medical Board of California.

(f) The foundation shall be subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), this article shall prevail.

(g) This section shall remain in effect only until January 1, ~~2011~~ *2016*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2011~~ *2016*, deletes or extends that date.

SEC. 4. Section 128335 of the Health and Safety Code, as added by Chapter 317 of the Statutes of 2005, is amended to read:

128335. (a) The office shall establish a nonprofit public benefit corporation, to be known as the Health Professions Education Foundation, that shall be governed by a board consisting of nine members appointed by the Governor, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules. The members of the foundation board appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules may include representatives of minority groups which are underrepresented in the health professions, persons employed as health professionals, and other appropriate members of health or related professions. All persons considered for appointment shall have an interest in health programs, an

interest in health educational opportunities for underrepresented groups, and the ability and desire to solicit funds for the purposes of this article as determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

(b) The Governor shall appoint the president of the board of trustees from among those members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules.

(c) The director, after consultation with the president of the board, may appoint a council of advisers comprised of up to nine members. The council shall advise the director and the board on technical matters and programmatic issues related to the Health Professions Education Foundation Program.

(d) Members of the board and members of the council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the board or the council.

(e) The foundation shall be subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), this article shall prevail.

(f) This section shall become operative January 1, ~~2011~~ *2016*.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

STATUS OF BILL:

This bill is in the Senate Appropriations 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: Neutral

July 15, 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.~~

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

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

SECTION 1. Section 2191 of the Business and Professions Code is amended to read:

2191. (a) In determining its continuing education requirements, the ~~Division of Licensing~~ *board* shall consider including a course in human sexuality as defined in Section 2090 and nutrition to be taken by those licensees whose practices may require knowledge in those areas.

(b) The ~~division~~ *board* shall consider including a course in child abuse detection and treatment to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with abused or neglected children.

(c) The ~~division~~ *board* shall consider including a course in acupuncture to be taken by those licensees whose practices may require knowledge in the area of acupuncture and whose education has not included instruction in acupuncture.

(d) The ~~division~~ *board* shall encourage every physician and surgeon to take nutrition as part of his or her continuing education, particularly a physician and surgeon involved in primary care.

(e) The ~~division~~ *board* shall consider including a course in elder abuse detection and treatment to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with abused or neglected persons 65 years of age and older.

(f) In determining its continuing education requirements, the ~~division~~ *board* shall consider including a course in the early detection and treatment of substance abusing pregnant women to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these women.

(g) In determining its continuing education requirements, the ~~division~~ *board* shall consider including a course in the special care needs of drug addicted infants to be taken by those licensees whose practices are of a nature that there is a likelihood of contact with these infants.

(h) In determining its continuing education requirements, the ~~division~~ *board* shall consider including a course providing training and guidelines on how to routinely screen for signs exhibited by

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

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

(1) Pain and symptom management.

(2) The psycho-social dynamics of death.

(3) Dying and bereavement.

(4) Hospice care.

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

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

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

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

O

AB 977

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

STATUS OF BILL:

This bill is in the Senate Business, Professions, and Economic Development Committee; it is no longer active.

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

July 15, 2010

AMENDED IN SENATE JUNE 1, 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.

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 *associated with an independent community pharmacy, as defined,* 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:

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

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

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

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

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

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

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

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

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

4052.8. (a) A pharmacist may initiate and administer influenza immunizations, pursuant to standardized protocols developed and approved by the Medical Board of California in consultation with public health officers, to any person 18 years of age or older. With respect to the development and approval of those standardized protocols, the Medical Board of California may consult with the board. The standardized protocols shall be consistent with protocols developed by the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention. *This section shall apply only to a pharmacist associated with an independent community pharmacy, as defined in Section 4001.*

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

Control and Prevention or the Accreditation Council for Pharmaceutical Education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O

AB 646

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 646
Author: Swanson
Bill Date: April 13, 2010
Subject: Authorizing District Hospitals to Employ Physicians
Sponsor: Author
Board Position: Support in Concept

STATUS OF BILL:

This bill is in the Senate Health Committee; it is no longer active.

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

July 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:

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

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The resolution shall also do the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 2.~~

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

O

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
Board Position: Support

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee; it is no longer active.

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: Support

July 15, 2010

AMENDED IN ASSEMBLY MAY 18, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2148

Introduced by Assembly Member Tran
(Principal coauthor: Assembly Member Portantino)

February 18, 2010

An act to ~~add Section 17206.2~~ *amend, repeal, and add Section 17072 of, and to add and repeal Section 17206.2 of,* to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2148, as amended, 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, *for taxable years beginning on or after January 1, 2011, and before January 1, 2016,* allow a deduction for the value of medical services ~~contributed~~ *performed by a physician* free of charge ~~by a physician~~ to a local community clinic *or in the emergency department of a general acute care hospital*, not to exceed specified amounts. *The bill would permit that deduction to be allowed in computing adjusted gross income.*

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:

SECTION 1. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) Section 62(a)(2)(D) of the Internal Revenue Code, relating to certain expenses of elementary and secondary school teachers, shall not apply.

(c) The deduction allowed by Section 17206.2, relating to the value of physician services provided free of charge in specific settings, shall be allowed in computing adjusted gross income.

(d) This section shall remain in effect only until December 1, 2016, and as of that date is repealed.

SEC. 2. Section 17072 is added to the Revenue and Taxation Code, to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) Section 62(a)(2)(D) of the Internal Revenue Code, relating to certain expenses of elementary and secondary school teachers, shall not apply.

(c) This section shall become operative on January, 1, 2016, and apply to taxable years beginning or after that date.

~~SECTION 1.~~

SEC. 3. Section 17206.2 is added to the Revenue and Taxation Code, to read:

17206.2. (a) ~~There~~ *For taxable years beginning on or after January 1, 2011, and before January 1, 2016, there* shall be allowed as a deduction the value ~~of medical services contributed free of charge by a physician to a local community clinic during the taxable year.~~ *of qualified medical services provided by a qualified taxpayer during the taxable year.*

(b) For purposes of this section, all of the following apply:

(1) "Emergency medical services" has the same meaning as "emergency services and care" as defined in Section 1317.1 of the Health and Safety Code.

~~(1)~~

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

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

(3) "Qualified medical services" means medical services provided by a qualified taxpayer free of charge at a local community clinic or emergency medical services provided by a qualified taxpayer free of charge in an emergency department of a general acute care hospital licensed pursuant to Section 1250 of the Health and Safety Code.

(4) "Qualified taxpayer" means a physician or surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California.

~~(3)~~

(c) The deduction allowed to any taxpayer by this section shall ~~not exceed either of the following:~~

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

~~(B) One~~ *not exceed one* thousand five hundred dollars ($1,500) per taxable year.

(d) The value of medical services provided shall be determined according to the usual, reasonable, and customary rate as described in Section 1300.71(a)(3)(B) of Title 28 of the California Code of Regulations.

~~(c)~~

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

(f) The local community clinic or general acute care hospital, as described in this section, shall provide documentation to the practicing physician regarding the value of services provided, as prescribed by this section.

(g) This section shall remain in effect only until December 1, 2016, and as of that date is repealed.

~~SEC. 2.~~

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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SB 726

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 726
Author: Ashburn
Bill Date: August 20, 2009
Subject: Pilot Program Authorizing Acute Care Hospitals to Employ Physicians
Sponsor: Author
Board Position: Support in Concept

STATUS OF BILL:

This bill is currently on the Senate 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. It 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 in Concept

July 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(C)~~

(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

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

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

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

(D) The total number of physicians and surgeons employed by the hospital does not exceed two at any time. However, the board shall authorize the hospital to hire no more than three additional physicians and surgeons if the hospital 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.

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

(F) The chief executive officer of the hospital certifies to the board that the hospital 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 hospital.

(e) The board shall 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 in improving access to health care in rural and medically underserved areas and the project's impact on consumer protection as it relates to intrusions into the practice of medicine. The board shall include in the report 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 and surgeons.

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

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

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AB 2699

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2699
Author: Bass
Bill Date: July 15, 2010
Subject: Healing Arts: Licensure Exemption
Sponsor: Los Angeles County Board of Supervisors

STATUS OF BILL:

This bill is in the Senate Appropriations Committee and will be heard on August 2, 2010.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would exempt specified health care practitioners, who are licensed and certified in other states, from California state licensure, for the purposes of providing voluntary health care services to uninsured and underinsured Californians on a short-term basis.

ANALYSIS:

Current law exempts health care practitioners that are licensed in other states from California licensure in a state of emergency. There are also reciprocity eligibility requirements for physicians, nurses and dentists who are licensed in other states.

This bill would exempt health care practitioners (physicians, osteopathic physicians and surgeons, chiropractors, dentists, dental hygienists, nurses, vocational nurses, optometrists, physician assistants, or podiatrists) from California state licensure if they are licensed or certified in good standing in another state, district, or territory of the United States and if they provide health care services in California under the following requirements:

- They must submit to the respective board in California a valid copy of his or her license or certificate and a photo identification issued by the state that he or she is licensed or certified.
- The services must be provided to uninsured or underinsured persons on a short-term voluntary basis (no longer than 10 days per sponsored event).
- The services must be provided in association with a sponsoring entity that complies with specified requirements.
- The services must be provided without charge to the recipient, or to a third party on behalf of the recipient.

The sponsoring entity, which may be a non-profit or community-based organization, must register with the appropriate licensing board on a form that includes the name of the sponsoring entity, its officers or organization officials, contract information, and any information required by the licensing board, and this information must also be provided to the county health department

in the county where the health care services will be provided. Within 15 days of the provision of health care services, the sponsoring entity must file a report with the licensing board and the county health department that includes the date, place, type, and general description of the services provided, and a listing of the health care practitioners who participated in providing those services. The sponsoring entity must maintain a list of health care practitioners associated with providing health care services and maintain a copy of each practitioners current license or certification. The sponsoring entity must require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings. This bill allows a licensing board to revoke the registration of a sponsoring entity if they do not comply with these provisions.

According to the sponsor, there are thousands of individuals in California who are lacking basic health care services and preventive care. In August 2009, the Remote Area Medical (RAM) Volunteer Corps conducted an eight-day health event in Los Angeles County. Volunteer health care practitioners provided $2.9 million in free services to over 14,000 patient encounters during this event. While this event was successful, RAM faced a shortage of volunteer health care professionals because of restrictions in California law that prohibit volunteer out-of-state licensed medical personnel from providing short-term services. Because of this shortage, thousands of residents were turned away. RAM conducted another event, which was held at the Los Angeles Sports Arena from April 27 to May 3, 2010, where over 6,600 uninsured and underinsured individuals received vision and dental services. RAM is a non-profit organization that has staged hundreds of medical clinics, both in the United States and worldwide.

Staff suggests that this bill be amended to put the oversight of the registration of the sponsoring entities under one entity that can control this information and disseminate it to the various boards; the Department of Consumer Affairs might be a good place for this registration program. Further, the word "rescind" should be used instead of the word "revoke", as revoke has a legal meaning. Also, the bill should limit the sponsoring entities to non-profit entities and require these entities to provide disclosure that some health care practitioners may not be licensed in California. Lastly, the health care practitioners should be required to provide the copy of the valid license and photo identification to the appropriate board at least 15 days in advance of the event.

FISCAL: Minimal and absorbable within existing resources.

POSITION: **Recommendation:** Neutral if Amended

July 15, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY MAY 12, 2010

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2699

Introduced by Assembly Member Bass

February 19, 2010

An act to amend Section 900 of, and to add Section 901 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, as amended, Bass. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

This bill would also provide an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in another state who offers or provides health care services for which he or she is licensed or certified (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in

association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, *and* (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill would also prohibit a contract of liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions.

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

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

SECTION 1. Section 900 of the Business and Professions Code is amended to read:

900. (a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

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

(g) For purposes of this section, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

SEC. 2. Section 901 is added to the Business and Professions Code, to read:

901. (a) For purposes of this section, the following provisions apply:

(1) "Board" means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) "Health care practitioner" means a physician and surgeon, *podiatrist,* osteopathic physician and surgeon, chiropractor, dentist, dental hygienist, nurse, vocational nurse, optometrist, or physician assistant.

(3) "Sponsoring entity" may include, but is not limited to, a nonprofit organization or a community-based organization.

(4) "Uninsured or underinsured person" means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage does not extend to the health care services offered by the health care practitioner under this section.

(b) Nothing in this division applies to a health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified if both of the following requirements are met:

(1) Prior to providing ~~that care~~ *these services*, he or she submits to the board a valid copy of his or her license or certificate and a photographic identification issued by the state in which he or she holds licensure or certification.

(2) ~~The care is~~ *The services are* provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (c).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with the board by completing a registration form that shall include all of the following elements:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(d) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (c) in writing of any change to the information required under subdivision (c) within 30 days of the change.

(e) Within 15 days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(f) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of

each health care practitioner's current license or certification and shall require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(g) The board may revoke the registration of a sponsoring entity that fails to comply with subdivision (e) or (f).

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not apply to a health care practitioner who renders care outside the scope of practice authorized by his or her license or certificate.

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SB 1031

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

STATUS OF BILL:

This bill is currently in the Assembly Business and Professions Committee; this bill is no longer active.

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 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

July 15, 2010

AMENDED IN SENATE MAY 28, 2010

AMENDED IN SENATE MAY 18, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL No. 1031

Introduced by Senator Corbett

February 12, 2010

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 create the Volunteer Insured Physicians Program, administered by the board, to provide specified medical malpractice insurance coverage to volunteer physicians providing uncompensated care to 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: yes. State-mandated local program: no.

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

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

Article 17.1. Volunteer Insured Physicians Program

2399. This article shall be known and may be cited as the Volunteer Insured Physicians (VIP) Act, which authorizes the creation and implementation of the Volunteer Insured Physicians (VIP) Program within the Medical Board of California.

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

~~(1)~~

(a) "Licensee" means the holder of a current physician and surgeon's certificate.

~~(2)~~

(b) "Patient" means a person who is eligible for free or discounted services at a qualified health care entity.

~~(3)~~

(c) "Qualified health care entity" means a community clinic as defined in subdivision (a) of Section 1204 of, or subdivision (c) of Section 1206 of, the Health and Safety Code, a county health department, or a hospital district, hospital, or a clinic owned and operated by a governmental entity that provides primary care to low-income patients.

~~(4)~~

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

~~(5)~~

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

~~(6)~~

(f) "Voluntary service contract" means an agreement executed pursuant to this article between a licensee and a qualified health care entity that authorizes the licensee to deliver health care services to patients as an agent of the qualified health care entity on a voluntary, uncompensated basis.

~~(7)~~

(g) "Volunteer physician" means a licensee under this chapter who provides primary care medical services in California without receiving monetary or material compensation and who is participating in the VIP Program.

2399.2. (a) A licensee who wants to provide voluntary, uncompensated care to patients, but who does not have medical professional liability insurance that provides insurance coverage for premiums, defense, and indemnity costs for any claims arising from voluntary and uncompensated care, may submit a voluntary service application to the board for coverage under the VIP Program.

(b) When the board receives an application for voluntary license status under Section 2083 or 2442, the board shall assess whether the applicant qualifies for coverage under the VIP Program and notify the applicant of its finding.

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

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

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

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

(e) Eligibility for the VIP Program shall be reassessed by the board during each license renewal cycle.

2399.3. (a) Licensees approved by the board for participation in the VIP Program may enter into a voluntary service agreement

with the board and a qualified health care entity that acknowledges the terms of the VIP Program and transfers responsibility from the volunteer physician to the state for medical professional liability insurance, including premiums, defense, and indemnity costs, for voluntary, uncompensated medical care that is provided in accordance with an executed and signed voluntary service contract between the volunteer physician and the qualified health care entity and that complies with the terms of the VIP Program.

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

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

(1) All care provided shall be both voluntary and uncompensated .

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

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

(4) The volunteer physician shall be subject to the qualified health care entity's standard peer review process and all related laws regarding peer review, including, but not limited to, the filing of reports pursuant to Section 805.

(5) If the qualified health care entity has no peer review process, the qualified health care entity shall utilize a quality assurance program to monitor services delivered by the volunteer physician under the voluntary service contract.

(6) The right to dismiss or terminate a volunteer physician delivering services under the voluntary service contract shall be retained by the qualified health care entity. If the voluntary service

contract is terminated, the qualified health care entity shall notify the VIP Program in writing within five days.

2399.4. The fact that a volunteer physician is insured under the VIP Program in relation to particular medical services rendered shall not operate to change or affect the laws applicable to any claims arising from or related to those medical services. All laws applicable to a claim remain the same regardless of whether a licensee is insured through the VIP Program.

2399.5. If a volunteer physician covered by the VIP Program receives notice or otherwise obtains knowledge that a claim of professional medical negligence has been or may be filed, the volunteer physician shall immediately notify the VIP Program or the contracted liability carrier.

2399.6. All costs for administering the VIP Program, including the cost of medical professional liability insurance for premiums, defense, and indemnity coverage for program participants, shall be paid for from the Contingent Fund of the Medical Board of ~~California, in an amount not to exceed ____ dollars ($____) per year.~~ *California.*

2399.7. (a) The board shall report annually to the Legislature summarizing the efficacy of access and outcomes with respect to providing health care services for patients pursuant to this article. The report shall include the numbers of injuries and deaths reported, claims statistics for all care rendered under the VIP Program, including the total of all premiums paid, the number of claims made for each year of the VIP Program, the amount of all indemnity payments made, the cost of defense provided, and administration costs associated with all claims made against volunteer physicians arising from voluntary and uncompensated care provided under the VIP Program.

(b) (1) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2015.

2399.75. Nothing in this article shall be construed to prevent the board from taking appropriate action against a licensee.

2399.8. This article shall remain operative until January 1, 2016, or until another viable source of funding is identified and adopted, whichever occurs first.

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SB 294

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 294
Author:	Negrete McLeod
Bill Date:	June 16, 2010, amended
Subject:	Dept. of Consumer Affairs: regulatory boards: sunset review
Sponsor:	Author

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill changes the sunset review dates on various Department of Consumer Affairs (DCA) regulatory boards and bureaus, including the Medical Board of California (the Board). This bill would change the sunset date for the Medical Board from 2013 to 2014.

ANALYSIS:

Existing law requires all boards and bureaus under DCA to go through the sunset review process, which is overseen by the Joint Legislative Sunset Review Committee. The purpose of the sunset review process is to routinely review the performance of these boards and bureaus.

This bill would change the sunset date for the Board from 2013 to 2014.

FISCAL: None

POSITION: **Recommendation:** No position required

July 15, 2010

Portions of bill related to the medical Board

AMENDED IN ASSEMBLY JUNE 16, 2010

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN ASSEMBLY JULY 1, 2009

AMENDED IN ASSEMBLY JUNE 8, 2009

AMENDED IN SENATE MARCH 31, 2009

SENATE BILL **No. 294**

Introduced by Senator Negrete McLeod

February 25, 2009

~~An act to amend Sections 27, 116, 160, 726, 802.1 803, 803.5, 803.6, 1695.5, 2365, 2663, 2666, 2715, 2770.7, 3534.1, 3534.5, 4365, 4369, and 4870 of, to add Sections 1695.7, 1699.2, 2365.5, 2372, 2669.2, 2770.16, 2770.18, 2835.7, 3534.12, 4375, 4870.5, and 4873.2 to, to add Article 10.1 (commencing with Section 720) to Chapter 1 of Division 2 of, to add and repeal Section 2719 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, relating to healing arts.~~ *An act to amend Sections 2001, 2020, 2531, 2569, 2570.19, 2701, 2708, 2920, 2933, 3010.5, 3014.6, 3504, 3512, 3685, 3686, 4800, 4804.5, 4928, 4934, 4990, 4990.04, 5000, 5015.6, 5510, 5517, 5552.5, 5620, 5621, 5622, 5810, 6510, 6710, 6714, 7000.5, 7011, 7200, 7303, 8000, 8005, 8520, 8528, 8710, 11506, 18602, 18613, 22259 of, and to amend and repeal Section 2531.75 of, the Business and Professions Code, and to amend*

Section 94950 of the Education Code, relating to the Department of Consumer Affairs.

LEGISLATIVE COUNSEL'S DIGEST

SB 294, as amended, Negrete McLeod. ~~Healing arts.~~ *Department of Consumer Affairs: regulatory boards.*

(1) Existing law provides for the licensure and regulation of various healing arts licensees by various boards, as defined, within the Department of Consumer Affairs, including the California Board of Occupational Therapy, the Physician Assistant Committee of the Medical Board of California, and the Veterinary Medical Board. Existing law requires the committee and authorizes the Veterinary Medical Board to appoint an executive officer. Under existing law, those provisions regarding the California Board of Occupational Therapy will become inoperative on July 1, 2013, and will be repealed on January 1, 2014. Those provisions governing the Physician Assistant Committee of the Medical Board of California and the Veterinary Medical Board will become inoperative on July 1, 2011, and will be repealed on January 1, 2012.

Under this bill, the provisions relating to the California Board of Occupational Therapy would become inoperative and be repealed on January 1, 2014, and the provisions concerning the Physician Assistant Committee of the Medical Board of California and the Veterinary Medical Board would become inoperative and be repealed on January 1, 2013.

Existing law provides for the licensure and regulation of certain healing arts licensees by the Medical Board of California and the State Board of Optometry. Existing law authorizes these boards to employ an executive director or appoint an executive officer, respectively. Existing law repeals these provisions on January 1, 2013. Existing law makes the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board responsible for the licensure of speech-language pathologists and audiologists and authorizes the board to appoint an executive officer. Existing law repeals these provisions on January 1, 2012. Under existing law, the Board of Psychology is responsible for the licensure and regulation of psychologists and is authorized to employ an executive officer. Existing law repeals these provisions on January 1, 2011.

Existing law provides for the regulation of registered dispensing opticians by the Medical Board of California and provides that the powers and duties of the board in that regard shall be subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection as if those provisions were scheduled to become inoperative on July 1, 2003, and repealed on January 1, 2004.

This bill would make the powers and duties of the board subject to that review as if those provisions were scheduled to be repealed on January 1, 2014.

Existing law provides for the licensure and regulation of specified healing arts licensees by the Acupuncture Board and the Board of Behavioral Sciences (BBS). Existing law authorizes the Acupuncture Board to appoint an executive officer and requires BBS to appoint an executive officer. Under existing law, these provisions are repealed on January 1, 2011.

Under this bill, these provisions would be repealed on January 1, 2013.

Existing law provides for the licensure and regulation of registered nurses by the Board of Registered Nursing and requires the board to appoint an executive officer. Under existing law, these provisions are repealed on January 1, 2013.

This bill would instead repeal these provisions on January 1, 2012.

Existing law provides for the licensure and regulation of naturopathic doctors by the Naturopathic Medicine Committee within the Osteopathic Medical Board of California. Existing law provides that these regulatory provisions are repealed on January 1, 2013.

This bill would provide that those regulatory provisions are repealed on January 1, 2014.

(2) Existing law also provides for the licensure and regulation of various profession and vocations by boards within the department, including, the California Board of Accountancy, the California Architects Board, the Landscape Architects Technical Committee, Professional Fiduciaries Bureau, the Board for Professional Engineers and Land Surveyors, and the State Board of Guide Dogs for the Blind. Existing law requires or authorizes, with certain exceptions, these boards to appoint an executive officer or a registrar. With respect to the Professional Fiduciaries Bureau, existing law authorizes the Governor to appoint the chief of the bureau. Under existing law, these provisions will become inoperative on July 1, 2011, and will be repealed on January 1, 2012.

This bill would make these provisions, inoperative and repealed on January 1, 2012.

Existing law authorizes the California Architects Board to implement an intern development program until July 1, 2011.

This bill would authorize the board to implement that program until July 1, 2012.

Existing law establishes in the Department of Pesticide Regulation a Structural Pest Control Board and requires the board, with the approval of the director of the department, to appoint a registrar. These provisions shall become inoperative on July 1, 2011, and are repealed on January 1, 2012.

This bill would make those provisions inoperative and repealed on January 1, 2015.

Existing law provides for the certification and regulation of interior designers until January 1, 2013.

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

Existing law provides for the regulation of certified common interest development managers and tax preparers and repeals these provisions on January 1, 2012.

This bill would repeal these provisions on January 1, 2015.

Under existing law, there is the Contractors' State License Board within the department and it is responsible for the licensure and regulation of contractors and existing law requires the board to appoint a registrar. Under existing law, these provisions are repealed on January 1, 2011.

This bill would repeal these provisions on January 1, 2012.

Existing law provides for the licensure and regulation of barbering and cosmetology by the Board of Barbering and Cosmetology and existing law authorizes the board to appoint an executive officer. Under existing law, these provisions are repealed on January 1, 2012.

This bill would repeal these provisions on January 1, 2014.

Under existing law, the practice of shorthand reporting is regulated by the Court Reporters Board of California and existing law authorizes the board to appoint committees. These provisions are repealed on January 1, 2011.

This bill would repeal these provisions January 1, 2013.

Under existing law, the State Athletic Commission is responsible for licensing and regulating boxing, kickboxing, and martial arts matches

and is required to appoint an executive officer. Existing law repeals these provisions on January 1, 2011.

This bill would repeal these provisions on January 1, 2012.

(3) Existing law, the California Private Postsecondary Education Act of 2009, provides for the regulation of private postsecondary educational institutions by the Bureau for Private Postsecondary Education in the Department of Consumer Affairs. Existing law repeals that act on January 1, 2016.

This bill would repeal the act on January 1, 2015.

~~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.~~

~~(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 to disclose on the Internet information on their respective 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 to audit and review the aforementioned activities by any of the healing arts boards. 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 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 been convicted of a felony or misdemeanor.~~

~~This bill would expand that requirement to any licensee of a healing arts board, as specified, would require these licensees to submit a written report, and would require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state.~~

~~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~~

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

SECTION 1. Section 2001 of the Business and Professions Code is amended to read:

2001. (a) There is in the Department of Consumer Affairs a Medical Board of California that consists of 15 members, seven of whom shall be public members.

(b) The Governor shall appoint 13 members to the board, subject to confirmation by the Senate, five of whom shall be public members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(c) Notwithstanding any other provision of law, to reduce the membership of the board to 15, the following shall occur:

(1) Two positions on the board that are public members having a term that expires on June 1, 2010, shall terminate instead on January 1, 2008.

(2) Two positions on the board that are not public members having a term that expires on June 1, 2008, shall terminate instead on August 1, 2008.

(3) Two positions on the board that are not public members having a term that expires on June 1, 2011, shall terminate instead on January 1, 2008.

(d) This section shall remain in effect only until January 1, ~~2013~~ *2014*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2013~~ *2014*, deletes or extends that date. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 2020 of the Business and Professions Code is amended to read:

2020. (a) The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. Investigators employed by the board shall be provided special training in investigating medical practice activities.

SB 700

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

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: Support

July 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

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

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

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

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

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

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

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

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

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

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

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

(4) Approved postgraduate training.

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

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

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

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

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

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

When considering malpractice data, please keep in mind:

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

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

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

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

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

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

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

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

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

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

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

~~(B) "Peer review body" includes:~~

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

~~(ii) 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 contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(m) A health care service plan 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) (A) "Peer review" means both of the following:

(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:

(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.

(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

(ii) Any other activities of a peer review body as specified in subparagraph (B).

~~(1)~~

(B) "Peer review body" includes:

~~(A)~~

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

~~(B)~~

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

~~(C)~~

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

~~(D)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Any statement of charges.

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

(3) Any opinions, findings, or conclusions.

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

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

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

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

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

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

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

(1) Any statement of charges.

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

(3) Any opinion, findings, or conclusions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 7.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SB 1111

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1111
Author: Negrete McLeod
Bill Date: April 12, 2010
Subject: Regulatory Boards
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Business, Professions, and Economic Development Committee; this bill is no longer active.

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 section720.24 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

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 licentiate 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:

SECTION 1. This act shall be known and may be cited as the Consumer Health Protection Enforcement Act.

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

(1) In recent years, it has been reported that many of the healing arts boards within the Department of Consumer Affairs take, on average, more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time that it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused, in part, by legal and procedural impediments to the enforcement programs.

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions. Consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this act will improve efficiency and increase accountability within the healing arts boards of the Department of Consumer Affairs, and will remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this act will provide the healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for

investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

SEC. 3. Section 27 of the Business and Professions Code is amended to read:

27. (a) ~~Every~~ *Each* entity specified in ~~subdivision (b)~~ *subdivisions (b) and (c)* shall provide on the Internet information regarding the status of every license issued by that entity, *whether the license is current, expired, canceled, suspended, or revoked,* in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees~~, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.~~.

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(10) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(13) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under

its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

~~(14) The Board of Registered Nursing shall disclose information on its licensees.~~

~~(15) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.~~

~~(16) The Veterinary Medical Board shall disclose information on its licensees and registrants.~~

~~(17) The Physical Therapy Board of California shall disclose information on its licensees.~~

~~(18) The California State Board of Pharmacy shall disclose information on its licensees.~~

~~(19) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall disclose information on its licensees.~~

~~(20) The Respiratory Care Board of California shall disclose information on its licensees.~~

~~(21) The California Board of Occupational Therapy shall disclose information on its licensees.~~

~~(22) The Naturopathic Medicine Committee of the Osteopathic Medical Board of California shall disclose information on its licensees.~~

~~(23) The Physician Assistant Committee of the Medical Board of California shall disclose information on its licensees.~~

~~(24) The Dental Hygiene Committee of California shall disclose information on its licensees.~~

(c) The State Board of Chiropractic Examiners shall disclose information on its licensees.

~~(c)~~

(d) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 4. Section 27.5 is added to the Business and Professions Code, to read:

27.5. (a) Each entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity, whether the license is current, expired, canceled, suspended, or revoked, in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the

Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board of Registered Nursing shall disclose information on its licensees.

(2) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.

(3) The Veterinary Medical Board shall disclose information on its licensees and registrants.

(4) The Physical Therapy Board of California shall disclose information on its licensees.

(5) The California State Board of Pharmacy shall disclose information on its licensees.

(6) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall disclose information on its licensees.

(7) The Respiratory Care Board of California shall disclose information on its licensees.

(8) The California Board of Occupational Therapy shall disclose information on its licensees.

(9) The Naturopathic Medicine Committee within the Osteopathic Medical Board of California shall disclose information on its licensees.

(10) The Physician Assistant Committee of the Medical Board of California shall disclose information on its licensees.

(11) The Dental Hygiene Committee of California shall disclose information on its licensees.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

~~SEC. 4.~~

SEC. 5. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any of the healing arts boards ~~defined~~ *listed* in Section 720. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, *for their consideration.*

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

~~SEC. 5.~~

SEC. 6. Section 125.3 of the Business and Professions Code, as amended by Section 2 of Chapter 223 of the Statutes of 2006, is amended to read:

125.3. (a) (1) Except as otherwise provided by law, in any order issued in resolution of a penalty or disciplinary proceeding or hearing on a citation issued pursuant to Section 125.9 or regulations adopted *pursuant* thereto, before any board specified in Section 101, the board or the administrative law judge may direct any licensee or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the ~~actual~~ *reasonable* costs of the investigation, prosecution, and enforcement of the case.

(2) In an order issued pursuant to paragraph (1) that places a license on probation, the administrative law judge may direct a licensee to pay the board's ~~actual~~ *reasonable* costs of monitoring that licensee while he or she remains on probation, if so requested by the entity bringing the proceeding. The board shall provide the administrative law judge with a good faith estimate of the probation monitoring costs at the time of the request.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of ~~actual~~ *reasonable* costs of investigation, prosecution, and enforcement of the case. The costs shall include the amount of investigative, prosecution, and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of ~~actual~~ *reasonable* costs of investigation, prosecution, and enforcement of the case and probation monitoring costs when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase any cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) In determining reasonable costs pursuant to subdivision (a), the administrative law judge shall only consider the public resources expended pursuant to the investigation, prosecution, and enforcement of the case. The administrative law judge shall provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered.

~~(e)~~

(f) If an order for recovery of costs is made, payment is due and payable, *in full,* 30 days after the effective date of the order, *unless the licensee and the board have agreed to a payment plan.* If timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

~~(f)~~

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

~~(g)~~

(h) (1) Except as provided in paragraph (2), the board shall not renew ~~or reinstate the license~~, *reinstate the license, or terminate the probation* of any licentiate who has failed to pay all of the costs ordered under this section. *This paragraph shall not apply to an administrative law judge when preparing a proposed decision.*

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

~~(h)~~

(i) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

~~(i)~~

(j) Nothing in this section shall preclude a board from including the recovery of the costs of investigation, prosecution, and enforcement of a case in any stipulated settlement.

~~(j)~~

(k) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for broader authority for the recovery of costs in an administrative disciplinary proceeding.

~~(k)~~

(l) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

~~(l)~~

(m) For purposes of this chapter, costs of prosecution shall include, but not be limited to, costs of attorneys, expert consultants, witnesses, any administrative filing and service fees, and any other cost associated with the prosecution of the case.

~~SEC. 6.~~

SEC. 7. Section 125.3 of the Business and Professions Code, as added by Section 1 of Chapter 1059 of the Statutes of 1992, is repealed.

~~SEC. 7.~~

SEC. 8. Section 125.4 is added to the Business and Professions Code, to read:

125.4. *(a)* Notwithstanding any other provision of law, a board may contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board, and, for those purposes, may provide to the collection agency the personal information of that person, including his or her birth date, telephone number, and social security number. The contractual agreement shall provide that the collection agency may use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that the personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection agency liable for the unauthorized use or disclosure of personal information received or collected under this section.

(b) A board shall not use a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.

~~SEC. 8.~~

SEC. 9. Section 125.9 of the Business and Professions Code is amended to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, commission, or committee within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation that may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, commission, or committee where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, commission, or committee exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, commission, or committee shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to appeal the finding of a violation, that hearing shall be requested by written notice to the board, bureau, commission, or committee within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or, at the discretion of a healing arts board, as ~~defined~~ *listed* in Section 720, pursuant to paragraph (5).

~~(5) (A) If the healing arts board is a board or committee, the executive officer and two members of that board or committee shall hear the appeal and issue a citation decision. A licensee desiring to appeal the citation decision shall file a written appeal of the citation decision with the board or committee within 30 days of issuance of the decision. The appeal shall be considered by the board or committee itself and shall issue a written decision on the appeal. The members of the board or committee who issued the citation decision shall not participate in the appeal before the board or committee unless one or both of the members are needed to establish a quorum to act on the appeal.~~

~~(B) If the healing arts board is a bureau, the director shall appoint a designee to hear the appeal and issue a citation decision.~~

~~A licensee desiring to appeal the citation decision shall file a written appeal of the citation decision with the bureau within 30 days of issuance of the decision. The appeal shall be considered by the director or his or her designee who shall issue a written decision on the appeal.~~

~~(C) The hearings specified in this paragraph are not subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(D) A healing arts board may adopt regulations to implement this paragraph, which may include the use of telephonic hearings.~~

(5) (A) If the healing arts board is a board or committee, two members of that board or committee shall hear the appeal and issue a citation decision. One of the two members shall be a licensee of the board.

(B) If the healing arts board is a bureau, the director shall appoint a designee to hear the appeal and issue a citation decision.

(C) A hearing held pursuant to this paragraph is not subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(D) A board or committee choosing to utilize the provisions of this paragraph shall first have adopted regulations providing for notice and opportunity to be heard. The regulations shall provide the licensee with due process and describe, in detail, the process for that hearing. Appeal of the citation decision may be made through the filing of a petition for writ of mandate.

(E) A healing arts board may permit the use of telephonic hearings. The decision to have a telephonic hearing shall be at the discretion of the licensee subject to the citation.

(6) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, commission, or committee. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, commission, or committee.

~~SEC. 9.~~

SEC. 10. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary *to* properly ~~to~~ investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as ~~defined~~ *listed* in Section 720, shall not be required to be employees of the Division of Investigation and the healing arts board may contract for investigative services provided by ~~the Medical Board of California or provided by~~ the Department of Justice.

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

~~SEC. 10.~~

SEC. 11. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards ~~specified~~ *listed* in Section 720.

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, shall be in the division and the personnel shall be appointed by the director.

~~SEC. 11.~~

SEC. 12. Section 160 of the Business and Professions Code is amended to read:

160. (a) The Chief and designated investigators of the Division of Investigation of the department, designated investigators of the Medical Board of California, designated investigators of the Dental Board of California, and designated investigators of the Board of Registered Nursing have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

(b) The Division of Investigation, the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing may employ investigators who are not peace officers to provide investigative services.

~~SEC. 12.~~

SEC. 13. Article 10.1 (commencing with Section 720) is added to Chapter 1 of Division 2 of the Business and Professions Code, 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*

authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to ~~surrender~~ *the revocation or surrender of* his or her license.

720.4. (a) Notwithstanding Section 11415.60 of the Government Code, a healing arts board may enter into a settlement with a licensee or applicant ~~prior to the board's~~ *in lieu of the* issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

~~(b) No~~

(c) A person who enters a settlement pursuant to this section ~~may petition~~ *is not precluded from filing a petition, in the timeframe permitted by law,* to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

~~(c) Any settlement~~

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. *Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.*

720.6. (a) Notwithstanding any other provision of law, upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, ~~or has failed to comply with a request to inspect or copy records made pursuant to Section 720.16,~~ the executive officer of that board may petition the director to issue a temporary order that the licensee cease all practice and activities that require a license by that board.

(b) (1) The executive officer of the healing arts board shall, to the extent practicable, provide telephonic, electronic mail, message, or facsimile written notice to the licensee of a hearing on the petition at least ~~24 hours~~ *five business days* prior to the hearing. The licensee and his or her counsel and the executive officer or his or her designee shall have the opportunity to present oral or written argument before the director. After presentation of the

evidence ~~and consideration of any arguments presented, the director may issue an order that the licensee cease all practice and activities that require a license by that board when, in the opinion of the director, the action is necessary to protect the public health, safety, or welfare.~~ *, if, in the director's opinion, the petitioner has established by a preponderance of the evidence that an imminent risk of serious harm to the public health, safety, or welfare exists, the director may issue an order that the licensee cease all practice and activities that require a license by that board.*

(2) The hearing specified in this subdivision shall not be subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any order to cease practice issued pursuant to this section shall automatically be vacated within ~~120~~ *90* days of issuance, or until the healing arts board ~~, pursuant to Section 494, files a petition~~ *files a petition pursuant to Section 494* for an interim suspension order and the petition is denied or granted, whichever occurs first.

(d) A licensee who fails or refuses to comply with an order of the director to cease practice pursuant to this section is subject to disciplinary action to revoke or suspend his or her license by ~~his or her~~ *the* respective healing arts board and an administrative fine assessed by the board not to exceed twenty-five thousand dollars ($25,000). The remedies provided herein are in addition to any other authority of the healing arts board to sanction a licensee for practicing or engaging in activities subject to the jurisdiction of the board without proper legal authority.

(e) Upon receipt of new information, the executive officer for the healing arts board who requested the temporary suspension order shall review the basis for the license suspension to determine if the grounds for the suspension continue to exist. The executive officer shall immediately notify the director if the executive officer believes that the licensee no longer poses an imminent risk of serious harm to the public health, safety, or welfare ~~or that the licensee has complied with the request to inspect or copy records pursuant to Section 720.16~~. The director shall review the information from the executive officer and may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare.

(f) Any petition and order to cease practice shall be displayed on the Internet Web site of the applicable healing arts board, except

that if the petition is not granted or the director vacates the suspension order pursuant to subdivision (e), the petition and order shall be removed from the respective board's Internet Web site.

(g) If the position of director is vacant, the chief deputy director of the department shall fulfill the duties of this section.

(h) Temporary suspension orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in, and for, the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

(i) For the purposes of this section, "imminent risk of serious harm to the public health, safety, or welfare" means that there is a reasonable likelihood that allowing the licensee to continue to practice will result in serious physical or emotional injury, unlawful sexual contact, or death to an individual or individuals within the next 90 days.

720.8. (a) The license of a licensee of a healing arts board shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The healing arts board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The healing arts board shall notify the licensee *in writing* of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative ~~Law~~ *Hearings* it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the healing arts board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the

Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the healing arts board.

(d) (1) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative ~~Law~~ *Hearings*. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the healing arts board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by a healing arts board shall not apply to proceedings conducted pursuant to this section.

720.10. Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in subdivision (c) of Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. ~~Unless otherwise provided in the laws and regulations of the healing arts board, the patient shall no longer be considered a patient of the licensee when the order for medical services and procedures provided by the licensee is terminated, discontinued, or not renewed by the prescribing physician and surgeon.~~

720.12. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the healing arts board shall be subject to the following requirements:

(1) The healing arts board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this division, the healing arts board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The healing arts board shall not stay the revocation and place the license on probation.

(3) The healing arts board shall not reinstate or reissue the individual's license. The healing arts board shall not issue a stay of license denial ~~and~~ *nor* place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the healing arts board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

720.14. (a) A licensee of a healing arts board shall not include or permit to be included any of the following provisions in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the healing arts board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the healing arts board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the healing arts board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

720.16. (a) Notwithstanding any other provision of law making a communication between a licensee of a healing arts board and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by a healing arts board. Members of a healing arts board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the

course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the healing arts board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and a healing arts board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the healing arts board or any other federal or state law, regulation, or rule relevant to the practice regulated by the healing arts board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A healing arts board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the healing arts board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) If a board complies with Section 2225, that board shall not be subject to the requirements of this section.

(h) This section shall not apply to a licensee who does not have access to, and control over, certified medical records.

720.18. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to a healing arts board, within ~~10~~ *15* days of receiving the request and authorization, shall pay to the healing arts board a civil penalty of *up to* one thousand dollars ($1,000) per day for each day that the documents have not been produced after the ~~10th~~ *15th* day, up to ~~one hundred thousand dollars ($100,000)~~ *ten thousand dollars ($10,000)*, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a healing arts board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the healing arts board within ~~10~~ *30* days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the ~~10th~~ *30th* day, up to ~~one hundred thousand dollars ($100,000)~~ *ten thousand dollars ($10,000)*, unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist a healing arts board in obtaining the patient's authorization. A healing arts board shall pay the reasonable costs of copying the certified medical records, but shall

not be required to make that payment prior to the production of the medical records.

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

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

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to a healing arts board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ~~one hundred thousand dollars ($100,000)~~ *ten thousand dollars ($10,000)*, after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board is guilty of a

misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

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

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

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, a healing arts board pursuant to this section shall be deposited into the fund administered by the healing arts board.

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

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

(h) If a board complies with Section ~~1684.5~~ *1684.1*, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.

720.20. (a) Notwithstanding any other provision of law, a state agency shall, upon receiving a request in writing from a healing arts board *for records*, immediately provide to the healing arts board all records in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a healing arts board, the state agency shall notify the healing arts board that it is conducting an investigation against one of its licentiates. The notification of investigation to the healing arts board ~~is to~~ *shall* include the name, address, and, if known, the professional ~~licensure~~ *license* type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the healing arts board in providing any requested information.

720.22. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a healing arts board shall provide records to the healing arts board upon request prior to receiving payment from the board *for the cost of providing the records.*

720.24. (a) ~~Any~~ *Notwithstanding any other provision of law, any* employer of a health care licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within ~~five~~ *15* business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension or termination for cause" ~~is defined as suspension~~ *or "resignation in lieu of suspension or termination for cause" is defined as resignation,*

suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

~~(4) Falsification of medical records.~~

~~(5)~~

(4) Gross negligence or incompetence.

~~(6)~~

(5) Theft from a patient or client, any other employee, or the employer.

~~(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.~~

~~(d) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.~~

~~(e) This section shall not apply to any of the reporting requirements under Section 805.~~

(c) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(d) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(f) No report is required under this section where a report of the action taken is already required under Section 805.

720.26. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.

(2) The total number of complaint forms received by the board.

(3) The total number of reports received by the board pursuant to Sections 801, 801.01, and 803, as applicable.

(4) The total number of coroner reports received by the board.

(5) The total number of convictions reported to the board.

(6) The total number of criminal filings reported to the board.

(7) If the board is authorized to receive reports pursuant to Section 805, the total number of Section 805 reports received by the board, by the type of peer review body reporting and, where applicable, the type of health care facility involved, and the total number and type of administrative or disciplinary actions taken by the board with respect to the reports, and their disposition.

(8) The total number of complaints closed or resolved without discipline, prior to accusation.

(9) The total number of complaints and reports referred for formal investigation.

(10) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(11) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(12) The total number of final licensee disciplinary actions taken, by category.

(13) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(14) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(15) The total number of licensees in diversion or on probation for alcohol or drug abuse or mental disorder, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(16) The total number of probation violation reports and probation revocation filings, and their dispositions.

(17) The total number of petitions for reinstatement, and their dispositions.

(18) The total number of caseloads of investigators for original cases and for probation cases, respectively.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) ~~If a board~~ *A board that* complies with Section 2313~~, that board~~ shall not be subject to the requirements of this section.

720.28. Unless otherwise provided, on or after July 1, 2013, every healing arts board shall post on the Internet the following information in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every healing arts license, whether or not the licensee *or former licensee* is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee *or former licensee* has been subject to discipline by the healing arts board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the healing arts board ~~after January 3, 1991~~.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board ~~after January 1, 1993~~.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 720.18 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the healing arts board and shall be adopted by regulation.

720.30. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

(c) The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.

720.32. (a) Whenever it appears that an applicant for a license, certificate, or permit from a healing arts board may be unable to practice his or her profession safely because the applicant's ability to practice ~~would~~ *may* be impaired due to mental illness, or physical illness affecting competency, the healing arts board may order the applicant to be examined by one or more physicians and surgeons or psychologists designated by the healing arts board. The report of the examiners shall be made available to the applicant and may

be received as direct evidence in proceedings conducted pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(b) An applicant's failure to comply with an order issued under subdivision (a) shall authorize the board to deny an applicant a license, certificate, or permit.

(c) A healing arts board shall not grant a license, certificate, or permit until it has received competent evidence of the absence or control of the condition that caused its action and until it is satisfied that with due regard for the public health and safety the person may safely practice the profession for which he or she seeks licensure.

720.34. (a) An applicant for a license, certificate, or permit from a healing arts board who is otherwise eligible for that license but is unable to practice some aspects of his or her profession safely due to a disability may receive a limited license if he or she does both of the following:

(1) Pays the initial licensure fee.

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

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

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

720.35. (a) ~~Each~~ *Each healing arts board listed in Section 720 shall report to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank the following information on each of its licensees:*

(1) Any adverse action taken by the board as a result of any disciplinary proceeding, including any revocation or suspension of a license and the length of that suspension, or any reprimand, censure, or probation.

(2) Any dismissal or closure of a disciplinary proceeding by reason of a licensee surrendering his or her license or leaving the state.

(3) Any other loss of the license of a licensee, whether by operation of law, voluntary surrender, or otherwise.

(4) Any negative action or finding by the board regarding a licensee.

(b) Each healing arts board shall conduct a search on the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank prior to granting or renewing a license, certificate, or permit to an applicant ~~who is licensed by another state~~.

~~(b)~~

(c) A healing arts board may charge a fee to cover the actual cost to conduct the search specified in subdivision ~~(a)~~ *(b)*.

720.36. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright and is reported to the National Practitioner Data Bank, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to

practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

~~720.36. Unless it is~~

720.37. Unless otherwise expressly provided, any person, whether licensed pursuant to this division or not, who violates any provision of this article is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200), or by imprisonment *in a county jail* for a term of not less than 60 days nor no more than 180 days, or by both the fine and imprisonment.

720.38. (a) The Emergency Health Care Enforcement Reserve Fund is hereby established in the State Treasury, to be administered by the department. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are hereby continuously appropriated and shall be used to support the investigation and prosecution of any matter within the authority

of any of the healing arts boards. The department, upon direction of a healing arts board, shall pay out the funds or approve such payments as deemed necessary from those funds as have been designated for the purpose of this section.

(b) Notwithstanding any other law, the funds of the Emergency Health Care Enforcement Reserve Fund are those moneys from the healing arts board's individual funds, which shall be deposited into the Emergency Health Care Enforcement Reserve Fund when the amount within those funds exceeds more than four months operating expenditures of the healing arts board.

(c) Notwithstanding any other law, the department, with approval of a healing arts board, may loan to any other board moneys necessary for the purpose of this section when it has been established that insufficient funds exist for that board, provided that the moneys will be repaid.

720.40. Notwithstanding any other provision of law, if a healing arts board's fund reserve exceeds its statutory maximum, the board may lower its fees by resolution in order to reduce its reserves to an amount below its maximum.

720.42. (a) The Legislature finds that there are occasions when a healing arts board, as listed in Section 720, urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that, apart from, and in addition to, the expenditure authority that may otherwise be established, the healing arts boards, as listed in Section 720, shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance pursuant to the provisions of subdivision (b) of this section, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for the services of the Attorney General and the Office of Administrative Hearings.

(b) Notwithstanding any other provision of law, upon the request of the department, the Department of Finance may 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. If an augmentation exceeds 20% of the

board's budget for the Attorney General, it may be made no sooner than 30 days after notification in writing to chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the Joint Legislative Budget Committee may in each instance determine.

~~SEC. 13.~~

SEC. 14. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, and under any initiative act referred to in this division.

(b) For purposes of Division 1.5 (commencing with Section 475), ~~and the licensing laws and regulations of a healing arts board, as defined in Section 720,~~ the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board *listed in Section 720.*

(c) This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

~~SEC. 14.~~

SEC. 15. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. 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.

(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

not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(c) A violation of subdivision (a) is a misdemeanor punishable by a fine of up to ten thousand dollars ($10,000), imprisonment in the county jail of up to six months, or both the fine and imprisonment.

~~SEC. 17.~~

SEC. 18. Section 737 is added to the Business and Professions Code, to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if ~~legally~~ requested by the board.

(b) Cooperate and participate in any ~~disciplinary~~ investigation or other regulatory or disciplinary proceeding pending against ~~himself or herself~~ *the licensee*. However, this subdivision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require a licensee to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against ~~him or her~~ *the licensee*.

~~SEC. 18.~~

SEC. 19. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A licensee of a healing arts board ~~defined under Section 720 shall submit a written report of~~ *listed in Section 720 shall report* any of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The arrest of the licensee.

(C) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(D) Any disciplinary action taken by another licensing entity or authority of this state or of another state *or an agency of the federal government.*

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the arrest, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand ~~dollars ($5,000).~~ *dollars ($5,000) and shall constitute unprofessional conduct.*

SEC. 20. Section 802.2 is added to the Business and Professions Code, to read:

802.2. A licensee of a healing arts board listed in Section 720 shall identify himself or herself as a licensee of the board to law enforcement and the court upon being arrested or charged with a misdemeanor or felony. The healing arts boards shall inform its licensees of this requirement.

~~SEC. 19.~~

SEC. 21. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from a healing arts board ~~defined~~ *listed* in Section 720, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services,

the clerk of the court that rendered the judgment shall report that fact to the board that issued the license.

~~SEC. 20.~~

SEC. 22. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the *appropriate* healing arts board ~~defined~~ *listed* in Section 720 and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

~~SEC. 21. Section 803.6 of the Business and Professions Code is amended to read:~~

~~803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the appropriate healing arts boards defined in Section 720 where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.~~

~~(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the appropriate board.~~

SEC. 23. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the ~~Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable,~~ *appropriate healing arts board listed in Section 720* where the total length of the

transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the *appropriate healing arts* board.

~~SEC. 22.~~

SEC. 24. Section 803.7 is added to the Business and Professions Code, to read:

803.7. The Department of Justice shall ensure that subsequent reports authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

~~SEC. 23. Article 15 (commencing with Section 870) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:~~

~~Article 15. Healing Arts Licensing Fees~~

~~870. (a) Notwithstanding any provision of law establishing a fee or a fee range in this division, the department may annually establish a maximum fee amount for each healing arts board, as defined in Section 720, adjusted consistent with the California Consumer Price Index.~~

~~(b) The department shall promulgate regulations pursuant to the Administrative Procedures Act to establish the maximum fee amount calculated pursuant to subdivision (a).~~

~~(c) A healing arts board, as defined in Section 720, shall establish, through regulations, the specific amount of all fees authorized by statute at a level that is at or below the amount established pursuant to subdivision (b).~~

~~SEC. 24.~~

SEC. 25. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment

in a county jail not to exceed one year, or by both that fine and imprisonment, ~~for a person to do any of the following:~~ *for:*

(A) Any person who does not hold a current and valid license to practice a healing art under this division who engages in that practice.

(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.

~~(C) Any person who represents himself or herself as engaging or authorized to engage in a healing art of this division who is not authorized to do so.~~

(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific healing arts licensing provisions for which he or she engaged in unauthorized practice.

(b) Notwithstanding any other provision of law, any person who is licensed under this division, but ~~who is not authorized to provide some or all services of another healing art, who practices or~~ supervises the practice of ~~those unauthorized services~~ *any person who does not hold a current and valid license to practice a healing art under this division*, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 26. Section 1005 of the Business and Professions Code is amended to read:

1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, *125.3. 125.4,* 125.6, *125.9,* 136, 137, 140, 141, 143, *155,* 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, *720.2, 720.4, 720.8, 720.10, 720.12, 720.14, 720.16, 720.18, 720.20, 720.22, 720.24, 720.28, 720.30, 720.32, 720.35, 720.36,* 730.5, 731, ~~and~~ *734, 735, 736, 737, 802.1, 803, 803.5, 803.6, 803.7,* 851, *and 880* are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

SEC. 27. Section 1006 is added to the Business and Professions Code, to read:

1006. (a) Notwithstanding any other provision of law, upon receipt of evidence that a licensee of the State Board of

Chiropractic Examiners has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, the executive officer may issue a temporary order that the licensee cease all practice and activities that require a license by the board.

(b) Before the executive officer may take any action pursuant to this section, the board shall delegate to the executive officer authority to issue a temporary cease practice order as specified in subdivision (a). The board may, by affirmative vote, rescind the executive officer's authority to issue cease temporary practice orders pursuant to subdivision (a).

(c) A licensee may appeal the temporary cease practice order decision pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any temporary order to cease practice issued pursuant to this section shall automatically be vacated within 90 days of issuance, or until the board files a petition pursuant to Section 494 for an interim suspension order and the petition is denied or granted, whichever occurs first.

(e) A licensee who fails or refuses to comply with a temporary order of the executive officer to cease practice pursuant to this section shall be subject to disciplinary action to revoke or suspend his or her license and by the board and an administrative fine assessed by the board not to exceed twenty-five thousand dollars ($25,000). The remedies provided herein are in addition to any other authority of the board to sanction a licensee for practicing or engaging in activities subject to the jurisdiction of the board without proper legal authority.

(f) Upon receipt of new information, the executive officer shall review the basis for the interim license suspension order pursuant to subdivision (d) to determine if the grounds for the suspension continue to exist. The executive officer may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare as described in subdivision (a) of Section 494.

(g) Any order to cease practice including an order pursuant to Section 494 shall be displayed on the board's Internet Web site, except that if the executive officer vacates the suspension order

pursuant to subdivision (e), the petition and order shall be removed from the respective board's Internet Web site.

(h) Temporary suspension orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in, and for, the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

(i) For the purposes of this section, "imminent risk of serious harm to the public health, safety, or welfare" means that there is 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 or individuals within the next 90 days.

SEC. 28. Section 1007 is added to the Business and Professions Code, to read:

1007. (a) The State Board of Chiropractic Examiners shall report annually to the Legislature, not later than October 1 of each year, the following information:

(1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.

(2) The total number of complaint forms received by the board.

(3) The total number of reports received by the board pursuant to Sections 801, 801.01, and 803, as applicable.

(4) The total number of coroner reports received by the board.

(5) The total number of convictions reported to the board.

(6) The total number of criminal filings reported to the board.

(7) The total number of complaints closed or resolved without discipline, prior to accusation.

(8) The total number of complaints and reports referred for formal investigation.

(9) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(10) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(11) The total number of final licensee disciplinary actions taken, by category.

(12) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(13) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(14) The total number of licensees in diversion or on probation for alcohol or drug abuse or mental disorder, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(15) The total number of probation violation reports and probation revocation filings, and their dispositions.

(16) The total number of petitions for reinstatement, and their dispositions.

(17) The total number of caseloads of investigators for original cases and for probation cases, respectively.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

~~SEC. 25.~~

SEC. 29. Section 1699.2 is added to the Business and Professions Code, to read:

1699.2. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 26.~~

SEC. 30. Section 2372 is added to the Business and Professions Code, to read:

2372. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 27.~~

SEC. 31. Section 2669.2 is added to the Business and Professions Code, to read:

2669.2. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted

statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 28.~~

SEC. 32. Section 2715 of the Business and Professions Code is amended to read:

2715. The board shall prosecute all persons guilty of violating the provisions of this chapter.

The board, in accordance with the provisions of the Civil Service Law, may employ investigators, nurse consultants, and other personnel as it deems necessary to carry into effect the provisions of this chapter. Investigators employed by the board shall be provided special training in investigating *alleged* nursing practice ~~activities~~ *violations*.

The board shall have and use a seal bearing the name "Board of Registered Nursing." The board may adopt, amend, or repeal, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of this chapter.

~~SEC. 29.~~

SEC. 33. Section 2770.18 is added to the Business and Professions Code, to read:

2770.18. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 34. Section 2815.6 is added to the Business and Professions Code, to read:

2815.6. (a) It is the intent of the Legislature that, notwithstanding Section 128.5, in order to maintain an appropriate fund reserve, and in setting fees pursuant to this chapter, the Board of Registered Nursing shall seek to maintain a reserve in the Board of Registered Nursing Fund of not less than three and no more than six months' operating expenditures.

~~SEC. 30.~~

SEC. 35. Section 3534.12 is added to the Business and Professions Code, to read:

3534.12. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted

statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 31.~~

SEC. 36. Section 4375 is added to the Business and Professions Code, to read:

4375. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 32.~~

SEC. 37. Section 4873.2 is added to the Business and Professions Code, to read:

4873.2. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 33. Section 12529 of the Government Code, as amended by Section 8 of Chapter 505 of the Statutes of 2009, is amended to read:~~

~~12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, any committee under the jurisdiction of the Medical Board of California, or any other healing arts board, as defined in Section 720 of the Business and Professions Code, as requested by the executive officer of that board.~~

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

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

~~(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the committees under the jurisdiction of the Medical Board of California, and any other healing arts board, as defined in Section 720 of the Business and Professions Code, with the intent that the expenses be proportionally shared as to services rendered.~~

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

~~SEC. 34. Section 12529 of the Government Code, as amended by Section 9 of Chapter 505 of the Statutes of 2009, is amended to read:~~

~~12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, any committee under the jurisdiction of the Medical Board of California, or any other healing arts board, as defined in Section 720 of the Business and Professions Code, as requested by the executive officer of that board, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.~~

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

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

~~(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the committees under the jurisdiction of the Medical Board of California, and any other healing arts board, as defined in Section 720 of the Business and Professions Code, with the intent that the expenses be proportionally shared as to services rendered.~~

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

~~SEC. 35. Section 12529.5 of the Government Code, as amended by Section 10 of Chapter 505 of the Statutes of 2009, is amended to read:~~

~~12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section. Complaints or relevant information may be referred to the Health Quality Enforcement Section as determined by the executive officer of any other healing arts board, as defined in Section 720 of the Business and Professions Code.~~

~~(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology, and shall assign attorneys to work on location at the Health Quality Enforcement Unit of the Division of Investigation of the Department of Consumer Affairs to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.~~

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

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

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

~~SEC. 36. Section 12529.5 of the Government Code, as amended by Section 11 of Chapter 505 of the Statutes of 2009, is amended to read:~~

~~12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section. Complaints or relevant information may be referred to the Health Quality Enforcement Section as determined by the executive officer of any other healing arts board, as defined in Section 720 of the Business and Professions Code.~~

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

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

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

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

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

~~SEC. 37. Section 12529.6 of the Government Code is amended to read:~~

~~12529.6. (a) The Legislature finds and declares that the healing arts boards, as defined in Section 720 of the Business and Professions Code, by ensuring the quality and safety of health care, perform one of the most critical functions of state government. Because of the critical importance of a board's public health and safety function, the complexity of cases involving alleged misconduct by health care practitioners, and the evidentiary burden in a healing arts board's disciplinary cases, the Legislature finds and declares that using a vertical enforcement and prosecution model for those investigations is in the best interests of the people of California.~~

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

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

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

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

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

~~(2) Establish and implement a plan to collocate, when feasible, its enforcement staff and the staff of the Health Quality Enforcement Section, in order to carry out the intent of the vertical enforcement and prosecution model.~~

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

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

~~SEC. 38. Section 12529.7 of the Government Code is amended to read:~~

~~12529.7. By March 1, 2012, the Department of Consumer Affairs, in consultation with the healing arts boards, as defined in Section 720 of the Business and Professions Code, and the Department of Justice, shall report and make recommendations to the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.~~

SEC. 38. Section 12529.8 is added to the Government Code, to read:

12529.8. (a) Any healing arts board listed in Section 720 of the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall

assign attorneys to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs.

(b) The report requirements contained in Section 12529.7 shall apply to any healing arts board that utilizes those provisions for enforcement.

(c) This section shall not apply to any healing arts board listed in subdivision (a) of Section 12529.

SEC. 39. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Care Services, Public Health, Social Services, Mental Health, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(l) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary

duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The Chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to ~~assuring~~ *ensuring* the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive

director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Health Care designated by the Director of the Department of Managed Health Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Health Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(v) The Chief, Deputy Chief, supervising investigators, and investigators of the Office of Protective Services of the State Department of Developmental Services, provided that the primary duty of each of those persons shall be the enforcement of the law relating to the duties of his or her department or office.

SEC. 40. (a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, 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. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department's licensing and enforcement functions.

(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.

SEC. 41. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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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
Board Position:	Support

STATUS OF BILL:

This bill is currently in the Assembly 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 devises. 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 education when considering cosmetic surgeries and being solicited by advertising.

FISCAL: Unknown but could be substantial if the Board does the inspections.

POSITION: Support

July 15, 2010

SENATE BILL No. 1150

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:

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone

other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised

for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a

diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he

or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or

association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical

Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) (1) Advertising by the following licensees shall include the designations as follows:

(A) Advertising by a chiropractor licensed under Chapter 2 (commencing with Section 1000) shall include the designation "DC" or the word "chiropractor" immediately following the chiropractor's name.

(B) Advertising by a dentist licensed under Chapter 4 (commencing with Section 1600) shall include the designation "DDS" or "DMD" immediately following the dentist's name.

(C) Advertising by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) shall include the designation "MD" immediately following the physician and surgeon's name.

(D) Advertising by an osteopathic physician and surgeon certified under Article 21 (commencing with Section 2450) shall include the designation "DO" immediately following the osteopathic physician and surgeon's name.

(E) Advertising by a podiatrist certified under Article 22 (commencing with Section 2460) of Chapter 5 shall include the designation "DPM" immediately following the podiatrist's name.

(F) Advertising by a registered nurse licensed under Chapter 6 (commencing with Section 2700) shall include the designation "RN" immediately following the registered nurse's name.

(G) Advertising by a licensed vocational nurse under Chapter 6.5 (commencing with Section 2840) shall include the designation "LVN" immediately following the licensed vocational nurse's name.

(H) Advertising by a psychologist licensed under Chapter 6.6 (commencing with Section 2900) shall include the designation "Ph.D." immediately following the psychologist's name.

(I) Advertising by an optometrist licensed under Chapter 7 (commencing with Section 3000) shall include the applicable designation or word described in Section 3098 immediately following the optometrist's name.

(J) Advertising by a physician assistant licensed under Chapter 7.7 (commencing with Section 3500) shall include the designation "PA" immediately following the physician assistant's name.

(K) Advertising by a naturopathic doctor licensed under Chapter 8.2 (commencing with Section 3610) shall include the designation "ND" immediately following the naturopathic doctor's name. However, if the naturopathic doctor uses the term or designation

"Dr." in an advertisement, he or she shall further identify himself by any of the terms listed in Section 3661.

(2) For purposes of this subdivision, "advertisement" includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.

(3) Advertisements do not include any of the following:

(A) A medical directory released by a health care service plan or a health insurer.

(B) A billing statement from a health care practitioner to a patient.

(C) An appointment reminder from a health care practitioner to a patient.

(4) This subdivision shall not apply until January 1, 2012, to any advertisement that is published annually and prior to July 1, 2011.

(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.

~~(i)~~

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not,

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

~~(j)~~

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

~~(k)~~

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

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

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

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

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

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

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

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

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

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

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

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

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

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

~~(b) "Division of Medical Quality" means the Division of Medical Quality of the Medical Board of California.~~

~~(c)~~

(b) (1) "Outpatient setting" means any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, as defined in Section 1250, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

(2) "Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55.

~~"Outpatient~~

(3) "Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

~~(d)~~

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the ~~division~~ *board* pursuant to Sections 1248.15 and 1248.4.

SEC. 5. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ *board* shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~(iii) Submit~~

(D) The outpatient setting shall submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(E) The outpatient setting shall submit for approval by an accreditation agency at the time accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations.

~~(D)~~

(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of ~~Health Services~~ *Public Health*, and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of* the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon,

or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of* the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of* the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division~~ *board*. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ *board* to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division~~ *board*, and no standard included in any certification program of any accreditation agency approved by the ~~division~~ *board*, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.

SEC. 6. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the ~~division~~ *board* under this chapter.

(b) The ~~division~~ *board* shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the

information provided by the accreditation, certification, and licensing agencies approved by the ~~division~~ *board*, and shall 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, *suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.*

SEC. 7. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the ~~division~~ *board*, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. *The accreditation agency shall immediately report to the board if the outpatient setting's certificate for accreditation has been denied.*

SEC. 8. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. *(a) Every outpatient setting which is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.*

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided.

~~(a)~~

(3) The ~~Division of Medical Quality or an accreditation agency may, upon reasonable prior notice and presentation of proper identification,~~ *Medical Board of California or the accreditation agency may* enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

~~(b)~~

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the ~~division~~ *board* or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

~~(c)~~

(d) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and *the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting* reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. *During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view.* The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

~~(d)~~

(e) If the ~~division~~ *board* determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the ~~division~~ *board*, the ~~division~~ *board* may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.

(f) Reports on the results of any inspection conducted pursuant to subdivision (a) shall be kept on file with the board or the

accreditation agency along with the plan of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

(g) The accreditation agency shall immediately report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

SEC. 9. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. The ~~division may~~ *board shall* evaluate the performance of an approved accreditation agency no less than every three 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 ~~division~~ *board*.

SEC. 10. Section 1248.55 of the Health and Safety Code is amended to read:

1248.55. (a) If the accreditation agency is not meeting the criteria set by the ~~division~~ *board*, the ~~division~~ *board* may terminate approval of the agency *or may issue a citation to the agency in accordance with the system established under subdivision (b).*

(b) The board may establish, by regulation, a system for the issuance of a citation to an accreditation agency that is not meeting the criteria set by the board. This system shall meet the requirements of Section 125.9 of the Business and Professions Code, as applicable, except that both of the following shall apply:

(1) Failure of an agency to pay an administrative fine assessed pursuant to a citation within 30 days of the date of the assessment, unless the citation is being appealed, may result in the board's termination of approval of the agency. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal fee established under Section 1248.6. Approval of an agency shall not be renewed without payment of the renewal fee and fine.

(2) Administrative fines collected pursuant to the system shall be deposited in the Outpatient Setting Fund of the Medical Board of California established under Section 1248.6.

~~(b)~~

(c) Before terminating approval of an accreditation agency, the ~~division~~ *board* shall provide the accreditation agency with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the requirements of this chapter, as well as the opportunity for a hearing on the matter in compliance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(c)~~

(d) (1) If approval of the accreditation agency is terminated by the ~~division~~ *board*, outpatient settings accredited by that agency shall be notified by the ~~division~~ *board* and, except as provided in paragraph (2), shall be authorized to continue to operate for a period of 12 months in order to seek accreditation through an approved accreditation agency, unless the time is extended by the ~~division~~ *board* for good cause.

(2) The ~~division~~ *board* may require that an outpatient setting, that has been accredited by an accreditation agency whose approval has been terminated by the ~~division~~ *board*, cease operations immediately ~~in the event that the division~~ *if the board* is in possession of information indicating that continued operation poses an imminent risk of harm to the health of an individual. In such cases, the ~~division~~ *board* shall provide the outpatient setting with notice of its action, the reason underlying it, and a subsequent opportunity for a hearing on the matter. An outpatient setting that is ordered to cease operations under this paragraph may reapply for a certificate of accreditation after six months and shall notify the ~~division~~ *board* promptly of its reapplication.

SEC. 11. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.

(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.

(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

(g) Notwithstanding any other provision of law, the department shall inspect for compliance with provisions of state law and regulations during a state periodic inspection or at the same time as a federal periodic inspection, including, but not limited to, an inspection required under this section. If the department inspects for compliance with state law and regulations at the same time as a federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.

(h) The department shall emphasize consistency across the state and *in* its district offices when conducting licensing and certification surveys and complaint investigations, including the selection of state or federal enforcement remedies in accordance with Section 1423. The department may issue federal deficiencies and recommend federal enforcement actions in those circumstances where they provide more rigorous enforcement action.

(i) It is the intent of the Legislature that the department, pursuant to its existing regulations, inspect the peer review process utilized by acute care hospitals as part of its periodic inspection of those hospitals pursuant to this section.

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

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SB 1069

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1069
Author: Pavley
Bill Date: May 5, 2010
Subject: Physician Assistants
Sponsor: California Academy of Physician Assistants
Board Position: Support

STATUS OF BILL:

This bill is currently in the Assembly 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:

Physician Assistants practice medicine under the supervision of physicians and surgeons and the duties of physician assistants are determined by the supervising physician and by current law. Current California law authorizes physician assistants to perform and certify specified medical examinations; this bill will permit physician assistants to perform other similar examinations and certifications.

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 will help to expand access to health care by furthering a physician's ability to delegate specified health care tasks.

This bill was amended on May 5, 2010 to make a minor, technical change.

FISCAL: None

POSITION: Support

July 15, 2010

AMENDED IN SENATE MAY 5, 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)
(Coauthors: Senators Correa and Negrete McLeod)

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 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~~ *acts* as the agent of the supervising physician *when performing authorized activities,* and ~~may~~ *would authorize a physician assistant to* perform physical examinations and other specified medical services, as defined, and sign and attest to any document evidencing those examinations and other services, *as* 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:

SECTION 1. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

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

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) "Regulations" means the rules and regulations as ~~contained~~ *set forth* in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

(k) "Delegation of services agreement" means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

(*l*) "Other specified medical services" means tests or examinations performed or ordered by a physician assistant practicing in compliance with this chapter or regulations of the board promulgated under this chapter.

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

SEC. 2. Section 3502.2 is added to the Business and Professions Code, to read:

3502.2. Notwithstanding any other provision of law, a physician assistant may perform the physical examination and any other specified medical services that are required pursuant to Section 2881 of the Public Utilities Code and Sections 44336, 49406, 49423, 49455, 87408, 87408.5, and 87408.6 of the Education Code, practicing in compliance with this chapter, and may sign and attest to any certificate, card, form, or other documentation evidencing the examination or other specified medical services.

SEC. 3. Section 3502.3 is added to the Business and Professions Code, to read:

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

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

(2) After performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with this chapter, certify disability pursuant to Section 2708 of the Unemployment Insurance Code.

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

(b) Nothing in this section shall be construed to affect the validity of any delegation of services agreement in effect prior to

the enactment of this section or those adopted subsequent to enactment.

SEC. 4. Section 3528.5 is added to the Business and Professions Code, to read:

3528.5. (a) Except as provided in subdivisions (b), (c), (d), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the committee discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves a minor, the 7-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority. However, if the committee discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the committee discovers that alleged act.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within 3 years after the committee discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the committee on and after January 1, 2011.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the committee due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the committee receives a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the committee becomes aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the committee receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

SEC. 5. Section 44336 of the Education Code is amended to read:

44336. When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

SEC. 6. Section 49406 of the Education Code is amended to read:

49406. (a) Except as provided in subdivision (h), no person shall be initially employed by a school district in a certificated or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code.

This examination shall consist of either an approved intradermal tuberculin test or any other test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), which, if positive, shall be followed by an X-ray of the lungs in accordance with subdivision (f) of Section 120115 of the Health and Safety Code.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent or his or her designee may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are test negative by either the tuberculin skin test or any other test for tuberculosis infection recommended by the CDC and licensed by the FDA shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee's test remains negative. Once an employee has a documented positive test for tuberculosis infection conducted pursuant to this subdivision which has been followed by an X-ray, the foregoing examination is no longer required, and a referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent of schools a certificate from the examining physician and surgeon or physician assistant showing the employee was examined and found free from active tuberculosis. The county board of education may require, by rule, that all their certificates be filed in the office of the county superintendent of schools or shall require their files be maintained in the office of the county superintendent of schools if a majority of the governing boards of the districts within the county so petition the county board of education, except that in either case a district or districts with a common board having an average daily

attendance of 60,000 or more may elect to maintain the files for its employees in that district. "Certificate," as used in this section, means a certificate signed by the examining physician and surgeon or physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code or a notice from a public health agency or unit of the American Lung Association that indicates freedom from active tuberculosis. The latter, regardless of form, shall constitute evidence of compliance with this section. Nothing in this section shall prevent the governing board, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent physical examination than required by this section, but the rule shall provide for reimbursement on the same basis as required in this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse that person in a like manner prescribed in this section for employees.

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with the provisions of this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a school year whose functions do not require frequent or prolonged contact with pupils.

The governing board may, however, require an examination described in subdivision (b) and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around school premises would constitute a health hazard to pupils.

(g) If the governing board of a school district determines by resolution, after hearing, that the health of pupils in the district would not be jeopardized thereby, this section shall not apply to

any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one school or school district to another shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate which shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has a certificate on file which contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to a school or school district subject to this section shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has a certificate on file which contains that showing.

(i) Any governing board or county superintendent of schools providing for the transportation of pupils under contract authorized by Section 39800, 39801, or any other provision of law shall require as a condition of the contract the examination for active tuberculosis, as provided by subdivision (a), of all drivers transporting these pupils, provided that private contracted drivers who transport these pupils on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

SEC. 7. Section 49423 of the Education Code is amended to read:

49423. (a) Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication

prescribed for him or her by a physician and surgeon or ordered for him or her by a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, may be assisted by the school nurse or other designated school personnel or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements identified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon or physician assistant detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken and a written statement from the parent, foster parent, or guardian of the pupil indicating the desire that the school district assist the pupil in the matters set forth in the statement of the physician and surgeon or physician assistant.

(2) In order for a pupil to carry and self-administer prescription auto-injectable epinephrine pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon or physician assistant detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer auto-injectable epinephrine, and a written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction as a result of self-administering medication pursuant to this paragraph.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if that pupil uses auto-injectable epinephrine in a manner other than as prescribed.

SEC. 8. Section 49455 of the Education Code is amended to read:

49455. Upon first enrollment in a California school district of a child at a California elementary school, and at least every third year thereafter until the child has completed the eighth grade, the child's vision shall be appraised by the school nurse or other authorized person under Section 49452. This evaluation shall include tests for visual acuity and color vision; however, color vision shall be appraised once and only on male children, and the results of the appraisal shall be entered in the health record of the pupil. Color vision appraisal need not begin until the male pupil has reached the first grade. Gross external observation of the child's eyes, visual performance, and perception shall be done by the school nurse and the classroom teacher. The evaluation may be waived, if the child's parents so desire, by their presenting of a certificate from a physician and surgeon, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or an optometrist setting out the results of a determination of the child's vision, including visual acuity and color vision.

The provisions of this section shall not apply to any child whose parents or guardian file with the principal of the school in which the child is enrolling, a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

SEC. 9. Section 49458 is added to the Education Code, to read:

49458. When a school district or a county superintendent of schools requires a physical examination as a condition of participation in an interscholastic athletic program, the physical examination may be performed by a physician and surgeon or physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code.

SEC. 10. Section 87408 of the Education Code is amended to read:

87408. (a) When a community college district wishes to employ a person in an academic position and that person has not previously been employed in an academic position in this state,

the district shall require a medical certificate showing that the applicant is free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students. The medical certificate shall be submitted directly to the governing board by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure. The medical examination shall have been conducted not more than six months before the submission of the certificate and shall be at the expense of the applicant. A governing board may offer a contract of employment to an applicant subject to the submission of the required medical certificate. Notwithstanding Section 87031, the medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

(b) The governing board of a community college district may require academic employees to undergo a periodic medical examination by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure, to determine that the employee is free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students. The periodic medical examination shall be at the expense of the district. The medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

SEC. 11. Section 87408.5 of the Education Code is amended to read:

87408.5. (a) When a community college district wishes to employ a retirant who is retired for service, and such person has not been previously employed as a retirant, such district shall require, as a condition of initial employment as a retirant, a medical certificate showing that the retirant is free from any disabling disease unfitting him or her to instruct or associate with students. The medical certificate shall be completed and submitted directly

to the community college district by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure. A medical examination shall be required for the completion of the medical certificate. The examination shall be conducted not more than six months before the completion and submission of the certificate and shall be at the expense of the retirant. The medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

(b) The community college district that initially employed the retirant, or any district that subsequently employs the retirant, may require a periodic medical examination by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure, to determine that the retirant is free from any communicable disease unfitting him or her to instruct or associate with students. The periodic medical examination shall be at the expense of the community college district. The medical certificate shall become a part of the personnel record of the retirant and shall be open to the retirant or his or her designee.

SEC. 12. Section 87408.6 of the Education Code is amended to read:

87408.6. (a) Except as provided in subdivision (h), no person shall be initially employed by a community college district in an academic or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code. This examination shall consist of an approved intradermal tuberculin test or any other test for tuberculosis infection recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug

Administration (FDA), that, if positive, shall be followed by an X-ray of the lungs.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent, or his or her designee, may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are skin test negative, or negative by any other test recommended by the CDC and licensed by the FDA, shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee remains test negative by either the tuberculin skin test or any other test recommended by the CDC and licensed by the FDA. Once an employee has a documented positive skin test or any other test that has been recommended by the CDC and licensed by the FDA that has been followed by an X-ray, the foregoing examinations shall no longer be required, and referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent a certificate from the examining physician and surgeon or physician assistant showing the employee was examined and found free from active tuberculosis. "Certificate," as used in this subdivision, means a certificate signed by the examining physician and surgeon or physician assistant, or a notice from a public health agency or unit of the American Lung Association that indicates freedom from active tuberculosis. The latter, regardless of form, shall constitute evidence of compliance with this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse

the person in a like manner prescribed for employees in subdivision (e).

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a college year whose functions do not require frequent or prolonged contact with students.

The governing board may, however, require the examination and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around college premises would constitute a health hazard to students.

(g) If the governing board of a community college district determines by resolution, after hearing, that the health of students in the district would not be jeopardized thereby, this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one campus or community college district to another shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the college previously employing him or her that it has a certificate on file that contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school

to the community college district subject to this section shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has the certificate on file.

(i) Any governing board of a community college district providing for the transportation of students under contract shall require as a condition of the contract the examination for active tuberculosis, as provided in subdivision (a), of all drivers transporting the students, provided that privately contracted drivers who transport the students on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

(j) Examinations required pursuant to subdivision (i) shall be made available without charge by the local health officer.

SEC. 13. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to any subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. In addition, a physician assistant may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hearing impaired to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices

of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow

providers of the equipment and service specified in subdivisions (a), (b), and (c), to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2014. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(f) The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(g) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2014, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(h) The commission shall prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum

usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(i) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

(j) The commission shall structure the programs required by this section so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

SEC. 14. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain

a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, spouse, or domestic partner.

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant

is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) "Physician" has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) "Practitioner" means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, physician assistant, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

O

SB 1172

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1172
Author: Negrete McLeod
Bill Date: June 22, 2010
Subject: Diversion Programs
Sponsor: Author
Board Position: Support

STATUS OF BILL:

This bill is currently in the Assembly 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 licensees 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.

This bill was amended to remove the provision that allowed a licensee to petition to return to practice after being issued a cease and desist order.

Other amendments that were taken that do not impact the Board include deletion of the external audit requirements, deletion of the provisions that prohibited the Board from disclosing to the public that a licensee is participating in a diversion program, and deletion of the provisions that prohibited waiving confidentiality for records pertaining to substance abuse treatment services. Lastly, this bill was amended to exempt the Board of Registered (BRN) nursing from the provisions in this bill.

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 April 27, 2010 amendments remove the provisions allowed a licensee to petition to return to practice after being issued a cease and desist order. They also removed the provisions that prohibited a licentiate from waiving confidentiality for records pertaining to substance abuse treatment services and that

The May 11, 2010 amendments delete the provisions that required an external audit of DCA's services relating to the treatment and rehabilitation of impaired physicians and other board's licensees that would have been required to be performed once every three years, along with the report of the audit that would have been required to be submitted to the legislature by June 30 of each year.

The June 22, 2010 amendments remove the provisions that prohibit the Board from disclosing to the public that a licensee is participating in a board diversion program unless participation was ordered as a term of probation. The amendments also exempt the BRN from the requirements of this bill.

FISCAL: None

POSITION: Support

July 15, 2010

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 12, 2010

SENATE BILL No. 1172

Introduced by Senator Negrete McLeod

February 18, 2010

An act to amend Section 156.1 of, and to add Sections ~~315.2, 315.4, and 315.6~~ *315.2 and 315.4* to, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. 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 specify that those records and documents shall be kept for 3 years and kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law.

(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.

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.~~ *The bill would provide that these provisions do not affect the Board of Registered Nursing.*

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

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

SECTION 1. Section 156.1 of the Business and Professions Code is amended to read:

156.1. (a) Notwithstanding any other provision of 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 shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for three years from the date of the last treatment or service rendered to that licentiate, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other

provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Unless otherwise expressly provided by statute or regulation, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the State Auditor to conduct any examination or audit under the terms of Section 8546.7 of the Government Code.

SEC. 2. Section 315.2 is added to the Business and Professions Code, to read:

315.2. (a) A board, as described in Section 315, shall order a licensee of the board 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.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

SEC. 3. Section 315.4 is added to the Business and Professions Code, to read:

315.4. (a) A board, as described in Section 315, may adopt regulations authorizing the board 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 pursuant to the uniform and specific standards adopted and authorized under Section 315.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

~~SEC. 4. Section 315.6 is added to the Business and Professions Code, to read:~~

~~315.6. Unless otherwise authorized by statute or regulation, a board, as described in Section 315, shall not disclose to the public that a licensee is participating in a board diversion program unless participation was ordered as a term of probation. However, a board shall disclose to the public any restrictions that are placed on a licensee's practice as a result of the licensee's participation in a board diversion program provided that the disclosure does not contain information linking the restriction to the licensee's participation in the board's diversion program.~~

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

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SB 1489

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 1489
Author:	Senate Business, Professions and Economic Development Committee
Bill Date:	June 17, 2010, amended
Subject:	Omnibus
Sponsor:	Committee
Board Position:	Sponsor/Support

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business 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, time spent in various training programs, and current and active practice in another state or Canadian province, when addressing the period of validity of the written examination scores required for licensure.
- **2516** – Clarifies provisions related to the reporting requirements for licensed midwives.

This bill was amended to include the reporting requirements for midwives and to provide clarifying amendments to Section 2184.

FISCAL: None to MBC

POSITION: Support MBC Provisions

July 15, 2010

Portions of the bill related to the medical Board

AMENDED IN ASSEMBLY JUNE 17, 2010

AMENDED IN SENATE APRIL 26, 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, 2516, *2530.2, 2539.1,* 2570.19, 3025.1, 3046, 3057.5, 3147, 3147.6, 3147.7, *3365.5, 4013,* 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. 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~~ *each step* of the United States Medical Licensing Examination and would also authorize the board to extend that period for ~~applicants~~ *an applicant* who ~~hold a valid, unlimited license as~~ *is* a physician and surgeon in another state or a Canadian province and ~~have~~ *who is currently and* actively ~~practiced~~ *practicing* medicine in that state or province.

Existing law requires a licensed midwife who assists in childbirths that occur in out-of-hospital settings to annually report specified information to the Office of Statewide Health Planning and Development in March and requires the office to report to the Medical Board of California licensee compliance with that requirement every April and the aggregate information collected every July.

This bill would require those annual reports to be made by March 30, April 30, and July 30, respectively, and would make additional changes to the information required to be reported by a midwife with regard to cases in California.

(2) Existing law provides for the licensure and regulation of speech-language pathologists, audiologists, and hearing aid dispensers by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. Existing law requires a licensed audiologist who wishes to sell hearing aids to meet specified licensure and examination requirements, and to apply for a dispensing audiologist certificate, pay applicable fees, and pass a board-approved hearing aid examination, except as specified. Existing law authorizes a licensed audiologist with an expired hearing aid dispenser's license to continue to sell hearing aids pursuant to his or her audiology license.

This bill would require the board to issue a dispensing audiology license to a licensed audiologist who meets those requirements or whose

license to sell hearing aids has expired. The bill would also waive the licensure, examination, and application requirements described above as applied to a licensed hearing aid dispenser who meets the qualifications for licensure as an audiologist.

Existing law requires a hearing aid dispenser to inform a customer, in writing, that he or she should consult with a physician based upon an observation, or being informed by the customer, that certain problems of the ear exist.

This bill would additionally require that written notification upon observing or being informed by the customer of pain or discomfort in the ear or of specified accumulation or a foreign body in the ear canal.

~~(2)~~

(3) 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)~~

(4) 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.

Existing law requires a facility licensed by the board to join the board's e-mail notification list within 60 days of obtaining a license or at the time of license renewal.

This bill would allow an owner of 2 or more facilities to comply with the e-mail notification requirement through the use of one e-mail address under specified circumstances.

~~(4)~~

(5) 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, *and would only allow an applicant to comply with the experience requirements with hours of experience gained on and after January 1, 2010.*

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 associate clinical worker or* 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 associate clinical worker or* 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 contract via two-way, real time videoconferencing.

This bill would delete that 30-hour limit and would require *an associate clinical worker or* 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, *and (4) failing to comply with required procedures when delivering health care via telemedicine.*

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:

SECTION 1. Section 2026 of the Business and Professions Code is repealed.

SEC. 2. Section 2065 of the Business and Professions Code is amended to read:

2065. Unless otherwise provided by law, no postgraduate trainee, intern, resident, postdoctoral fellow, or instructor may engage in the practice of medicine, or receive compensation therefor, or offer to engage in the practice of medicine unless he or she holds a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the board. However, a graduate of an approved medical school, who is registered with the board and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of medicine whenever and wherever required as a part of the program under the following conditions:

(a) A graduate enrolled in an approved first-year postgraduate training program may so engage in the practice of medicine for a period not to exceed one year whenever and wherever required as a part of the training program, and may receive compensation for that practice.

(b) A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of that residency or fellowship, and may receive compensation for that practice. The resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure, or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If the resident or fellow fails to receive a license to practice medicine under this chapter within one year from the commencement of the residency or fellowship or if the board denies his or her application for licensure, all privileges and exemptions under this section shall automatically cease.

SEC. 3. Section 2096 of the Business and Professions Code is amended to read:

2096. (a) In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), except as provided in subdivision (b), shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least one year of postgraduate training.

(b) An applicant applying pursuant to Section 2102 shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least two years of postgraduate training.

(c) The postgraduate training required by this section shall include at least four months of general medicine and shall be obtained in a postgraduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC).

(d) The amendments made to this section at the 1987 portion of the 1987–88 session of the Legislature shall not apply to applicants who completed their one year of postgraduate training on or before July 1, 1990.

SEC. 4. Section 2102 of the Business and Professions Code is amended to read:

2102. An applicant whose professional instruction was acquired in a country other than the United States or Canada shall provide evidence satisfactory to the board of compliance with the following requirements to be issued a physician's and surgeon's certificate:

(a) Completion in a medical school or schools of a resident course of professional instruction equivalent to that required by Section 2089 and issuance to the applicant of a document acceptable to the board that shows final and successful completion of the course. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the board. This subdivision shall apply to all applicants who are subject to this section and who have not taken and passed the written examination specified in subdivision (d) prior to June 1, 1986.

(c) Satisfactory completion of the postgraduate training required under subdivision (b) of Section 2096. An applicant shall be required to have substantially completed the professional instruction required in subdivision (a) and shall be required to make application to the board and have passed steps 1 and 2 of the written examination relating to biomedical and clinical sciences prior to commencing any postgraduate training in this state. In its discretion, the board may authorize an applicant who is deficient in any education or clinical instruction required by Sections 2089 and 2089.5 to make up any deficiencies as a part of his or her postgraduate training program, but that remedial training shall be in addition to the postgraduate training required for licensure.

(d) Passage of the written examination as provided under Article 9 (commencing with Section 2170). An applicant shall be required to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

(e) Nothing in this section prohibits the board from disapproving a foreign medical school or from denying an application if, in the opinion of the board, the professional instruction provided by the medical school or the instruction received by the applicant is not

equivalent to that required in Article 4 (commencing with Section 2080).

SEC. 5. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant who is a citizen of the United States shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

(a) Submitted official evidence satisfactory to the board of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to Article 4 (commencing with Section 2080).

(b) Submitted official evidence satisfactory to the board of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social service or be admitted or licensed to practice medicine in the country in which the professional instruction was completed.

(c) Attained a score satisfactory to an approved medical school on a qualifying examination acceptable to the board.

(d) Successfully completed one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104. The board shall also recognize as compliance with this subdivision the successful completion of a one-year supervised clinical medical internship operated by a medical school pursuant to Chapter 85 of the Statutes of 1972 and as amended by Chapter 888 of the Statutes of 1973 as the equivalent of the year of supervised clinical training required by this section.

(1) Training received in the academic year of supervised clinical training approved pursuant to Section 2104 shall be considered as part of the total academic curriculum for purposes of meeting the requirements of Sections 2089 and 2089.5.

(2) An applicant who has passed the basic science and English language examinations required for certification by the Educational Commission for Foreign Medical Graduates may present evidence of those passing scores along with a certificate of completion of one academic year of supervised clinical training in a program

approved by the board pursuant to Section 2104 in satisfaction of the formal certification requirements of subdivision (b) of Section 2102.

(e) Satisfactorily completed the postgraduate training required under Section 2096.

(f) Passed the written examination required for certification as a physician and surgeon under this chapter.

SEC. 6. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the board.

(b) Applicants may elect to take the written examinations conducted or accepted by the board in separate parts.

(c) (1) An applicant shall have obtained a passing score on Step 3 of the United States Medical Licensing Examination within not more than four attempts in order to be eligible for a physician's 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. 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~~ *each step* of the United States Medical Licensing Examination shall be valid for a period of 10 years from the month of the examination for purposes of qualification for licensure in California.

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

(A) For good cause.

(B) For time spent in a postgraduate training program, including, but not limited to, residency training, 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.~~

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

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

SEC. 8. Section 2516 of the Business and Professions Code is amended to read:

2516. (a) Each licensed midwife who assists, or supervises a student midwife in assisting, in childbirth that occurs in an out-of-hospital setting shall annually report to the Office of Statewide Health Planning and Development. The report shall be submitted no later than March 30, with the first report due in March 2008, for the prior calendar year, in a form specified by the board and shall contain all of the following:

(1) The midwife's name and license number.

(2) The calendar year being reported.

(3) The following information with regard to cases in California in which the midwife, or the student midwife supervised by the midwife, assisted during the previous year when the intended place of birth at the onset of care was an out-of-hospital setting:

(A) The total number of clients served as primary caregiver at the onset of care.

(B) The total number of clients served with collaborative care available through, or given by, a licensed physician and surgeon.

(C) The total number of clients served under the supervision of a licensed physician and surgeon.

(D) The number by county of live births attended as primary caregiver.

(E) The number, by county, of cases of fetal demise, infant deaths, and maternal deaths attended as primary caregiver at the discovery of the demise or death.

(F) The number of women whose primary care was transferred to another health care practitioner during the antepartum period, and the reason for each transfer.

(G) The number, reason, and outcome for each elective hospital transfer during the intrapartum or postpartum period.

(H) The number, reason, and outcome for each urgent or emergency transport of an expectant mother in the antepartum period.

(I) The number, reason, and outcome for each urgent or emergency transport of an infant or mother during the intrapartum or immediate postpartum period.

(J) The number of planned out-of-hospital births at the onset of labor and the number of births completed in an out-of-hospital setting.

(K) The number of planned out-of-hospital births completed in an out-of-hospital setting that were any of the following:

(i) Twin births.

(ii) Multiple births other than twin births.

(iii) Breech births.

(iv) Vaginal births after the performance of a cesarean section.

(L) A brief description of any complications resulting in the morbidity or mortality of a mother or an infant.

(M) Any other information prescribed by the board in regulations.

(b) The Office of Statewide Health Planning and Development shall maintain the confidentiality of the information submitted pursuant to this section, and shall not permit any law enforcement or regulatory agency to inspect or have copies made of the contents of any reports submitted pursuant to subdivision (a) for any purpose, including, but not limited to, investigations for licensing, certification, or regulatory purposes.

(c) The office shall report to the board, by April 30, those licensees who have met the requirements of subdivision (a) for that year.

(d) The board shall send a written notice of noncompliance to each licensee who fails to meet the reporting requirement of subdivision (a). Failure to comply with subdivision (a) will result in the midwife being unable to renew his or her license without first submitting the requisite data to the Office of Statewide Health Planning and Development for the year for which that data was missing or incomplete. The board shall not take any other action against the licensee for failure to comply with subdivision (a).

(e) The board, in consultation with the office and the Midwifery Advisory Council, shall devise a coding system related to data elements that require coding in order to assist in both effective reporting and the aggregation of data pursuant to subdivision (f). The office shall utilize this coding system in its processing of information collected for purposes of subdivision (f).

(f) The office shall report the aggregate information collected pursuant to this section to the board by July 30 of each year. The board shall include this information in its annual report to the Legislature.

(g) Notwithstanding any other provision of law, a violation of this section shall not be a crime.

SEC. 9. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. As used in this chapter or any other provision of law, "Speech-Language Pathology and Audiology Board" shall be deemed to refer to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) The practice of speech-language pathology means all of the following:

(1) The application of principles, methods, instrumental procedures, and noninstrumental procedures for measurement, testing, screening, evaluation, identification, prediction, and counseling related to the development and disorders of speech, voice, language, or swallowing.

(2) The application of principles and methods for preventing, planning, directing, conducting, and supervising programs for habilitating, rehabilitating, ameliorating, managing, or modifying disorders of speech, voice, language, or swallowing in individuals or groups of individuals.

SB 1410

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1410
Author: Cedillo
Bill Date: June 23, 2010
Subject: Medicine: licensure examinations
Sponsor: Author
Board Position: Oppose

STATUS OF BILL:

This bill is currently in the Assembly 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.

This bill was amended to require the Medical Board of California (Board) to adopt a resolution at a public meeting every time it adopts a passing score, prohibits the Board from delegating the responsibility to adopt the passing score to any other entity, and requires the passing score to be a numerical score and not a percentage. The amendments state the intent of the Legislature that the Board complies with the court's holding in Marquez v. Medical board of California. The amendments also remove the urgency clause and the retroactive provision, so this bill will now take effect on January 1, 2011 and will no longer make the removal of limitation 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 ass 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 past 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 (FSMB).

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.

The May 19, 2010 amendments continue to repeal the four attempt limit for licensing applicants to pass the USMLE Step III and now require the Board to adopt a resolution at a public meeting every time it adopts a passing score. The amendments also prohibit the Board from delegating the responsibility to adopt the passing score to any other entity and require the passing score to be a numerical score and not a percentage. The Board re-adopted the FSMB's passing score at the April Board Meeting by resolution; however this bill is contrary to FSMB's passing score, which is a percentage, not a numerical score. The amendments also state the intent of the Legislature that the Board comply with the court's holding in Marquez v. Medical board of California, which the Board believes it has already done.

The June 23, 2010 amendments remove the urgency clause and the retroactive provision, so this bill will now take effect on January 1, 2011 and will no longer make the removal of limitation attempts retroactive to January 1, 2007.

The Department of Consumer Affairs is also opposed to this bill, attached is their letter of opposition.

FISCAL: None

POSITION: Oppose

July 15, 2010

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
Division of Legislative and Policy Review
1625 North Market Blvd., Suite S-204, Sacramento, CA 95834
P 916-574-7800 F 916-574-6855 | www.dca.ca.gov

July 13, 2010

The Honorable Felipe Fuentes
Chair, Committee on Appropriations
California State Assembly
State Capitol, Room 2114
Sacramento, CA 95814

RE: SB 1410 (Cedillo), (As Introduced) – **OPPOSE**

Dear Chairman Fuentes:

The Department of Consumer Affairs (Department) must respectfully take an **OPPOSE** position on, **SB 1410**, which would retroactively allow an applicant for a physician and surgeon's license in California to take Part III of the United States Medial Licensing Examination (USMLE) as many times as needed to pass. This urgency bill would also modify the date a physician and surgeon applicant's passing score is determined and require the Medical Board of California (Board) to establish a formal process for adopting a recommended passing score for its exams.

The Department opposes the idea of an applicant's passing score being determined by the date the applicant registered for an examination as that can lead to a situation where two or more applicants can have different passing scores while taking the same examination. Furthermore, the Department views the requirement that the Board adopt a formal process for adopting an examination's passing score recommendation from the Federation of State Medical Boards as being unnecessary. The Department also sees no reason to remove the four-attempt limit on applicants taking Part III of the USMLE.

For these reasons, we ask for your **NO** vote on **SB 1410**. Should you have any questions regarding our position, please contact me at 574-7800.

Sincerely,

Luis Portillo
Assistant Deputy Director
Division of Legislative and Policy Review

cc: Michael Prosio, Legislative Secretary, Office of the Governor
Laura Zuniga, Deputy Secretary, State and Consumer Services Agency
Linda Whitney, Executive Director, Medical Board of California
Members, Assembly Committee on Appropriations

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 19, 2010

SENATE BILL No. 1410

Introduced by Senator Cedillo

February 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 amended, 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, and requires the board to adopt by resolution the passing score for each examination or each part of an examination. Existing law requires an applicant to obtain a passing score on Step 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 Step 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 act by passing a resolution every time it adopts a passing score for an entire examination or for each part of an examination that is required for certification, subject to specified requirements and in conformity with the court's holding in Marquez v. Medical Board of California (2010) 182 Cal.App.4th 548.

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

Vote: ~~2/3~~ *majority*. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

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

(a) Under Section 2177 of the Business and Professions Code, an applicant who is seeking a physician's and surgeon's certificate in California must obtain a passing score on Step III of the United States Medical Licensing Examination (USMLE) within not more than four attempts in order to be eligible for a certificate. The examination has three steps. However, only Step III has a limit on the number of times that an applicant may attempt to pass the step.

(b) The USMLE is administered by the Federation of State Medical Boards (FSMB), a national nonprofit entity. Periodically, the FSMB recommends passing scores to the various state medical boards. It is left to the discretion of each state board to determine whether to adopt the recommended score. Historically, the Medical Board of California (MBC) has not had a formal procedure regarding adoption of the FSMB recommended passing score.

(c) When an applicant registers for the USMLE, he or she has an eligibility period of three months in which to take the examination. Multiple examination dates are available within the three-month period. The lack of a formal adoption process within the MBC, combined with a three-month window to take the examination after registration, has created some confusion as the MBC may increase the accepted passing score at any time without public record, input, or notification to applicants who have already registered for the examination.

(d) Furthermore, prior to the enactment of Chapter 843 of the Statutes of 2006 (AB 1796), California did not limit the number

of times an applicant may take any part of the USMLE. Under the new law, which places an arbitrary limit of attempts on Step III of the examination, highly qualified and much needed physicians and surgeons are being denied a license to practice medicine in California. Their only option is to move to another state, become licensed and practice there, and return four years later.

(e) Failing to pass the USMLE under an arbitrary cap on the number of attempts does not translate into a lack of competency in providing high-quality medical care. Furthermore, existing law does not take into consideration learning disabilities, a history of poor performance on standardized tests, hardships, or other variables that may impede the ability of an individual to pass the examination, essentially discriminating against certain applicants.

(f) Twenty-seven states in the United States and two territories have more lenient policies regarding the USMLE, which may include having no cap or allowing for more attempts than California. Those states and territories include AL, AZ, CO, CT, DE, FL, GU, HI, IA, IL, KS, MA, MI, MN, MS, MT, NM, NV, NJ, NY, NC, ND, OH, OK, PA, TN, VA, VI, and WY. In fact, AZ, CO, CT, DE, GU, HI, IA, KS, MA, MI, MN, MS, MT, NJ, NY, NC, ND, OH, PA, TN, VI, VA, and WY have no limit on the number of times an applicant may take the examination.

(g) Lastly, even though Assembly Bill 1796 was signed by the Governor, he expressed concerns with the measure. The Governor issued a signing message stating that Assembly Bill 1796 failed to provide the appropriate exceptions to the requirement that physicians and surgeons applying for licensure pass Step III of the USMLE within four attempts, and that Assembly Bill 1796 may have unintended consequences. The Governor requested that the MBC address his concerns. Subsequently, the MBC requested that language be added to Section 2177 of the Business and Professions Code that would cross-reference Section 2135.5 of the Business and Professions Code to exempt from the four-attempt limitation an applicant who holds an unlimited and restricted license as a physician and surgeon in another state and who has held that license continuously for a minimum of four years prior to the date of application. This amendment was added by Chapter 588 of the Statutes of 2007 (SB 1048), which was an omnibus bill for the Senate Committee on Business and Professions.

(h) The inclusion of those changes by Senate Bill 1048 has proven to be an inadequate approach to addressing the need for flexibility and consideration of other factors that may contribute to an individual failing to pass Step III of the USMLE within four attempts. It is now viewed by the Legislature as unreasonable to require an individual to leave the state, go through all the steps necessary to obtain licensure in another state, and then return to California after four years to obtain a license to practice medicine.

(i) It is further unreasonable for the MBC to change the passing score for an examination once an applicant has registered for that examination without any formal procedure or notification to the applicant.

SEC. 2. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the board.

(b) Applicants may elect to take the written examinations conducted or accepted by the board in separate parts.

(c) An applicant shall have obtained a passing score on Step III of the United States Medical Licensing Examination in order to be eligible for a physician's and surgeon's certificate.

~~(d) The changes made to subdivision (c) by the act adding this subdivision shall apply retroactively to January 1, 2007.~~

SEC. 3. Section 2177.5 is added to the Business and Professions Code, to read:

2177.5. ~~(a)~~ Notwithstanding subdivision (a) of Section 2177, the board shall accept as a passing score on an examination or part of an examination 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.

~~(b) This section shall apply retroactively to January 1, 2007.~~

SEC. 4. Section 2177.7 is added to the Business and Professions Code, to read:

2177.7. (a) Pursuant to Sections 2177 and 2184, the board shall adopt a resolution every time the board adopts a passing score for an entire examination or for each part of an examination that is required for certification under this article.

(b) The resolution required pursuant to subdivision (a) shall be adopted or readopted at a public meeting of the board, and subject

to public input and an affirmative vote of a majority of board members present at the meeting constituting at least a quorum.

(c) The board shall not delegate to any other entity, whether by contract or resolution, the responsibility to adopt the passing score described in this section. If the board adopts the recommended passing score of another entity as its passing score for an examination or any part of an examination and that ~~the~~ entity subsequently changes that recommended passing score, the board's passing score shall not be changed unless the board readopts that recommended passing score, or adopts some other score, by resolution pursuant to this section.

(d) The passing score to be adopted pursuant to this section shall be stated as a numerical score and shall not be stated as a percentage of correct answers.

SEC. 5. (a) It is the intent of the Legislature in enacting Section 4 of this act that the Medical Board of California comply with the court's holding in Marquez v. Medical Board of California (2010) 182 Cal.App.4th 548.

(b) Sections 2177 and 2184 of the Business and Professions Code unambiguously require the Medical Board of California to establish a passing score for Step III of the United States Medical Licensing Examination and to do so by resolution.

(c) The board shall adopt a passing score by means of a formal, memorialized public vote. This single, unambiguous statutory requirement is intended to keep the board accountable to the Legislature, the medical professions, medical license applicants, and the public, and to prevent the board from delegating this responsibility to anyone else.

~~SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to allow for the licensure of competent physicians and surgeons at the earliest possible time, it is necessary that this act take effect immediately.~~

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TRACKER II

Medical Board of California
Tracker II - Legislative Bills
7/19/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Umbillical Cord Blood Collection Program	Sen. Health	06/16/10
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Dead	03/25/09
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Sen. Approps.	03/15/10
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Dead	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Dead	
AB 456	Emmerson	Dentristry Diversion Program	Dead	05/28/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Dead	05/14/09
AB 520	Carter	Public Records: limiting requests	Dead	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Sen. Approps	07/15/10
AB 718	Emmerson	Health Care Coverage	Sen. Health	05/20/10
AB 721	Nava	Physical Therapists: scope of practice	Dead	04/13/09
AB 832	Jones	Ambulatory surgical clinics: workgroup	Dead	05/05/09
AB 834	Solorio	Health Care Practitioners: peer review	Dead	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	Dead	04/14/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Sen. Approps	07/15/10
AB 1162	Carter	Health Facilities: licensure	Dead	
AB 1168	Carter	Professions and Vocations (spot)	Dead	
AB 1194	Strickland	State Agency Internet Web Sites: information	Dead	
AB 1235	Hayashi	Healing Arts: peer review	Sen. Floor	02/16/10
AB 1458	Davis	Drugs: adverse effects: reporting	Dead	05/05/09

Medical Board of California
Tracker II - Legislative Bills
7/19/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Dead	
AB 1487	Hill	Tissue Donation	Sen. Floor	06/14/10
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Sen. Rules	04/08/10
AB 1542	Health Comm.	Medical Records: centralized location	Sen. Rules	06/24/10
AB 1659	Huber	State Government: agency repeals	Sen. Approps	07/15/10
AB 1916	Davis	Pharmacies: prescriptions: reports	Dead	04/08/10
AB 1937	Fletcher	Pupil Health: Immunizations	Sen. Floor	06/23/10
AB 1938	Fletcher	Dentistry	Dead	
AB 1940	Fletcher	Physician Assistants	Dead	04/05/10
AB 1994	Skinner	Hospital employees: presumption	Dead	03/23/10
AB 2028	Hernandez	Confidentially of Medical Information: disclosure	Sen. Approps	06/22/10
AB 2093	V. Manual Perez	Immunizations for Children: reimbursement of physicians	Sen. Approps	07/15/10
AB 2104	Hayashi	California State Board of Pharmacy	Sen. Approps	06/24/10
AB 2130	Huber	Professions and Vocations: sunset review	Sen. Approps	06/22/10
AB 2254	Ammiano	Marijuana Control, Regulation, and Education Act	Dead	
AB 2268	Chesbro	Alcohol and Drug Abuse	Chaptered, #93	04/20/10
AB 2292	Lownethal	Pharmacy: clinics	Dead	
AB 2382	Blumenfield	California State University: Doctor of Physical Therapy	Sen. Approps	07/15/10
AB 2500	Hagman	Professions & Vocations: licenses: military service	Sen. Approps	06/22/10
AB 2548	Block	CURES: Prescription Drug Monitoring Program	Dead	
AB 2551	Hernandez	Pharmacy Technicians: scholarship and loan repayment	Sen. Approps	04/26/10
AB 2707	Berryhill	Department of Consumer Affairs: regulatory boards	Dead	

Medical Board of California
Tracker II - Legislative Bills
7/19/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 58	Aanestad	Physicians and Surgeons: peer review	Dead	05/19/09
SB 92	Aanestad	Health care reform	Dead	03/11/09
SB 238	Calderon	Prescription drugs	Dead	04/23/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Dead	05/14/09
SB 389	Negrete McLeod	Professions and Vocations	Dead	06/01/09
SB 395	Wyland	Medical Practice	Dead	
SB 442	Ducheny	Clinic Corporation: licensing	Sen. Floor	06/22/10
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	Dead	
SB 638	Negrete McLeod	Regulatory boards: operations	Dead	
SB 719	Huff	State Agency Internet Web Sites: information searchability	Dead	
SB 761	Aanestad	Health Manpower Pilot Projects	Dead	05/06/09
SB 810	Leno	Single-Payer Health Care Coverage	Asm. Approps.	01/13/10
SB 953	Walters	Podiatrists: liability for emergency services	Chaptered, #105	05/19/10
SB 1050	Yee	Osteopathic Medical Board of California: Naturopathic Medicine	Asm. Floor	04/22/10
SB 1051	Huff	Emergency Medical Assistance: administration of disasters	Dead	05/12/10
SB 1083	Correa	Health Facilities: licensure	Dead	04/28/10
SB 1094	Aanestad	Healing Arts: peer review	Dead	
SB 1106	Yee	Prescribers: dispensing of samples	Asm. Approps.	04/05/10
SB 1132	Negrete McLeod	Healing Arts	Dead	
SB 1171	Negrete McLeod	Regulatory boards: operations	Dead	04/05/10

Medical Board of California
Tracker II - Legislative Bills
7/19/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 1246	Negrete McLeod	Naturopathic Medicine	Asm. Approps.	06/15/10
SB 1281	Padilla	Emergency Medical Services: defibrillators	Dead	
SB 1390	Corbett	Prescription drug labels	Dead	06/15/10
SB 1490	B&P Comm.	Professions and Vocations	Asm. Approps.	04/12/10
SB 1491	B&P Comm.	Professions and Vocations	Asm. Approps.	06/16/10
SBX8 53	Calderon	Medical Marijuana Act	Dead	
SJR 14	Leno	Medical Marijuana	Asm. Floor	
SJR 15	Leno	Public Health Laboratories	Chaptered, #46	08/17/09