

LEGISLATIVE PACKET



MEDICAL BOARD MEETING

**MAY 8, 2009
SAN FRANCISCO, CA**

**Medical Board of California
Tracker - Legislative Bill File
4/30/2009**

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 120	Hayashi	Peer Review: 809 sections	Asm. B&P (5/5)	Staff Rec: Watch	4/13/2009
AB 175	Galgiani	Telemedicine: Optometrists	Asm Approps.	Staff Rec: Support	4/21/2009
AB 245	Ma	Disclosure Verification	Asm. Approps.	Ex Com: Watch Staff Rec: Oppose	4/27/2009
AB 252	Carter	Cosmetic surgery: employment of physicians	Asm. Floor	Ex Com: Watch Staff Rec: Support	
AB 356	Fletcher	Radiological Technology: physician assistants	Asm. Approps.	Staff Rec: Support	4/23/2009
AB 501	Emmerson	Licensing: Limited, Use of M.D., Fee/Fund	Asm. Approps.	Sponsor/Support	4/13/2009
AB 526	Fuentes	Public Protection and Physician Health Program Act of 2009	Asm. Approps.	Ex Com: Watch Staff Rec: Neutral	4/16/2009
AB 583	Hayashi	Disclosure of Education and Office Hours	Sen. Rules	Ex Com: Support if amended Staff Rec: Support if amended	
AB 602	Price	Dispensing Opticians	Asm. Floor	Ex Com: Watch Staff Rec: Watch	3/25/2009
AB 646	Swanson	Physician employment: district hospital pilot project	Asm. Approps.	Ex Com: Oppose unless amended Staff Rec:	4/13/2009
AB 648	Chesbro	Rural Hospitals: physician employment	Asm. Approps.	Ex Com: Oppose Staff Rec:	4/15/2009

**Medical Board of California
Tracker - Legislative Bill File
4/30/2009**

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 718	Emmerson	Electronic Prescribing Pilot Program	Asm. Floor	Ex Com: Support Staff Rec: Support	4/22/2009
AB 832	Jones	Clinic Licensing: Workgroup	Asm. Approps.	Ex Com: Watch Staff Rec: Support if amended	4/22/2009
AB 834	Solorio	Health Care Practitioners: peer review	Asm. B&P	Ex Com: Watch Staff Rec:	4/14/2009
AB 933	Fong	Workers' Compensation: utilization review	Asm. Insur. (5/6)	Staff Rec: Support	
AB 977	Skinner	Pharmacists: Protocols with Physicians	Asm. B&P (5/5)	Staff Rec: Watch	4/23/2009
AB 1070	Hill	Enforcement Enhancements: reporting, public reprimand	Asm. Approps.	Sponsor/Support	4/22/2009
AB 1116	Carter	Cosmetic Surgery: physical examination prior to surgery	Asm. Health (5/5)	Ex Com: Oppose Staff Rec: Support	
AB 1310	Hernandez	Healing Arts: database	Asm. Approps. (4/29)	Staff Rec: Support if amended	4/2/2009
AB 1458	Davis	Drugs: adverse events: reporting	Asm. Approps.	Staff Rec: Support	4/15/2009

**Medical Board of California
Tracker - Legislative Bill File
4/30/2009**

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
SB 58	Aanestad	Physicians and Surgeons: peer review	Sen. Approps.	Ex Com: Watch Staff Rec:	4/22/2009
SB 92	Aanestad	Health care reform	Sen. Health (4/29)	Ex Com: Watch Staff Rec: Watch	3/11/2009
SB 132	Denham	Polysomnographic Technologists (urgent)	Sen. Floor	Ex Com: Support Staff Rec: Support	4/27/2009
SB 389	Negrete McLeod	Fingerprinting	Sen. Approps.	Ex Com: Support Staff Rec: Support	
SB 470	Corbett	Prescriptions: labeling	Sen. Approps. (5/4)	Ex Com: Support Staff Rec: Support	4/27/2009
SB 638	Negrete McLeod	Regulatory Boards: joint committee on operations	Sen. Approps.	Ex Com: Support Staff Rec: Support	
SB 674	Negrete McLeod	Outpatient settings/Advertising	Sen. Approps. (5/4)	Ex Com: Support if amended Staff Rec: Support	4/28/2009
SB 700	Negrete McLeod	Healing Arts: peer review	Sen. Approps. (5/4)	Ex Com: Support Staff Rec: Support	4/22/2009
SB 726	Ashburn	Hospitals: employment of physician; pilot project revision	Sen. B&P	Ex Com: Support if amended Staff Rec:	4/23/2009
SB 819	B&P Comm.	Omnibus: provisions from 2008	Sen. Approps.	Ex Com: Support MBC provisions Staff Rec: support MBC provisions	4/20/2009
SB 821	B&P Comm.	Omnibus: MBC provisions	Sen. Approps.	Ex Com: Support MBC provisions Staff Rec: support MBC provisions	4/16/2009

AB 120

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 120
Author: Hayashi
Bill Date: April 13, 2009, amended
Subject: Peer Review: 809 sections
Sponsor: California Medical Association

STATUS OF BILL:

This bill is currently in the Assembly Business and Professions Committee and is set for hearing on May 5, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill declares the importance of external per review in California. This bill addresses only Business and Professions Code section 809. The bill does not include the areas of peer review that are directly related to the Medical Board (Board).

ANALYSIS:

This bill addresses the 809 sections of the Business and Professions Code. This bill would revise the hearing process pertaining to peer review cases. The provisions in this bill attempt to change and revise portions of the peer review process but they do not directly affect the Board.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Watch

March 18, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009
AMENDED IN ASSEMBLY MARCH 26, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 120

Introduced by Assembly Member Hayashi

January 15, 2009

An act to amend Sections 809, 809.2, and 809.3 of, and to add Sections 809.04, 809.07, and 809.08 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as amended, Hayashi. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would encourage a peer review body of a health care facility to obtain external peer review, as defined, for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff of the facility in specified circumstances.

This bill would require a peer review body to respond to the request of another peer review body and produce the records requested concerning a licentiate under review. The bill would specify that the records produced pursuant to this provision are not subject to discovery, ~~a subpoena, or a subpoena duces tecum, and are not admissible as evidence in a civil action~~ *as specified*.

Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in

specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licensee.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licensees with whom the facility has a contract and would prohibit the governing body from unreasonably withholding approval of those recommendations, as specified.

Existing law provides various due process rights for licensees who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Under existing law, the hearing must be held before either an arbitrator mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.

This bill would give the licensee the choice of having the hearing before a mutually acceptable arbitrator or a panel of unbiased individuals. The bill would require the hearing officer presiding at a hearing before a panel to meet certain requirements and to disclose all actual and potential conflicts. The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence.

Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review body to adopt written provisions governing whether a licensee may be represented by an attorney.

This bill would give both parties the right to be represented by an attorney, except as specified.

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

809. (a) The Legislature hereby finds and declares the following:

(1) In 1986, Congress enacted the Health Care Quality Improvement Act of 1986 (Chapter 117 (commencing with Section 11101) Title 42, United States Code), to encourage physicians to engage in effective professional peer review, but giving each state the opportunity to “opt-out” of some of the provisions of the federal act.

(2) Because of deficiencies in the federal act and the possible adverse interpretations by the courts of the federal act, it is preferable for California to “opt-out” of the federal act and design its own peer review system.

(3) Peer review, fairly conducted, is essential to preserving the highest standards of medical practice.

(4) It is essential that California’s peer review system generate a culture of trust and safety so that health care practitioners will participate robustly in the process by engaging in critically important patient safety activities, such as reporting incidents they believe to reflect substandard care or unprofessional conduct and serving on peer review, quality assurance, and other committees necessary to protect patients.

(5) It is the policy of the state that evaluation, corrective action, or other forms of peer review only be conducted for patient safety and the improvement of quality patient care.

(6) Peer review that is not conducted fairly results in harm both to patients and healing arts practitioners by wrongfully depriving patients of their ability to obtain care from their chosen practitioner and by depriving practitioners of their ability to care for their patients, thereby limiting much needed access to care.

(7) Peer review, fairly conducted, will aid the appropriate state licensing boards in their responsibility to regulate and discipline errant healing arts practitioners.

(8) To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who

1 engage in professional misconduct, regardless of the effect of that
2 exclusion on competition.

3 (9) It is the intent of the Legislature that peer review of
4 professional health care services be done efficiently, on an ongoing
5 basis, and with an emphasis on early detection of potential quality
6 problems and resolutions through informal educational
7 interventions. It is further the intent of the Legislature that peer
8 review bodies be actively involved in the measurement, assessment,
9 and improvement of quality and that there be appropriate oversight
10 by the peer review bodies to ensure the timely resolution of issues.

11 (10) Sections 809 to 809.8, inclusive, shall not affect the
12 respective responsibilities of the organized medical staff or the
13 governing body of an acute care hospital with respect to peer
14 review in the acute care hospital setting. It is the intent of the
15 Legislature that written provisions implementing Sections 809 to
16 809.8, inclusive, in the acute care hospital setting shall be included
17 in medical staff bylaws that shall be adopted by a vote of the
18 members of the organized medical staff and shall be subject to
19 governing body approval, which approval shall not be withheld
20 unreasonably.

21 (11) (A) The Legislature thus finds and declares that the laws
22 of this state pertaining to the peer review of healing arts
23 practitioners shall apply in lieu of Chapter 117 (commencing with
24 Section 11101) of Title 42 of the United States Code, because the
25 laws of this state provide a more careful articulation of the
26 protections for both those undertaking peer review activity and
27 those subject to review, and better integrate public and private
28 systems of peer review. Therefore, California exercises its right
29 to opt out of specified provisions of the Health Care Quality
30 Improvement Act relating to professional review actions, pursuant
31 to Section 11111(c)(2)(B) of Title 42 of the United States Code.
32 This election shall not affect the availability of any immunity under
33 California law.

34 (B) The Legislature further declares that it is not the intent or
35 purposes of Sections 809 to 809.8, inclusive, to opt out of any
36 mandatory national data bank established pursuant to Subchapter
37 II (commencing with Section 11131) of Chapter 117 of Title 42
38 of the United States Code.

39 (b) For the purpose of this section and Sections 809.1 to 809.8,
40 inclusive, "healing arts practitioner" or "licentiate" means a

1 physician and surgeon, podiatrist, clinical psychologist, marriage
2 and family therapist, clinical social worker, or dentist; and "peer
3 review body" means a peer review body as specified in paragraph
4 (1) of subdivision (a) of Section 805, and includes any designee
5 of the peer review body.

6 SEC. 2. Section 809.04 is added to the Business and Professions
7 Code, to read:

8 809.04. (a) It is the public policy of the state that licentiates
9 who may be providing substandard care be subject to the peer
10 review hearing and reporting process set forth in this article.

11 (b) To ensure that the peer review process is not circumvented,
12 a member of a medical or professional staff, by contract or
13 otherwise, shall not be required to alter or surrender staff privileges,
14 status, or membership solely due to the termination of a contract
15 between that member and a health care facility.

16 (c) The peer review body of a health care facility shall be entitled
17 to review and make recommendations to the governing body of
18 the facility regarding the quality implications of the selection,
19 performance evaluation, and any change in the retention or
20 replacement of licentiates with whom the health care facility has
21 a contract. The governing body shall not unreasonably withhold
22 approval of those recommendations.

23 (d) This section shall not impair a governing body's ability to
24 take action against a licentiate pursuant to Section 809.05.

25 SEC. 3. Section 809.07 is added to the Business and Professions
26 Code, to read:

27 809.07. (a) It is the policy of the state that in certain
28 circumstances, external peer review may be necessary to promote
29 and protect patient care in order to eliminate perceived bias, obtain
30 needed medical expertise, or respond to other particular
31 circumstances.

32 (b) A peer review body is encouraged to obtain external peer
33 review for the evaluation or investigation of an applicant, privilege
34 holder, or member of the medical staff in the following
35 circumstances:

36 (1) Committee or department reviews that could affect ~~an~~
37 ~~individual's~~ a licentiate's membership or privileges do not provide
38 a sufficiently clear basis for action or inaction.

39 (2) No current medical staff member can provide the necessary
40 expertise in the clinical procedure or area under review.

1 (3) To promote impartial peer review.

2 (4) Upon the reasonable request of the licentiate.

3 (c) Under no circumstances may any organization external to
4 the peer review body that provides quality improvement activities
5 perform any activities at the health care facility without the
6 concurrence of and input from the peer review body.

7 (d) For purposes of this section, the following definitions apply:

8 (1) "Peer review body" has the meaning provided in paragraph
9 (1) of subdivision (a) of Section 805.

10 (2) "External peer review" means peer review provided by an
11 external objective organization engaged in quality improvement
12 activities that has the ability to perform review by licentiates who
13 are not members of the peer review body.

14 SEC. 4. Section 809.08 is added to the Business and Professions
15 Code, to read:

16 809.08. (a) The Legislature hereby finds and declares that the
17 sharing of information between peer review bodies is essential to
18 protect the public health.

19 (b) A peer review body shall respond to the request of another
20 peer review body and produce the records requested concerning
21 a licentiate under review to the extent not otherwise prohibited by
22 state or federal law. The records produced pursuant to this section
23 shall not be subject to discovery, a subpoena, or a subpoena duces
24 tecum, and shall not be admissible as evidence in a civil action: *to*
25 *the extent provided in Section 1157 of the Evidence Code.* The
26 peer review body responding to the request shall be entitled to all
27 other confidentiality protections and privileges otherwise provided
28 by law as to the information and records disclosed pursuant to this
29 section.

30 SEC. 5. Section 809.2 of the Business and Professions Code
31 is amended to read:

32 809.2. If a licentiate timely requests a hearing concerning a
33 final proposed action for which a report is required to be filed
34 under Section 805, the following shall apply:

35 (a) The hearing shall be held before a trier of fact, and the
36 licentiate shall have the choice of hearing by either of the
37 following:

38 (1) An arbitrator or arbitrators selected by a process mutually
39 acceptable to the licentiate and the peer review body.

1 (2) A panel of unbiased individuals who shall gain no direct
2 financial benefit from the outcome, who have not acted as an
3 accuser, investigator, factfinder, or initial decisionmaker in the
4 same matter, and which shall include, where feasible, an individual
5 practicing the same specialty as the licentiate.

6 (b) (1) If a hearing officer is selected to preside at a hearing
7 held before a panel, the hearing officer shall gain no direct financial
8 benefit from the outcome, shall disclose all actual and potential
9 conflicts of interest, shall not act as a prosecuting officer or
10 advocate, and shall not be entitled to vote. The hearing officer
11 shall also meet both of the following requirements:

12 (A) Be mutually acceptable to the licentiate and the peer review
13 body. If the licentiate and peer review body are unable to agree,
14 they shall utilize the services of the American Arbitration
15 Association or other mutually agreed upon dispute resolution
16 organization.

17 (B) Be an attorney licensed to practice law in the State of
18 California and qualified to preside over a quasi-judicial hearing.
19 Attorneys from a firm utilized by the hospital, the medical staff,
20 or the involved licentiate within the preceding two years shall not
21 be eligible.

22 (2) The hearing officer shall endeavor to ensure that all parties
23 maintain proper decorum and have a reasonable opportunity to be
24 heard and present all relevant oral and documentary evidence. The
25 hearing officer shall be entitled to determine the order of, or
26 procedure for, presenting evidence and argument during the hearing
27 and shall have the authority and discretion to make all rulings on
28 questions pertaining to matters of law, procedure, or the
29 admissibility of evidence. The hearing officer shall also take all
30 appropriate steps to ensure a timely resolution of the hearing, but
31 may not terminate the hearing process.

32 (c) The licentiate shall have the right to a reasonable opportunity
33 to voir dire the panel members and any hearing officer, and the
34 right to challenge the impartiality of any member or hearing officer.
35 Challenges to the impartiality of any member or hearing officer
36 shall be ruled on by the presiding officer, who shall be the hearing
37 officer if one has been selected.

38 (d) The licentiate shall have the right to inspect and copy at the
39 licentiate's expense any documentary information relevant to the
40 charges which the peer review body has in its possession or under

1 its control, as soon as practicable after the receipt of the licentiate's
2 request for a hearing. The peer review body shall have the right
3 to inspect and copy at the peer review body's expense any
4 documentary information relevant to the charges which the
5 licentiate has in his or her possession or control as soon as
6 practicable after receipt of the peer review body's request. The
7 failure by either party to provide access to this information at least
8 30 days before the hearing shall constitute good cause for a
9 continuance. The right to inspect and copy by either party does
10 not extend to confidential information referring solely to
11 individually identifiable licentiates, other than the licentiate under
12 review. The arbitrator or presiding officer shall consider and rule
13 upon any request for access to information, and may impose any
14 safeguards the protection of the peer review process and justice
15 requires.

16 (e) When ruling upon requests for access to information and
17 determining the relevancy thereof, the arbitrator or presiding officer
18 shall, among other factors, consider the following:

19 (1) Whether the information sought may be introduced to
20 support or defend the charges.

21 (2) The exculpatory or inculpatory nature of the information
22 sought, if any.

23 (3) The burden imposed on the party in possession of the
24 information sought, if access is granted.

25 (4) Any previous requests for access to information submitted
26 or resisted by the parties to the same proceeding.

27 (f) At the request of either side, the parties shall exchange lists
28 of witnesses expected to testify and copies of all documents
29 expected to be introduced at the hearing. Failure to disclose the
30 identity of a witness or produce copies of all documents expected
31 to be produced at least 10 days before the commencement of the
32 hearing shall constitute good cause for a continuance.

33 (g) Continuances shall be granted upon agreement of the parties
34 or by the arbitrator or presiding officer on a showing of good cause.

35 (h) A hearing under this section shall be commenced within 60
36 days after receipt of the request for hearing, and the peer review
37 process shall be completed within a reasonable time, after a
38 licentiate receives notice of a final proposed action or an immediate
39 suspension or restriction of clinical privileges, unless the arbitrator
40 or presiding officer issues a written decision finding that the

1 licentiate failed to comply with subdivisions (d) and (e) in a timely
2 manner, or consented to the delay.

3 SEC. 6. Section 809.3 of the Business and Professions Code
4 is amended to read:

5 809.3. (a) During a hearing concerning a final proposed action
6 for which reporting is required to be filed under Section 805, both
7 parties shall have all of the following rights:

8 (1) To be provided with all of the information made available
9 to the trier of fact.

10 (2) To have a record made of the proceedings, copies of which
11 may be obtained by the licentiate upon payment of any reasonable
12 charges associated with the preparation thereof.

13 (3) To call, examine, and cross-examine witnesses.

14 (4) To present and rebut evidence determined by the arbitrator
15 or presiding officer to be relevant.

16 (5) To submit a written statement at the close of the hearing.

17 (6) To be represented by an attorney of the party's choice at the
18 party's expense, subject to subdivision (c).

19 (b) The burden of presenting evidence and proof during the
20 hearing shall be as follows:

21 (1) The peer review body shall have the initial duty to present
22 evidence which supports the charge or recommended action.

23 (2) Initial applicants shall bear the burden of persuading the
24 trier of fact by a preponderance of the evidence of their
25 qualifications by producing information which allows for adequate
26 evaluation and resolution of reasonable doubts concerning their
27 current qualifications for staff privileges, membership, or
28 employment. Initial applicants shall not be permitted to introduce
29 information not produced upon request of the peer review body
30 during the application process, unless the initial applicant
31 establishes that the information could not have been produced
32 previously in the exercise of reasonable diligence.

33 (3) Except as provided above for initial applicants, the peer
34 review body shall bear the burden of persuading the trier of fact
35 by a preponderance of the evidence that the action or
36 recommendation is reasonable and warranted.

37 (c) No peer review body shall be represented by an attorney if
38 the licentiate is not so represented, except dental professional

- 1 society peer review bodies may be represented by an attorney,
- 2 even if the licentiate declines to be represented by an attorney.

AB 175

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 175
Author: Galgiani
Bill Date: April 21, 2009, amended
Subject: Telemedicine: optometrists
Sponsor: Author

STATUS OF BILL:

This bill passed out of the Assembly Business and Professions Committee on consent and was referred to the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill further defines “teleophthalmology and teledermatology by store and forward.”

ANALYSIS:

Under current law, “teleophthalmology and teledermatology by store and forward” under the Medi-Cal program is defined as asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology. This information is reviewed by a physician without the patient present.

This bill would allow optometrists to perform telemedicine within their scope of practice.

This bill would specify that in the case that a reviewing optometrist identifies a disease or condition requiring consultation or referral, that consultation or referral must be with an appropriate physician or ophthalmologist.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Support

April 25, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 175

Introduced by Assembly Member Galgiani

(Principal coauthor: Senator Florez)

(Coauthors: Assembly Members ~~Tom Berryhill~~ and ~~Fuller Tom~~

Berryhill, Block, Fuller, and Monning)

(Coauthor: Senator Maldonado)

January 29, 2009

An act to amend Section 14132.725 of the Welfare and Institutions Code, relating to telemedicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 175, as amended, Galgiani. Medical telemedicine: optometrists.

Existing law, the Medical Practice Act, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications.

Existing law, until January 1, 2013, authorizes “teleophthalmology and teledermatology by store and forward” under the Medi-Cal program, to the extent that federal financial participation is available. Existing law defines “teleophthalmology and teledermatology by store and forward” as an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology, where the physician at the distant site reviews the medical information without the patient being present in real time.

This bill would expand the definition of “teleophthalmology and teledermatology by store and forward” to include an asynchronous

transmission of medical information to be reviewed at a later time, *for teleophthalmology, by an a licensed optometrist trained to diagnose and treat eye diseases.*

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

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

1 SECTION 1. Section 14132.725 of the Welfare and Institutions
2 Code is amended to read:
3 14132.725. (a) Commencing July 1, 2006, to the extent that
4 federal financial participation is available, face-to-face contact
5 between a health care provider and a patient shall not be required
6 under the Medi-Cal program for teleophthalmology and
7 teledermatology by store and forward. Services appropriately
8 provided through the store and forward process are subject to
9 billing and reimbursement policies developed by the department.
10 (b) For purposes of this section, “teleophthalmology and
11 teledermatology by store and forward” means an asynchronous
12 transmission of medical information to be reviewed at a later time
13 by a physician at a distant site who is trained in ophthalmology or
14 dermatology ~~or or, for teleophthalmology, by an optometrist trained~~
15 ~~to diagnose and treat eye diseases~~ *who is licensed pursuant to*
16 *Chapter 7 (commencing with Section 3000) of Division 2 of the*
17 *Business and Professions Code, where the physician or optometrist*
18 *at the distant site reviews the medical information without the*
19 *patient being present in real time. A patient receiving*
20 *teleophthalmology or teledermatology by store and forward shall*
21 *be notified of the right to receive interactive communication with*
22 *the distant specialist physician or optometrist, and shall receive*
23 *an interactive communication with the distant specialist physician*
24 *or optometrist, upon request. If requested, communication with*
25 *the distant specialist physician or optometrist may occur either at*
26 *the time of the consultation, or within 30 days of the patient’s*
27 *notification of the results of the consultation. If the reviewing*
28 *optometrist identifies a disease or condition requiring consultation*
29 *or referral pursuant to Section 3041 of the Business and*
30 *Professions Code, that consultation or referral shall be with an*
31 *appropriate physician and surgeon or ophthalmologist, as*
32 *required.*

1 (c) Notwithstanding Chapter 3.5 (commencing with Section
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
3 the department may implement, interpret, and make specific this
4 section by means of all county letters, provider bulletins, and
5 similar instructions.

6 (d) On or before January 1, 2008, the department shall report
7 to the Legislature the number and type of services provided, and
8 the payments made related to the application of store and forward
9 telemedicine as provided, under this section as a Medi-Cal benefit.

10 (e) The health care provider shall comply with the informed
11 consent provisions of subdivisions (c) to (g), inclusive, of, and
12 subdivisions (i) and (j) of, Section 2290.5 of the Business and
13 Professions Code when a patient receives teleophthalmology or
14 teledermatology by store and forward.

15 (f) This section shall remain in effect only until January 1, 2013,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2013, deletes or extends that date.

AB 245

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 245
Author: Ma
Bill Date: April 27, 2009, amended
Subject: Disclosure Verification
Sponsor: Union of American Physicians and Dentists

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has not been sent for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Medical Board (Board) to verify the accuracy of the information posted on its Website regarding enforcement actions or other items required to be posted. This bill would require the Board to remove any expunged convictions within 30 days.

ANALYSIS:

Currently the Board is required to post on its Web site specified information regarding license status, enforcement actions, and specified information reported to the Board. This bill would require the Board to verify all of the information prior to posting it on the website and would require the Board to remove information that is incorrect, inaccurate, or unsubstantiated.

The Board would be required to verify that all of the biographical information on its licensees is accurate. This bill would require the Board to establish a process for addressing complaints received from licensees regarding inappropriate information posted by the Board.

The sponsor states the reason for the bill is due to 31 physicians members who had false reports of medical discipline transmitted to the Board which caused damage to their careers. This is 805 reporting, and to force the Board to verify those reports prior to posting is against the public policy established in the peer review reporting laws. This issue should be dealt with in the peer review bills.

FISCAL: Considerable, estimated at \$1.3 million ongoing costs

POSITION: **Executive Committee Recommendation:** Watch
 Staff Recommendation: Oppose

April 25, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009
AMENDED IN ASSEMBLY MARCH 26, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 245

Introduced by Assembly Member Ma

February 10, 2009

An act to amend Section 2027 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 245, as amended, Ma. Physicians and surgeons.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to post certain information on the Internet regarding licensed physicians and surgeons, including, but not limited to, felony convictions, certain misdemeanor convictions, and whether or not the licensees are in good standing. Existing law requires that certain information remain posted for 10 years and prohibits the removal of certain other information.

This bill would require the board to verify the information posted pursuant to those provisions, as specified, and would require the board to immediately remove information discovered to be false and to remove expunged misdemeanor or felony convictions within a specified period of time. The bill would also require the board to ensure that the biographical information posted on its Internet Web site regarding licensees is accurate. The bill would *also* require the board to establish a process for addressing complaints from licensees regarding the posting of inappropriate information ~~and would make the board liable for~~

~~damages incurred by a licensee as a result of the board's failure to comply with these requirements.~~

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

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

1 SECTION 1. Section 2027 of the Business and Professions
2 Code is amended to read:

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

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

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

13 (3) Any felony convictions reported to the board after January
14 3, 1991.

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

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

23 (6) Any hospital disciplinary actions that resulted in the
24 termination or revocation of a licensee's hospital staff privileges
25 for a medical disciplinary cause or reason.

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

29 (8) Appropriate disclaimers and explanatory statements to
30 accompany the above information, including an explanation of
31 what types of information are not disclosed. These disclaimers and
32 statements shall be developed by the board and shall be adopted
33 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. Notwithstanding the provisions of this paragraph, 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.

(c) Notwithstanding subdivision (b), the board shall remove an expunged misdemeanor or felony conviction posted pursuant to this section within 30 days of receiving notice of the expungement.

(d) (1) Notwithstanding subdivision (b), the board shall verify the accuracy of information posted pursuant to this section as of January 1, 2010, and shall, by April 1, 2010, remove any information that the board is unable to verify.

(2) On and after January 1, 2010, *notwithstanding subdivision (a)*, the board shall not post information pursuant to this section unless it first verifies the accuracy of that information. The verification required by this paragraph shall include, but not be limited to, an attempt to verify the information with the licensed physician and surgeon who is the subject of the information and his or her attorney.

(3) Notwithstanding subdivision (b), and except as provided in paragraph (1), any information posted pursuant to this section that

1 the board subsequently discovers to be false shall be immediately
2 removed.

3 (e) The board shall ensure that the biographical information
4 posted on its Internet Web site with respect to licensed physicians
5 and surgeons is accurate.

6 (f) The board shall establish a process to completely address
7 complaints from licensed physicians and surgeons regarding
8 inappropriate information posted by the board pursuant to this
9 section.

10 ~~(g) The board shall be liable for damages incurred by a licensed~~
11 ~~physician and surgeon as a result of the board's failure to meet the~~
12 ~~requirements of subdivision (c), (d), or (e).~~

13 ~~(h)~~

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

AB 252

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 252
Author: Carter
Bill Date: February 11, 2009, introduced
Subject: Cosmetic surgery: employment of physicians
Sponsor: American Society for Dermatological Surgery

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill:

- 1) Declares it illegal for physicians to be employed by a corporation or artificial entity to practice cosmetic procedures, as prohibited by Business and Professions (B&P) Code section 2400 (restating current law).
- 2) Adds 2417.5 to the B&P Code, which:
 - Codifies that it is grounds for license revocation for physicians who knowingly violate the corporate practice prohibitions by working for or contracting with a business providing cosmetic medical treatments or procedures.
 - Establishes the legal presumption that physicians “knowingly” are violating the corporate practice prohibitions by contracting to serve as a medical director or otherwise become employed by an organization that they do not own related to cosmetic medical procedures or treatments.
 - Makes it a felony for an entity to provide cosmetic medical treatments or hire or contract with physicians for the providing of treatments, establishing that such a practice violates Penal Code section 550.

ANALYSIS:

Current law already prohibits the corporate practice of medicine, that is to say, lay entities employing or contracting with physicians to practice medicine. Current law also grants authority to the Board to take disciplinary actions, including revocation, against physicians who violate the law. There are two provisions of this bill, however, that are significant:

- 1) Violations by entities of the corporate practice bar are deemed to be a violation of Penal Section 550, thereby making it a felony punishable up to 5 years in prison, as well as other penalties, and;
- 2) Establishes the legal presumption that physicians violating the law by becoming employees or contractors of cosmetic surgery or treatment businesses that they do not own “knowingly” are violating the law; thus, removing the difficult burden to prosecutors to provide evidence to establish that physicians knew they were breaking the law.

In summary, this bill addresses violations of the corporate practice of medicine in the cosmetic medicine industry. It specifies that non-physician entities owning cosmetic medicine practices providing medical treatments (laser hair removal, laser resurfacing, Botox and filler injections) are in violation of the corporate practice prohibition of B&P Code Section 2400. This bill would make a violation of the corporate practice bar a felony for the (non-medically owned) entities, and grounds for license revocation for physicians who knowingly work or contract with these entities.

FISCAL: Unknown, but some increase in enforcement costs

POSITION: **Executive Committee Recommendation:** Watch
Staff Recommendation: Support

April 25, 2009

ASSEMBLY BILL

No. 252

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

February 11, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 252, 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 authorize the revocation of the license of a physician and surgeon who practices medicine with, or serves or is employed as the medical director of, a business organization that provides outpatient elective cosmetic medical procedures or treatments, as defined, knowing that the organization is owned or operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists. The bill would also make a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is

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

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

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

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

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

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

1 SECTION 1. The Legislature finds and declares that the
2 Medical Practice Act restricts the employment of physicians and
3 surgeons by a corporation or other artificial legal entity, as
4 described in Article 18 (commencing with Section 2400) of Chapter
5 5 of Division 2 of the Business and Professions Code, and that the
6 prohibited conduct described in subdivisions (a) and (b) of Section
7 2417.5 of the Business and Professions Code, as added by this act,
8 is declaratory of existing law.

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

11 2417.5. (a) In addition to any other remedies for a violation
12 of Section 2400 involving any other types of medical procedures,
13 a physician and surgeon who practices medicine with a business
14 organization that offers to provide, or provides, outpatient elective
15 cosmetic medical procedures or treatments, knowing that the
16 organization is owned or operated in violation of Section 2400,
17 may have his or her license to practice revoked. A physician and
18 surgeon who contracts to serve as, or otherwise allows himself or
19 herself to be employed as, the medical director of a business
20 organization that he or she does not own and that offers to provide

1 or provides outpatient elective cosmetic medical procedures or
2 treatments that may only be provided by the holder of a valid
3 physician's and surgeon's certificate under this chapter shall be
4 deemed to have knowledge that the business organization is in
5 violation of Section 2400.

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

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

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

AB 356

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 356
Author: Fletcher
Bill Date: April 23, 2009, amended
Subject: Radiological Technology: physician assistants
Sponsor: California Association of Physician Assistants (CAPA)

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow physician assistants to take the appropriate licensing exams for fluoroscopy licentiate permits issued by the Radiologic Health Branch of the California Department of Public Health (DPH).

ANALYSIS:

Current law allows physician assistants to perform a variety of delegated medical services including ordering and performing various diagnostic tests under physician supervision, taking patient histories, performing physical examinations, ordering X-rays and diagnostic studies, instituting treatment procedures, initiating hospital admissions, ordering medications, and performing surgical procedures which do not require general anesthesia.

The Radiologic Health Branch of the DPH regulates the performance of medical imaging by various health professions, including specific certification of a Radiological Technologist (RT). Certain "licentiates of the healing arts" are exempt from needing an RT certification in order to perform various forms of medical imaging. These "licentiates of the healing arts" include physicians, podiatrists, and chiropractors.

This bill would allow physician assistants to take the appropriate licensing exams for fluoroscopy. This would include physician assistants as "licentiates of the healing arts" who are not required to obtain an RT certification.

Amendments to this bill added 40 hours of course work before a physician assistant would be allowed to perform procedures. Amendments also included an additional 10 hours of biennial continuing education.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Support

April 23, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 356

Introduced by Assembly Member Fletcher

February 19, 2009

An act to amend Section 114850 of the Health and Safety Code, relating to radiologic technology.

LEGISLATIVE COUNSEL'S DIGEST

AB 356, as amended, Fletcher. Radiologic technology: licentiates of the healing arts.

Existing law sets forth the duties of various agencies relating to the protection of the public health and safety from the harmful effects of radiation, including, among others, the duties of the State Department of Public Health regarding the licensing and regulation of radiologic technology.

Existing law requires the department to provide for the certification of licentiates of the healing arts to supervise the operation of X-ray machines or to operate X-ray machines, or both, to prescribe minimum standards of training and experience for these licentiates of the healing arts, and to prescribe procedures for examining applicants for certification. Under existing law, licentiates of the healing arts is defined to include any person licensed under the Medical Practice Act, the Osteopathic Act, or a specified initiative act that created the State Board of Chiropractic Examiners, as provided.

Existing law, the Physician Assistant Practice Act, separately establishes the Physician Assistant Committee of the Medical Board of California, and provides for the licensure of physician assistants meeting specified criteria and for the regulation of their practice. Under that act, a physician assistant is authorized to perform certain medical services under the supervision of a physician and surgeon, subject to certain exceptions.

This bill would revise the definition of licentiates of the healing arts to also include a physician assistant who is licensed pursuant to the Physician Assistant Practice Act and who practices under the supervision of a qualified physician and surgeon, as provided. The bill would require a physician assistant who is issued a *licentiate fluoroscopy* permit to meet specified continuing education requirements. The bill would also require the supervising physician and surgeon to have, or be exempt from having, a ~~certificate or~~ *licentiate fluoroscopy* permit to perform the functions that he or she is supervising, as provided.

This bill would also allow a physician and surgeon to delegate to a licensed physician assistant procedures using ~~ionizing radiation, including, but not limited to,~~ fluoroscopy. The bill would ~~commencing January 1, 2011,~~ specify training requirements that must be met in order for a physician assistant to be delegated this task ~~as of January 1, 2011.~~

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

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

- 1 SECTION 1. Section 114850 of the Health and Safety Code
- 2 is amended to read:
- 3 114850. As used in this chapter:
- 4 (a) "Department" means the State Department of Public Health.
- 5 (b) "Committee" means the Radiologic Technology
- 6 Certification Committee.
- 7 (c) "Radiologic technology" means the application of X-rays
- 8 on human beings for diagnostic or therapeutic purposes.
- 9 (d) "Radiologic technologist" means any person, other than a
- 10 licentiate of the healing arts, making application of X-rays to
- 11 human beings for diagnostic or therapeutic purposes pursuant to
- 12 subdivision (b) of Section 114870.
- 13 (e) "Limited permit" means a permit issued pursuant to
- 14 subdivision (c) of Section 114870 to persons to conduct radiologic

1 technology limited to the performance of certain procedures or the
2 application of X-ray to specific areas of the human body, except
3 for a mammogram.

4 (f) "Approved school for radiologic technologists" means a
5 school that the department has determined provides a course of
6 instruction in radiologic technology that is adequate to meet the
7 purposes of this chapter.

8 (g) "Supervision" means responsibility for, and control of,
9 quality, radiation safety, and technical aspects of all X-ray
10 examinations and procedures.

11 (h) (1) "Licentiate of the healing arts" means a person licensed
12 under the provisions of the Medical Practice Act, the provisions
13 of the initiative act entitled "An act prescribing the terms upon
14 which licenses may be issued to practitioners of chiropractic,
15 creating the State Board of Chiropractic Examiners and declaring
16 its powers and duties, prescribing penalties for violation thereof,
17 and repealing all acts and parts of acts inconsistent herewith,"
18 approved by electors November 7, 1922, as amended, the
19 "Osteopathic Act," or a person licensed under the Physician
20 Assistant Practice Act (Chapter 7.7 (commencing with Section
21 3500) of Division 2 of the Business and Professions Code) who
22 practices under the supervision of a qualified physician and surgeon
23 pursuant to the act and pursuant to Division 13.8 of Title 16 of the
24 California Code of Regulations.

25 (2) In order to supervise a physician assistant in performing the
26 functions authorized by this chapter, a physician and surgeon shall
27 either hold, or be exempt from holding, a ~~certificate or licentiate~~
28 *fluoroscopy* permit required to perform the functions being
29 supervised.

30 (3) A physician and surgeon may delegate to a licensed
31 physician assistant procedures using ionizing radiation, including,
32 but not limited to, fluoroscopy. ~~As of January 1, 2011, a physician~~
33 ~~assistant delegated the use of ionizing radiation shall fluoroscopy.~~
34 *A physician assistant to whom a physician and surgeon has*
35 *delegated the use of fluoroscopy shall demonstrate successful*
36 *completion of 40 hours of total coursework, including radiation*
37 *safety and protection, recognized by the department.*
38 *Documentation of completed coursework shall be kept on file at*
39 *the practice site and available to the department upon request.*
40 *Notwithstanding any other provision of law, the department shall*

1 accept applications for a ~~licentiate~~ *fluoroscopy* permit from a
2 licensed physician assistant who meets the requirements of this
3 section.

4 (4) A licensed physician assistant who is issued a ~~licentiate~~
5 *fluoroscopy* permit pursuant to the requirements of this section
6 shall, in the two years preceding the expiration date of the permit,
7 earn 10 approved continuing education credits.

8 (i) "Certified supervisor or operator" means a licentiate of the
9 healing arts who has been certified under subdivision (e) of Section
10 114870 or 107115 to supervise the operation of X-ray machines
11 or to operate X-ray machines, or both.

12 (j) "Student of radiologic technology" means a person who has
13 started and is in good standing in a course of instruction that, if
14 completed, would permit the person to be certified a radiologic
15 technologist or granted a limited permit upon satisfactory
16 completion of any examination required by the department.
17 "Student of radiologic technology" does not include any person
18 who is a student in a school of medicine, chiropractic, podiatry,
19 dentistry, dental radiography, or dental hygiene.

20 (k) "Mammogram" means an X-ray image of the human breast.

21 (l) "Mammography" means the procedure for creating a
22 mammogram.

AB 501

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 501
Author: Emmerson
Bill Date: April 13, 2009, amended
Subject: Licensing: Limited, Use of M.D., Fee/Fund
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

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

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

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

ANALYSIS:

Amends Business and Professions Code section 2054:

This bill would allow a graduate of an approved medical school, who is enrolled in post graduate training in California, to use the initials M.D. only while that post graduate trainee is under the supervision of a licensed physician from that program. The post graduate trainee would be permitted to use the initials only while he or she is under the supervision of a licensed physician from that program.

This bill would allow physicians licensed in other states or countries to participate in events in California using the initials M.D. as long as they are not practicing medicine as physicians.

Amends Business and Professions Code section 2088:

Currently the Board does not have the authority to issue a limited medical license at the time of initial licensure. The law allows the Board to issue a probationary license initially with restrictions against engaging in certain types of practice. Although the Board is authorized to limit a license of an existing licensee, there are various individuals who wish to practice in California and are not eligible to obtain a full and unrestricted medical license but can practice safely with a limited license.

All applicants for a limited license would be required to sign a statement agreeing to limit his or her practice to whatever areas are recommended by a reviewing physician who may be recommended by the Board. Several other states have laws that allow for the initial issuance of limited, restricted, or special licenses to address applicants with disabilities. There are qualified applicants who wish to be licensed in California, who will be able to practice safely with a limited license.

Amends Business and Professions Code section 2435:

This bill would establish a cap on the licensing fee imposed by the Medical Board. The cap would be fixed by the Board at a fee equal to or less than seven hundred ninety dollars (\$790). Currently the law requires the fee to be exactly seven hundred ninety dollars (\$790), leaving the Medical Board without the option to lower the fee when needed in order to comply with the limits on the reserve allowed in the Contingent Fund of the Medical Board. The fee cap would allow the Board to adjust the fee as needed.

This bill would increase the amount of reserve allowed in the Contingent Fund of the Medical Board to not less than two months and not more than four months' operating expenditures. The current two month limit on the reserve is rigid in that it limits the Board's ability to implement programs. A reserve fund of two to four months would allow more room to effectively maintain compatibility with the state audit while also allowing the Board to implement programs as necessary.

This bill would require an audit of the Board's financial status to be commenced no later than January 1, 2012 by the Bureau of State Audits. The audit would include the impact of the 2008 loan to the general fund as well as projections related to expenses, revenues, and reserves. The audit will be funded within existing resources of the 2011-2012 fiscal year and would be required to be completed by June 1, 2012. The audit conducted in 2007 cost \$75,000.

FISCAL: None to the Board until 2011/2012, approximate cost \$100,000

POSITION: Sponsor/ Support

April 25, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 501

Introduced by Assembly Member Emmerson

February 24, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Emmerson. Physicians and ~~surgeons: limited license: surgeons.~~

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

This bill would authorize a graduate of an approved medical school who is enrolled in a postgraduate training program approved by the board to use certain words, letters, or phrases while under instruction and under the supervision of a licensed physician and surgeon at the training program. The bill would also authorize a graduate of an approved medical school who does not have a valid certificate as a physician and surgeon issued by the board and who is not otherwise authorized to practice medicine in this state to use the initials "M.D." subject to specified conditions.

Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes

a licensee who demonstrates that he or she is unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician.

This bill would authorize an applicant for a license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license fee and signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board. By requiring that the agreement be signed under penalty of perjury, the bill would expand the scope of a crime, thereby imposing a state-mandated local program. The bill would authorize the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license.

Under existing law, licensees of the board are required to pay licensure fees, including an initial licensing fee of \$790 and a biennial renewal fee of \$790. Existing law authorizes the board to increase those fees in certain circumstances and states the intent of the Legislature that, in setting these fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board equal to 2 months' operating expenditures.

This bill would require those fees to be fixed by the board at a maximum of \$790, while retaining the authority of the board to raise those fees in certain circumstances. The bill would state the intent of the Legislature that, in setting those fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board in an amount not less than 2 nor more than 4 months' operating expenditures. The bill would also require the Bureau of State Audits to commence a review of the board's financial status by January 1, 2012, and to report its findings and recommendations to the Joint Legislative Audit Committee by June 1, 2012, as specified.

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

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

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

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

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

3 2054. (a) Any person who uses in any sign, business card, or
4 letterhead, or, in an advertisement, the words "doctor" or
5 "physician," the letters or prefix "Dr.," the initials "M.D.," or any
6 other terms or letters indicating or implying that he or she is a
7 physician and surgeon, physician, surgeon, or practitioner under
8 the terms of this or any other law, or that he or she is entitled to
9 practice hereunder, or who represents or holds himself or herself
10 out as a physician and surgeon, physician, surgeon, or practitioner
11 under the terms of this or any other law, without having at the time
12 of so doing a valid, unrevoked, and unsuspended certificate as a
13 physician and surgeon under this chapter, is guilty of a
14 misdemeanor.

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

20 (c) *A graduate of an approved medical school who is enrolled*
21 *in a postgraduate training program approved by the board may*
22 *use the words "doctor" or "physician," the letters or prefix "Dr.,"*
23 *or the initials "M.D." while under instruction and under the*
24 *supervision of a licensed physician and surgeon at that*
25 *postgraduate training program, and shall not be in violation of*
26 *subdivision (a).*

27 (d) *Except as provided in subdivision (c), a graduate of an*
28 *approved medical school who does not have a valid, unrevoked,*
29 *and unsuspended certificate as a physician and surgeon issued*
30 *under this chapter and who is not otherwise authorized to practice*
31 *medicine under this chapter may use the initials "M.D." without*
32 *violating subdivision (a), provided he or she does not do either of*
33 *the following:*

1 (1) *Imply that he or she is a physician and surgeon, physician,*
2 *surgeon, or practitioner under the terms of this chapter, or that*
3 *he or she is entitled to practice medicine in this state.*

4 (2) *Represent or hold himself or herself out as a physician and*
5 *surgeon, physician, surgeon, or practitioner under the terms of*
6 *this chapter.*

7 ~~SECTION 1.~~

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

10 2088. (a) An applicant for a physician's and surgeon's license
11 who is otherwise eligible for that license but is unable to practice
12 some aspects of medicine safely due to a disability may receive a
13 limited license if he or she does both of the following:

14 (1) Pays the initial license fee.

15 (2) Signs an agreement on a form prescribed by the board, signed
16 under penalty of perjury, in which the applicant agrees to limit his
17 or her practice in the manner prescribed by the reviewing physician
18 and agreed to by the board.

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

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

25 2435. The following fees apply to the licensure of physicians
26 and surgeons:

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

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

39 (c) Each applicant who qualifies for a certificate, as a condition
40 precedent to its issuance, in addition to other fees required herein,

1 shall pay an initial license fee, if any, *in an amount fixed by the*
2 *board consistent with this section.* The initial license fee shall ~~be~~
3 *not exceed* seven hundred ninety dollars (\$790). An applicant
4 enrolled in an approved postgraduate training program shall be
5 required to pay only 50 percent of the initial license fee.

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

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

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

18 (2) Any increase in the amount of investigation and enforcement
19 costs incurred by the board after January 1, 2006, that exceeds the
20 average costs expended for investigation and enforcement costs
21 during the three fiscal years immediately preceding July 1, 2006.
22 When calculating the amount of costs for services for which the
23 board paid an hourly rate, the board shall use the average number
24 of hours for which the board paid for those costs over these prior
25 three fiscal years, multiplied by the hourly rate paid by the board
26 for those costs as of July 1, 2005. Beginning January 1, 2009, the
27 board shall instead use the average number of hours for which it
28 paid for those costs over the three-year period of fiscal years
29 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate
30 paid by the board for those costs as of July 1, 2005. In calculating
31 the increase in the amount of investigation and enforcement costs,
32 the board shall include only those costs for which it was eligible
33 to obtain reimbursement under Section 125.3 and shall not include
34 probation monitoring costs and disciplinary costs, including those
35 associated with the citation and fine process and those required to
36 implement subdivision (b) of Section 12529 of the Government
37 Code.

38 (f) Notwithstanding Section 163.5, the delinquency fee shall be
39 10 percent of the biennial renewal fee.

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

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

9 (i) Not later than ~~July 1, 2007, January 1, 2012,~~ the Bureau of
10 State Audits (BSA) shall ~~conduct~~ *commence* a review of the board's
11 financial status, ~~its financial projections and historical projections,~~
12 including, but not limited to, its projections related to expenses,
13 revenues, and reserves, ~~and the impact of the loan from the~~
14 ~~Contingent Fund of the Medical Board of California to the General~~
15 ~~Fund made pursuant to the Budget Act of 2008.~~ The BSA shall,
16 on the basis of the review, report ~~its findings and recommendations~~
17 to the Joint Legislative Audit Committee ~~before January 1, 2008,~~
18 ~~on any adjustment to the amount of the licensure fee that is required~~
19 ~~to maintain the reserve amount in the Contingent Fund of the~~
20 ~~Medical Board of California pursuant to subdivision (h) of Section~~
21 ~~2435, and whether a refund of any excess revenue should be made~~
22 ~~to licensees by June 1, 2012. This review shall be funded from~~
23 ~~the existing resources of the board during the 2011–12 fiscal year.~~

24 ~~SEC. 2.~~

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

AB 526

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 526
Author: Fuentes
Bill Date: April 16, 2009, amended
Subject: Public Protection and Physician Health Program Act of 2009
Sponsor: California Medical Association

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has not been set for hearing.

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.

ANALYSIS:

This bill would establish the Public Protection and Physician Health Committee. The Committee would be comprised of 14 members and 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 and 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.

FISCAL: Unknown, some cost should the fee be implemented

POSITION: **Executive Committee Recommendation:** Watch
Staff Recommendation: Neutral

April 27, 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 Committee, consisting of 14 members appointed by specified entities, and would require *the committee to be appointed*

and to hold its first meeting by March 1, 2010, and would require agency adoption of related rules and regulations 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 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 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 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~~ *authorize* the board to increase physician and surgeon licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.

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

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

- 1 SECTION 1. The Legislature hereby finds and declares that:
- 2 (a) California has long valued high quality medical care for its
- 3 citizens and, through its regulatory and enforcement system,
- 4 protects health care consumers through the proper licensing and
- 5 regulation of physicians and surgeons to promote access to quality
- 6 medical care. The protection of the public from harm by physicians
- 7 and surgeons who may be impaired by alcohol or substance abuse
- 8 or dependence or by a mental disorder is paramount.
- 9 (b) Nevertheless, physicians and surgeons experience
- 10 health-related problems at the same frequency as the general
- 11 population, and many competent physicians and surgeons with
- 12 illnesses may or may not immediately experience impairment in
- 13 their ability to serve the public. It has been estimated that at least
- 14 10 percent of the population struggles with alcohol or substance

1 abuse or dependence during their lifetime, which may, at some
2 point, impact approximately 12,500 of the state's 125,000 licensed
3 physicians and surgeons.

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

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

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

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

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

36
37 Article 14. Public Protection and Physician Health Program
38

39 2340. This article shall be known and may be cited as the Public
40 Protection and Physician Health Program Act of 2009.

1 2341. For purposes of this article, the following terms have
2 the following meanings:

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

4 (b) "Board" means the Medical Board of California.

5 (c) "Committee" means the Public Protection and Physician
6 Health Committee established pursuant to Section 2342.

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

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

14 (f) "Physician health program" or "program" means the program
15 for the prevention, detection, intervention, monitoring, and referral
16 to treatment of impaired physicians and surgeons, and includes
17 vendors, providers, or entities contracted with by the agency
18 pursuant to this article.

19 (g) "Physician and surgeon" means a holder of a physician's
20 and surgeon's certificate.

21 (h) "Qualifying illness" means "alcohol or substance abuse,"
22 "alcohol or chemical dependency," or a "mental disorder" as those
23 terms are used in the Diagnostic and Statistical Manual of Mental
24 Disorders, Fourth Edition (DSM-IV) or subsequent editions.

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

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

30 2342. (a) (1) There is hereby established within the State and
31 Consumer Services Agency the Public Protection and Physician
32 Health Committee. *The committee shall be appointed and hold its*
33 *first meeting no later than March 1, 2010.* The committee shall be
34 comprised of 14 members who shall be appointed as follows:

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

37 (i) Two members who are licensed mental health professionals
38 with knowledge and expertise in the identification and treatment
39 of substance abuse and mental disorders.

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

12 (B) Four members of the public appointed by the Governor, at
13 least one of whom shall have experience in advocating on behalf
14 of consumers of medical care in this state.

15 (C) One member of the public appointed by the Speaker of the
16 Assembly.

17 (D) One member of the public appointed by the Senate
18 Committee on Rules.

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

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

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

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

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

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

34 (c) Committee members shall serve terms of four years, and
35 may be reappointed. By lot, the committee shall stagger the terms
36 of the initial members appointed.

37 (d) The committee shall be subject to the Bagley-Keene Open
38 Meeting Act (Article 9 (commencing with Section 11120) of
39 Chapter 1 of Part 1 of Division 3 of Title 2 of the Government
40 Code), and shall prepare *any additional* recommended rules and

1 regulations necessary or advisable for the purpose of implementing
2 this article, subject to the Administrative Procedures Act (Chapter
3 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
4 Title 2 of the Government Code). The rules and regulations shall
5 include appropriate minimum standards and requirements for
6 referral to treatment, and monitoring of participants in the physician
7 health program, and shall be written in a manner that provides
8 clear guidance and measurable outcomes to ensure patient safety
9 and the health and wellness of physicians and surgeons. The agency
10 shall adopt regulations for the implementation of this article, taking
11 into consideration the regulations recommended by the committee.

12 (e) The rules and regulations required by this section shall be
13 adopted not later than June 30, 2010, and shall, at a minimum, be
14 consistent with the uniform standards adopted pursuant to Section
15 315, and shall include all of the following:

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

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

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

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

26 (5) Worksite monitoring requirements and standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 2343. (a) On and after July 1, 2010, upon adoption of the rules
34 and regulations required by Section 2342, the committee shall
35 recommend one or more physician health programs to the agency,
36 and the agency may contract with any qualified physician health
37 program. The physician health program shall be a nonprofit
38 corporation organized under Section 501(c)(3) of Title 26 of the
39 United States Code. The chief executive officer shall have expertise
40 in the areas of alcohol abuse, substance abuse, alcohol dependency,

1 other chemical dependencies, and mental disorders. *In order to*
2 *expedite the delivery of physician health program services*
3 *established by this article, the agency may contract with an entity*
4 *meeting the minimum standards and requirements set forth in*
5 *subdivision (e) of Section 2342 on an interim basis prior to the*
6 *adoption of any additional rules and regulations required to be*
7 *adopted pursuant to subdivision (d) of Section 2342. The agency*
8 *may extend the contract when the rules and regulations are*
9 *adopted, provided that the physician health program meets the*
10 *requirements in those rules and regulations.*

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

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

19 (1) Report annually to the committee statistics, including the
20 number of participants served, the number of compliant
21 participants, the number of participants who have successfully
22 completed their agreement period, and the number of participants
23 reported to the board for suspected noncompliance; provided,
24 however, that in making that report, the physician health program
25 shall not disclose any personally identifiable information relating
26 to any physician and surgeon participating in a voluntary agreement
27 as provided in this article.

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

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

38 2344. The agency has the sole discretion to contract with a
39 physician health program for licensees of the board and no
40 provision of this article may be construed to entitle any physician

1 and surgeon to the creation or designation of a physician health
2 program for any individual qualifying illness or group of qualifying
3 illnesses.

4 2345. (a) In order to encourage voluntary participation in
5 monitored alcohol or chemical dependency or mental disorder
6 treatment programs, and in recognition of the fact that mental
7 disorders, alcohol dependency, and chemical dependency are
8 illnesses, a physician and surgeon, certified or otherwise lawfully
9 practicing in this state, may enter into a voluntary agreement with
10 a physician health program. The agreement between the physician
11 and surgeon and the physician health program shall include a
12 jointly agreed upon treatment program and mandatory conditions
13 and procedures to monitor compliance with the treatment program,
14 including, but not limited to, an agreement to cease practice, as
15 defined by the rules and regulations adopted pursuant to Section
16 2342. Except as provided in subdivisions (b), (c), (d), and (e), a
17 physician and surgeon's participation in the physician health
18 program pursuant to a voluntary agreement shall be confidential
19 unless waived by the physician and surgeon.

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

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

27 (B) The board has not referred a complaint against the physician
28 and surgeon to a district office of the board for ~~simultaneous~~
29 ~~investigation jointly assigned to an investigator and to the deputy~~
30 ~~attorney general in the Health Quality Enforcement Section~~
31 ~~pursuant to Section 12529.6 of the Government Code for conduct~~
32 ~~investigation for conduct~~ involving or alleging an impairment
33 adversely affecting the care and treatment of patients.

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

37 (2) (A) Each participant, prior to entering into the voluntary
38 agreement described in paragraph (1), shall disclose to the
39 committee whether he or she is under investigation by the board.
40 If a participant fails to disclose such an investigation, upon

1 enrollment or at any time while a participant, the participant shall
2 be terminated from the program. For those purposes, the committee
3 ~~shall periodically request from the board copies of recent~~ *shall*
4 *regularly monitor recent* accusations filed against physicians and
5 surgeons and shall compare the names of physicians and surgeons
6 subject to accusation with the names of program participants.

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

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

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

20 (B) Report to the committee if the physician and surgeon fails
21 to cooperate with any of the requirements of the physician health
22 program, fails to cease practice when required, fails to submit to
23 evaluation, treatment, or biological fluid testing when required, or
24 whose impairment is not substantially alleviated through treatment,
25 or who, in the opinion of the physician health program, is unable
26 to practice medicine with reasonable skill and safety, *or who*
27 *withdraws or is terminated from the physician health program*
28 *prior to completion.*

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

39 (d) Except as provided in subdivisions (b), (c), and (e), and this
40 subdivision, any oral or written information reported to the board

1 pursuant to this section, including, but not limited to, any physician
2 and surgeon's participation in the physician health program and
3 any voluntary agreement entered into pursuant to this article, shall
4 remain confidential as provided in subdivision (c) of Section 800,
5 and shall not constitute a waiver of any existing evidentiary
6 privileges under any other provision or rule of law. However, this
7 subdivision shall not apply if the board has referred a complaint
8 against the physician and surgeon to a district office of the board
9 ~~for simultaneous investigation jointly assigned to an investigator~~
10 ~~and to the deputy attorney general in the Health Quality~~
11 ~~Enforcement Section pursuant to Section 12529.6 of the~~
12 ~~Government Code for conduct involving or alleging an impairment~~
13 ~~for investigation for conduct involving or alleging an impairment~~
14 adversely affecting the care and treatment of patients.

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

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

22 2346. The committee shall report to the agency statistics
23 received from the physician health program pursuant to Section
24 2343, and the agency shall, thereafter, report to the Legislature the
25 number of individuals served, the number of compliant individuals,
26 the number of individuals who have successfully completed their
27 agreement period, and the number of individuals reported to the
28 board for suspected noncompliance; provided, however, that in
29 making that report the agency shall not disclose any personally
30 identifiable information relating to any physician and surgeon
31 participating in a voluntary agreement as provided herein.

32 2347. (a) A physician and surgeon participating in a voluntary
33 agreement shall be responsible for all expenses relating to chemical
34 or biological fluid testing, treatment, and recovery as provided in
35 the written agreement between the physician and surgeon and the
36 physician health program.

37 (b) In addition to the fees charged for the initial issuance or
38 biennial renewal of a physician and surgeon's certificate pursuant
39 to Section 2435, and at the time those fees are charged, the board
40 ~~shall~~ may include a surcharge of not less than twenty-two dollars

1 (\$22) and not to exceed an amount equal to 2.5 percent of the fee
2 set pursuant to Section 2435, which shall be expended solely for
3 the purposes of this article. ~~The~~ *If the board includes a surcharge,*
4 *the* board shall collect this surcharge and cause it to be transferred
5 monthly to the trust fund established pursuant to subdivision (c).
6 This amount shall be separately identified on the fee statement
7 provided to physicians and surgeons as being imposed pursuant
8 to this article. The board may include a conspicuous statement
9 indicating that the Public Protection and Physician Health Program
10 is not a program of the board and the collection of this fee does
11 not, nor shall it be construed to, constitute the board's endorsement
12 of, support for, control of, or affiliation with, the program.

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

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

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

27 2348. (a) The agency shall biennially contract to perform a
28 thorough audit of the effectiveness, efficiency, and overall
29 performance of the program and its vendors. The agency may
30 contract with a third party to conduct the performance audit, except
31 the third party may not be a person or entity that regularly testifies
32 before the board. This section is not intended to reduce the number
33 of audits the agency or board may otherwise conduct.

34 (b) The audit shall make recommendations regarding the
35 continuation of this program and this article and shall suggest any
36 changes or reforms required to ensure that individuals participating
37 in the program are appropriately monitored and the public is
38 protected from physicians and surgeons who are impaired due to
39 alcohol or drug abuse or dependency or mental disorder. Any
40 person conducting the audit required by this section shall maintain

1 the confidentiality of all records reviewed and information obtained
2 in the course of conducting the audit and shall not disclose any
3 information that is identifiable to any program participant.

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

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

16 2349. This article shall remain in effect only until January 1,
17 2021, and as of that date is repealed, unless a later enacted statute,
18 that is enacted before January 1, 2021, deletes or extends that date.

AB 583

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 583
Author: Hayashi
Bill Date: February 25, 2009, introduced
Subject: Disclosure of Education and Office Hours
Sponsor: CA Medical Association and CA Society of Plastic Surgeons

STATUS OF BILL:

This bill is currently in Senate Rules and has not been set for hearing.

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: **Executive Committee Recommendation:** Support if amended to add information about the Board to the posting such as the name of the Board and the Board's Website and to specify more clearly what "prominent display" means.
Staff Recommendation: Support if amended (same suggested amends)

April 26, 2009

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 introduced, 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 prominently display his or her license in his or her office, except as specified.

This bill would require 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.

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

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

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

3 680. (a) (1) Except as otherwise provided in this section, a
4 health care practitioner shall disclose, while working, his or her
5 name ~~and~~ practitioner's license status *and license type*, as granted
6 by this state, *and the highest level of academic degree he or she*
7 *holds*, on a name tag in at least 18-point type. A health care
8 practitioner in a practice or an office, whose license ~~is and highest~~
9 *level of academic degree are* prominently displayed *or who has*
10 *communicated in writing to the practice's or office's patients his*
11 *or her license status, license type, and highest level of academic*
12 *degree*, may opt to not wear a name tag. If a health care practitioner
13 or a licensed clinical social worker is working in a psychiatric
14 setting or in a setting that is not licensed by the state, the employing
15 entity or agency shall have the discretion to make an exception
16 from the name tag requirement for individual safety or therapeutic
17 concerns. In the interest of public safety and consumer awareness,
18 it shall be unlawful for any person to use the title "nurse" in
19 reference to himself or herself and in any capacity, except for an
20 individual who is a registered nurse or a licensed vocational nurse,
21 or as otherwise provided in Section 2800. Nothing in this section
22 shall prohibit a certified nurse assistant from using his or her title.

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

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

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

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

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

16 (2) *In writing to a patient at the patient’s initial office visit.*

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

18 (e) *A physician and surgeon who supervises an office in addition*
19 *to his or her primary practice location shall conspicuously post*
20 *in each of those offices a current schedule of the regular hours*
21 *when he or she is present in the respective office, and the hours*
22 *during which each office is open and he or she is not present.*

AB 602

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 602
Author: Price
Bill Date: March 25, 2009, amended
Subject: Dispensing Opticians
Sponsor: Lenscrafters

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize registered dispensing opticians (RDO) to receive license renewal materials provided by the Medical Board of California (MBC) at an address other than the place of business.

ANALYSIS:

Currently, renewal materials are mailed to hundreds of locations statewide, including large businesses such as Kaiser, WalMart, and LensCrafters. This bill would authorize the aggregation of renewal materials to a corporate mailing address. This bill would increase the efficiency of licensure renewal.

This bill is a placeholder. Should this issue be resolved between staff and the sponsor, then the bill will be used for another purpose. Staff is working with the sponsor and hopes to have this issue resolved by June 1, 2009.

FISCAL: None

POSITION: **Executive Committee Recommendation:** Watch
 Staff Recommendation: Watch

April 25, 2009

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 602

Introduced by Assembly Member Price

February 25, 2009

An act to amend Sections 2550 and 2551 of the Business and Professions Code, relating to dispensing opticians.

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as amended, Price. Dispensing opticians.

Existing law provides that the right to dispense, sell, or furnish prescription lenses at retail to the person named in a prescription is limited to physicians and surgeons, optometrists, and registered dispensing opticians. Existing law provides for the regulation of dispensing opticians by the Medical Board of California, and requires a person engaging in the business of a dispensing optician to be registered with the board.

This bill would *require* a person engaging in the business of a dispensing optician to be registered biennially with the Medical Board of California. The bill would also authorize a dispensing optician, upon registration, to provide a mailing address to the board ~~for purposes of communication~~ *that is different from the address of the optician's place of business, and, if provided, would require the board to send all further application and renewal materials to that address.*

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

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

1 SECTION 1. Section 2550 of the Business and Professions
2 Code is amended to read:

3 2550. Individuals, corporations, and firms engaged in the
4 business of filling prescriptions of physicians and surgeons licensed
5 by the Medical Board of California or optometrists licensed by the
6 State Board of Optometry for prescription lenses and kindred
7 products, and, as incidental to the filling of those prescriptions,
8 doing any or all of the following acts, either singly or in
9 combination with others, taking facial measurements, fitting and
10 adjusting those lenses and fitting and adjusting spectacle frames,
11 shall be known as dispensing opticians and shall not engage in that
12 business unless biennially registered with the Medical Board of
13 California.

14 SEC. 2. Section 2551 of the Business and Professions Code is
15 amended to read:

16 2551. Individuals, corporations, and firms shall make
17 application for registration and shall not engage in that business
18 prior to being issued a certificate of registration. Application for
19 that registration shall be on forms prescribed by the board, shall
20 bear the signature of the individual, or general partners if a
21 partnership, or the president or secretary if a corporation, and shall
22 contain the name under which he or she, they, or it proposes to do
23 business and the business address. Separate applications shall be
24 made for each place of business and each application must be
25 accompanied by the application fee prescribed by Section 2565.
26 ~~A mailing address may be provided to the board for the purposes~~
27 ~~of communication. An individual, corporation, or firm may provide~~
28 ~~an address to the board at which to receive application and~~
29 ~~renewal materials that is different from the address provided for~~
30 ~~the place of business. If provided, the board shall send all further~~
31 ~~application and renewal materials to that address.~~

AB 646

AB 646

Physician Employment: District Hospital Pilot Project

Amended in committee on April 28, 2009.

To be presented at the Board Meeting

AB 648

AB 648

Rural Hospitals: Physician Employment

To be presented at the Board Meeting

AB 718

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 718
Author: Emmerson
Bill Date: April 22, 2009, amended
Subject: Electronic Prescribing Pilot Program
Sponsor: Reed Elsevier Inc.

STATUS OF BILL:

This bill is on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would create the Inland Empire Health Plan E-Prescribing Pilot Program to promote the exchange of health care information.

ANALYSIS:

Electronically created and transmitted prescriptions can reduce or eliminate errors both at the physician's office, at the point of prescribing, and at the pharmacy when a written or oral prescription is entered into a pharmacy's computer system. An electronic prescribing system in California would greatly increase safety and efficiency within the practices of medicine and pharmacy, and would streamline the prescribing process and enhance communication among health care professionals.

In addition to increased patient safety, there are several other benefits to electronic prescribing. Physicians will know which pharmacy a prescription has been sent to and have the ability to track whether the patient has picked it up. This will offer opportunities for physicians and pharmacists to better ensure patient compliance. Prescriptions will be completely legible and physicians will have an electronic record of what has been prescribed. This will make pharmacy prescription records immediately retrievable. Prescriptions will be received only through trusted partners or agents and will be securely authorized with electronic signatures.

E-prescribing will make improvements in health care quality and efficiency overall by ensuring that patients with multiple physicians are not being over prescribed or taking medications that are contradictory in nature. This will also ensure that only Medi-Cal approved medications are prescribed to those on Medi-Cal as a physician will be immediately notified if the medication is not on the formulary.

Originally this was a statewide mandatory program that has now been reduced to a pilot project to test the implementation of a program.

As amended, this bill would create the Inland Empire Health Plan E-Prescribing Pilot Program in order to promote health care quality and the exchange of health care information. This program would be administered by an entity with at least five years experience electronically prescribing under the Medi-Cal program. This program would include various components such as integrated clinical decisions support alerts for allergies, drug-drug interactions, duplications in therapy and elderly alerts. The pilot program would work to create cost-effective prescribing at the point of care and include approved drug compendia.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support (when this was a statewide mandatory program)
Staff Recommendation: Support

April 24, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 718

Introduced by Assembly Member Emmerson

February 26, 2009

An act to add Section 4071.2 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 718, as amended, Emmerson. ~~Prescription drugs; electronic transmissions; Inland Empire Health Plan E-Prescribing Pilot Program.~~

The Pharmacy Law regulates, among other matters, the dispensing by prescription of dangerous devices and dangerous drugs, which include controlled substances. Existing law authorizes the electronic transmission of prescriptions under specified circumstances. ~~Under existing law, a violation of the Pharmacy Law is a crime.~~

~~This bill would require, to the extent consistent with federal law, every licensed prescriber, or prescriber's authorized agent, or pharmacy operating in California to have the ability, on or before January 1, 2016, to transmit and receive prescriptions by electronic data transmission. Because a knowing violation of that provision would constitute a crime under the Pharmacy Law, the bill would impose a state-mandated local program.~~

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

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

This bill would state the intent of the Legislature to enact legislation that would create the Inland Empire Health Plan E-Prescribing Pilot Program, which would promote health care quality and the exchange of health care information, include specified components, and be administered by an entity with specified certification and at least 5 years of e-prescribing experience under the Medi-Cal program.

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

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

1 SECTION 1. *It is the intent of the Legislature to enact*
2 *legislation that would create the Inland Empire Health Plan*
3 *E-Prescribing Pilot Program, which would meet all of the following*
4 *requirements:*

5 (a) *Be administered by an entity with certification from the*
6 *Certification Commission for Health Information Technology and*
7 *a minimum of five years of e-prescribing experience under the*
8 *Medi-Cal program.*

9 (b) *Promote health care quality and the exchange of health care*
10 *information.*

11 (c) *Include all of the following components:*

12 (1) *Integrated clinical decision support alerts for allergies,*
13 *drug-drug interactions, duplications in therapy, and elderly alerts.*

14 (2) *Current payer formulary information.*

15 (3) *Appropriate alternatives, when needed, to support*
16 *cost-effective prescribing at the point of care.*

17 (4) *Drug compendia approved by the Center for Medicare and*
18 *Medicaid Services.*

19 (5) *Electronic transmission of prescriptions.*

20 ~~SECTION 1. Section 4071.2 is added to the Business and~~
21 ~~Professions Code, to read:~~

22 ~~4071.2. To the extent consistent with federal law, on or before~~
23 ~~January 1, 2016, every licensed prescriber, prescriber's authorized~~
24 ~~agent, or pharmacy operating in California shall have the ability~~
25 ~~to transmit and receive prescriptions by electronic data~~
26 ~~transmission.~~

1 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

AB 832

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 832
Author: Jones
Bill Date: April 22, 2009, amended
Subject: Clinic Licensing: Workgroup
Sponsor: California Department of Public Health (CDPH)

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill, that was amended in the Assembly Health Committee, will now require the Department of Public Health (DPH) to convene a workgroup to consider and develop recommendations for state oversight and monitoring of ambulatory surgical centers to ensure public safety.

ANALYSIS:

This bill would require DPH to convene a workgroup, no later than February 1, 2010, to consider and develop recommendations for state oversight and monitoring of ambulatory surgical centers. These recommendations would be focused on increasing public health and safety.

The workgroup would be tasked with, among other topics, considering the implications of the 2007 Third District Court of Appeals ruling, *Capen v. Shewry*. The workgroup would also be required to address existing quality and accreditation standards, including federal conditions of participation for ambulatory surgical centers who participate in the Medicare program, and the state of the art of ambulatory surgery centers within the state. The workgroup would need to submit its conclusions and recommendations to the appropriate policy committees of the Legislature no later than July 1, 2010. The members of the workgroup would serve without compensation.

The workgroup would include representatives from all of those listed on the attached proposed language.

FISCAL: None to MBC.

POSITION: **Staff Recommendation:** Support if amended to address the Capen v. Shewry decision for a minimum of a one year period while the workgroup develops its recommendations and legislation can be enacted.

April 24, 2009

Amendments to AB 832 (Jones)

As amended April 22, 2009

(As proposed to be amended)

Delete and replace the existing provisions of the bill with the following:

- a) The Department of Public Health shall convene a workgroup, no later than February 1, 2010, to consider and develop recommendations for state oversight and monitoring of ambulatory surgical centers, as defined in Section 1204 of the Health and Safety Code, to ensure public health and safety. The workgroup shall consider the implications of the 2007 Third District Court of Appeals ruling, *Capen v. Shewry*, (155 Cal. App. 4th 378), existing quality and accreditation standards, including federal conditions of participation for ambulatory surgical centers participating in the Medicare program, and the state of the art of ambulatory surgery centers within this state. The workgroup shall submit its conclusions and recommendations to the appropriate policy committees of the Legislature no later than July 1, 2010.
- b) The workgroup shall include representatives from all of the following:
 - 1) American Nurses Association of California;
 - 2) California Academy of Eye Physicians and Surgeons;
 - 3) California Ambulatory Surgical Association;
 - 4) California Dental Association;
 - 5) California Society of Dermatology and Dermatologic Surgery;
 - 6) California Medical Association;
 - 7) California Nurses Association;
 - 8) California Orthopedic Association;
 - 9) California Podiatric Medical Association;
 - 10) California Society of Anesthesiologists;
 - 11) California Society of Plastic Surgeons;
 - 12) Medical Board of California;
 - 13) Office of Statewide Health Planning and Development;
 - 14) Service Employees International Union;
 - 15) At least one advocacy organization that represents consumers; and,
 - 16) Other organizations with expertise in the licensing and operation of ASCs.
- c) The members of the workgroup shall serve without compensation.

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 832

Introduced by Assembly Member Jones

February 26, 2009

An act to amend Sections 1200, 1204, 1206, and 1248.1 of, and to add Sections 1204.6, *1204.65*, 1212.5, 1212.6, and 1212.7 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 832, as amended, Jones. Clinic licensing.

(1) Existing law establishes various programs for the prevention of disease and the promotion of the public health under the jurisdiction of the State Department of Public Health, including, but not limited to, provisions for the licensing, with certain exceptions, of clinics, as defined. A violation of these provisions is a crime.

This bill would exclude a place, establishment, or institution that solely provides immunizations, or screenings for blood pressure, cholesterol, or bone density, or a combination of those services, from the definition of "clinic" for these purposes.

(2) Existing law defines "surgical clinic" as a clinic that provides ambulatory surgical care and is not part of a hospital or is a place that is owned, leased, or operated as a clinic or office by one or more physicians or dentists.

This bill would ~~recast~~ revise that definition, would define "ambulatory surgical care" for this purpose, and would delete the exemption for a place that is owned, leased, or operated by one or more physicians or dentists. The bill would *also* require surgical clinics to be licensed regardless of physician ownership, but would exclude a doctor's office

or other place that ~~provides only prescribed~~ *does not provide ambulatory surgical care services and dental offices that provide only conscious sedation and not general sedation*, and would make conforming changes.

This bill would require any person seeking licensure as a surgical clinic to ~~provide documentation of satisfactory completion of prescribed structural building requirements~~ *meet specified standards*.

This bill would require a surgical clinic that was in operation prior to January 1, 2010, and that is required to become licensed as a result of the passage of the bill to submit a completed application and the required application fee no later than June 30, 2010, but would allow the surgical clinic to remain in operation until the department grants or denies a provisional license.

By changing the definition of an existing crime, this bill would impose a state-mandated local program.

This bill would declare the intent of the Legislature to subsequently appropriate funds to the department as a loan to support the licensing and certification program relating to surgical clinics.

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

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

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Outpatient Surgery Patient Safety and Improvement
3 Act.

4 SEC. 2. Section 1200 of the Health and Safety Code is amended
5 to read:

6 1200. As used in this chapter, "clinic" means an organized
7 outpatient health facility that provides direct medical, surgical,
8 dental, optometric, or podiatric advice, services, or treatment to
9 patients who remain less than 24 hours, and which may also
10 provide diagnostic or therapeutic services to patients in the home
11 as an incident to care provided at the clinic facility. Nothing in
12 this section shall be construed to prohibit the provision of nursing
13 services in a clinic licensed pursuant to this chapter. In no case

1 shall a clinic be deemed to be a health facility subject to the
2 provisions of Chapter 2 (commencing with Section 1250) of this
3 division. A place, establishment, or institution that solely provides
4 advice, counseling, information, or referrals on the maintenance
5 of health or on the means and measures to prevent or avoid
6 sickness, disease, or injury, where ~~such~~ the advice, counseling,
7 information, or referrals ~~does~~ do not constitute the practice of
8 medicine, surgery, dentistry, optometry, or podiatry, shall not be
9 deemed a clinic for purposes of this chapter. A place,
10 establishment, or institution that solely provides immunizations,
11 or screenings for blood pressure, cholesterol, or bone density, or
12 any combination of these services, shall not be deemed a clinic
13 for purposes of this chapter.

14 References in this chapter to "primary care clinics" shall mean
15 and designate all the types of clinics specified in subdivision (a)
16 of Section 1204, including community clinics and free clinics.
17 References in this chapter to specialty clinics shall mean and
18 designate all the types of clinics specified in subdivision (b) of
19 Section 1204, including surgical clinics, chronic dialysis clinics,
20 and rehabilitation clinics.

21 SEC. 3. Section 1204 of the Health and Safety Code is amended
22 to read:

23 1204. Clinics eligible for licensure pursuant to this chapter are
24 primary care clinics and specialty clinics.

25 (a) (1) Only the following defined classes of primary care
26 clinics shall be eligible for licensure:

27 (A) A "community clinic" means a clinic operated by a
28 tax-exempt nonprofit corporation that is supported and maintained
29 in whole or in part by donations, bequests, gifts, grants, government
30 funds or contributions, that may be in the form of money, goods,
31 or services. In a community clinic, any charges to the patient shall
32 be based on the patient's ability to pay, utilizing a sliding fee scale.
33 No corporation other than a nonprofit corporation, exempt from
34 federal income taxation under paragraph (3) of subsection (c) of
35 Section 501 of the Internal Revenue Code of 1954 as amended, or
36 a statutory successor thereof, shall operate a community clinic;
37 provided, that the licensee of any community clinic so licensed on
38 the effective date of this section shall not be required to obtain
39 tax-exempt status under either federal or state law in order to be

1 eligible for, or as a condition of, renewal of its license. No natural
2 person or persons shall operate a community clinic.

3 (B) A "free clinic" means a clinic operated by a tax-exempt,
4 nonprofit corporation supported in whole or in part by voluntary
5 donations, bequests, gifts, grants, government funds or
6 contributions, that may be in the form of money, goods, or services.
7 In a free clinic there shall be no charges directly to the patient for
8 services rendered or for drugs, medicines, appliances, or
9 apparatuses furnished. No corporation other than a nonprofit
10 corporation exempt from federal income taxation under paragraph
11 (3) of subsection (c) of Section 501 of the Internal Revenue Code
12 of 1954 as amended, or a statutory successor thereof, shall operate
13 a free clinic; provided, that the licensee of any free clinic so
14 licensed on the effective date of this section shall not be required
15 to obtain tax-exempt status under either federal or state law in
16 order to be eligible for, or as a condition of, renewal of its license.
17 No natural person or persons shall operate a free clinic.

18 (2) Nothing in this subdivision shall prohibit a community clinic
19 or a free clinic from providing services to patients whose services
20 are reimbursed by third-party payers, or from entering into
21 managed care contracts for services provided to private or public
22 health plan subscribers, as long as the clinic meets the requirements
23 identified in subparagraphs (A) and (B). For purposes of this
24 subdivision, any payments made to a community clinic by a
25 third-party payer, including, but not limited to, a health care service
26 plan, shall not constitute a charge to the patient. This paragraph is
27 a clarification of existing law.

28 (b) The following types of specialty clinics shall be eligible for
29 licensure as specialty clinics pursuant to this chapter:

30 (1) A "surgical clinic" means a clinic that is not part of a hospital
31 or a primary care clinic that is either licensed pursuant to this
32 section, or exempt pursuant to subdivision (b) of Section 1206,
33 and that provides ambulatory surgical care as defined in Section
34 1204.6 for patients who remain less than 24 hours. Surgical clinics
35 shall be subject to licensure by the department regardless of
36 physician ownership.

37 (2) A "chronic dialysis clinic" means a clinic that provides less
38 than 24-hour care for the treatment of patients with end-stage renal
39 disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

(c) In accordance with subdivision (d) of Section 1248.1, licensure as a surgical clinic shall satisfy the requirements of Chapter 1.3 (commencing with Section 1248).

SEC. 4. Section 1204.6 is added to the Health and Safety Code, to read:

1204.6. (a) "Ambulatory surgical care" for purposes of licensure as a surgical clinic, means the incision, partial or complete excision, destruction, resection, or other structural alteration of human tissue by any means except any of the following:

(1) Minor skin repair procedures, including, but not limited to, any of the following:

(A) Repair of minor lacerations.

(B) Excision of moles, warts, or other minor skin lesions.

(C) Incision and drainage of superficial abscesses.

(2) Procedures using only local anesthesia, topical anesthesia, or no anesthesia.

(3) Procedures not using general anesthesia or conscious sedation.

(b) "General anesthesia" for purposes of licensure as a surgical clinic, means a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

(c) "Conscious sedation" for purposes of licensure as a surgical clinic, means a minimally depressed level of consciousness produced by a pharmacologic or nonpharmacologic method, or a combination thereof, that retains the patient's ability to maintain independently and continuously an airway, and respond

1 appropriately to physical stimulation or verbal command.
2 Conscious sedation does not include the administration of oral
3 medications or the administration of a mixture of nitrous oxide
4 and oxygen, whether administered alone or in combination with
5 each other.

6 (d) A doctor's office or other place, establishment, or institution
7 ~~that provides no surgical services~~ *does not provide ambulatory*
8 *surgical care, as defined in subdivision (a), other than those the*
9 *exceptions described in paragraphs (1), (2), and (3) of subdivision*
10 *(a), shall not be required to obtain licensure as a surgical clinic.*

11 (e) *A dental office or other place, establishment, or institution*
12 *that does not use general anesthesia but does use conscious*
13 *sedation, with a permit issued pursuant to Article 2.8 (commencing*
14 *with Section 1647) of Chapter 4 of Division 2 of the Business and*
15 *Professions Code, shall not be required to obtain licensure as a*
16 *surgical clinic.*

17 SEC. 5. Section 1204.65 is added to the Health and Safety
18 Code, to read:

19 1204.65. *A surgical clinic that was in operation prior to*
20 *January 1, 2010, and is required to become licensed due to the*
21 *enactment of Section 1204.6 and the amendments to Section 1206,*
22 *as contained in the act adding this section, shall submit a*
23 *completed application for licensure as a surgical clinic,*
24 *accompanied by the required application fee, not later than June*
25 *30, 2010, but may continue to operate as a surgical clinic until*
26 *the department conducts a licensing visit and grants or denies a*
27 *provisional license pursuant to Sections 1219 or 1219.1. A surgical*
28 *clinic that is denied a license shall cease operating immediately*
29 *upon receipt of the denial.*

30 ~~SEC. 5.~~

31 SEC. 6. Section 1206 of the Health and Safety Code is amended
32 to read:

33 1206. The requirement of licensure and other requirements of
34 this chapter do not apply to any of the following:

35 (a) Any place or establishment owned or leased and operated
36 as a clinic or office by one or more licensed health care
37 practitioners and used by the practitioner as an office for the
38 practice of his or her profession, within the scope of his or her
39 license in any lawful form of organization, ~~so long as each licensed~~
40 ~~health care practitioner who practices at the clinic has some~~

~~ownership or leasehold interest in, and some degree of control over and responsibility for, the operation of the clinic, regardless of the unless the clinic or office is providing ambulatory surgical services, as defined in subdivision (a) of Section 1204.6, other than the exceptions described in paragraphs (1), (2), and (3) of subdivision (a) of Section 1204.6, regardless of the name used publicly to identify the place or establishment. The exemption pursuant to this subdivision shall not apply to either of the following:~~

(1) Any surgical clinic as described in paragraph (1) of subdivision (b) of Section 1204, regardless of any health care practitioner ownership interest in the clinic.

(2) Any chronic dialysis clinic as described in paragraph (2) of subdivision (b) of Section 1204.

(b) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 that is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations that utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, that is located on land recognized as tribal land by the federal government.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning that teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art. The exemption

1 pursuant to this subdivision shall not apply to any surgical clinic
2 as described in paragraph (1) of subdivision (b) of Section 1204.

3 (h) A clinic that is operated by a primary care community or
4 free clinic and that is operated on separate premises from the
5 licensed clinic and is only open for limited services of no more
6 than 20 hours a week. An intermittent clinic as described in this
7 subdivision shall, however, meet all other requirements of law,
8 including administrative regulations and requirements, pertaining
9 to fire and life safety.

10 (i) The offices of physicians in group practice who provide a
11 preponderance of their services to members of a comprehensive
12 group practice prepayment health care service plan subject to
13 Chapter 2.2 (commencing with Section 1340).

14 (j) Student health centers operated by public institutions of
15 higher education.

16 (k) Nonprofit speech and hearing centers, as defined in Section
17 1201.5. Any nonprofit speech and hearing clinic desiring an
18 exemption under this subdivision shall make application therefor
19 to the director, who shall grant the exemption to any facility
20 meeting the criteria of Section 1201.5. Notwithstanding the
21 licensure exemption contained in this subdivision, a nonprofit
22 speech and hearing center shall be deemed to be an organized
23 outpatient clinic for purposes of qualifying for reimbursement as
24 a rehabilitation center under the Medi-Cal Act (Chapter 7
25 (commencing with Section 14000) of Part 3 of Division 9 of the
26 Welfare and Institutions Code).

27 (l) A clinic operated by a nonprofit corporation exempt from
28 federal income taxation under paragraph (3) of subsection (c) of
29 Section 501 of the Internal Revenue Code of 1954, as amended,
30 or a statutory successor thereof, that conducts medical research
31 and health education and provides health care to its patients through
32 a group of 40 or more physicians and surgeons, who are
33 independent contractors representing not less than 10
34 board-certified specialties, and not less than two-thirds of whom
35 practice on a full-time basis at the clinic.

36 (m) Any clinic, limited to in vivo diagnostic services by
37 magnetic resonance imaging functions or radiological services
38 under the direct and immediate supervision of a physician and
39 surgeon who is licensed to practice in California. This shall not

1 be construed to permit cardiac catheterization or any treatment
2 modality in these clinics.

3 (n) A clinic operated by an employer or jointly by two or more
4 employers for their employees only, or by a group of employees,
5 or jointly by employees and employers, without profit to the
6 operators thereof or to any other person, for the prevention and
7 treatment of accidental injuries to, and the care of the health of,
8 the employees comprising the group.

9 (o) A community mental health center, as defined in Section
10 5601.5 of the Welfare and Institutions Code.

11 (p) (1) A clinic operated by a nonprofit corporation exempt
12 from federal income taxation under paragraph (3) of subsection
13 (c) of Section 501 of the Internal Revenue Code of 1954, as
14 amended, or a statutory successor thereof, as an entity organized
15 and operated exclusively for scientific and charitable purposes and
16 that satisfied all of the following requirements on or before January
17 1, 2005:

18 (A) Commenced conducting medical research on or before
19 January 1, 1982, and continues to conduct medical research.

20 (B) Conducted research in, among other areas, prostatic cancer,
21 cardiovascular disease, electronic neural prosthetic devices,
22 biological effects and medical uses of lasers, and human magnetic
23 resonance imaging and spectroscopy.

24 (C) Sponsored publication of at least 200 medical research
25 articles in peer-reviewed publications.

26 (D) Received grants and contracts from the National Institutes
27 of Health.

28 (E) Held and licensed patents on medical technology.

29 (F) Received charitable contributions and bequests totaling at
30 least five million dollars (\$5,000,000).

31 (G) Provides health care services to patients only:

32 (i) In conjunction with research being conducted on procedures
33 or applications not approved or only partially approved for payment
34 (I) under the Medicare program pursuant to Section 1359y(a)(1)(A)
35 of Title 42 of the United States Code, or (II) by a health care service
36 plan registered under Chapter 2.2 (commencing with Section 1340),
37 or a disability insurer regulated under Chapter 1 (commencing
38 with Section 10110) of Part 2 of Division 2 of the Insurance Code;
39 provided that services may be provided by the clinic for an
40 additional period of up to three years following the approvals, but

1 only to the extent necessary to maintain clinical expertise in the
2 procedure or application for purposes of actively providing training
3 in the procedure or application for physicians and surgeons
4 unrelated to the clinic.

5 (ii) Through physicians and surgeons who, in the aggregate,
6 devote no more than 30 percent of their professional time for the
7 entity operating the clinic, on an annual basis, to direct patient care
8 activities for which charges for professional services are paid.

9 (H) Makes available to the public the general results of its
10 research activities on at least an annual basis, subject to good faith
11 protection of proprietary rights in its intellectual property.

12 (I) Is a freestanding clinic, whose operations under this
13 subdivision are not conducted in conjunction with any affiliated
14 or associated health clinic or facility defined under this division,
15 except a clinic exempt from licensure under subdivision (m). For
16 purposes of this subparagraph, a freestanding clinic is defined as
17 "affiliated" only if it directly, or indirectly through one or more
18 intermediaries, controls, or is controlled by, or is under common
19 control with, a clinic or health facility defined under this division,
20 except a clinic exempt from licensure under subdivision (m). For
21 purposes of this subparagraph, a freestanding clinic is defined as
22 "associated" only if more than 20 percent of the directors or trustees
23 of the clinic are also the directors or trustees of any individual
24 clinic or health facility defined under this division, except a clinic
25 exempt from licensure under subdivision (m). Any activity by a
26 clinic under this subdivision in connection with an affiliated or
27 associated entity shall fully comply with the requirements of this
28 subdivision. This subparagraph shall not apply to agreements
29 between a clinic and any entity for purposes of coordinating
30 medical research.

31 (2) By January 1, 2007, and every five years thereafter, the
32 Legislature shall receive a report from each clinic meeting the
33 criteria of this subdivision and any other interested party
34 concerning the operation of the clinic's activities. The report shall
35 include, but not be limited to, an evaluation of how the clinic
36 impacted competition in the relevant health care market, and a
37 detailed description of the clinic's research results and the level
38 of acceptance by the payer community of the procedures performed
39 at the clinic. The report shall also include a description of
40 procedures performed both in clinics governed by this subdivision

1 and those performed in other settings. The cost of preparing the
2 reports shall be borne by the clinics that are required to submit
3 them to the Legislature pursuant to this paragraph.

4 ~~SEC. 6.~~

5 ~~SEC. 7.~~ Section 1212.5 is added to the Health and Safety Code,
6 to read:

7 ~~1212.5. (a) Commencing January 1, 2010, in addition to other~~
8 ~~licensing requirements of this chapter, any person, firm,~~
9 ~~association, partnership, or corporation seeking a license for a~~
10 ~~surgical clinic shall provide the department with documentation~~
11 ~~of satisfactory completion of the structural and building~~
12 ~~requirements set forth in Section 1226 of Title 24 of the California~~
13 ~~Code of Regulations, or compliance with the 2000 Medicare Life~~
14 ~~and Safety Code requirements.~~

15 ~~(b)~~

16 ~~1212.5. (a)~~ Commencing January 1, 2010, a surgical clinic
17 shall also meet all of the following standards:

18 ~~(1) Only those patients who have given full informed consent~~
19 ~~about the inherent risks of receiving surgery in facilities with~~
20 ~~limited post surgical rescue potential that would be available in a~~
21 ~~general acute care hospital shall receive services in the surgical~~
22 ~~clinic.~~

23 ~~(2)~~

24 ~~(1)~~ Comply with the conditions of coverage as set forth in
25 Subpart C of Part 416 of Title 42 of the Code of Federal
26 Regulations, as those conditions exist on January 1, 2008. The
27 conditions of coverage shall be conditions of providing services
28 regardless of the source of payment for those services.

29 ~~(3)~~

30 ~~(2)~~ Limit surgical procedures to those that comply with all of
31 the following:

32 (A) Do not require the presence of more than one surgeon during
33 the procedure.

34 (B) Are not expected to require a blood transfusion.

35 (C) Are not expected to require major or prolonged invasion of
36 body cavities.

37 (D) Are not expected to involve major blood vessels.

38 (E) Are not inherently life threatening.

39 (F) Are not emergency surgeries.

40 (G) Are not experimental surgeries.

1 ~~(4)~~

2 (3) A preanesthesia evaluation, including an ASA Physical
3 Status Classification, shall be completed on all surgical anesthesia
4 patients. Surgical procedures shall not be performed on a patient
5 with severe systemic disease that is a constant threat to life (ASA
6 Classification 4) or on a moribund patient who is not expected to
7 survive for 24 hours without the operation (ASA Classification
8 5). A patient with severe systemic disease (ASA Classification 3)
9 shall have a presurgical consultation with a physician specialist
10 appropriate for the patient's severe systemic disease in order to
11 obtain medical clearance for surgery.

12 ~~(5)~~

13 (4) Establish and implement policies and procedures compliant
14 with the conditions of coverage. The policies and procedures shall
15 comply with both of the following:

16 (A) The policies and procedures shall include, but need not be
17 limited to, all of the following:

18 (i) Surgical services, as provided by physicians, ~~dentists~~, or
19 podiatrists.

20 (ii) Anesthesia services.

21 (iii) Nursing services.

22 (iv) Evaluation of quality assessment and performance
23 improvement.

24 (v) Infection control.

25 (vi) Pharmaceutical services.

26 (vii) Laboratory and radiology services.

27 (viii) Housekeeping services, including provisions for
28 maintenance of a safe, clean environment.

29 (ix) Patient health records, including provisions that shall be
30 developed with the assistance of a person skilled in record
31 maintenance and preservation.

32 (x) Personnel policies and procedures.

33 (B) The policies and procedures shall provide for appropriate
34 staffing ratios for all care provided to patients receiving general
35 anesthesia in compliance with both of the following:

36 (i) In each surgical room there shall be at least one registered
37 nurse assigned to the duties of the circulating nurse and a minimum
38 of one additional person serving as scrub assistant for each
39 patient-occupied operating room. The scrub assistant may be a
40 licensed nurse, an operating room technician, or other person who

1 has demonstrated current competence to the clinic as a scrub
2 assistant, but shall not be a physician or other licensed health
3 professional who is assisting in the performance of surgery.

4 (ii) The licensed nurse-to-patient ratio in a postanesthesia
5 recovery unit of the anesthesia service shall be one-to-two or fewer
6 at all times, regardless of the type of general anesthesia the patient
7 receives.

8 (b) *A clinic licensed pursuant to this section shall be subject to*
9 *the requirements of Section 1280.15.*

10 ~~SEC. 7.~~

11 SEC. 8. Section 1212.6 is added to the Health and Safety Code,
12 to read:

13 1212.6. Every clinic for which a license has been issued under
14 Section 1212.5 shall be subject to the reporting requirements
15 contained in Section 1279.1 and the penalties imposed under
16 Sections 1280.1, 1280.3, and 1280.4.

17 ~~SEC. 8.~~

18 SEC. 9. Section 1212.7 is added to the Health and Safety Code,
19 to read:

20 1212.7. It is the intent of the Legislature to provide funding
21 through an appropriation in the Budget Act or other measure to
22 the State Department of Public Health, for a loan for the support
23 the operations of the Licensing and Certification Program for
24 activities authorized by this chapter relating to the licensure of
25 surgical clinics. The loan shall be repaid with proceeds from fees
26 collected pursuant to Section 1266. *The department shall implement*
27 *the provisions of this chapter relating to the licensure of surgical*
28 *clinics to the extent resources are provided.*

29 ~~SEC. 9.~~

30 SEC. 10. Section 1248.1 of the Health and Safety Code is
31 amended to read:

32 1248.1. No association, corporation, firm, partnership, or person
33 shall operate, manage, conduct, or maintain an outpatient setting
34 in this state, unless the setting is one of the following:

35 (a) An ambulatory surgical center that is certified to participate
36 in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395
37 et seq.) of the federal Social Security Act.

38 (b) ~~Any~~ A clinic conducted, maintained, or operated by a
39 federally recognized Indian tribe or tribal organization, as defined

1 in Section 450 or 1601 of Title 25 of the United States Code, and
2 located on land recognized as tribal land by the federal government.

3 (c) ~~Any~~ A clinic directly conducted, maintained, or operated by
4 the United States or by any of its departments, officers, or agencies.

5 (d) ~~Any~~ A primary care clinic licensed under subdivision (a)
6 and ~~any~~ a surgical clinic licensed under subdivision (b) of Section
7 1204.

8 (e) ~~Any~~ A health facility licensed as a general acute care hospital
9 under Chapter 2 (commencing with Section 1250).

10 (f) ~~Any~~ An outpatient setting to the extent that it is used by a
11 dentist or physician and surgeon in compliance with Article 2.7
12 (commencing with Section 1646) or Article 2.8 (commencing with
13 Section 1647) of Chapter 4 of Division 2 of the Business and
14 Professions Code.

15 (g) An outpatient setting accredited by an accreditation agency
16 approved by the division pursuant to this chapter.

17 (h) A setting, including, but not limited to, a mobile van, in
18 which equipment is used to treat patients admitted to a facility
19 described in subdivision (a), (d), or (e), and in which the procedures
20 performed are staffed by the medical staff of, or other healthcare
21 practitioners with clinical privileges at, the facility and are subject
22 to the peer review process of the facility but which setting is not
23 a part of a facility described in subdivision (a), (d), or (e).

24 Nothing in this section shall relieve an association, corporation,
25 firm, partnership, or person from complying with all other
26 provisions of law that are otherwise applicable, including, but not
27 limited to, licensure as a primary care or specialty clinic as set
28 forth in Chapter 1 (commencing with Section 1200) of Division
29 2 of the Health and Safety Code. Surgical clinics shall be subject
30 to licensure regardless of any physician ownership interest.

31 ~~SEC. 10.~~

32 *SEC. 11.* No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O

AB 834

AB 834

Health Care Practitioners: Peer Review

To be presented at the Board Meeting

AB 933

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

STATUS OF BILL:

This bill is in the Assembly Insurance Committee and is set for hearing on May 6, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

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

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

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

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

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Support

April 24, 2009

ASSEMBLY BILL

No. 933

Introduced by Assembly Member Fong

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

3209.3. (a) "Physician"—~~includes~~ *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 ~~licensed~~ 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 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AB 977

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 977
Author: Skinner
Bill Date: April 23, 2009, amended
Subject: Pharmacists: protocols with physicians
Sponsor: Pharmacy Board

STATUS OF BILL:

This bill is in the Assembly Business and Professions Committee and is set for hearing on May 5, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would request the California Pharmacists Association to provide information to specified legislative committees on the status of immunization protocols between independent pharmacists and physicians.

ANALYSIS:

This bill, in its prior form, permitted pharmacists to administer flu and pneumonia vaccines to people over the age of seven years and administer epinephrine by injection for severe allergic reactions. There was considerable opposition but the sponsor reiterated the difficulties in the establishment of protocols between physicians and pharmacists. In order to substantiate these concerns, this bill had been amended to require submission of documentation on this issue. The original concept may be reconsidered if the documentation demonstrates the need.

This bill would request that the California Pharmacists Association provide information to the chairpersons of the Assembly Business and Professions Committee and the Assembly Health Committee, and the Senate Business, Professions and Economic Development Committee and the Senate Health Committee on the status of immunization protocols between independent pharmacists and physicians.

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Watch

April 26, 2009

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 amend Section 4052 of, and to add Section 4052.8 to, the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists by the California State Board of Pharmacy.

This bill would request the California Pharmacists Association to provide information to specified legislative committees on the status of immunization protocols between independent pharmacists and physicians.

~~Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists by the Board of Pharmacy in the Department of Consumer Affairs. 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 would additionally authorize a pharmacist to initiate and administer influenza and pneumococcal immunizations to any person 7 years of age or older. 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 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 an immunization, to provide the patient with a Vaccine Information Statement and to provide the patient's physician with documentation of administration of the immunization. The bill would also require a pharmacist administering an immunization to maintain a specified immunization administration record, provide documentation of administration to the California Immunization Registry, report any adverse event and assure proper storage and handling of vaccines. The bill would authorize a pharmacist initiating and administering vaccines to initiate and administer epinephrine for severe allergic reactions. The bill would also require a pharmacist to obtain the consent of a parent or guardian before administering any immunization to a patient under 18 years of age.

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

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

1 SECTION 1. The California Pharmacists Association is hereby
2 requested to provide information to the respective chairpersons
3 of the Committees on Business and Professions and Health of the
4 Assembly and of the Committees on Business, Professions and
5 Economic Development and Health of the Senate on the status of
6 immunization protocols between independent pharmacists and
7 physicians.

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

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

4 (b) ~~The National Vital Statistics Report published by HHS~~
5 ~~reports that influenza and pneumonia combined are the eighth~~
6 ~~leading cause of death in people of all ages, and the sixth leading~~
7 ~~cause of death in people over 65 years of age.~~

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

11 (d) ~~According to the California Health Care Foundation,~~
12 ~~6,600,000 Californians are uninsured and may not have access to~~
13 ~~immunizations.~~

14 (e) ~~Pharmacists represent the third largest health professional~~
15 ~~group in the United States and are on the front line of preventative~~
16 ~~care.~~

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

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

24 ~~SEC. 2. Section 4052 of the Business and Professions Code is~~
25 ~~amended to read:~~

26 ~~4052. (a) Notwithstanding any other provision of law, a~~
27 ~~pharmacist may:~~

28 (1) ~~Furnish a reasonable quantity of compounded drug product~~
29 ~~to a prescriber for office use by the prescriber.~~

30 (2) ~~Transmit a valid prescription to another pharmacist.~~

31 (3) ~~Administer, orally or topically, drugs and biologicals~~
32 ~~pursuant to a prescriber's order.~~

33 (4) ~~Perform procedures or functions in a licensed health care~~
34 ~~facility as authorized by Section 4052.1.~~

35 (5) ~~Perform procedures or functions as part of the care provided~~
36 ~~by a health care facility, a licensed home health agency, a licensed~~
37 ~~clinic in which there is a physician oversight, a provider who~~
38 ~~contracts with a licensed health care service plan with regard to~~
39 ~~the care or services provided to the enrollees of that health care~~
40 ~~service plan, or a physician, as authorized by Section 4052.2.~~

1 ~~(6) Manufacture, measure, fit to the patient, or sell and repair~~
2 ~~dangerous devices or furnish instructions to the patient or the~~
3 ~~patient's representative concerning the use of those devices.~~

4 ~~(7) Provide consultation to patients and professional information,~~
5 ~~including clinical or pharmacological information, advice, or~~
6 ~~consultation to other health care professionals.~~

7 ~~(8) Furnish emergency contraception drug therapy as authorized~~
8 ~~by Section 4052.3.~~

9 ~~(9) Administer or initiate and administer immunizations pursuant~~
10 ~~to Section 4052.8.~~

11 ~~(b) A pharmacist who is authorized to issue an order to initiate~~
12 ~~or adjust a controlled substance therapy pursuant to this section~~
13 ~~shall personally register with the federal Drug Enforcement~~
14 ~~Administration.~~

15 ~~(c) Nothing in this section shall affect the requirements of~~
16 ~~existing law relating to maintaining the confidentiality of medical~~
17 ~~records.~~

18 ~~(d) Nothing in this section shall affect the requirements of~~
19 ~~existing law relating to the licensing of a health care facility.~~

20 ~~SEC. 3. Section 4052.8 is added to the Business and Professions~~
21 ~~Code, to read:~~

22 ~~4052.8. (a) A pharmacist may do either of the following:~~

23 ~~(1) Administer any immunization pursuant to a protocol with a~~
24 ~~prescriber.~~

25 ~~(2) Initiate and administer influenza or pneumococcal~~
26 ~~immunizations to any person seven years of age or older.~~

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

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

38 ~~(2) If a pharmacist fails to satisfy this requirement, he or she~~
39 ~~shall, in addition to any other applicable disciplinary action, retake~~
40 ~~the training identified in subdivision (b) and also complete the~~

1 ~~three hours of immunization-related continuing education~~
2 ~~coursework described in paragraph (1) prior to initiating and~~
3 ~~administering any further immunizations.~~

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

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

10 ~~(e) A pharmacist shall obtain the consent of a parent or guardian~~
11 ~~before administering an immunization to a patient under 18 years~~
12 ~~of age.~~

13 ~~(f) At the time of administration of an immunization, the~~
14 ~~pharmacist shall do all of the following:~~

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

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

22 ~~(3) Provide documentation of administration of the~~
23 ~~immunization to the California Immunization Registry (CAIR).~~

24 ~~(g) The pharmacist shall maintain an immunization~~
25 ~~administration record, which shall include, but not be limited to,~~
26 ~~the name of the vaccine, the expiration date, the date of~~
27 ~~administration, the manufacturer and lot number, the administration~~
28 ~~site and route, the Vaccine Information Statement date, and the~~
29 ~~name and title of the person administering, for the longer of the~~
30 ~~following periods:~~

31 ~~(1) Ten years from the date of administration.~~

32 ~~(2) If the patient is younger than 18 years of age at the time of~~
33 ~~administration, three years beyond the patient's 18th birthday.~~

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

37 ~~(i) Any adverse event shall be reported to the Vaccine Adverse~~
38 ~~Event Reporting System within the U.S. Department of Health~~
39 ~~and Human Services.~~

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

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

AB 1070

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1070
Author: Hill
Bill Date: April 22, 2009, amended
Subject: Enforcement Enhancements: reporting, public reprimand
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

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

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

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

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

ANALYSIS:

Amends Business and Professions Code section 801.01:

1. Finds and declares the importance of the required reporting under this section for public protection and clarifies the interpretation of the reporting requirements. This is necessary because there are entities that are not reporting, either due to finding ways around it or misinterpreting the law. The Board cannot effectively protect consumers if reporting is not consistent and enforced.

2. Specifies that the University of California is included in the definition of “state governmental agency.” This is a technical amendment to make clear that all state and local hospitals are considered state agencies and are bound by the same reporting requirements.
3. Removes section (e) due to the changes made in (f) rendering (e) duplicative.
4. Requires not only physicians, but the entities with which the physicians are affiliated to send a copy of any report filed to the claimant or his or her counsel. Current law states that the physician is required to send a copy of the report to the claimant. The word ‘entity’ is being added to cover a broader spectrum of individuals who may be reporting. This allows for the burden to be shared by all involved, rather than just the physician.
5. Puts the responsibility for any failure to comply with the reporting requirements on all parties, not just the physician. If an entity, rather than an individual physician, is responsible for making the decision in a case, that entity is responsible for the reporting. However, if the physician is not affiliated with a larger entity, the burden of reporting would be on the physician. Additionally, the fines for failing to comply are increased to not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000).
6. Adds that a copy of a judgment must be submitted to the Board to be consistent with the requirement for a copy of an arbitration award.
7. Requires that any entity providing a report to a licensing Board must also notify the licensee that such report is being filed with that Board.

Adds Business and Professions Code section 804.5:

1. Recognizes that various entities are implementing risk management programs in the interest of early intervention to address known complications and other unanticipated events. Prohibits these programs from including provisions that prohibit patients from contacting or cooperating with the Board or from filing or withdrawing a complaint.

Amends Business and Professions Code section 2008:

1. Allows the Board President to sit on a disciplinary panel when the Board does not have a full complement of members. Currently, the Board President is not permitted to sit on a panel. When the Board does not have enough members to fill both panels, usually due to term expirations, it is often the case that Board members must serve on two disciplinary panels at the same time in order to

have a quorum with which to take action. Allowing the Board President to sit on a panel would expedite the process of decision making and reduce the workload for the members who are sitting on more than one panel.

Amends Business and Professions Code section 2225.5:

1. Requires all medical records requested by the Board to be certified. When the Board requests medical records upon initial complaint, certified records are requested but not always provided. The initial review can be performed without certified records, however, if the complaint goes to investigation, the Board will need certified medical records. Currently, the Board often has to request medical records more than once, which prolongs the process of investigation. Requiring the requested medical records to be certified would expedite the process of review and investigation of complaints. The board has a form that can be filled out to certify the records and the provider of the records can ask the board to send its copy service thus reducing the cost to the physician or entity. (form attached)
2. Puts a cap of ten thousand dollars (\$10,000) on the penalty that can be assessed a physician for not complying with the Board's request for medical records. Currently the penalty is one thousand dollars (\$1,000) a day for not complying with the request for medical records. This cap is the same as what is in current law for hospitals.
3. Defines certified medical records as a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the board.

Amends Business and Professions Code section 2227:

1. Allows an administrative law judge to recommend the issuance of a public reprimand that includes additional education and training in a proposed decision. Currently, when the Board feels the appropriate level of discipline for a physician is a public letter of reprimand with required training or education, prior to the filing of an Accusation, the Board may issue the physician a public letter of reprimand that includes the additional education or training requirements. However, if the Board has filed an accusation against a physician and the accusation is heard by an administrative law judge, the law does not allow the administrative law judge to recommend a public reprimand to be issued to the physician with a training or education requirement.

Amends Business and Professions Code section 2425.3:

1. Specifies that licensees must report to the Board information regarding any specialty board certifications he or she holds that is issued by a member of the American Board of Medical Specialties or approved by the Board, his or her practice status, and may report his or her cultural background and foreign language proficiency both at the time of renewal and at upon initial licensure. Current law states that a physician must report the required information to the Board at renewal, but does not specify that the physician report the required information to the Board at the time of initial licensure.

FISCAL: None to the Board

POSITION: Sponsor/ Support

April 24, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009
AMENDED IN ASSEMBLY MARCH 31, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1070

Introduced by Assembly Member Hill

February 27, 2009

An act to amend Sections 801.01, 2008, 2225.5, 2227, and 2425.3 of, *and to add Section 804.5 to*, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as amended, Hill. Healing arts.

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

This bill would specify that ~~those reports must be sent whether or not the licensee was a named party in the underlying claim or action and would limit reports regarding claims or actions to those based on the licensee's alleged negligence, error, or omission in practice in California.~~ The bill would also specify that the reporting requirements apply to the University of California, as specified.

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

This bill would require any entity or person ~~obligated~~ *required* to make a report to send a copy of the report to the claimant or his or her counsel. *The bill would also require an entity that makes a report to notify the licensee within 15 days of the filing of the report.*

The bill would also make a failure to comply with any of the reporting requirements an infraction punishable by a specified fine. By expanding the scope of a crime, the bill would impose a state-mandated local program.

~~Existing law requires these reports to include certain information, including the name and address of every physician and surgeon or podiatrist who was alleged to have acted improperly.~~

~~This bill would require the reports to include that information with respect to every physician and surgeon or podiatrist who participated in the care or professional services provided to the patient.~~

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

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

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

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

(2)

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

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

(3)

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

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

(4)

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

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

(5)

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

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

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

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

~~The bill would also require a licensed physician and surgeon to report to the board, at the time of license renewal, if any civil action has been~~

~~filed or criminal conviction has occurred, as specified, since his or her last renewal or initial licensure, as specified.~~

~~(6)~~

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

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

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

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

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

3 801.01. The Legislature finds and declares that the filing of
4 reports with the applicable state agencies required under this
5 section is essential for the protection of the public. It is the intent
6 of the Legislature that the reporting requirements set forth in this
7 section be interpreted broadly in order to expand reporting
8 obligations.

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

13 (1) A settlement over thirty thousand dollars (\$30,000) or
14 arbitration award of any amount or a civil judgment of any amount,
15 whether or not vacated by a settlement after entry of the judgment,
16 that was not reversed on appeal, of a claim or action for damages
17 for death or personal injury caused by the licensee's alleged
18 negligence, error, or omission in practice in California, or by his
19 or her rendering of unauthorized professional services, ~~whether or~~
20 ~~not the licensee was a named party in the claim or action.~~

21 (2) A settlement over thirty thousand dollars (\$30,000) ~~of a~~
22 ~~claim or action, whether or not the licensee was a named party in~~
23 ~~the claim or action,~~ if the settlement is based on the licensee's
24 alleged negligence, error, or omission in practice in California, or
25 on the licensee's rendering of unauthorized professional services,
26 and a party to the settlement is a corporation, medical group,

1 partnership, or other corporate entity in which the licensee has an
2 ownership interest or that employs or contracts with the licensee.

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

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

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

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

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

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

32 ~~(e) If an insurer is required under subdivision (b) to send the~~
33 ~~report, the insurer shall notify the claimant, or if the claimant is~~
34 ~~represented by counsel, the claimant's counsel, that the insurer~~
35 ~~has sent the report to the Medical Board of California, the~~
36 ~~Osteopathic Medical Board of California, or the California Board~~
37 ~~of Podiatric Medicine. If the claimant, or his or her counsel, has~~
38 ~~not received this notice within 45 days after the settlement was~~
39 ~~reduced to writing and signed by all of the parties or the arbitration~~
40 ~~award was served on the parties or the date of entry of the civil~~

1 judgment, the claimant or the claimant's counsel shall make the
2 report to the appropriate board.

3 ~~(f)~~

4 (e) The entity, person, or licensee ~~obligated~~ required to report
5 under subdivision (b) shall send a copy of the report to the claimant
6 or to his or her counsel if he or she is represented by counsel. If
7 the claimant or his or her counsel has not received a copy of the
8 report within 45 days after the settlement was reduced to writing
9 and signed by all of the parties or the arbitration award was served
10 on the parties or the date of entry of the civil judgment, the claimant
11 or the claimant's counsel shall make the report to the appropriate
12 board.

13 ~~(g)~~

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

17 ~~(h)~~

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

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

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

27 (B) The name and last known business and residential address
28 of every licensee who ~~participated in the care or professional~~
29 ~~services provided to the patient~~ *was alleged to have acted*
30 *improperly*, whether or not that person was a named defendant in
31 the action and whether or not that person was required to pay any
32 damages pursuant to the settlement, arbitration award, or judgment.

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

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

39 (E) A description or summary of the facts of each claim, charge,
40 or allegation, including the date of occurrence, ~~each and the~~

1 licensee's role in the care or professional services provided to the
2 patient with respect to those services at issue in the claim, ~~charge,~~
3 ~~or allegation, and a list of the dates of treatment rendered by each~~
4 ~~licensee or action.~~

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

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

16 (H) The specialty or subspecialty of the licensee who
17 ~~participated in the care or professional services provided to the~~
18 ~~patient.~~ *was the subject of the claim or action.*

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

22 (3) Every professional liability insurer, self-insured
23 governmental agency, or licensee or his or her counsel that makes
24 a report under this section and has received a copy of any written
25 or electronic patient medical or hospital records prepared by the
26 treating physician and surgeon or podiatrist, or the staff of the
27 treating physician and surgeon, podiatrist, or hospital, describing
28 the medical condition, history, care, or treatment of the person
29 whose death or injury is the subject of the report, or a copy of any
30 deposition in the matter that discusses the care, treatment, or
31 medical condition of the person, shall include with the report,
32 copies of the records and depositions, subject to reasonable costs
33 to be paid by the Medical Board of California, the Osteopathic
34 Medical Board of California, or the California Board of Podiatric
35 Medicine. If confidentiality is required by court order and, as a
36 result, the reporter is unable to provide the records and depositions,
37 documentation to that effect shall accompany the original report.
38 The applicable board may, upon prior notification of the parties
39 to the action, petition the appropriate court for modification of any
40 protective order to permit disclosure to the board. A professional

1 liability insurer, self-insured governmental agency, or licensee or
2 his or her counsel shall maintain the records and depositions
3 referred to in this paragraph for at least one year from the date of
4 filing of the report required by this section.

5 (†)

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

12 (†)

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

18 (j) *Any entity that makes a report pursuant to this section shall,*
19 *within 15 days after filing the report, notify the licensee that the*
20 *report was filed with the appropriate licensing board.*

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

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

26 *804.5. The Legislature recognizes that various types of entities*
27 *are creating, implementing, and maintaining patient safety and*
28 *risk management programs that encourage early intervention in*
29 *order to address known complications and other unanticipated*
30 *events requiring medical care. The Legislature recognizes that*
31 *some entities even provide financial assistance to individual*
32 *patients to help them address these unforeseen health care*
33 *concerns. It is the intent of the Legislature, however, that such*
34 *financial assistance not limit a patient's interaction with, or his*
35 *or her rights before, the Medical Board of California.*

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

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

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

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

7 ~~SEC. 2.~~

8 SEC. 3. Section 2008 of the Business and Professions Code is
9 amended to read:

10 2008. The board may appoint panels from its members for the
11 purpose of fulfilling the obligations established in subdivision (c)
12 of Section 2004. Any panel appointed under this section shall at
13 no time be comprised of less than four members and the number
14 of public members assigned to the panel shall not exceed the
15 number of licensed physician and surgeon members assigned to
16 the panel. The president of the board shall not be a member of any
17 panel unless there is a vacancy in the membership of the board.
18 Each panel shall annually elect a chair and a vice chair.

19 ~~SEC. 3.~~

20 SEC. 4. Section 2225.5 of the Business and Professions Code
21 is amended to read:

22 2225.5. (a) (1) A licensee who fails or refuses to comply with
23 a request for the certified medical records of a patient, that is
24 accompanied by that patient's written authorization for release of
25 records to the board, within 15 days of receiving the request and
26 authorization, shall pay to the board a civil penalty of one thousand
27 dollars (\$1,000) per day for each day that the documents have not
28 been produced after the 15th day, up to ten thousand dollars
29 (\$10,000), unless the licensee is unable to provide the documents
30 within this time period for good cause.

31 (2) A health care facility shall comply with a request for the
32 certified medical records of a patient that is accompanied by that
33 patient's written authorization for release of records to the board
34 together with a notice citing this section and describing the
35 penalties for failure to comply with this section. Failure to provide
36 the authorizing patient's certified medical records to the board
37 within 30 days of receiving the request, authorization, and notice
38 shall subject the health care facility to a civil penalty, payable to
39 the board, of up to one thousand dollars (\$1,000) per day for each
40 day that the documents have not been produced after the 30th day,

1 up to ten thousand dollars (\$10,000), unless the health care facility
2 is unable to provide the documents within this time period for good
3 cause. This paragraph shall not require health care facilities to
4 assist the board in obtaining the patient's authorization. The board
5 shall pay the reasonable costs of copying the certified medical
6 records.

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

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

27 (3) A health care facility that fails or refuses to comply with a
28 court order, issued in the enforcement of a subpoena, mandating
29 the release of patient records to the board, that is accompanied by
30 a notice citing this section and describing the penalties for failure
31 to comply with this section, shall pay to the board a civil penalty
32 of up to one thousand dollars (\$1,000) per day for each day that
33 the documents have not been produced, up to ten thousand dollars
34 (\$10,000), after the date by which the court order requires the
35 documents to be produced, unless it is determined that the order
36 is unlawful or invalid. Any statute of limitations applicable to the
37 filing of an accusation by the board against a licensee shall be
38 tolled during the period the health care facility is out of compliance
39 with the court order and during any related appeals.

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

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

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

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

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

(f)

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

~~SEC. 4.~~

SEC. 5. Section 2227 of the Business and Professions Code is amended to read:

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as

1 designated in Section 11371 of the Government Code, or whose
2 default has been entered, and who is found guilty, or who has
3 entered into a stipulation for disciplinary action with the board,
4 may, in accordance with the provisions of this chapter:

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

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

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

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

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

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

24 ~~SEC. 5.~~

25 *SEC. 6.* Section 2425.3 of the Business and Professions Code
26 is amended to read:

27 2425.3. (a) A licensed physician and surgeon shall report to
28 the board, immediately upon issuance of an initial license and at
29 the time of license renewal, any specialty board certification he or
30 she holds that is issued by a member board of the American Board
31 of Medical Specialties or approved by the Medical Board of
32 California.

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

37 (1) Full-time practice in California.

38 (2) Full-time practice outside of California.

39 (3) Part-time practice in California.

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

(5) Retired.

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

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

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

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

~~(d) A licensed physician and surgeon shall report to the board, at the time of license renewal, if either of the following have occurred since his or her last renewal, or if this is the licensee's first renewal, since his or her initial license was issued:~~

~~(1) He or she has been convicted of a felony or misdemeanor.~~

~~(2) The filing of a civil action alleging unlawful conduct by the licensee, whether or not the licensee was a named party in the action.~~

~~(e)~~

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

~~SEC. 6.~~

SEC. 7. 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

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

AB 1116

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1116
Author: Carter
Bill Date: February 27, 2009, introduced
Subject: Cosmetic surgery: Physical examination prior to surgery
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Health Committee and is set for hearing on May 5, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This bill enacts the Donda West Law, and would require that physicians or dentists conduct a physical examination on patients prior to performing elective cosmetic surgery, including liposuction.

The legislation adds Business and Professions Code sections 1638.2 (dentists) and 2259.8 (physicians) which would prohibit performing cosmetic surgery unless the patient has received a physical examination and written clearance from one of the following:

- A licensed physician and surgeon, which may be the surgeon performing the surgery;
- A nurse practitioner;
- A physician assistant, or;
- A dentist licensed to perform surgery under section 1634 of the Business and Professions Code.

The examination must include the taking of a complete medical history.

ANALYSIS:

Donda West was a patient that, prior to finding a surgeon willing to perform her procedures, was rejected as a candidate for surgery by several practitioners due to existing physical conditions. She died shortly after undergoing surgery.

This bill is identical to AB 2968 (Carter), passed in 2008, but vetoed by the Governor. (The reason for the veto was that due to the budget negotiations there was insufficient time for review.) The Medical Board took a "support" position on that legislation.

Under the current standard of care, surgeons should be taking a complete history and performing a physical examination prior to performing any surgery to ensure the patient is sufficiently healthy to undergo the procedure. Unfortunately, some surgeons' practices do not rise to this standard of care. While probably unnecessary, stating this standard in law may serve to protect patients by clarifying that a prior examination is part of the cosmetic surgery process.

FISCAL: Minor and absorbable.

POSITION: **Executive Committee Recommendation:** Oppose
 Staff Recommendation: Support

April 24, 2009

ASSEMBLY BILL

No. 1116

Introduced by Assembly Member Carter

February 27, 2009

An act to add Sections 1638.2 and 2259.8 to the Business and Professions Code, relating to cosmetic surgery.

LEGISLATIVE COUNSEL'S DIGEST

AB 1116, as introduced, Carter. Cosmetic surgery.

Existing law, the Dental Practice Act, establishes the Dental Board of California in the Department of Consumer Affairs, which licenses dentists and regulates their practice, including dentists who hold a permit to perform oral and maxillofacial surgery. Existing law, the Medical Practice Act, establishes the Medical Board of California in the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

The Medical Practice Act requires specified disclosures to patients undergoing procedures involving collagen injections, and also requires the Medical Board of California to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would enact the Donda West Law, which would prohibit the performance of an elective cosmetic surgery procedure on a patient unless, prior to surgery, the patient has received a physical examination by, and has received written clearance for the procedure from, the licensed physician and surgeon or dentist performing the cosmetic surgery or another licensed physician and surgeon, or a certified nurse practitioner or a licensed physician assistant, as specified. The bill would

require the physical examination to include the taking of a complete medical history. The bill would also provide that a violation of these provisions would not constitute a crime.

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

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Donda West Law.
- 3 SEC. 2. Section 1638.2 is added to the Business and Professions
- 4 Code, to read:
- 5 1638.2. (a) Notwithstanding any other provision of law, a
- 6 person licensed pursuant to Section 1634 who holds a permit to
- 7 perform elective facial cosmetic surgery issued pursuant to this
- 8 article may not perform elective facial cosmetic surgery on a
- 9 patient, unless the patient has received a physical examination by,
- 10 and written clearance for the procedure from, either of the
- 11 following:
- 12 (1) A licensed physician and surgeon.
- 13 (2) The person licensed pursuant to Section 1634 who holds a
- 14 permit to perform elective facial cosmetic surgery issued pursuant
- 15 to this article and who will be performing the surgery.
- 16 (b) The physical examination described in subdivision (a) shall
- 17 include the taking of a complete medical history.
- 18 (c) A violation of this section shall not constitute a crime.
- 19 SEC. 3. Section 2259.8 is added to the Business and Professions
- 20 Code, to read:
- 21 2259.8. (a) Notwithstanding any other provision of law, a
- 22 cosmetic surgery procedure may not be performed on a patient
- 23 unless, prior to surgery, the patient has received a physical
- 24 examination by, and written clearance for the procedure from, any
- 25 of the following:
- 26 (1) The physician and surgeon who will be performing the
- 27 surgery.
- 28 (2) Another licensed physician and surgeon.
- 29 (3) A certified nurse practitioner, in accordance with a certified
- 30 nurse practitioner's scope of practice, unless limited by protocols
- 31 or a delegation agreement.

1 (4) A licensed physician assistant, in accordance with a licensed
2 physician assistant's scope of practice, unless limited by protocols
3 or a delegation agreement.

4 (b) The physical examination described in subdivision (a) shall
5 include the taking of a complete medical history.

6 (c) "Cosmetic surgery" means an elective surgery that is
7 performed to alter or reshape normal structures of the body in order
8 to improve the patient's appearance, including, but not limited to,
9 liposuction and elective facial cosmetic surgery.

10 (d) Section 2314 shall not apply to this section.

AB 1310

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1310
Author: Hernandez
Bill Date: April 2, 2009, amended
Subject: Healing Arts: database
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and is set for hearing on April 29, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

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

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.

FISCAL:

Unknown.

POSITION:

Staff Recommendation: Support if amended to only require the location of the high school when a college degree or graduate education is not required; to make information on additional practice locations permissive; or to provide more time before these requirements are mandatory.

April 23, 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, 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 department~~ *specified 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 ~~specified healing arts~~ *those* boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse

annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

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

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

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

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

- 7 (1) First name, middle name, and last name.
- 8 (2) Last four digits of social security number.
- 9 (3) Complete mailing address.
- 10 (4) Educational background and training, including, but not
- 11 limited to, degree, related school name and location, and year of
- 12 graduation, and, as applicable, the highest professional degree
- 13 obtained, related professional school name and location, and year
- 14 of graduation.
- 15 (5) Birth date and place of birth.
- 16 (6) Sex.
- 17 (7) Race and ethnicity.
- 18 (8) Location of high school.
- 19 (9) Mailing address of primary practice, if applicable.
- 20 (10) Number of hours per week spent at primary practice
- 21 location, if applicable.
- 22 (11) Description of primary practice setting, if applicable.
- 23 (12) Primary practice information, including, but not limited
- 24 to, primary specialty practice, practice location ZIP Code, and
- 25 county.
- 26 (13) Information regarding any additional practice, including,
- 27 but not limited to, a description of practice setting, practice location
- 28 ZIP Code, and county.
- 29 (b) The department, in consultation with the Healthcare
- 30 Workforce Development Division and the Health Care Workforce
- 31 Clearinghouse, shall select a database and shall add the data

1 specified in paragraphs (5) to (13) ~~of subdivision (a), inclusive,~~
2 *inclusive, of subdivision (a)* to that database.

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

4 (1) The Acupuncture Board.

5 (2) The Dental Hygiene Committee of California.

6 (3) The Dental Board of California.

7 (4) The Medical Board of California.

8 (5) The Bureau of Naturopathic Medicine.

9 (6) The California Board of Occupational Therapy.

10 (7) The State Board of Optometry.

11 (8) The Osteopathic Medical Board of California.

12 (9) The California State Board of Pharmacy.

13 (10) The Physical Therapy Board of California.

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

16 (12) The California Board of Podiatric Medicine.

17 (13) The Board of Psychology.

18 (14) The Board of Registered Nursing.

19 (15) The Respiratory Care Board of California.

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

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

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

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

AB 1458

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1458
Author: Davis
Bill Date: April 15, 2009, amended
Subject: Drugs: adverse events: reporting
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require licensed health professionals to report serious adverse drug events to the Federal Food and Drug Administration and would exempt violations from related criminal provisions

ANALYSIS:

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the California Department of Public Health, including, but not limited to, a program for the licensing and regulation of health facilities to report adverse events relating to patient care. The Department is required to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act.

The Federal Food and Drug Administration (FDA) operates a voluntary reporting system for adverse drug reactions known as the MedWatch system. The FDA estimates that only 10 percent of the adverse drug reactions or events that occur each year are reported to the FDA.

Given the prevalence of pharmaceuticals and their use for treatment of hundreds of chronic diseases and conditions, and given recent highly publicized instances of commonly used prescription drugs being taken off the market because of safety concerns that were discovered after the drugs were approved for use, the author believes the systematic underreporting of adverse drug events represents a serious public health problem.

Requiring licensed health professionals to report adverse drug events to the MedWatch system would increase the amount of data available to the FDA. This would then enable the FDA to safeguard the public health in a more effectual manner.

This does increase the responsibility of the health care provider in reporting these occurrences but there are no penalties under the Health and Safety Code.

FISCAL: None.

POSITION: **Staff Recommendation:** Support

April 23, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1458

Introduced by Assembly Member Davis

February 27, 2009

An act to add Article 7 (commencing with Section 111657.10) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1458, as amended, Davis. Drugs: adverse effects: reporting.

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the State Department of Public Health, including, but not limited to, a program Health. Existing law also contains provisions for the licensing and regulation of health facilities and clinics professionals. Existing law requires certain health facilities to report adverse events, as defined, relating to patient care. Existing law requires the department to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime.

This bill would require ~~clinics, health facilities, and~~ health professionals to report serious adverse drug events to the federal Food and Drug Administration and would exempt violations from related criminal 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. The Legislature finds and declares all of the following:

(a) The federal Food and Drug Administration (FDA) operates a voluntary reporting system for adverse drug reactions known as the MedWatch system.

(b) The FDA currently estimates that only 10 percent of the adverse drug reactions or events that occur each year are reported to the FDA.

(c) Given the prevalence of pharmaceuticals and their use for treatment of hundreds of chronic diseases and conditions, and given recent highly publicized instances of commonly used prescription drugs being taken off the market due to safety concerns that were discovered after the drugs were approved for use, the systematic underreporting of adverse drug events represents a serious public health problem.

(d) Requiring licensed health professionals and health facilities to report adverse drug events to the FDA would increase the amount of data available to the FDA about adverse drug reactions, thereby enabling the FDA to discern problems with drugs that arise after they are approved and to take action to protect the public health in a more timely manner.

SEC. 2. Article 7 (commencing with Section 111657.10) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 7. Adverse Event Reporting

111657.10. (a) A licensed health professional, including, but not limited to, a physician and surgeon, dentist, or pharmacist, ~~a health facility as defined in Section 1250, or a clinic as defined under Chapter 1 (commencing with Section 1200)~~, shall report all suspected serious adverse drug events that are spontaneously discovered or observed in medical practice to MedWatch, the drug safety information and adverse event reporting program operated by the federal Food and Drug Administration (FDA).

1 (b) For purposes of this section, serious adverse drug events
2 shall include adverse health outcomes involving patients that result
3 in death, life-threatening conditions, hospitalization, disability,
4 congenital anomaly, or that require intervention to prevent
5 permanent impairment or damage.

6 (c) Any ~~health professional, health facility, or clinic~~ *professional*
7 that is required to report an adverse drug event pursuant to this
8 section shall use the FDA 3500 Voluntary form developed by the
9 FDA for MedWatch.

10 111657.15. A licensed ~~health professional, health facility, or~~
11 ~~clinic~~ *professional* that violates any provision of this article shall
12 not be subject to the penalties and remedies outlined in Chapter 8
13 (commencing with Section 111825). Nothing in this section affects
14 otherwise existing duties, rights, or remedies under the law.

SB 58

SB 58

Physicians and Surgeons: Peer Review

To be presented at the Board Meeting

SB 92

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 92
Author: Aanestad
Bill Date: March 11, 2009, amended
Subject: Health Care Reform
Sponsor: Author

STATUS OF BILL:

This bill has been referred to the Senate Health Committee and is set for hearing April 29, 2009.

DESCRIPTION OF CURRENT LEGISLATION:

This is a major Health Care Reform bill. There are several sections that pertain to the Medical Board (Board).

ANALYSIS:

The provisions of this bill that would affect the Board are:

1. This bill would specify that only a California licensed health care professional, while performing medical reviews to authorize health care services, may deny, delay, or modify requests for approved care.
2. This bill would require the licensee who is performing medical reviews to have at least the same scope of practice as the provider who is submitting the request for authorization.
3. This bill would make a medical professional reviewer's failure to conduct a good faith prior examination of the insured patient under review unprofessional conduct and grounds for disciplinary action. This bill specifies that the primary obligation of the reviewer is the enrolled or insured patient.
4. Allows medical assistants to administer medication in any setting under the specific authorization and supervision of a physician, nurse practitioner, nurse-midwife, or physician assistant.

FISCAL: Unknown at this time.

POSITION: **Staff Recommendation:** Watch. Due to the extensive reforms contained in this bill it may not be appropriate to take a position at this time.

April 29, 2009

AMENDED IN SENATE MARCH 11, 2009
AMENDED IN SENATE FEBRUARY 25, 2009

SENATE BILL

No. 92

Introduced by Senator Aanestad

January 21, 2009

An act to amend Section 2069 of, *and to add Section 734 to*, the Business and Professions Code, to add Section 1815.5 to the Financial Code, to add Sections 22830.5, 22830.6, 22869.5, and 22917 to the Government Code, to amend Sections 1345, 1357, 1357.03, 1357.06, 1357.14, 1367.01, *1367.63, 1367.635, 1374.32, 1374.33, and 1374.58* ~~1374.58, and 1395~~ of, to add Sections 1346.2, 1349.3, and 1367.38 to, and to add Article 12 (commencing with Section 1399.830) to Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 10121.7, 10123.135, 10169.2, 10169.3, 10700, 10705, 10706, and 10708 of, to add Sections 699.6, 10123.56, *10123.86, 10123.88, 10123.136, and 12938.1 to, to add Chapter 9.7 (commencing with Section 10920)* ~~to Part 2 of Division 2 of, and to, to add Article 7 (commencing with Section 11885) to Chapter 4 of Part 3 of Division 2 of, and to add Chapter 9.7 (commencing with Section 10920) to Part 2 of Division 2 of, the Insurance Code, to amend Sections 511 and 515 of, and to add Section 96.8 to, the Labor Code, to amend Sections 17072, 17215, and 19184 of, to add Sections 17053.91, 17053.102, 17053.103, 17138.5, 17138.6, and 17216 to, and to add and repeal Sections 17053.58, 17053.77, 17204, 23658, and 23677 of, the Revenue and Taxation Code, and to amend Sections 14043.26 and 14133 of, to add Sections 14026.7, 14029.7, 14079.7, 14132.104, 14132.105, and 14164.5 to, to add Article 2.94 (commencing with Section 14091.50) to Chapter 7 of Part 3 of Division 9 of, and to add Division 23 (commencing with Section 23000) to, the Welfare and Institutions Code, relating to health care, and making an appropriation therefor.~~

see pages 4, 5, 12-14

LEGISLATIVE COUNSEL'S DIGEST

SB 92, as amended, Aanestad. Health care reform.

(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (the Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the Knox-Keene Act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

The Knox-Keene Act requires, subject to specified exceptions, that a health care service plan be licensed by the department and provide basic health care services, as defined, among other benefits, unless exempted from that requirement by the director of the department. Existing law also requires, subject to specified exceptions, that an insurer obtain a certificate of authority from the Insurance Commissioner in order to transact business in this state and that the insurer operate in accordance with specified requirements.

This bill would allow a carrier domiciled in another state to offer, sell, or renew a health care service plan contract or a health insurance policy in this state without holding a license issued by the department or a certificate of authority issued by the commissioner. The bill would exempt the carrier's plan contract or policy from requirements otherwise applicable to plans and insurers providing health care coverage in this state if the plan contract or policy complies with the domiciliary state's requirements, and the carrier is lawfully authorized to issue the plan contract or policy in that state and to transact business there.

The bill would also authorize health care service plans and health insurers to offer, market, and sell individual health care service plan contracts and individual health insurance policies that do not include all of the benefits mandated under state law to individuals with income below 350% of the federal poverty level if the individual waives those benefits, as specified, and the plan contract or insurance policy is approved by the Director of the Department of Managed Health Care or the Insurance Commissioner.

(2) Under existing law, health care service plans and health insurers are required to include certain benefits in their contracts and policies. Existing federal law authorizes an individual who has a high deductible health plan to make tax deductible contributions to a Health Savings Account that may be used to pay medical expenses.

This bill would require the Director of the Department of Managed Health Care and the Insurance Commissioner to encourage the design of health care service plan contracts and health insurance policies that conform to current federal requirements for high deductible health plans used in conjunction with Health Savings Accounts and to standardize the process used to review and approve new health care service plan contracts and health insurance policies. The bill would require the director and the commissioner to report specified information to the Legislature regarding those requirements.

The bill would also authorize group health care service plan contracts and group health insurance policies to offer to include a Healthy Action Incentives and Rewards Program, as specified.

(3) Existing law imposes certain requirements on health care service plans and health insurers to enable small employers to access health care coverage. Existing law requires health care service plans and health insurers to sell to any small employer any of the benefit plan designs it offers to small employers and prohibits plans and insurers, among others, from encouraging or directing small employers to refrain from filing an application for coverage with the plan or insurer, and from encouraging or directing small employers to seek coverage from another carrier, because of the health status, claims experience, industry, occupation, or geographic location within the carrier's approved service area of the small employer or the small employer's employees.

This bill would also prohibit a plan or insurer from taking either of those actions because of the employer's implementation of, or intent to implement, any form of claim support for covered employees, as specified.

Existing law defines "small employer" for these purposes to include a guaranteed association that purchases health care coverage for its members. Existing law defines "guaranteed association" to mean a nonprofit organization of individuals or employers that meets certain requirements, including having been in active existence and having included health coverage as a membership benefit for at least 5 years prior to January 1, 1992, and covering at least 1,000 persons in that regard.

This bill would delete the requirements for a guaranteed association to have been in active existence and to have included health care coverage as a membership benefit for at least 5 years prior to January 1, 1992. The bill would reduce the required number of persons covered by health coverage provided through the guaranteed association from

1,000 to 100. The bill would also define “small employer” to include an eligible association that purchases health care coverage for its members and would define an eligible association as a community or civic group or a charitable or religious organization.

Because a willful violation of these requirements with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(4) Existing law requires health care service plans and specified disability insurers to have written policies and procedures establishing the process by which the plans or insurers prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity, requests by providers of health care services for enrollees or insureds. Existing law imposes specified requirements on that process and specifies that only a licensed physician or licensed health care professional with specified competency may deny or modify requests for authorization of health care services.

This bill would ~~authorize a~~ *specify that only a California* licensed health care professional, ~~other than a person licensed to practice medicine, to~~ *may, deny, delay, or modify requests only with respect to for authorization of health care services. The bill would limit that licensee's review to services that fall within his or her scope of practice and would make that review subject to standardized protocol limitations or supervision requirements applicable under his or her license. The bill would also require the licensee to have at least the same scope of practice as the provider submitting the request for authorization. The bill would also prohibit a physician or other health care professional licensee from denying, delaying, or modifying a request without first conducting a good faith examination of the enrollee or insured, except as specified, and would make a violation of that requirement unprofessional conduct and grounds for disciplinary action. The bill would specify that the primary obligation of that licensee is to the enrollee or insured.* The bill would also provide that a service is medically necessary or a medical necessity when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.

Existing law establishes an independent medical review system in which an independent medical review organization reviews grievances involving a disputed health care service under a health care service plan contract or disability insurance policy. Existing law requires ~~that the~~ medical professionals selected by that organization to conduct reviews

to be either physicians holding a specified certification or other appropriate providers holding a nonrestricted license in any state.

This bill would require those physicians and other providers to be licensed in California and would limit the reviews conducted by those ~~other providers~~ persons, as specified.

Existing law requires the medical reviewers selected to conduct a review to review specified information, including, but not limited to, provider reports and all pertinent medical records of the enrollee or insured.

This bill would also require that at least one of those medical professional reviewers conduct a good faith examination of the enrollee, except as specified, *and would make a failure to conduct that examination unprofessional conduct and grounds for disciplinary action. The bill would specify that the primary obligation of these reviewers is to the enrollee or insured.*

Because a willful violation of these requirements with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(5) Existing law provides for insurers to be admitted to transact business in specified types of insurance, including workers' compensation insurance.

This bill would allow any insurer admitted to transact health insurance or workers' compensation insurance, or a health care service plan licensed pursuant to the Knox-Keene Act, to make written application to the commissioner for a license to offer a single policy that provides health care coverage and workers' compensation benefits.

(6) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive various health care services and benefits. Existing law prescribes various requirements governing reimbursement rates for these services.

This bill would require, on January 1, 2010, the reimbursement levels for fee-for-service physician services under Medi-Cal to be increased to 80% of the amount that the federal Medicare Program reimburses for these same services in Area 9 (Santa Clara County), and would thereafter require the rates to be increased annually in accordance with the California Consumer Price Index.

The bill would require the department, before making any adjustment to Medi-Cal reimbursement rates, to consider the ability of Medi-Cal beneficiaries to access physician services by geography and specialty

and to request data from the Office of Statewide Health Planning and Development to allow the department to determine the extent of Medi-Cal physician shortages, if any, by geography and specialty.

The bill would require the department to ensure the existence and operation of a single searchable Internet Web site, accessible by the public at no cost, that specifies Medi-Cal expenditures, including a line item breakdown of administrative overhead and provider and health care expenses.

The bill would require the department to prepare and submit a proposal for a demonstration project by July 31, 2010, for participation in the federal Medicaid Demonstration Project for Health Opportunity Accounts and would specify the details of that demonstration project.

The bill would also require the department, on or before January 1, 2011, to provide or arrange for the provision of an electronic personal health record and an electronic personal benefits record for beneficiaries of the Medi-Cal program. The bill would additionally authorize the department to establish a Healthy Action Incentives and Rewards Program as a covered benefit under the Medi-Cal program, subject to federal financial participation and approval.

The bill would state the intent of the Legislature to enact legislation that would realign Medi-Cal benefits to more closely resemble benefits offered through private health care coverage.

The bill would also state the intent of the Legislature to enact legislation that would establish a pilot project that utilizes a self-directed “cash and counseling” model for providing Medi-Cal services to disabled Medi-Cal enrollees. Under a “cash and counseling” model, disabled Medi-Cal enrollees, with assistance from family members and Medi-Cal case managers, would be given an individual budget to manage and direct payment for their personal care services and enable them to determine which supportive services they want and from whom they wish to have these services delivered.

Under existing law, the Director of Health Care Services may contract with any qualified individual, organization, or entity to provide services to, arrange for, or case manage the care of Medi-Cal beneficiaries subject to specified requirements.

This bill would state the intent of the Legislature to enact legislation that would establish a pilot project in which Medi-Cal managed care is used as a platform to transition from a defined-benefit system, where the state pays for services used based on a defined set of benefits, to a

defined-contribution system, where Medi-Cal enrollees would be assigned a risk-adjusted amount to purchase private health care coverage.

Existing law requires an applicant that is not currently enrolled as a provider in the Medi-Cal program, a provider required to apply for continued enrollment, or a provider not currently enrolled at a location where the provider intends to provide Medi-Cal goods or services to submit a complete application package for enrollment, continuing enrollment, or enrollment at a new location, except as specified. Existing law requires the department to provide, within 30 days of receipt, written notice that the application package has been received, except as specified. Applicants or providers that meet certain criteria may be granted preferred provisional provider status for up to 18 months.

This bill would, notwithstanding any other provision of law, additionally provide that, on and after January 1, 2010, certain licensed health care providers submitting an application to the department pursuant to the above provisions shall be granted preferred provisional provider status, effective from the date the department received their application, if the applicant is in good standing as a provider under the federal Medicare Program and with his or her state licensing board.

This bill would require the department to provide written notice to the applicant that the application package has been received within 15 days after receiving the application. The bill would require the department to provide successful applicants with written notice of their preferred provisional provider status within 30 days after receiving the application.

Existing law establishes, within the office of the Attorney General, the Bureau of Medi-Cal Fraud for the investigation and prosecution of violations of applicable laws pertaining to the Medi-Cal program, and to review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the Medi-Cal program.

This bill would require the State Department of Health Care Services to establish a computer modeling program to be used to prevent and identify Medi-Cal fraud. The bill would require the computer modeling program to alert the department when providers engage in specified billing behavior. The bill would require the department, upon receiving the alert, to conduct a Medi-Cal fraud investigation if the department determines an investigation is appropriate under the circumstances.

Existing law, administered by the State Department of Public Health, provides for the licensure and regulation of various clinics, including primary care clinics, as defined.

Existing law establishes the Medi-Cal Hospital/Uninsured Care Demonstration Project Act that revises hospital reimbursement methodologies in order to maximize the use of federal funds consistent with federal Medicaid law and stabilize the distribution of funding for hospitals.

This bill would require the Director of Health Care Services to provide to the Legislature, no later than July 1, 2010, a plan to permit these funds to be used for the purpose of creating new, and expanding existing, primary care clinics.

Under existing law, one of the utilization controls to which services are subject under the Medi-Cal program is the treatment authorization request process, which is approval by a department consultant of a specified service in advance of the rendering of that service based upon a determination of medical necessity. Other utilization controls include postservice prepayment audits and postservice postpayment audits, that involve reviews for medical necessity and program coverage.

This bill would, instead, provide that treatment authorization requests shall be approved based upon a determination that the service is covered under Medi-Cal. The bill would also provide that postservice prepayment audits and postservice postpayment audits shall only involve reviews for program coverage.

(7) Existing law allows the Controller, in his or her discretion, to offset any amount due to a state agency by a person or entity against any amount owed to that person or entity by a state agency.

Existing law requires the Controller, to the extent feasible, to offset any amount overdue and unpaid for a fine, penalty, assessment, bail, vehicle parking penalty, or court-ordered reimbursement for court-related services, from a person or entity, against any amount owed to the person or entity by a state agency on a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Tax Law or from winnings in the California State Lottery.

This bill would permit a hospital or health care provider, as defined, that provides health care services to an uninsured individual who does not qualify for government health care benefits to file a claim with the State Department of Health Care Services to be reimbursed for those services if the recipient of the services does not pay for those services. The bill would require the Director of Health Care Services to certify the debt owed to the hospital or health care provider to the Franchise Tax Board and the California Lottery Commission in order to the have

the debt satisfied with any tax refund or lottery winnings owed to the debtor, as specified.

(8) Under the Public Employees' Medical and Hospital Care Act, the Board of Administration of the Public Employees' Retirement System contracts for and administers health care benefit plans for public employees and annuitants. Existing state and federal income tax laws allow a deduction for contributions to a qualifying medical savings account by a taxpayer who is covered under a high deductible health plan, as defined. Money within this type of account may be used to pay for qualified medical expenses, as defined.

This bill would require the board to offer a high deductible health plan, as defined in the federal tax law, and a Health Savings Account option to public employees and annuitants, as specified. The bill would establish the Public Employees' Health Savings Fund, a continuously appropriated trust fund within the State Treasury, for payment of qualified medical expenses of eligible employees and annuitants who elect to enroll in the high deductible health plan and participate in the Health Savings Account option, and would require those employees and annuitants, and their employers, to make specified contributions to that fund, thereby making an appropriation.

The bill would also require the board, on or before January 1, 2011, to provide or arrange for the provision of an electronic personal health record and an electronic personal benefits record for enrollees receiving health care benefits. The bill would additionally authorize the board to provide a Healthy Action Incentives and Rewards Program to its enrollees, as specified.

(9) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2010, and before January 1, 2015, in an amount equal to the amount paid or incurred during the taxable year for qualified health expenses, as defined, that do not exceed specified amounts.

This bill would authorize a credit against personal income taxes for each taxable year beginning on or after January 1, 2009, in an amount equal to 25% of the tax imposed on a medical care professional who provides medical services in a rural area. The bill would also authorize a credit against personal income taxes, as specified, for a primary care provider, as defined, and for uncompensated medical care provided by a physician.

This bill would authorize a credit under the Personal Income Tax Law and the Corporation Tax Law for each taxable year beginning on or after January 1, 2009, and before January 1, 2015, in an amount equal to 15% of the amount paid or incurred by a qualified taxpayer, as defined, during the taxable year for qualified health insurance, as defined, for employees of the taxpayer. This bill would require the Legislative Analyst to report to the Legislature on or before March 1, 2014, on the effectiveness of the credit, as specified.

The Personal Income Tax Law authorizes various deductions in computing income subject to taxation.

This bill would allow a deduction in computing adjusted gross income for the costs of health insurance, as provided. This bill would also allow a deduction in connection with Health Savings Accounts in conformity with federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by, or on behalf of, an eligible individual, as defined, to a Health Savings Account of that individual, as provided. This bill would also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer Medical Savings Accounts to a Health Savings Account, and penalties in connection therewith.

(10) Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would authorize an individual employee employed by an employer with 50 or fewer employees that offers health care coverage benefits to its employees to request a work schedule of up to 10 hours per day within a 40-hour workweek, and would authorize an employer to implement this schedule without any obligation to pay overtime compensation for hours worked as part of the schedule. The bill would enact related provisions and would make other conforming and technical changes.

The bill would also authorize an employer to provide health coverage that includes a Healthy Action Incentives and Rewards Program to his or her employees. In addition, the bill would state the intent of the Legislature to enact legislation providing incentives to employers who

offer health insurance, flex-time work schedules, and other benefits agreed upon by employers and employees.

(11) Existing law defines the term “medical assistant” and sets forth the scope of services a medical assistant is authorized to perform. Existing law provides that a medical assistant may administer medication upon the specific authorization and supervision of a licensed physician and surgeon or licensed podiatrist or, in specified clinic settings, upon the specific authorization and supervision of a nurse practitioner, nurse-midwife, or physician assistant.

This bill would remove the requirement that a medical assistant’s administration of medication upon the specific authorization and supervision of a nurse practitioner, nurse-midwife, or physician assistant occur in specified clinic settings, and would make related changes.

(12) Existing law provides for the licensure and regulation by the Commissioner of Financial Institutions of money transmitters, who receive money in this state for transmission to foreign countries, and makes a violation of these provisions a crime.

This bill would require a licensee, or its agent, to collect a 3% fee on any money transmission received from a client who is unable to provide documentation of lawful presence in the United States. The bill would require the deposit of the fee in an unspecified fund to be used to pay for emergency medical care provided in this state to persons without documentation of legal residence in the United States.

Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program.

In addition, the bill would memorialize the Congress and President of the United States to enact legislation that would provide full reimbursement for the costs of providing federally mandated health care services to anyone, regardless of immigration status.

(13) Existing law regulates the establishment and operation of hospitals, including emergency rooms.

This bill would state the intent of the Legislature to enact legislation that would allow hospitals to offer preventative medical services delivered through the hospital’s primary care or community-based clinic.

(14) The bill would enact other related provisions and make various technical, nonsubstantive changes.

(15) This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

(16) 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: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 734 is added to the Business and
2 Professions Code, to read:

3 734. The failure of a person licensed under this division or
4 under an initiative act referred to in this division to conduct a
5 good faith examination as required under any of the following
6 provisions constitutes unprofessional conduct and grounds for
7 disciplinary action by the person's licensing board:

8 (a) Paragraph (3) of subdivision (e) of Section 1367.01 of the
9 Health and Safety Code or paragraph (3) of subdivision (e) of
10 Section 10123.135 of the Insurance Code.

11 (b) Subdivision (b) of Section 1367.63 of the Health and Safety
12 Code or subdivision (b) of Section 10123.88 of the Insurance Code.

13 (c) Subdivision (c) of Section 1367.635 of the Health and Safety
14 Code or subdivision (c) of Section 10123.86 of the Insurance Code.

15 (d) Subdivision (a) of Section 1374.33 of the Health and Safety
16 Code or subdivision (a) of Section 10169.3 of the Insurance Code.

17 ~~SECTION 1.~~

18 SEC. 2. Section 2069 of the Business and Professions Code is
19 amended to read:

20 2069. (a) (1) Notwithstanding any other provision of law, a
21 medical assistant may administer medication only by intradermal,
22 subcutaneous, or intramuscular injections and perform skin tests
23 and additional technical supportive services upon the specific
24 authorization and supervision of a licensed physician and surgeon,
25 nurse practitioner, nurse-midwife, physician assistant, or licensed
26 podiatrist.

27 (2) The licensed physician and surgeon may, at his or her
28 discretion, in consultation with the nurse practitioner,

1 nurse-midwife, or physician assistant, provide written instructions
2 to be followed by a medical assistant in the performance of tasks
3 or supportive services. These written instructions may provide that
4 the supervisory function for the medical assistant for these tasks
5 or supportive services may be delegated to the nurse practitioner,
6 nurse-midwife, or physician assistant within the standardized
7 procedures or protocol, and that tasks may be performed when the
8 licensed physician and surgeon is not onsite, so long as the
9 following apply:

10 (A) The nurse practitioner or nurse-midwife is functioning
11 pursuant to standardized procedures, as defined by Section 2725,
12 or protocol. The standardized procedures or protocol shall be
13 developed and approved by the supervising physician and surgeon,
14 the nurse practitioner or nurse-midwife, and the facility
15 administrator or his or her designee.

16 (B) The physician assistant is functioning pursuant to regulated
17 services defined in Section 3502 and is approved to do so by the
18 supervising physician or surgeon.

19 (b) As used in this section and Sections 2070 and 2071, the
20 following definitions shall apply:

21 (1) "Medical assistant" means a person who may be unlicensed,
22 who performs basic administrative, clerical, and technical
23 supportive services in compliance with this section and Section
24 2070 for a licensed physician and surgeon or a licensed podiatrist,
25 or group thereof, for a medical, nursing, or podiatry corporation,
26 for a physician assistant, a nurse practitioner, or a nurse-midwife
27 as provided in subdivision (a), or for a health care service plan,
28 who is at least 18 years of age, and who has had at least the
29 minimum amount of hours of appropriate training pursuant to
30 standards established by the Division of Licensing. The medical
31 assistant shall be issued a certificate by the training institution or
32 instructor indicating satisfactory completion of the required
33 training. A copy of the certificate shall be retained as a record by
34 each employer of the medical assistant.

35 (2) "Specific authorization" means a specific written order
36 prepared by the licensed physician and surgeon, licensed podiatrist,
37 physician assistant, nurse practitioner, or nurse-midwife authorizing
38 the procedures to be performed on a patient, which shall be placed
39 in the patient's medical record, or a standing order prepared by
40 the licensed physician and surgeon, licensed podiatrist, physician

1 assistant, nurse practitioner, or nurse-midwife, authorizing the
2 procedures to be performed, the duration of which shall be
3 consistent with accepted medical practice. A notation of the
4 standing order shall be placed on the patient's medical record.

5 (3) "Supervision" means the supervision of procedures
6 authorized by this section by the following practitioners, within
7 the scope of their respective practices, who shall be physically
8 present in the treatment facility during the performance of those
9 procedures:

10 (A) A licensed physician and surgeon.

11 (B) A licensed podiatrist.

12 (C) A physician assistant, nurse practitioner, or nurse-midwife.

13 (4) "Technical supportive services" means simple routine
14 medical tasks and procedures that may be safely performed by a
15 medical assistant who has limited training and who functions under
16 the supervision of a licensed physician and surgeon, a licensed
17 podiatrist, a physician assistant, a nurse practitioner, or a
18 nurse-midwife.

19 (c) Nothing in this section shall be construed as authorizing the
20 licensure of medical assistants. Nothing in this section shall be
21 construed as authorizing the administration of local anesthetic
22 agents by a medical assistant. Nothing in this section shall be
23 construed as authorizing the division to adopt any regulations that
24 violate the prohibitions on diagnosis or treatment in Section 2052.

25 (d) Notwithstanding any other provision of law, a medical
26 assistant may not be employed for inpatient care in a licensed
27 general acute care hospital as defined in subdivision (a) of Section
28 1250 of the Health and Safety Code.

29 (e) Nothing in this section shall be construed as authorizing a
30 medical assistant to perform any clinical laboratory test or
31 examination for which he or she is not authorized by Chapter 3
32 (commencing with Section 1200). Nothing in this section shall be
33 construed as authorizing a nurse practitioner, nurse-midwife, or
34 physician assistant to be a laboratory director of a clinical
35 laboratory, as those terms are defined in paragraph (7) of
36 subdivision (a) of Section 1206 and subdivision (a) of Section
37 1209.

38 ~~SEC. 2.~~

39 SEC. 3. Section 1815.5 is added to the Financial Code, to read:

SB 132

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 132
Author: Denham
Bill Date: April 27, 2009, amended
Subject: Polysomnographic Technologists (urgent)
Sponsor: California Sleep Society

STATUS OF BILL:

This bill is currently on the Senate Floor.

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

Sleep medicine has been recognized as a specialty by the American Medical Association since 1996. Physician sleep specialists are board certified, and the American Board of Sleep Medicine is one of the specialty boards officially recognized and approved by the Medical Board.

Recently, the California Respiratory Care Board has threatened to issue significant fines against those involved in assisting with the practice of sleep medicine. This has threatened the availability of these important medical services.

On August 24, 2007 the California Respiratory Care Board passed a motion to move forward with issuing citations against the unlicensed individuals engaged in the practice of sleep medicine. This has caused a great deal of concern and uncertainty amongst medical professionals who treat patients with sleep disorders.

This bill would provide consumer protections to patients seeking sleep disorder treatment, and helps clarify existing law as it relates to polysomnography. Specifically this bill:

- a) establishes the criteria necessary for becoming a certified polysomnographic technologist;

- b) requires that the polysomnographic technologists work under the supervision and direction of a licensed physician;
- c) requires background checks for polysomnographic technologists;
- d) defines the term “polysomnography” and permits polysomnographic technologists to engage in the practice of polysomnography as long as they satisfy the criteria in the bill (this bill places no limitations on other health care practitioners acting within their own scope of practice); and
- e) Defines the terms “polysomnographic technician” and “polysomnographic trainee” and permits those individuals to act under the supervision of a certified polysomnographic technologist or licensed physician.

This bill requires the Board to develop regulations relative to the qualifications for registration of these three classifications. This must be done within a year of the effective date of the legislation. According to staff, the Board should be able to meet this requirement for adoption since most of the preliminary work on qualifications was done in the previous year.

In addition, within one year, the Board must adopt regulations regarding the employment of technicians and trainees by the physician. This may include the scope of services and level of supervision. This will require some work with the sponsor and interested parties but should be able to be accomplished in the time frame specified.

Amendments to this bill change the \$100 registration fee to a \$50 application fee and a \$50 registration fee. This amendment is to make this registration program similar to other licensure and registration programs that are operated on a neutral cost basis. This process will allow the Board to cover the cost of application review and then registration. Fees are split as some applications may be denied registration as a result of the fingerprint or background check thereby allowing the Board to be compensated for its work but not over collecting for work that may not be necessary.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support

Staff Recommendation: Support

April 24, 2009

AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 132

Introduced by Senator Denham

February 9, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

This bill would require the Medical Board of California to adopt regulations within ~~a~~ *one* year after the effective date of this act, relative to the qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, with a specified

exception for that examination requirement for a 3-year period. The bill would prohibit a person from using the title “certified polysomnographic technologist” or engaging in the practice of polysomnography unless he or she undergoes a Department of Justice background check, as specified, is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. The bill would define polysomnography to mean the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board, within ~~a~~ *one* year after the effective date of this act, to adopt regulations related to the employment of polysomnographic technicians and trainees.

This bill would require polysomnographic technologists to *apply to and* register with the Medical Board of California for ~~a fee~~ *fees* to be fixed by the board at no more than ~~\$100~~ *\$50 each*, and to renew their registration biennially for a fee of no more than \$50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, thereby making an appropriation. The bill would further set forth specified disciplinary standards and procedures.

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

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

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

3
4 CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

5
6 3575. (a) For the purposes of this chapter, the following
7 definitions shall apply:

8 (1) “Board” means the Medical Board of California.

9 (2) “Polysomnography” means the treatment, management,
10 diagnostic testing, control, education, and care of patients with
11 sleep and wake disorders. Polysomnography shall include, but not
12 be limited to, the process of analysis, monitoring, and recording

1 of physiologic data during sleep and wakefulness to assist in the
2 treatment of disorders, syndromes, and dysfunctions that are
3 sleep-related, manifest during sleep, or disrupt normal sleep
4 activities. Polysomnography shall also include, but not be limited
5 to, the therapeutic and diagnostic use of oxygen, the use of positive
6 airway pressure including continuous positive airway pressure
7 (CPAP) and bilevel modalities, adaptive servo-ventilation, and
8 maintenance of nasal and oral airways that do not extend into the
9 trachea.

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

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

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

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

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

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

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

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

(3) The Department of Justice shall provide a response to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

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

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

(d) Notwithstanding any other provision of law, an individual may use the title "certified polysomnographic technologist" and may engage in the practice of polysomnography only under the following circumstances:

(1) He or she is registered with the board.

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

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

(e) Within one year after the effective date of this chapter, the board shall adopt regulations that establish the means and circumstances in which a licensed physician and surgeon may employ polysomnographic technicians and polysomnographic trainees. The board may also adopt regulations specifying the scope of services that may be provided by a polysomnographic technician

1 or polysomnographic trainee. Any regulation adopted pursuant to
2 this section may specify the level of supervision that
3 polysomnographic technicians and trainees are required to have
4 when working under the supervision of a certified
5 polysomnographic technologist or licensed health care professional.

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

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

14 3576. (a) A registration under this chapter may be denied,
15 suspended, revoked, or otherwise subjected to discipline for any
16 of the following by the holder:

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

19 (2) An act of dishonesty or fraud.

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

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

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

29 ~~3577. (a) Each person to whom registration is granted under~~
30 ~~this chapter who applies for registration under this chapter shall~~
31 ~~pay into the Contingent Fund of the Medical Board of California~~
32 ~~a fee to be fixed by the board at a sum not in excess of one hundred~~
33 ~~dollars (\$100); fifty dollars (\$50).~~

34 *(b) Each person to whom registration is granted under this*
35 *chapter shall pay into the Contingent Fund of the Medical Board*
36 *of California a fee to be fixed by the board at a sum not in excess*
37 *of fifty dollars (\$50).*

38 ~~(b)~~

39 (c) The registration shall expire after two years. The registration
40 may be renewed biennially at a fee which shall be paid into the

1 Contingent Fund of the Medical Board of California to be fixed
2 by the board at a sum not in excess of fifty dollars (\$50).

3 ~~(e)~~

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

7 3578. Notwithstanding any other provision of law, nothing in
8 this chapter shall prohibit a clinic or health facility licensed
9 pursuant to Division 2 (commencing with Section 1200) of the
10 Health and Safety Code from employing a certified
11 polysomnographic technologist.

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

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

SB 389

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 389
Author: Negrete McLeod
Bill Date: February 26, 2009, introduced
Subject: Fingerprinting
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill will require a licensee who has not been previously fingerprinted or for whom a record does not exist, to successfully complete a fingerprint record search at time of renewal. It will require notification by the licensee at time of renewal if he or she has been convicted of a felony or misdemeanor since the last renewal.

ANALYSIS:

The Medical Board has been fingerprinting its licensees for many years. Staff is in the process of verifying how far back this requirement has been in place, as it was a requirement prior to being placed in law. For purposes of this bill, staff will need to determine what records no longer exist at the Department of Justice (DOJ).

Staff has reported to the board that the number of physicians not fingerprinted may be up to 45,000, although through licensing record searches, this number may be lower than 11,000. The issue will be whether the DOJ still has a flag on the file of those licensed prior to 1986.

The Medical Board passed a motion in November of 2008 to have fingerprint records for all physicians who are licensed in this state.

FISCAL: One time cost of a technician over a two year period to assist in the processing of these reports. Additional cost to a licensee renewing his/her license is \$51 for the fingerprinting.

POSITION: **Executive Committee Recommendation:** Support
Staff Recommendation: Support

April 26, 2009

Introduced by Senator Negrete McLeodFebruary 26, 2009

An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 389, as introduced, Negrete McLeod. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on various grounds, including, but not limited to, conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciary Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require applicants for a license and, commencing January 1, 2011, licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete a state and federal level criminal offender record information search, as specified. The bill would require licensees to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill

would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she has been convicted, as defined, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

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

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

1 SECTION 1. Section 144 of the Business and Professions Code
2 is amended to read:

3 144. (a) Notwithstanding any other provision of law, an agency
4 designated in subdivision (b) shall require an applicant *for a license*
5 to furnish to the agency a full set of fingerprints for purposes of
6 conducting criminal history record checks *and shall require the*
7 *applicant to successfully complete a state and federal level criminal*
8 *offender record information search conducted through the*
9 *Department of Justice as provided in subdivision (c) or as*
10 *otherwise provided in this code.* ~~Any agency designated in~~
11 ~~subdivision (b) may obtain and receive, at its discretion, criminal~~
12 ~~history information from the Department of Justice and the United~~
13 ~~States Federal Bureau of Investigation.~~

14 (b) Subdivision (a) applies to the following:

- 15 (1) California Board of Accountancy.
16 (2) State Athletic Commission.
17 (3) Board of Behavioral Sciences.
18 (4) Court Reporters Board of California.
19 (5) State Board of Guide Dogs for the Blind.
20 (6) California State Board of Pharmacy.
21 (7) Board of Registered Nursing.
22 (8) Veterinary Medical Board.
23 (9) Registered Veterinary Technician Committee.
24 (10) Board of Vocational Nursing and Psychiatric Technicians.
25 (11) Respiratory Care Board of California.
26 (12) Hearing Aid Dispensers ~~Advisory Commission Bureau.~~
27 (13) Physical Therapy Board of California.
28 (14) Physician Assistant Committee of the Medical Board of
29 California.
30 (15) Speech-Language Pathology and Audiology Board.

- 1 (16) Medical Board of California.
- 2 (17) State Board of Optometry.
- 3 (18) Acupuncture Board.
- 4 (19) Cemetery and Funeral Bureau.
- 5 (20) Bureau of Security and Investigative Services.
- 6 (21) Division of Investigation.
- 7 (22) Board of Psychology.
- 8 (23) ~~The~~ California Board of Occupational Therapy.
- 9 (24) Structural Pest Control Board.
- 10 (25) Contractors' State License Board.
- 11 (26) Bureau of Naturopathic Medicine.
- 12 (27) *Dental Board of California.*
- 13 (28) *Dental Hygiene Committee of California.*
- 14 (27) *Professional Fiduciaries Bureau.*
- 15 (28) *California Board of Podiatric Medicine.*
- 16 (29) *Osteopathic Medical Board of California.*
- 17 (30) *State Board of Chiropractic Examiners.*

18 ~~(c) The provisions of paragraph (24) of subdivision (b) shall~~
19 ~~become operative on July 1, 2004. The provisions of paragraph~~
20 ~~(25) of subdivision (b) shall become operative on the date on which~~
21 ~~sufficient funds are available for the Contractors' State License~~
22 ~~Board and the Department of Justice to conduct a criminal history~~
23 ~~record check pursuant to this section or on July 1, 2005, whichever~~
24 ~~occurs first.~~

25 *(c) Except as otherwise provided in this code, each agency listed*
26 *in subdivision (b) shall direct applicants for a license to submit to*
27 *the Department of Justice fingerprint images and related*
28 *information required by the Department of Justice for the purpose*
29 *of obtaining information as to the existence and content of a state*
30 *or federal criminal record. The Department of Justice shall forward*
31 *the fingerprint images and related information received to the*
32 *Federal Bureau of Investigation and request federal criminal*
33 *history information. The Department of Justice shall compile and*
34 *disseminate state and federal responses to the agency pursuant to*
35 *subdivision (p) of Section 11105 of the Penal Code. The agency*
36 *shall request from the Department of Justice subsequent arrest*
37 *notification service, pursuant to Section 11105.2 of the Penal Code,*
38 *for each person who submitted information pursuant to this*
39 *subdivision. The Department of Justice shall charge a fee sufficient*
40 *to cover the cost of processing the request described in this section.*

1 SEC. 2. Section 144.5 is added to the Business and Professions
2 Code, to read:

3 144.5. (a) Notwithstanding any other provision of law, an
4 agency designated in subdivision (b) of Section 144 shall require
5 a licensee who has not previously submitted fingerprints or for
6 whom a record of the submission of fingerprints no longer exists
7 to, as a condition of license renewal, successfully complete a state
8 and federal level criminal offender record information search
9 conducted through the Department of Justice as provided in
10 subdivision (d).

11 (b) (1) A licensee described in subdivision (a) shall, as a
12 condition of license renewal, certify on the renewal application
13 that he or she has successfully completed a state and federal level
14 criminal offender record information search pursuant to subdivision
15 (d).

16 (2) The licensee shall retain for at least three years, as evidence
17 of the certification made pursuant to paragraph (1), either a receipt
18 showing that he or she has electronically transmitted his or her
19 fingerprint images to the Department of Justice or, for those
20 licensees who did not use an electronic fingerprinting system, a
21 receipt evidencing that the licensee's fingerprints were taken.

22 (c) Failure to provide the certification required by subdivision
23 (b) renders an application for renewal incomplete. An agency shall
24 not renew the license until a complete application is submitted.

25 (d) Each agency listed in subdivision (b) of Section 144 shall
26 direct licensees described in subdivision (a) to submit to the
27 Department of Justice fingerprint images and related information
28 required by the Department of Justice for the purpose of obtaining
29 information as to the existence and content of a state or federal
30 criminal record. The Department of Justice shall forward the
31 fingerprint images and related information received to the Federal
32 Bureau of Investigation and request federal criminal history
33 information. The Department of Justice shall compile and
34 disseminate state and federal responses to the agency pursuant to
35 subdivision (p) of Section 11105 of the Penal Code. The agency
36 shall request from the Department of Justice subsequent arrest
37 notification service, pursuant to Section 11105.2 of the Penal Code,
38 for each person who submitted information pursuant to this
39 subdivision. The Department of Justice shall charge a fee sufficient
40 to cover the cost of processing the request described in this section.

1 (e) An agency may waive the requirements of this section if the
2 license is inactive or retired, or if the licensee is actively serving
3 in the military. The agency may not activate an inactive license or
4 return a retired license to full licensure status for a licensee
5 described in subdivision (a) until the licensee has successfully
6 completed a state and federal level criminal offender record
7 information search pursuant to subdivision (d).

8 (f) With respect to licensees that are business entities, each
9 agency listed in subdivision (b) of Section 144 shall, by regulation,
10 determine which owners, officers, directors, shareholders,
11 members, agents, employees, or other natural persons who are
12 representatives of the business entity are required to submit
13 fingerprint images to the Department of Justice and disclose the
14 information on its renewal forms, as required by this section.

15 (g) A licensee who falsely certifies completion of a state and
16 federal level criminal record information search under subdivision
17 (b) may be subject to disciplinary action by his or her licensing
18 agency.

19 (h) This section shall become operative on January 1, 2011.

20 SEC. 3. Section 144.6 is added to the Business and Professions
21 Code, to read:

22 144.6. (a) An agency described in subdivision (b) of Section
23 144 shall require a licensee, as a condition of license renewal, to
24 notify the board on the license renewal form if he or she has been
25 convicted, as defined in Section 490, of a felony or misdemeanor
26 since his or her last renewal, or if this is the licensee's first renewal,
27 since the initial license was issued.

28 (b) The reporting requirement imposed under this section shall
29 apply in addition to any other reporting requirement imposed under
30 this code.

SB 470

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 470
Author: Corbett
Bill Date: April 27, 2009, amended
Subject: Prescriptions: labeling
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require every prescription to include on the label, the purpose for which the drug is prescribed, if requested by the patient.

ANALYSIS:

Under current law, Section 4076 of the Business and Professions Code, a prescription drug container label is required to contain certain information in addition to the drug name including: the names of the patient, prescriber and pharmacy; the date of issue; directions for use; strength and quantity of the drug dispensed; and expiration date. The condition for which the drug was prescribed may be indicated on the label, but only if the patient asks for the prescriber to include it on the prescription. This bill would change the word "condition" to "purpose."

Many patients are unaware of their right to ask the prescriber to have the intended purpose included on the label. Individuals, including seniors, who have multiple prescriptions, have difficulty remembering the purpose of each medication and would greatly benefit from having it listed on the label.

According to the Medical Errors Panel report, "Prescription for Improving Patient Safety: Addressing Medication Errors," an estimated 150,000 Californians are sickened, injured or killed each year by medication errors, with an annual cost of \$17.7 billion. One of the recommendations by the panel is to require the intended purpose of medication to be indicated on all prescriptions and included on the container label.

Adding the purpose of the drug to the label, for those who wish it, will help the patient, the care-giver and any other person who helps administer medications prevent illness or death due to medication errors.

If the condition or purpose of the drug is not included on the prescription, the patient may request of the pharmacist that it be included. Pharmacists may include the information once they have consulted with the physician or prescriber. The consultation may be conducted verbally or electronically.

This concept has been introduced in previous legislative sessions. The Board has supported the concept in the past because it did not require the purpose to be listed, but allowed for a physician to ask as long as there was no penalty if the provider forgets to ask the patient. In this bill, it still allows the patient to ask but the physician will put the purpose of the drug on the label instead of the condition for which it is prescribed and continues to have no penalty for the provider.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support
Staff Recommendation: Support

April 26, 2009

Introduced by Senator Corbett

February 26, 2009

An act to amend Sections 4040 and 4076 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 470, as amended, Corbett. Prescriptions.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and *provides that* a knowing violation of the law is a crime. Existing law ~~authorizes~~ *requires* a prescription, as defined, to include *a legible, clear notice of* the condition for which the drug is prescribed, if requested by the patient. Existing law prohibits a pharmacist from dispensing any prescription unless it is in a specified container ~~and the prescription label includes that is correctly labeled to include~~, among other information, the condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

This bill would ~~revise that requirement to~~ instead require the label to ~~include the~~ *that every prescription include a legible, clear notice of the condition or purpose for which the drug is prescribed if requested by the patient or if the purpose is indicated on the prescription. The bill would also make a conforming change, and would delete the requirement that a patient request the inclusion of that information. The bill would also require that every prescription container be correctly labeled to include that information if so included on the prescription, and would provide a process for inclusion of that information on the*

label if it is not included on the prescription and is requested by the patient.

By revising ~~this requirement~~ *these requirements*, the knowing violation of which would be a crime, the bill would impose a state-mandated local program.

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

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

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

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

- 1 SECTION 1. Section 4040 of the Business and Professions
- 2 Code is amended to read:
- 3 4040. (a) "Prescription" means an oral, written, or electronic
- 4 transmission order that is both of the following:
- 5 (1) Given individually for the person or persons for whom
- 6 ordered that includes all of the following:
- 7 (A) The name or names and address of the patient or patients.
- 8 (B) The name and quantity of the drug or device prescribed and
- 9 the directions for use.
- 10 (C) The date of issue.
- 11 (D) Either rubber stamped, typed, or printed by hand or typeset,
- 12 the name, address, and telephone number of the prescriber, his or
- 13 her license classification, and his or her federal registry number,
- 14 if a controlled substance is prescribed.
- 15 (E) A legible, clear notice of the *condition or* purpose for which
- 16 the drug is being prescribed, ~~if requested by the patient or patients.~~
- 17 (F) If in writing, signed by the prescriber issuing the order, or
- 18 the certified nurse-midwife, nurse practitioner, physician assistant,
- 19 or naturopathic doctor who issues a drug order pursuant to Section
- 20 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist
- 21 who issues a drug order pursuant to either subparagraph (D) of
- 22 paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
- 23 (5) of, subdivision (a) of Section 4052.
- 24 (2) Issued by a physician, dentist, optometrist, podiatrist,
- 25 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,

1 if a drug order is issued pursuant to Section 2746.51, 2836.1,
2 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,
3 physician assistant, or naturopathic doctor licensed in this state,
4 or pursuant to either subparagraph (D) of paragraph (4) of, or
5 clause (iv) of subparagraph (A) of paragraph (5) of, subdivision
6 (a) of Section 4052 by a pharmacist licensed in this state.

7 (b) Notwithstanding subdivision (a), a written order of the
8 prescriber for a dangerous drug, except for any Schedule II
9 controlled substance, that contains at least the name and signature
10 of the prescriber, the name and address of the patient in a manner
11 consistent with paragraph (3) of subdivision (b) of Section 11164
12 of the Health and Safety Code, the name and quantity of the drug
13 prescribed, directions for use, and the date of issue may be treated
14 as a prescription by the dispensing pharmacist as long as any
15 additional information required by subdivision (a) is readily
16 retrievable in the pharmacy. In the event of a conflict between this
17 subdivision and Section 11164 of the Health and Safety Code,
18 Section 11164 of the Health and Safety Code shall prevail.

19 (c) "Electronic transmission prescription" includes both image
20 and data prescriptions. "Electronic image transmission
21 prescription" means any prescription order for which a facsimile
22 of the order is received by a pharmacy from a licensed prescriber.
23 "Electronic data transmission prescription" means any prescription
24 order, other than an electronic image transmission prescription,
25 that is electronically transmitted from a licensed prescriber to a
26 pharmacy.

27 (d) The use of commonly used abbreviations shall not invalidate
28 an otherwise valid prescription.

29 (e) Nothing in the amendments made to this section (formerly
30 Section 4036) at the 1969 Regular Session of the Legislature shall
31 be construed as expanding or limiting the right that a chiropractor,
32 while acting within the scope of his or her license, may have to
33 prescribe a device.

34 SEC. 2. Section 4076 of the Business and Professions Code is
35 amended to read:

36 4076. (a) A pharmacist shall not dispense any prescription
37 except in a container that meets the requirements of state and
38 federal law and is correctly labeled with all of the following:

39 (1) Except where the prescriber or the certified nurse-midwife
40 who functions pursuant to a standardized procedure or protocol

1 described in Section 2746.51, the nurse practitioner who functions
2 pursuant to a standardized procedure described in Section 2836.1,
3 or protocol, the physician assistant who functions pursuant to
4 Section 3502.1, the naturopathic doctor who functions pursuant
5 to a standardized procedure or protocol described in Section
6 3640.5, or the pharmacist who functions pursuant to a policy,
7 procedure, or protocol pursuant to either subparagraph (D) of
8 paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
9 (5) of, subdivision (a) of Section 4052 orders otherwise, either the
10 manufacturer's trade name of the drug or the generic name and
11 the name of the manufacturer. Commonly used abbreviations may
12 be used. Preparations containing two or more active ingredients
13 may be identified by the manufacturer's trade name or the
14 commonly used name or the principal active ingredients.

15 (2) The directions for the use of the drug.

16 (3) The name of the patient or patients.

17 (4) The name of the prescriber or, if applicable, the name of the
18 certified nurse-midwife who functions pursuant to a standardized
19 procedure or protocol described in Section 2746.51, the nurse
20 practitioner who functions pursuant to a standardized procedure
21 described in Section 2836.1, or protocol, the physician assistant
22 who functions pursuant to Section 3502.1, the naturopathic doctor
23 who functions pursuant to a standardized procedure or protocol
24 described in Section 3640.5, or the pharmacist who functions
25 pursuant to a policy, procedure, or protocol pursuant to either
26 subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section
28 4052.

29 (5) The date of issue.

30 (6) The name and address of the pharmacy, and prescription
31 number or other means of identifying the prescription.

32 (7) The strength of the drug or drugs dispensed.

33 (8) The quantity of the drug or drugs dispensed.

34 (9) The expiration date of the effectiveness of the drug
35 dispensed.

36 (10) The *condition or purpose* for which the drug was prescribed
37 ~~if requested by the patient or the purpose is indicated on the~~
38 ~~prescription. If the condition or purpose is indicated on the~~
39 ~~prescription. If the patient requests the condition or purpose on~~
40 ~~the container label but it is not included on the prescription, the~~

1 *pharmacist may include this information only after consulting with*
2 *the prescriber. The consultation may be conducted orally or*
3 *electronically.*

4 (11) (A) Commencing January 1, 2006, the physical description
5 of the dispensed medication, including its color, shape, and any
6 identification code that appears on the tablets or capsules, except
7 as follows:

8 (i) Prescriptions dispensed by a veterinarian.

9 (ii) An exemption from the requirements of this paragraph shall
10 be granted to a new drug for the first 120 days that the drug is on
11 the market and for the 90 days during which the national reference
12 file has no description on file.

13 (iii) Dispensed medications for which no physical description
14 exists in any commercially available database.

15 (B) This paragraph applies to outpatient pharmacies only.

16 (C) The information required by this paragraph may be printed
17 on an auxiliary label that is affixed to the prescription container.

18 (D) This paragraph shall not become operative if the board,
19 prior to January 1, 2006, adopts regulations that mandate the same
20 labeling requirements set forth in this paragraph.

21 (b) If a pharmacist dispenses a prescribed drug by means of a
22 unit dose medication system, as defined by administrative
23 regulation, for a patient in a skilled nursing, intermediate care, or
24 other health care facility, the requirements of this section will be
25 satisfied if the unit dose medication system contains the
26 aforementioned information or the information is otherwise readily
27 available at the time of drug administration.

28 (c) If a pharmacist dispenses a dangerous drug or device in a
29 facility licensed pursuant to Section 1250 of the Health and Safety
30 Code, it is not necessary to include on individual unit dose
31 containers for a specific patient, the name of the certified
32 nurse-midwife who functions pursuant to a standardized procedure
33 or protocol described in Section 2746.51, the nurse practitioner
34 who functions pursuant to a standardized procedure described in
35 Section 2836.1, or protocol, the physician assistant who functions
36 pursuant to Section 3502.1, the naturopathic doctor who functions
37 pursuant to a standardized procedure or protocol described in
38 Section 3640.5, or the pharmacist who functions pursuant to a
39 policy, procedure, or protocol pursuant to either subparagraph (D)

1 of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
2 (5) of, subdivision (a) of Section 4052.

3 (d) If a pharmacist dispenses a prescription drug for use in a
4 facility licensed pursuant to Section 1250 of the Health and Safety
5 Code, it is not necessary to include the information required in
6 paragraph (11) of subdivision (a) when the prescription drug is
7 administered to a patient by a person licensed under the Medical
8 Practice Act (Chapter 5 (commencing with Section 2000)), the
9 Nursing Practice Act (Chapter 6 (commencing with Section 2700)),
10 or the Vocational Nursing Practice Act (Chapter 6.5 (commencing
11 with Section 2840)), who is acting within his or her scope of
12 practice.

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

SB 638

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 638
Author: Negrete McLeod
Bill Date: February 27, 2009, amended
Subject: Regulatory Boards: joint committee on operations
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Rules Committee, after passing out of the Senate Business and Professions Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill will change the sunset date for the Board.

This bill would delete the requirement that a board become a bureau under the Department of Consumer Affairs (DCA) if it sunsets. This bill would require, instead, that the board's members be removed and a successor board would be appointed.

This bill revises how the sunset process will take place in the legislature.

ANALYSIS:

This bill does not yet set a sunset review date for the Board.

This bill revises the sunset review law to provide that when a board becomes inoperative the board's members are removed then a successor board is appointed with the same rights, duties, and membership parameters as the board it is succeeding.

This bill deletes the requirement that a board be designated as a bureau under DCA if it sunsets. This bill terminates the terms of office of each board member and bureau chief within DCA upon an unspecified date and authorizes successor board members and bureau chiefs to be appointed.

This bill would require all boards and bureaus, with the assistance of DCA, to prepare an analysis and submit a report to the appropriate policy committees of the

Legislature no later than 22 months before the board's membership or the bureau chief shall be terminated (sunset date).

FISCAL: Unknown

POSITION: **Executive Committee Recommendation:** Support
Staff Recommendation: Support

April 26, 2009

Introduced by Senator Negrete McLeodFebruary 27, 2009

An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 638, as introduced, Negrete McLeod. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief

within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and the Tax Education Council to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if their annual report contains certain information, to post it on its Internet Web site. The bill would make other conforming changes.

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

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

1 SECTION 1. Section 22 of the Business and Professions Code
2 is amended to read:

3 22. ~~(a)~~ “Board,” as used in any provision of this code, refers
4 to the board in which the administration of the provision is vested,
5 and unless otherwise expressly provided, shall include “bureau,”
6 “commission,” “committee,” “department,” “division,” “examining
7 committee,” “program,” and “agency.”

8 ~~(b) Whenever the regulatory program of a board that is subject~~
9 ~~to review by the Joint Committee on Boards, Commissions, and~~
10 ~~Consumer Protection, as provided for in Division 1.2 (commencing~~
11 ~~with Section 473), is taken over by the department, that program~~
12 ~~shall be designated as a “bureau.”~~

13 SEC. 2. Section 101.1 of the Business and Professions Code
14 is repealed.

15 ~~101.1. (a) It is the intent of the Legislature that all existing~~
16 ~~and proposed consumer-related boards or categories of licensed~~
17 ~~professionals be subject to a review every four years to evaluate~~
18 ~~and determine whether each board has demonstrated a public need~~
19 ~~for the continued existence of that board in accordance with~~
20 ~~enumerated factors and standards as set forth in Division 1.2~~
21 ~~(commencing with Section 473).~~

1 ~~(b) (1) In the event that any board, as defined in Section 477,~~
2 ~~becomes inoperative or is repealed in accordance with the act that~~
3 ~~added this section, or by subsequent acts, the Department of~~
4 ~~Consumer Affairs shall succeed to and is vested with all the duties,~~
5 ~~powers, purposes, responsibilities and jurisdiction not otherwise~~
6 ~~repealed or made inoperative of that board and its executive officer.~~

7 ~~(2) Any provision of existing law that provides for the~~
8 ~~appointment of board members and specifies the qualifications~~
9 ~~and tenure of board members shall not be implemented and shall~~
10 ~~have no force or effect while that board is inoperative or repealed.~~
11 ~~Every reference to the inoperative or repealed board, as defined~~
12 ~~in Section 477, shall be deemed to be a reference to the department.~~

13 ~~(3) Notwithstanding Section 107, any provision of law~~
14 ~~authorizing the appointment of an executive officer by a board~~
15 ~~subject to the review described in Division 1.2 (commencing with~~
16 ~~Section 473), or prescribing his or her duties, shall not be~~
17 ~~implemented and shall have no force or effect while the applicable~~
18 ~~board is inoperative or repealed. Any reference to the executive~~
19 ~~officer of an inoperative or repealed board shall be deemed to be~~
20 ~~a reference to the director or his or her designee.~~

21 ~~(c) It is the intent of the Legislature that subsequent legislation~~
22 ~~to extend or repeal the inoperative date for any board shall be a~~
23 ~~separate bill for that purpose.~~

24 SEC. 3. Section 101.1 is added to the Business and Professions
25 Code, to read:

26 101.1. (a) Notwithstanding any other provision of law, if the
27 terms of office of the members of a board are terminated in
28 accordance with the act that added this section or by subsequent
29 acts, successor members shall be appointed that shall succeed to,
30 and be vested with, all the duties, powers, purposes,
31 responsibilities, and jurisdiction not otherwise repealed or made
32 inoperative of the members that they are succeeding. The successor
33 members shall be appointed by the same appointing authorities,
34 for the remainder of the previous members' terms, and shall be
35 subject to the same membership requirements as the members they
36 are succeeding.

37 (b) Notwithstanding any other provision of law, if the term of
38 office for a bureau chief is terminated in accordance with the act
39 that added this section or by subsequent acts, a successor bureau
40 chief shall be appointed who shall succeed to, and be vested with,

1 all the duties, powers, purposes, responsibilities, and jurisdiction
2 not otherwise repealed or made inoperative of the bureau chief
3 that he or she is succeeding. The successor bureau chief shall be
4 appointed by the same appointing authorities, for the remainder
5 of the previous bureau chief's term, and shall be subject to the
6 same requirements as the bureau chief he or she is succeeding.

7 SEC. 4. Section 473 of the Business and Professions Code is
8 repealed.

9 ~~473. (a) There is hereby established the Joint Committee on~~
10 ~~Boards, Commissions, and Consumer Protection.~~

11 ~~(b) The Joint Committee on Boards, Commissions, and~~
12 ~~Consumer Protection shall consist of three members appointed by~~
13 ~~the Senate Committee on Rules and three members appointed by~~
14 ~~the Speaker of the Assembly. No more than two of the three~~
15 ~~members appointed from either the Senate or the Assembly shall~~
16 ~~be from the same party. The Joint Rules Committee shall appoint~~
17 ~~the chairperson of the committee.~~

18 ~~(c) The Joint Committee on Boards, Commissions, and~~
19 ~~Consumer Protection shall have and exercise all of the rights,~~
20 ~~duties, and powers conferred upon investigating committees and~~
21 ~~their members by the Joint Rules of the Senate and Assembly as~~
22 ~~they are adopted and amended from time to time, which provisions~~
23 ~~are incorporated herein and made applicable to this committee and~~
24 ~~its members.~~

25 ~~(d) The Speaker of the Assembly and the Senate Committee on~~
26 ~~Rules may designate staff for the Joint Committee on Boards,~~
27 ~~Commissions, and Consumer Protection.~~

28 ~~(e) The Joint Committee on Boards, Commissions, and~~
29 ~~Consumer Protection is authorized to act until January 1, 2012, at~~
30 ~~which time the committee's existence shall terminate.~~

31 SEC. 5. Section 473 is added to the Business and Professions
32 Code, to read:

33 473. Whenever the provisions of this code refer to the Joint
34 Committee on Boards, Commissions and Consumer Protection,
35 the reference shall be construed to be a reference to the appropriate
36 policy committees of the Legislature.

37 SEC. 6. Section 473.1 of the Business and Professions Code
38 is amended to read:

39 473.1. This chapter shall apply to all of the following:

(a) Every board, as defined in Section 22, that is scheduled to become inoperative and to be repealed have its membership reconstituted on a specified date as provided by the specific act relating to the board subdivision (a) of Section 473.12.

(b) ~~The Bureau for Postsecondary and Vocational Education.~~ For purposes of this chapter, "board" includes the bureau Every bureau that is named in subdivision (b) of Section 473.12.

(c) ~~The Cemetery and Funeral Bureau.~~ Every entity that is named in subdivision (c) of Section 473.12.

SEC. 7. Section 473.12 is added to the Business and Professions Code, to read:

473.12. (a) Notwithstanding any other provision of law, the term of office of each member of the following boards in the department shall terminate on the date listed, unless a later enacted statute, that is enacted before the date listed for that board, deletes or extends that date:

- (1) The Dental Board of California: January 1, ____.
- (2) The Medical Board of California: January 1, ____.
- (3) The State Board of Optometry: January 1, ____.
- (4) The California State Board of Pharmacy: January 1, ____.
- (5) The Veterinary Medical Board: January 1, ____.
- (6) The California Board of Accountancy: January 1, ____.
- (7) The California Architects Board: January 1, ____.
- (8) The State Board of Barbering and Cosmetology: January 1, ____.
- (9) The Board for Professional Engineers and Land Surveyors: January 1, ____.
- (10) The Contractors' State License Board: January 1, ____.
- (11) The Structural Pest Control Board: January 1, ____.
- (12) The Board of Registered Nursing: January 1, ____.
- (13) The Board of Behavioral Sciences: January 1, ____.
- (14) The State Athletic Commission: January 1, ____.
- (15) The State Board of Guide Dogs for the Blind: January 1, ____.
- (16) The Court Reporters Board of California: January 1, ____.
- (17) The Board of Vocational Nursing and Psychiatric Technicians: January 1, ____.
- (18) The Landscape Architects Technical Committee: January 1, ____.

- 1 (19) The Board for Geologists and Geophysicists: January 1,
- 2 ____.
- 3 (20) The Respiratory Care Board of California: January 1, ____.
- 4 (21) The Acupuncture Board: January 1, ____.
- 5 (22) The Board of Psychology: January 1, ____.
- 6 (23) The California Board of Podiatric Medicine: January 1,
- 7 ____.
- 8 (24) The Physical Therapy Board of California: January 1, ____.
- 9 (25) The Physician Assistant Committee, Medical Board of
- 10 California: January 1, ____.
- 11 (26) The Speech-Language Pathology and Audiology Board:
- 12 January 1, ____.
- 13 (27) The California Board of Occupational Therapy: January
- 14 1, ____.
- 15 (28) The Dental Hygiene Committee of California: January 1,
- 16 ____.
- 17 (b) Notwithstanding any other provision of law, the term of
- 18 office for the bureau chief of each of the following bureaus shall
- 19 terminate on the date listed, unless a later enacted statute, that is
- 20 enacted before the date listed for that bureau, deletes or extends
- 21 that date:
- 22 (1) Arbitration Review Program: January 1, ____.
- 23 (2) Bureau for Private Postsecondary Education: January 1,
- 24 ____.
- 25 (3) Bureau of Automotive Repair: January 1, ____.
- 26 (4) Bureau of Electronic and Appliance Repair: January 1, ____.
- 27 (5) Bureau of Home Furnishings and Thermal Insulation:
- 28 January 1, ____.
- 29 (6) Bureau of Naturopathic Medicine: January 1, ____.
- 30 (7) Bureau of Security and Investigative Services: January 1,
- 31 ____.
- 32 (8) Cemetery and Funeral Bureau: January 1, ____.
- 33 (9) Hearing Aid Dispensers Bureau: January 1, ____.
- 34 (10) Professional Fiduciaries Bureau: January 1, ____.
- 35 (11) Telephone Medical Advice Services Bureau: January 1,
- 36 ____.
- 37 (12) Division of Investigation: January 1, ____.
- 38 (c) Notwithstanding any other provision of law, the following
- 39 shall be subject to review under this chapter on the following dates:
- 40 (1) Interior design certification organizations: January 1, ____.

(2) State Board of Chiropractic Examiners pursuant to Section 473.15: January 1, ____.

(3) Osteopathic Medical Board of California pursuant to Section 473.15: January 1, ____.

(4) California Tax Education Council: January 1, ____.

(d) Nothing in this section or in Section 101.1 shall be construed to preclude, prohibit, or in any manner alter the requirement of Senate confirmation of a board member, chief officer, or other appointee that is subject to confirmation by the Senate as otherwise required by law.

(e) It is not the intent of the Legislature in enacting this section to amend the initiative measure that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 8. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) ~~The Joint Committee on Boards, Commissions, and Consumer Protection established pursuant to Section 473~~ *appropriate policy committees of the Legislature* shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* on or before September 1, 2010.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* on or before September 1, 2011.

(d) ~~The Joint Committee on Boards, Commissions, and Consumer Protection~~ *appropriate policy committees of the Legislature* shall, during the interim recess of ~~2004~~ *2011* for the Osteopathic Medical Board of California, and during the interim

1 recess of 2011 for the State Board of Chiropractic Examiners, hold
2 public hearings to receive testimony from the Director of Consumer
3 Affairs, the board involved, the public, and the regulated industry.
4 In that hearing, each board shall be prepared to demonstrate a
5 compelling public need for the continued existence of the board
6 or regulatory program, and that its licensing function is the least
7 restrictive regulation consistent with the public health, safety, and
8 welfare.

9 ~~(e) The Joint Committee on Boards, Commissions, and~~
10 ~~Consumer Protection appropriate policy committees of the~~
11 ~~Legislature shall evaluate and make determinations pursuant to~~
12 ~~Section 473.4 and shall report its findings and recommendations~~
13 ~~to the department as provided in Section 473.5.~~

14 (f) In the exercise of its inherent power to make investigations
15 and ascertain facts to formulate public policy and determine the
16 necessity and expediency of contemplated legislation for the
17 protection of the public health, safety, and welfare, it is the intent
18 of the Legislature that the State Board of Chiropractic Examiners
19 and the Osteopathic Medical Board of California be reviewed
20 pursuant to this section.

21 (g) It is not the intent of the Legislature in ~~requiring a review~~
22 ~~under~~ *enacting* this section to amend the initiative measures that
23 established the State Board of Chiropractic Examiners or the
24 Osteopathic Medical Board of California.

25 SEC. 9. Section 473.16 of the Business and Professions Code
26 is repealed.

27 ~~473.16. The Joint Committee on Boards, Commissions, and~~
28 ~~Consumer Protection shall examine the composition of the Medical~~
29 ~~Board of California and its initial and biennial fees and report to~~
30 ~~the Governor and the Legislature its findings no later than July 1,~~
31 ~~2008.~~

32 SEC. 10. Section 473.2 of the Business and Professions Code
33 is amended to read:

34 473.2. (a) All boards to which this chapter applies or bureaus
35 listed in Section 473.12 shall, with the assistance of the Department
36 of Consumer Affairs, prepare an analysis and submit a report to
37 the ~~Joint Committee on Boards, Commissions, and Consumer~~
38 ~~Protection appropriate policy committees of the Legislature~~ no
39 later than 22 months before that ~~board~~ board's membership or the
40 bureau chief's term shall ~~become inoperative~~ be terminated

1 pursuant to Section 473.12. The analysis and report shall include,
2 at a minimum, all of the following:

3 ~~(a) A comprehensive statement of the board's mission, goals,~~
4 ~~objectives and legal jurisdiction in protecting the health, safety,~~
5 ~~and welfare of the public.~~

6 ~~(b) The board's enforcement priorities, complaint and~~
7 ~~enforcement data, budget expenditures with average and~~
8 ~~median costs per case, and case aging data specific to post and~~
9 ~~preaccusation cases at the Attorney General's office.~~

10 ~~(c) The board's~~

11 *(1) The number of complaints it received per year, the number*
12 *of complaints per year that proceeded to investigation, the number*
13 *of accusations filed per year, and the number and kind of*
14 *disciplinary actions taken, including, but not limited to, interim*
15 *suspension orders, revocations, probations, and suspensions.*

16 *(2) The average amount of time per year that elapsed between*
17 *receipt of a complaint and the complaint being closed or referred*
18 *to investigation; the average amount of time per year elapsed*
19 *between the commencement of an investigation and the complaint*
20 *either being closed or an accusation being filed; the average*
21 *amount of time elapsed per year between the filing of an accusation*
22 *and a final decision, including appeals; and the average and*
23 *median costs per case.*

24 *(3) The average amount of time per year between final*
25 *disposition of a complaint and notice to the complainant.*

26 *(4) A copy of the enforcement priorities including criteria for*
27 *seeking an interim suspension order.*

28 *(5) A brief description of the board's or bureau's fund*
29 *conditions, sources of revenues, and expenditure categories for*
30 *the last four fiscal years by program component.*

31 ~~(d) The board's description of its licensing process including~~
32 ~~the time and costs~~

33 *(6) A brief description of the cost per year required to implement*
34 *and administer its licensing examination, ownership of the license*
35 *examination, the last assessment of the relevancy and validity of*
36 *the licensing examination, and the passage rate for each of the last*
37 *four years, and areas of examination.*

38 ~~(e) The board's initiation of legislative efforts, budget change~~
39 ~~proposals, and other initiatives it has taken to improve its legislative~~
40 ~~mandate.~~

1 (7) A copy of sponsored legislation and a description of its
2 budget change proposals.

3 (8) A brief assessment of its licensing fees as to whether they
4 are sufficient, too high, or too low.

5 (9) A brief statement detailing how the board or bureau over
6 the prior four years has improved its enforcement, public
7 disclosure, accessibility to the public, including, but not limited
8 to, Web casts of its proceedings, and fiscal condition.

9 (b) If an annual report contains information that is required by
10 this section, a board or bureau may submit the annual report to
11 the committees and it shall post it on the board's or bureau's
12 Internet Web site.

13 SEC. 11. Section 473.3 of the Business and Professions Code
14 is amended to read:

15 473.3. ~~(a) Prior to the termination, continuation, or~~
16 ~~reestablishment of the terms of office of the membership of any~~
17 ~~board or any of the board's functions, the Joint Committee on~~
18 ~~Boards, Commissions, and Consumer Protection shall the chief of~~
19 ~~any bureau described in Section 473.12, the appropriate policy~~
20 ~~committees of the Legislature, during the interim recess preceding~~
21 ~~the date upon which a board becomes inoperative board member's~~
22 ~~or bureau chief's term of office is to be terminated, may hold public~~
23 ~~hearings to receive and consider testimony from the Director of~~
24 ~~Consumer Affairs, the board or bureau involved, and the Attorney~~
25 ~~General, members of the public, and representatives of the~~
26 ~~regulated industry. In that hearing, each board shall have the burden~~
27 ~~of demonstrating a compelling public need for the continued~~
28 ~~existence of the board or regulatory program, and that its licensing~~
29 ~~function is the least restrictive regulation consistent with the public~~
30 ~~health, safety, and welfare regarding whether the board's or~~
31 ~~bureau's policies and practices, including enforcement, disclosure,~~
32 ~~licensing exam, and fee structure, are sufficient to protect~~
33 ~~consumers and are fair to licensees and prospective licensees,~~
34 ~~whether licensure of the profession is required to protect the public,~~
35 ~~and whether an enforcement monitor may be necessary to obtain~~
36 ~~further information on operations.~~

37 (b) In addition to subdivision (a), in 2002 and every four years
38 thereafter, the committee, in cooperation with the California
39 Postsecondary Education Commission, shall hold a public hearing
40 to receive testimony from the Director of Consumer Affairs, the

1 Bureau for Private Postsecondary and Vocational Education,
2 private postsecondary educational institutions regulated by the
3 bureau, and students of those institutions. In those hearings, the
4 bureau shall have the burden of demonstrating a compelling public
5 need for the continued existence of the bureau and its regulatory
6 program, and that its function is the least restrictive regulation
7 consistent with the public health, safety, and welfare.

8 (c) The committee, in cooperation with the California
9 Postsecondary Education Commission, shall evaluate and review
10 the effectiveness and efficiency of the Bureau for Private
11 Postsecondary and Vocational Education, based on factors and
12 minimum standards of performance that are specified in Section
13 473.4. The committee shall report its findings and
14 recommendations as specified in Section 473.5. The bureau shall
15 prepare an analysis and submit a report to the committee as
16 specified in Section 473.2.

17 (d) In addition to subdivision (a), in 2003 and every four years
18 thereafter, the committee shall hold a public hearing to receive
19 testimony from the Director of Consumer Affairs and the Bureau
20 of Automotive Repair. In those hearings, the bureau shall have the
21 burden of demonstrating a compelling public need for the continued
22 existence of the bureau and its regulatory program, and that its
23 function is the least restrictive regulation consistent with the public
24 health, safety, and welfare.

25 (e) The committee shall evaluate and review the effectiveness
26 and efficiency of the Bureau of Automotive Repair based on factors
27 and minimum standards of performance that are specified in
28 Section 473.4. The committee shall report its findings and
29 recommendations as specified in Section 473.5. The bureau shall
30 prepare an analysis and submit a report to the committee as
31 specified in Section 473.2.

32 SEC. 12. Section 473.4 of the Business and Professions Code
33 is amended to read:

34 473.4. (a) The Joint Committee on Boards, Commissions, and
35 Consumer Protection shall *appropriate policy committees of the*
36 *Legislature* may evaluate and determine whether a board or
37 regulatory program has demonstrated a public need for the
38 continued existence of the board or regulatory program and for
39 the degree of regulation the board or regulatory program

1 implements based on the following factors and minimum standards
2 of performance:

3 (1) Whether regulation by the board is necessary to protect the
4 public health, safety, and welfare.

5 (2) Whether the basis or facts that necessitated the initial
6 licensing or regulation of a practice or profession have changed.

7 (3) Whether other conditions have arisen that would warrant
8 increased, decreased, or the same degree of regulation.

9 (4) If regulation of the profession or practice is necessary,
10 whether existing statutes and regulations establish the least
11 restrictive form of regulation consistent with the public interest,
12 considering other available regulatory mechanisms, and whether
13 the board rules enhance the public interest and are within the scope
14 of legislative intent.

15 (5) Whether the board operates and enforces its regulatory
16 responsibilities in the public interest and whether its regulatory
17 mission is impeded or enhanced by existing statutes, regulations,
18 policies, practices, or any other circumstances, including budgetary,
19 resource, and personnel matters.

20 (6) Whether an analysis of board operations indicates that the
21 board performs its statutory duties efficiently and effectively.

22 (7) Whether the composition of the board adequately represents
23 the public interest and whether the board encourages public
24 participation in its decisions rather than participation only by the
25 industry and individuals it regulates.

26 (8) Whether the board and its laws or regulations stimulate or
27 restrict competition, and the extent of the economic impact the
28 board's regulatory practices have on the state's business and
29 technological growth.

30 (9) Whether complaint, investigation, powers to intervene, and
31 disciplinary procedures adequately protect the public and whether
32 final dispositions of complaints, investigations, restraining orders,
33 and disciplinary actions are in the public interest; or if it is, instead,
34 self-serving to the profession, industry or individuals being
35 regulated by the board.

36 (10) Whether the scope of practice of the regulated profession
37 or occupation contributes to the highest utilization of personnel
38 and whether entry requirements encourage affirmative action.

39 (11) Whether administrative and statutory changes are necessary
40 to improve board operations to enhance the public interest.

1 ~~(b) The Joint Committee on Boards, Commissions, and~~
2 ~~Consumer Protection shall consider alternatives to placing~~
3 ~~responsibilities and jurisdiction of the board under the Department~~
4 ~~of Consumer Affairs.~~

5 ~~(e)~~

6 ~~(b) Nothing in this section precludes any board from submitting~~
7 ~~other appropriate information to the Joint Committee on Boards,~~
8 ~~Commissions, and Consumer Protection. appropriate policy~~
9 ~~committees of the Legislature.~~

10 SEC. 13. Section 473.5 of the Business and Professions Code
11 is repealed.

12 ~~473.5. The Joint Committee on Boards, Commissions, and~~
13 ~~Consumer Protection shall report its findings and preliminary~~
14 ~~recommendations to the department for its review, and, within 90~~
15 ~~days of receiving the report, the department shall report its findings~~
16 ~~and recommendations to the Joint Committee on Boards,~~
17 ~~Commissions, and Consumer Protection during the next year of~~
18 ~~the regular session that follows the hearings described in Section~~
19 ~~473.3. The committee shall then meet to vote on final~~
20 ~~recommendations. A final report shall be completed by the~~
21 ~~committee and made available to the public and the Legislature.~~
22 ~~The report shall include final recommendations of the department~~
23 ~~and the committee and whether each board or function scheduled~~
24 ~~for repeal shall be terminated, continued, or reestablished, and~~
25 ~~whether its functions should be revised. If the committee or the~~
26 ~~department deems it advisable, the report may include proposed~~
27 ~~bills to carry out its recommendations.~~

28 SEC. 14. Section 473.6 of the Business and Professions Code
29 is amended to read:

30 473.6. The chairpersons of the appropriate policy committees
31 of the Legislature may refer to the ~~Joint Committee on Boards,~~
32 ~~Commissions, and Consumer Protection for interim study~~ review
33 of any legislative issues or proposals to create new licensure or
34 regulatory categories, change licensing requirements, modify scope
35 of practice, or create a new licensing board under the provisions
36 of this code or pursuant to Chapter 1.5 (commencing with Section
37 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

38 SEC. 15. Section 473.7 is added to the Business and Professions
39 Code, to read:

1 473.7. The appropriate policy committees of the Legislature
2 may, through their oversight function, investigate the operations
3 of any entity to which this chapter applies and hold public hearings
4 on any matter subject to public hearing under Section 473.3.

5 SEC. 16. Section 9882 of the Business and Professions Code
6 is amended to read:

7 9882. (a) There is in the Department of Consumer Affairs a
8 Bureau of Automotive Repair under the supervision and control
9 of the director. The duty of enforcing and administering this chapter
10 is vested in the chief who is responsible to the director. The director
11 may adopt and enforce those rules and regulations that he or she
12 determines are reasonably necessary to carry out the purposes of
13 this chapter and declaring the policy of the bureau, including a
14 system for the issuance of citations for violations of this chapter
15 as specified in Section 125.9. These rules and regulations shall be
16 adopted pursuant to Chapter 3.5 (commencing with Section 11340)
17 of Part 1 of Division 3 of Title 2 of the Government Code.

18 (b) In 2003 and every four years thereafter, the ~~Joint Committee~~
19 ~~on Boards, Commissions, and Consumer Protection~~ *appropriate*
20 *policy committees of the Legislature* shall hold a public hearing to
21 receive *and consider* testimony from the Director of Consumer
22 Affairs ~~and, the bureau. In those hearings, the bureau shall have~~
23 ~~the burden of demonstrating a compelling public need for the~~
24 ~~continued existence of the bureau and its regulatory program, and~~
25 ~~that its function is the least restrictive regulation consistent with~~
26 ~~the public health, safety, and welfare, the Attorney General,~~
27 ~~members of the public, and representatives of this industry~~
28 ~~regarding the bureau's policies and practices as specified in~~
29 ~~Section 473.3. The committee shall appropriate policy committees~~
30 ~~of the Legislature may~~ evaluate and review the effectiveness and
31 efficiency of the bureau based on factors and minimum standards
32 of performance that are specified in Section 473.4. ~~The committee~~
33 ~~shall report its findings and recommendations as specified in~~
34 ~~Section 473.5.~~ The bureau shall prepare an analysis and submit a
35 report to the ~~committee~~ *appropriate policy committees of the*
36 *Legislature* as specified in Section 473.2.

SB 674

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 674
Author: Negrete McLeod
Bill Date: April 28, 2009, amended
Subject: Outpatient settings/Advertising
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill covers a variety of subjects, including advertising, outpatient setting accreditation requirements, supervision of laser and IPL device procedures, the wearing of name tags for healthcare professionals, and public information.

ANALYSIS:

This bill makes some significant changes to sections of the Business and Professions (B&P) Code and the Health and Safety (H&S) Code that may benefit the public.

Amends B&P Code section 651, which would require, effective January 1, 2011, advertising to include the license designation following the licensee's name:

- Chiropractors - "DC"
- Dentists - "DDS" or "DMD"
- Physicians - "MD" or "DO", as appropriate;
- Podiatrists - "DPM"
- Registered Nurses - "RN"
- Vocational Nurses - "LVN"
- Psychologists - "Ph.D."
- Optometrists - "OD"
- Physician Assistants - "PA"
- Naturopathic doctor - "ND"

This bill also defines advertising as virtually any promotional communications, including direct mail, television, radio, motion picture, newspaper, book, Internet, or any other form of communication. It does not include insurance provider directories, billing statements, or appointment reminders.

Amends B&P Code section 2023.5:

This amendment would require that the Nursing and Medical Boards adopt regulations by July 1, 2010 relating to the “appropriate level of physician availability” needed for use of prescriptive lasers or intense pulse light devices.

These two Boards held three public forums to study this subject as mandated by B&P Code section 2023.5 (added to statutes by SB 1423; Figueroa, Chap 873, Statutes of 2006). As a result of that study, it was determined that current law and regulations were sufficient related to supervision --- it was lack of enforcement that was contributing to the problems occurring in the use of lasers and IPL devices, among other cosmetic procedures. These forums did not address physician availability.

Adds B&P Code section 2027.5:

This new section requires the Board to post on its Web site a comprehensive fact sheet on cosmetic surgery. This will enhance consumer awareness and protection.

Amends H&S Code section 1248:

This section clarifies that any references to Division of Licensing are deemed to refer to the Medical Board. More importantly is adds in vitro fertilization facilities or other assisted reproduction technology services to the definition of “Outpatient setting.”

Amends H&S Code section 1248.15:

This section makes technical changes and adds the requirement for accreditation agencies that they not only require of the settings emergency plans for outpatient settings, but also require the inclusion of standardized procedures and protocols to be followed in the event of emergencies or complications that place patients at risk of injury or harm. This is added to address concerns that detailed procedures were not in place at these settings. This section, as amended, allows the Board to adopt standards for outpatient settings that offer in vitro fertilization or assisted reproduction technology. Facilities providing these services would be required to meet accreditation standards that the board deems necessary, different than existing standards for current outpatient settings.

Amends H&S Code section 1248.2:

This section replaces “Division” or “Division of Licensing” with “Board” to reflect the current organization of the Medical Board. This section requires the Medical Board to disclose to the public if an outpatient setting has been suspended, placed on probation, or received a reprimand by the approved accreditation agency. This will allow the public access to the status of all outpatient settings.

Amends H&S Code sections 1248.25 and 1248.35, and 1248.5:

These sections make do the following:

- Requires the Board or the Board’s approved accreditation agencies to periodically inspect accredited outpatient settings. Inspections must be performed no less than once every three years. This will help the settings remain in compliance with the law, thus providing enhanced consumer protection. It is not clear who will pay for these inspections.

- Current law requires accreditation agencies to provide outpatient settings a notice of deficiencies and a reasonable time to remedy them before revoking accreditation. This legislation would require the outpatient setting to prominently post the notice of deficiencies. This will allow the public access to issues that the settings may have or had to remedy.
- Requires that reports on the results of outpatient setting inspections be kept on file by the Board or accrediting agency, along with proposed corrective action and recommendations for reinspection. These reports will be public information - disclosable to the public.
- Requires the approved accrediting agencies to immediately inform the Board when they issue a reprimand, suspend or revoke accreditation, or place an outpatient setting on probation. This will alert the Board of an issue that may need action.
- Requires the Board to:
 1. Evaluate the accreditation agencies every three years;
 2. Evaluate in response to complaints against an agency;
 3. Evaluate complaints against the accreditation of outpatient settings.

This bill was amended to require the Department of Public Health, while conducting regular period state inspections of acute care hospitals, to inspect the peer review process in that hospital as well.

FISCAL: Unknown, but could be substantial if the Board does the inspections.

POSITION: **Executive Committee Recommendation:** Support if amended
Staff Recommendation: Support

April 26, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 674

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 651, ~~680~~, 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, and 1279 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 674, as amended, Negrete McLeod. Healing arts.

(1) 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 impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

~~(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status on a specified name tag. However, existing law exempts from this requirement a health care practitioner, in a practice or office, whose license is prominently displayed.~~

~~This bill would delete that exemption and would instead authorize a health care practitioner, in a practice or office, to disclose his or her name and his or her type of license verbally.~~

~~(3)~~

(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 July 1, 2010, 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.

~~(4)~~

(3) Existing law requires the board 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.

~~(5)~~

(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.

This bill would include, among those specified aspects, the submission for approval by an accrediting 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, and assisted reproduction technology treatments.

~~(6)~~

(5) 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.

~~(7)~~

(6) 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 accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

~~(8)~~

(7) 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, and the bill would require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

~~(9)~~

(8) 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.

~~(10)~~

(9) 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 require the department, when conducting an inspection of an acute care hospital, to inspect the peer review process utilized by the hospital.

~~(11)~~

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

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

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

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

1 SECTION 1. Section 651 of the Business and Professions Code
2 is amended to read:

3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely
8 to induce, directly or indirectly, the rendering of professional
9 services or furnishing of products in connection with the
10 professional practice or business for which he or she is licensed.
11 A "public communication" as used in this section includes, but is
12 not limited to, communication by means of mail, television, radio,
13 motion picture, newspaper, book, list or directory of healing arts
14 practitioners, Internet, or other electronic communication.

15 (b) A false, fraudulent, misleading, or deceptive statement,
16 claim, or image includes a statement or claim that does any of the
17 following:

18 (1) Contains a misrepresentation of fact.

19 (2) Is likely to mislead or deceive because of a failure to disclose
20 material facts.

21 (3) (A) Is intended or is likely to create false or unjustified
22 expectations of favorable results, including the use of any
23 photograph or other image that does not accurately depict the
24 results of the procedure being advertised or that has been altered
25 in any manner from the image of the actual subject depicted in the
26 photograph or image.

1 (B) Use of any photograph or other image of a model without
2 clearly stating in a prominent location in easily readable type the
3 fact that the photograph or image is of a model is a violation of
4 subdivision (a). For purposes of this paragraph, a model is anyone
5 other than an actual patient, who has undergone the procedure
6 being advertised, of the licensee who is advertising for his or her
7 services.

8 (C) Use of any photograph or other image of an actual patient
9 that depicts or purports to depict the results of any procedure, or
10 presents “before” and “after” views of a patient, without specifying
11 in a prominent location in easily readable type size what procedures
12 were performed on that patient is a violation of subdivision (a).
13 Any “before” and “after” views (i) shall be comparable in
14 presentation so that the results are not distorted by favorable poses,
15 lighting, or other features of presentation, and (ii) shall contain a
16 statement that the same “before” and “after” results may not occur
17 for all patients.

18 (4) Relates to fees, other than a standard consultation fee or a
19 range of fees for specific types of services, without fully and
20 specifically disclosing all variables and other material factors.

21 (5) Contains other representations or implications that in
22 reasonable probability will cause an ordinarily prudent person to
23 misunderstand or be deceived.

24 (6) Makes a claim either of professional superiority or of
25 performing services in a superior manner, unless that claim is
26 relevant to the service being performed and can be substantiated
27 with objective scientific evidence.

28 (7) Makes a scientific claim that cannot be substantiated by
29 reliable, peer reviewed, published scientific studies.

30 (8) Includes any statement, endorsement, or testimonial that is
31 likely to mislead or deceive because of a failure to disclose material
32 facts.

33 (c) Any price advertisement shall be exact, without the use of
34 phrases, including, but not limited to, “as low as,” “and up,”
35 “lowest prices,” or words or phrases of similar import. Any
36 advertisement that refers to services, or costs for services, and that
37 uses words of comparison shall be based on verifiable data
38 substantiating the comparison. Any person so advertising shall be
39 prepared to provide information sufficient to establish the accuracy
40 of that comparison. Price advertising shall not be fraudulent,

1 deceitful, or misleading, including statements or advertisements
2 of bait, discount, premiums, gifts, or any statements of a similar
3 nature. In connection with price advertising, the price for each
4 product or service shall be clearly identifiable. The price advertised
5 for products shall include charges for any related professional
6 services, including dispensing and fitting services, unless the
7 advertisement specifically and clearly indicates otherwise.

8 (d) Any person so licensed shall not compensate or give anything
9 of value to a representative of the press, radio, television, or other
10 communication medium in anticipation of, or in return for,
11 professional publicity unless the fact of compensation is made
12 known in that publicity.

13 (e) Any person so licensed may not use any professional card,
14 professional announcement card, office sign, letterhead, telephone
15 directory listing, medical list, medical directory listing, or a similar
16 professional notice or device if it includes a statement or claim
17 that is false, fraudulent, misleading, or deceptive within the
18 meaning of subdivision (b).

19 (f) Any person so licensed who violates this section is guilty of
20 a misdemeanor. A bona fide mistake of fact shall be a defense to
21 this subdivision, but only to this subdivision.

22 (g) Any violation of this section by a person so licensed shall
23 constitute good cause for revocation or suspension of his or her
24 license or other disciplinary action.

25 (h) Advertising by any person so licensed may include the
26 following:

27 (1) A statement of the name of the practitioner.

28 (2) A statement of addresses and telephone numbers of the
29 offices maintained by the practitioner.

30 (3) A statement of office hours regularly maintained by the
31 practitioner.

32 (4) A statement of languages, other than English, fluently spoken
33 by the practitioner or a person in the practitioner's office.

34 (5) (A) A statement that the practitioner is certified by a private
35 or public board or agency or a statement that the practitioner limits
36 his or her practice to specific fields.

37 (i) For the purposes of this section, a dentist licensed under
38 Chapter 4 (commencing with Section 1600) may not hold himself
39 or herself out as a specialist, or advertise membership in or
40 specialty recognition by an accrediting organization, unless the

1 practitioner has completed a specialty education program approved
2 by the American Dental Association and the Commission on Dental
3 Accreditation, is eligible for examination by a national specialty
4 board recognized by the American Dental Association, or is a
5 diplomate of a national specialty board recognized by the American
6 Dental Association.

7 (ii) A dentist licensed under Chapter 4 (commencing with
8 Section 1600) shall not represent to the public or advertise
9 accreditation either in a specialty area of practice or by a board
10 not meeting the requirements of clause (i) unless the dentist has
11 attained membership in or otherwise been credentialed by an
12 accrediting organization that is recognized by the board as a bona
13 fide organization for that area of dental practice. In order to be
14 recognized by the board as a bona fide accrediting organization
15 for a specific area of dental practice other than a specialty area of
16 dentistry authorized under clause (i), the organization shall
17 condition membership or credentialing of its members upon all of
18 the following:

19 (I) Successful completion of a formal, full-time advanced
20 education program that is affiliated with or sponsored by a
21 university based dental school and is beyond the dental degree at
22 a graduate or postgraduate level.

23 (II) Prior didactic training and clinical experience in the specific
24 area of dentistry that is greater than that of other dentists.

25 (III) Successful completion of oral and written examinations
26 based on psychometric principles.

27 (iii) Notwithstanding the requirements of clauses (i) and (ii), a
28 dentist who lacks membership in or certification, diplomate status,
29 other similar credentials, or completed advanced training approved
30 as bona fide either by an American Dental Association recognized
31 accrediting organization or by the board, may announce a practice
32 emphasis in any other area of dental practice only if the dentist
33 incorporates in capital letters or some other manner clearly
34 distinguishable from the rest of the announcement, solicitation, or
35 advertisement that he or she is a general dentist.

36 (iv) A statement of certification by a practitioner licensed under
37 Chapter 7 (commencing with Section 3000) shall only include a
38 statement that he or she is certified or eligible for certification by
39 a private or public board or parent association recognized by that
40 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

1 Education approved postgraduate training program that provides
2 complete training in a specialty or subspecialty.

3 The Medical Board of California shall adopt regulations to
4 establish and collect a reasonable fee from each board or
5 association applying for recognition pursuant to this subparagraph.
6 The fee shall not exceed the cost of administering this
7 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
8 Statutes of 1990, this subparagraph shall become operative July
9 1, 1993. However, an administrative agency or accrediting
10 organization may take any action contemplated by this
11 subparagraph relating to the establishment or approval of specialist
12 requirements on and after January 1, 1991.

13 (C) A doctor of podiatric medicine licensed under Chapter 5
14 (commencing with Section 2000) by the Medical Board of
15 California may include a statement that he or she is certified or
16 eligible or qualified for certification by a private or public board
17 or parent association, including, but not limited to, a
18 multidisciplinary board or association, if that board or association
19 meets one of the following requirements: (i) is approved by the
20 Council on Podiatric Medical Education, (ii) is a board or
21 association with equivalent requirements approved by the
22 California Board of Podiatric Medicine, or (iii) is a board or
23 association with the Council on Podiatric Medical Education
24 approved postgraduate training programs that provide training in
25 podiatric medicine and podiatric surgery. A doctor of podiatric
26 medicine licensed under Chapter 5 (commencing with Section
27 2000) by the Medical Board of California who is certified by a
28 board or association referred to in clause (i), (ii), or (iii) shall not
29 use the term "board certified" unless the full name of the certifying
30 board is also used and given comparable prominence with the term
31 "board certified" in the statement. A doctor of podiatric medicine
32 licensed under Chapter 5 (commencing with Section 2000) by the
33 Medical Board of California who is certified by an organization
34 other than a board or association referred to in clause (i), (ii), or
35 (iii) shall not use the term "board certified" in reference to that
36 certification.

37 For purposes of this subparagraph, a "multidisciplinary board
38 or association" means an educational certifying body that has a
39 psychometrically valid testing process, as determined by the
40 California Board of Podiatric Medicine, for certifying doctors of

1 podiatric medicine that is based on the applicant's education,
2 training, and experience. For purposes of the term "board certified,"
3 as used in this subparagraph, the terms "board" and "association"
4 mean an organization that is a Council on Podiatric Medical
5 Education approved board, an organization with equivalent
6 requirements approved by the California Board of Podiatric
7 Medicine, or an organization with a Council on Podiatric Medical
8 Education approved postgraduate training program that provides
9 training in podiatric medicine and podiatric surgery.

10 The California Board of Podiatric Medicine shall adopt
11 regulations to establish and collect a reasonable fee from each
12 board or association applying for recognition pursuant to this
13 subparagraph, to be deposited in the State Treasury in the Podiatry
14 Fund, pursuant to Section 2499. The fee shall not exceed the cost
15 of administering this subparagraph.

16 (6) A statement that the practitioner provides services under a
17 specified private or public insurance plan or health care plan.

18 (7) A statement of names of schools and postgraduate clinical
19 training programs from which the practitioner has graduated,
20 together with the degrees received.

21 (8) A statement of publications authored by the practitioner.

22 (9) A statement of teaching positions currently or formerly held
23 by the practitioner, together with pertinent dates.

24 (10) A statement of his or her affiliations with hospitals or
25 clinics.

26 (11) A statement of the charges or fees for services or
27 commodities offered by the practitioner.

28 (12) A statement that the practitioner regularly accepts
29 installment payments of fees.

30 (13) Otherwise lawful images of a practitioner, his or her
31 physical facilities, or of a commodity to be advertised.

32 (14) A statement of the manufacturer, designer, style, make,
33 trade name, brand name, color, size, or type of commodities
34 advertised.

35 (15) An advertisement of a registered dispensing optician may
36 include statements in addition to those specified in paragraphs (1)
37 to (14), inclusive, provided that any statement shall not violate
38 subdivision (a), (b), (c), or (e) or any other section of this code.

39 (16) A statement, or statements, providing public health
40 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” 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 designation “OD” 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.

1 (2) For purposes of this subdivision, "advertisement" includes
2 communication by means of mail, television, radio, motion picture,
3 newspaper, book, directory, Internet, or other electronic
4 communication.

5 (3) Advertisements do not include any of the following:

6 (A) A medical directory released by a health care service plan
7 or a health insurer.

8 (B) A billing statement from a health care practitioner to a
9 patient.

10 (C) An appointment reminder from a health care practitioner to
11 a patient.

12 (4) This subdivision shall not apply until January 1, 2011, to
13 any advertisement that is published annually and prior to July 1,
14 2010.

15 (5) This subdivision shall not apply to any advertisement or
16 business card disseminated by a health care service plan that is
17 subject to the requirements of Section 1367.26 of the Health and
18 Safety Code.

19 (j) Each of the healing arts boards and examining committees
20 within Division 2 shall adopt appropriate regulations to enforce
21 this section in accordance with Chapter 3.5 (commencing with
22 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
23 Code.

24 Each of the healing arts boards and committees and examining
25 committees within Division 2 shall, by regulation, define those
26 efficacious services to be advertised by businesses or professions
27 under their jurisdiction for the purpose of determining whether
28 advertisements are false or misleading. Until a definition for that
29 service has been issued, no advertisement for that service shall be
30 disseminated. However, if a definition of a service has not been
31 issued by a board or committee within 120 days of receipt of a
32 request from a licensee, all those holding the license may advertise
33 the service. Those boards and committees shall adopt or modify
34 regulations defining what services may be advertised, the manner
35 in which defined services may be advertised, and restricting
36 advertising that would promote the inappropriate or excessive use
37 of health services or commodities. A board or committee shall not,
38 by regulation, unreasonably prevent truthful, nondeceptive price
39 or otherwise lawful forms of advertising of services or
40 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.

(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.

(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 680 of the Business and Professions Code is amended to read:~~

~~680. (a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and the practitioner's type of license, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or office may opt to disclose this information verbally. 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. 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 and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in~~

1 Section 2800. Nothing in this section shall prohibit a certified nurse
2 assistant from using his or her title.

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

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

17 ~~SEC. 3.~~

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

20 2023.5. (a) The board, in conjunction with the Board of
21 Registered Nursing, and in consultation with the Physician
22 Assistant Committee and professionals in the field, shall review
23 issues and problems surrounding the use of laser or intense light
24 pulse devices for elective cosmetic procedures by physicians and
25 surgeons, nurses, and physician assistants. The review shall include,
26 but need not be limited to, all of the following:

27 (1) The appropriate level of physician supervision needed.

28 (2) The appropriate level of training to ensure competency.

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

31 (A) Patient selection.

32 (B) Patient education, instruction, and informed consent.

33 (C) Use of topical agents.

34 (D) Procedures to be followed in the event of complications or
35 side effects from the treatment.

36 (E) Procedures governing emergency and urgent care situations.

37 (b) On or before January 1, 2009, the board and the Board of
38 Registered Nursing shall promulgate regulations to implement
39 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 July 1, 2010, 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.

~~SEC. 4.~~

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. 5.~~

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) (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. ~~"Outpatient"~~

(2) "Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55, or facilities that offer assisted reproduction technology treatments.

~~"Outpatient"~~

1 (3) "Outpatient setting" does not include, among other settings,
2 any setting where anxiolytics and analgesics are administered,
3 when done so in compliance with the community standard of
4 practice, in doses that do not have the probability of placing the
5 patient at risk for loss of the patient's life-preserving protective
6 reflexes.

7 (c) "Accreditation agency" means a public or private
8 organization that is approved to issue certificates of accreditation
9 to outpatient settings by the board pursuant to Sections 1248.15
10 and 1248.4.

11 ~~SEC. 6.~~

12 *SEC. 5.* Section 1248.15 of the Health and Safety Code is
13 amended to read:

14 1248.15. (a) The board shall adopt standards for accreditation
15 and, in approving accreditation agencies to perform accreditation
16 of outpatient settings, shall ensure that the certification program
17 shall, at a minimum, include standards for the following aspects
18 of the settings' operations:

19 (1) Outpatient setting allied health staff shall be licensed or
20 certified to the extent required by state or federal law.

21 (2) (A) Outpatient settings shall have a system for facility safety
22 and emergency training requirements.

23 (B) There shall be onsite equipment, medication, and trained
24 personnel to facilitate handling of services sought or provided and
25 to facilitate handling of any medical emergency that may arise in
26 connection with services sought or provided.

27 (C) In order for procedures to be performed in an outpatient
28 setting as defined in Section 1248, the outpatient setting shall do
29 one of the following:

30 (i) Have a written transfer agreement with a local accredited or
31 licensed acute care hospital, approved by the facility's medical
32 staff.

33 (ii) Permit surgery only by a licensee who has admitting
34 privileges at a local accredited or licensed acute care hospital, with
35 the exception that licensees who may be precluded from having
36 admitting privileges by their professional classification or other
37 administrative limitations, shall have a written transfer agreement
38 with licensees who have admitting privileges at local accredited
39 or licensed acute care hospitals.

1 (D) Submission for approval by an accrediting agency of a
2 detailed procedural plan for handling medical emergencies that
3 shall be reviewed at the time of accreditation. No reasonable plan
4 shall be disapproved by the accrediting agency.

5 (E) Submission for approval by an accrediting agency at the
6 time of accreditation of a detailed plan, standardized procedures,
7 and protocols to be followed in the event of serious complications
8 or side effects from surgery that would place a patient at high risk
9 for injury or harm and to govern emergency and urgent care
10 situations.

11 (F) All physicians and surgeons transferring patients from an
12 outpatient setting shall agree to cooperate with the medical staff
13 peer review process on the transferred case, the results of which
14 shall be referred back to the outpatient setting, if deemed
15 appropriate by the medical staff peer review committee. If the
16 medical staff of the acute care facility determines that inappropriate
17 care was delivered at the outpatient setting, the acute care facility's
18 peer review outcome shall be reported, as appropriate, to the
19 accrediting body, the Health Care Financing Administration, the
20 State Department of Public Health, and the appropriate licensing
21 authority.

22 (3) The outpatient setting shall permit surgery by a dentist acting
23 within his or her scope of practice under Chapter 4 (commencing
24 with Section 1600) of Division 2 of the Business and Professions
25 Code or physician and surgeon, osteopathic physician and surgeon,
26 or podiatrist acting within his or her scope of practice under
27 Chapter 5 (commencing with Section 2000) of Division 2 of the
28 Business and Professions Code or the Osteopathic Initiative Act.
29 The outpatient setting may, in its discretion, permit anesthesia
30 service by a certified registered nurse anesthetist acting within his
31 or her scope of practice under Article 7 (commencing with Section
32 2825) of Chapter 6 of Division 2 of the Business and Professions
33 Code.

34 (4) Outpatient settings shall have a system for maintaining
35 clinical records.

36 (5) Outpatient settings shall have a system for patient care and
37 monitoring procedures.

38 (6) (A) Outpatient settings shall have a system for quality
39 assessment and improvement.

1 (B) Members of the medical staff and other practitioners who
2 are granted clinical privileges shall be professionally qualified and
3 appropriately credentialed for the performance of privileges
4 granted. The outpatient setting shall grant privileges in accordance
5 with recommendations from qualified health professionals, and
6 credentialing standards established by the outpatient setting.

7 (C) Clinical privileges shall be periodically reappraised by the
8 outpatient setting. The scope of procedures performed in the
9 outpatient setting shall be periodically reviewed and amended as
10 appropriate.

11 (7) Outpatient settings regulated by this chapter that have
12 multiple service locations governed by the same standards may
13 elect to have all service sites surveyed on any accreditation survey.
14 Organizations that do not elect to have all sites surveyed shall have
15 a sample, not to exceed 20 percent of all service sites, surveyed.
16 The actual sample size shall be determined by the board. The
17 accreditation agency shall determine the location of the sites to be
18 surveyed. Outpatient settings that have five or fewer sites shall
19 have at least one site surveyed. When an organization that elects
20 to have a sample of sites surveyed is approved for accreditation,
21 all of the organizations' sites shall be automatically accredited.

22 (8) Outpatient settings shall post the certificate of accreditation
23 in a location readily visible to patients and staff.

24 (9) Outpatient settings shall post the name and telephone number
25 of the accrediting agency with instructions on the submission of
26 complaints in a location readily visible to patients and staff.

27 (10) Outpatient settings shall have a written discharge criteria.

28 (b) Outpatient settings shall have a minimum of two staff
29 persons on the premises, one of whom shall either be a licensed
30 physician and surgeon or a licensed health care professional with
31 current certification in advanced cardiac life support (ACLS), as
32 long as a patient is present who has not been discharged from
33 supervised care. Transfer to an unlicensed setting of a patient who
34 does not meet the discharge criteria adopted pursuant to paragraph
35 (10) of subdivision (a) shall constitute unprofessional conduct.

36 (c) An accreditation agency may include additional standards
37 in its determination to accredit outpatient settings if these are
38 approved by the board to protect the public health and safety.

39 (d) No accreditation standard adopted or approved by the board,
40 and no standard included in any certification program of any

1 accreditation agency approved by the board, shall serve to limit
2 the ability of any allied health care practitioner to provide services
3 within his or her full scope of practice. Notwithstanding this or
4 any other provision of law, each outpatient setting may limit the
5 privileges, or determine the privileges, within the appropriate scope
6 of practice, that will be afforded to physicians and allied health
7 care practitioners who practice at the facility, in accordance with
8 credentialing standards established by the outpatient setting in
9 compliance with this chapter. Privileges may not be arbitrarily
10 restricted based on category of licensure.

11 *(e) The board may adopt standards for outpatient settings that*
12 *offer in vitro fertilization or assisted reproduction technology that*
13 *it deems necessary.*

14 ~~SEC. 7.~~

15 SEC. 6. Section 1248.2 of the Health and Safety Code is
16 amended to read:

17 1248.2. (a) Any outpatient setting may apply to an
18 accreditation agency for a certificate of accreditation. Accreditation
19 shall be issued by the accreditation agency solely on the basis of
20 compliance with its standards as approved by the board under this
21 chapter.

22 (b) The board shall obtain and maintain a list of all accredited,
23 certified, and licensed outpatient settings from the information
24 provided by the accreditation, certification, and licensing agencies
25 approved by the board, and shall notify the public whether a setting
26 is accredited, certified, or licensed, or the setting's accreditation,
27 certification, or license has been revoked, suspended, or placed on
28 probation, or the setting has received a reprimand by the
29 accreditation agency.

30 ~~SEC. 8.~~

31 SEC. 7. Section 1248.25 of the Health and Safety Code is
32 amended to read:

33 1248.25. If an outpatient setting does not meet the standards
34 approved by the board, accreditation shall be denied by the
35 accreditation agency, which shall provide the outpatient setting
36 notification of the reasons for the denial. An outpatient setting may
37 reapply for accreditation at any time after receiving notification
38 of the denial. The accrediting agency shall immediately report to
39 the board if the outpatient setting's certificate for accreditation has
40 been denied.

1 ~~SEC. 9.~~

2 SEC. 8. Section 1248.35 of the Health and Safety Code is
3 amended to read:

4 1248.35. (a) Every outpatient setting which is accredited shall
5 be periodically inspected by the Medical Board of California or
6 the accreditation agency. The frequency of inspection shall depend
7 upon the type and complexity of the outpatient setting to be
8 inspected. Inspections shall be conducted no less often than once
9 every three years and as often as necessary to ensure the quality
10 of care provided. The Medical Board of California or the
11 accreditation agency may enter and inspect any outpatient setting
12 that is accredited by an accreditation agency at any reasonable
13 time to ensure compliance with, or investigate an alleged violation
14 of, any standard of the accreditation agency or any provision of
15 this chapter.

16 (b) If an accreditation agency determines, as a result of its
17 inspection, that an outpatient setting is not in compliance with the
18 standards under which it was approved, the accreditation agency
19 may do any of the following:

20 (1) Issue a reprimand.

21 (2) Place the outpatient setting on probation, during which time
22 the setting shall successfully institute and complete a plan of
23 correction, approved by the board or the accreditation agency, to
24 correct the deficiencies.

25 (3) Suspend or revoke the outpatient setting's certification of
26 accreditation.

27 (c) Except as is otherwise provided in this subdivision, before
28 suspending or revoking a certificate of accreditation under this
29 chapter, the accreditation agency shall provide the outpatient setting
30 with notice of any deficiencies and the outpatient setting shall
31 agree with the accreditation agency on a plan of correction that
32 shall give the outpatient setting reasonable time to supply
33 information demonstrating compliance with the standards of the
34 accreditation agency in compliance with this chapter, as well as
35 the opportunity for a hearing on the matter upon the request of the
36 outpatient center. During that allotted time, a list of deficiencies
37 and the plan of correction shall be conspicuously posted in a clinic
38 location accessible to public view. The accreditation agency may
39 immediately suspend the certificate of accreditation before
40 providing notice and an opportunity to be heard, but only when

1 failure to take the action may result in imminent danger to the
2 health of an individual. In such cases, the accreditation agency
3 shall provide subsequent notice and an opportunity to be heard.

4 (d) If the board determines that deficiencies found during an
5 inspection suggests that the accreditation agency does not comply
6 with the standards approved by the board, the board may conduct
7 inspections, as described in this section, of other settings accredited
8 by the accreditation agency to determine if the agency is accrediting
9 settings in accordance with Section 1248.15.

10 (e) Reports on the results of each inspection shall be kept on
11 file with the board or the accrediting agency along with the plan
12 of correction and the outpatient setting comments. The inspection
13 report may include a recommendation for reinspection. All
14 inspection reports, lists of deficiencies, and plans of correction
15 shall be public records open to public inspection.

16 (f) The accrediting agency shall immediately report to the board
17 if the outpatient setting has been issued a reprimand or if the
18 outpatient setting's certification of accreditation has been
19 suspended or revoked or if the outpatient setting has been placed
20 on probation.

21 ~~SEC. 10.~~

22 *SEC. 9.* Section 1248.5 of the Health and Safety Code is
23 amended to read:

24 1248.5. The board shall evaluate the performance of an
25 approved accreditation agency no less than every three years, or
26 in response to complaints against an agency, or complaints against
27 one or more outpatient settings accreditation by an agency that
28 indicates noncompliance by the agency with the standards approved
29 by the board.

30 ~~SEC. 11.~~

31 *SEC. 10.* Section 1279 of the Health and Safety Code is
32 amended to read:

33 1279. (a) Every health facility for which a license or special
34 permit has been issued shall be periodically inspected by the
35 department, or by another governmental entity under contract with
36 the department. The frequency of inspections shall vary, depending
37 upon the type and complexity of the health facility or special
38 service to be inspected, unless otherwise specified by state or
39 federal law or regulation. The inspection shall include participation
40 by the California Medical Association consistent with the manner

1 in which it participated in inspections, as provided in Section 1282
2 prior to September 15, 1992.

3 (b) Except as provided in subdivision (c), inspections shall be
4 conducted no less than once every two years and as often as
5 necessary to ensure the quality of care being provided.

6 (c) For a health facility specified in subdivision (a), (b), or (f)
7 of Section 1250, inspections shall be conducted no less than once
8 every three years, and as often as necessary to ensure the quality
9 of care being provided.

10 (d) During the inspection, the representative or representatives
11 shall offer such advice and assistance to the health facility as they
12 deem appropriate.

13 (e) For acute care hospitals of 100 beds or more, the inspection
14 team shall include at least a physician, registered nurse, and persons
15 experienced in hospital administration and sanitary inspections.
16 During the inspection, the team shall offer advice and assistance
17 to the hospital as it deems appropriate.

18 (f) The department shall ensure that a periodic inspection
19 conducted pursuant to this section is not announced in advance of
20 the date of inspection. An inspection may be conducted jointly
21 with inspections by entities specified in Section 1282. However,
22 if the department conducts an inspection jointly with an entity
23 specified in Section 1282 that provides notice in advance of the
24 periodic inspection, the department shall conduct an additional
25 periodic inspection that is not announced or noticed to the health
26 facility.

27 (g) Notwithstanding any other provision of law, the department
28 shall inspect for compliance with provisions of state law and
29 regulations during a state periodic inspection or at the same time
30 as a federal periodic inspection, including, but not limited to, an
31 inspection required under this section. If the department inspects
32 for compliance with state law and regulations at the same time as
33 a federal periodic inspection, the inspection shall be done consistent
34 with the guidance of the federal Centers for Medicare and Medicaid
35 Services for the federal portion of the inspection.

36 (h) During a state periodic inspection of an acute care hospital,
37 including, but not limited to, an inspection required under this
38 section, the department shall inspect the peer review process
39 utilized by the hospital.

1 (i) The department shall emphasize consistency across the state
2 and *in* its district offices when conducting licensing and
3 certification surveys and complaint investigations, including the
4 selection of state or federal enforcement remedies in accordance
5 with Section 1423. The department may issue federal deficiencies
6 and recommend federal enforcement actions in those circumstances
7 where they provide more rigorous enforcement action.

8 ~~SEC. 12.~~

9 *SEC. 11.* No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

SB 700

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 700
Author: Negrete McLeod
Bill Date: April 22, 2009, amended
Subject: Peer Review
Sponsor: Author

STATUS OF BILL:

This bill is in the Senate Appropriations Committee and is set for hearing on May 5, 2009.

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. This bill clarifies that the definition of a peer review body includes any clinic specified in the Health and Safety Code. This clarification is needed in order to makes clear all the entities and individuals who are required to conduct peer review.
- Rewrites for clarity the section that require an 805 report to be filed within 15 days from the date when;
 1. A peer review body denies or rejects a licensee's application for staff privileges or membership for a medical disciplinary cause or reason;
 2. A licensee's staff privileges, membership, or employment are

revoked for a medical disciplinary cause or reason;

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

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

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

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

FISCAL: Minor and absorbable

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

April 26, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 700

Introduced by Senator Negrete McLeod

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 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.

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. 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 require the filing of the 805 report with the licensing board within 15 days of the imposition of a specified action on a licentiate regardless of whether a hearing has occurred.

This bill would also require specified persons to file a report with a licensing board if ~~a formal investigation of a person licensed by that board results in a specified finding of fact~~ *peer review body concludes, after formal investigation, that a person licensed by that board departed from the standard of care, as specified, suffered from mental illness or substance abuse, or engaged in sexual misconduct.* The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

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 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 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 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 post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

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, 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

1 that finding in the central file. For purposes of this paragraph, “peer
2 review” has the same meaning as defined in Section 805.

3 (5) Information reported pursuant to Section 805.01.

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

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

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

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

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

39 Each board may permit any law enforcement or regulatory
40 agency when required for an investigation of unlawful activity or

1 for licensing, certification, or regulatory purposes to inspect and
2 have copies made of that licensee's file, unless the disclosure is
3 otherwise prohibited by law.

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

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

8 803.1. (a) Notwithstanding any other provision of law, the
9 Medical Board of California, the Osteopathic Medical Board of
10 California, and the California Board of Podiatric Medicine shall
11 disclose to an inquiring member of the public information regarding
12 any enforcement actions taken against a licensee by either board
13 or by another state or jurisdiction, including all of the following:

14 (1) Temporary restraining orders issued.

15 (2) Interim suspension orders issued.

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

19 (4) Public letters of reprimand issued.

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

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

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

32 (2) (A) All settlements in the possession, custody, or control
33 of the board shall be disclosed for a licensee in the low-risk
34 category if there are three or more settlements for that licensee
35 within the last 10 years, except for settlements by a licensee
36 regardless of the amount paid where (i) the settlement is made as
37 a part of the settlement of a class claim, (ii) the licensee paid in
38 settlement of the class claim the same amount as the other licensees
39 in the same class or similarly situated licensees in the same class,
40 and (iii) the settlement was paid in the context of a case where the

1 complaint that alleged class liability on behalf of the licensee also
2 alleged a products liability class action cause of action. All
3 settlements in the possession, custody, or control of the board shall
4 be disclosed for a licensee in the high-risk category if there are
5 four or more settlements for that licensee within the last 10 years
6 except for settlements by a licensee regardless of the amount paid
7 where (i) the settlement is made as a part of the settlement of a
8 class claim, (ii) the licensee paid in settlement of the class claim
9 the same amount as the other licensees in the same class or
10 similarly situated licensees in the same class, and (iii) the
11 settlement was paid in the context of a case where the complaint
12 that alleged class liability on behalf of the licensee also alleged a
13 products liability class action cause of action. Classification of a
14 licensee in either a "high-risk category" or a "low-risk category"
15 depends upon the specialty or subspecialty practiced by the licensee
16 and the designation assigned to that specialty or subspecialty by
17 the Medical Board of California, as described in subdivision (f).
18 For the purposes of this paragraph, "settlement" means a settlement
19 of an action described in paragraph (1) entered into by the licensee
20 on or after January 1, 2003, in an amount of thirty thousand dollars
21 (\$30,000) or more.

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

25 (i) Comparing the settlement amount to the experience of other
26 licensees within the same specialty or subspecialty, indicating if
27 it is below average, average, or above average for the most recent
28 10-year period.

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

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

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

39 (4) Approved postgraduate training.

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

7 (6) Any summaries of hospital disciplinary actions that result
8 in the termination or revocation of a licensee's staff privileges for
9 medical disciplinary cause or reason, unless a court finds that the
10 peer review resulting in the disciplinary action was conducted in
11 bad faith and the licensee notifies the board of that finding. For
12 purposes of this paragraph, "peer review" has the same meaning
13 as defined in Section 805.

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

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

31
32 "Some studies have shown that there is no significant correlation
33 between malpractice history and a doctor's competence. At the
34 same time, the State of California believes that consumers should
35 have access to malpractice information. In these profiles, the State
36 of California has given you information about both the malpractice
37 settlement history for the doctor's specialty and the doctor's history
38 of settlement payments only if in the last 10 years, the doctor, if
39 in a low-risk specialty, has three or more settlements or the doctor,
40 if in a high-risk specialty, has four or more settlements. The State

1 of California has excluded some class action lawsuits because
2 those cases are commonly related to systems issues such as product
3 liability, rather than questions of individual professional
4 competence and because they are brought on a class basis where
5 the economic incentive for settlement is great. The State of
6 California has placed payment amounts into three statistical
7 categories: below average, average, and above average compared
8 to others in the doctor's specialty. To make the best health care
9 decisions, you should view this information in perspective. You
10 could miss an opportunity for high-quality care by selecting a
11 doctor based solely on malpractice history.

12 When considering malpractice data, please keep in mind:

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

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

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

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

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

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

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

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

38 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
39 (b), the specialty or subspecialty information required by this
40 section shall group physicians by specialty board recognized

1 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
2 a different grouping would be more valid and the board, in its
3 statement of reasons for its regulations, explains why the validity
4 of the grouping would be more valid.

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

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

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

16 (B) "Peer review body" includes:

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

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

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

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

37 (2) "Licentiate" means a physician and surgeon, doctor of
38 podiatric medicine, clinical psychologist, marriage and family
39 therapist, clinical social worker, or dentist. "Licentiate" also

1 includes a person authorized to practice medicine pursuant to
2 Section 2113.

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

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

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

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

22 (7) "805 report" means the written report required under
23 subdivision (b).

24 (b) The chief of staff of a medical or professional staff or other
25 chief executive officer, medical director, or administrator of any
26 peer review body and the chief executive officer or administrator
27 of any licensed health care facility or clinic shall file an 805 report
28 with the relevant agency within 15 days after the effective date on
29 which any of the following are imposed on a licentiate as a result
30 of an action of a peer review body, regardless of whether a hearing
31 has occurred pursuant to Section 809.2:

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

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

36 (3) Restrictions are imposed, or voluntarily accepted, on staff
37 privileges, membership, or employment for a cumulative total of
38 30 days or more for any 12-month period, for a medical disciplinary
39 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 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

1 terms, conditions, or sanctions imposed as disciplinary action by
2 the reporting peer review body. In performing its dissemination
3 functions required by Section 805.5, the agency shall include a
4 copy of a supplemental report, if any, whenever it furnishes a copy
5 of the original 805 report.

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

14 (g) The reporting required by this section shall not act as a
15 waiver of confidentiality of medical records and committee reports.
16 The information reported or disclosed shall be kept confidential
17 except as provided in subdivision (c) of Section 800 and Sections
18 803.1 and 2027, provided that a copy of the report containing the
19 information required by this section may be disclosed as required
20 by Section 805.5 with respect to reports received on or after
21 January 1, 1976.

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

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

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

29 (k) A willful failure to file an 805 report by any person who is
30 designated or otherwise required by law to file an 805 report is
31 punishable by a fine not to exceed one hundred thousand dollars
32 (\$100,000) per violation. The fine may be imposed in any civil or
33 administrative action or proceeding brought by or on behalf of any
34 agency having regulatory jurisdiction over the person regarding
35 whom the report was or should have been filed. If the person who
36 is designated or otherwise required to file an 805 report is a
37 licensed physician and surgeon, the action or proceeding shall be
38 brought by the Medical Board of California. The fine shall be paid
39 to that agency but not expended until appropriated by the
40 Legislature. A violation of this subdivision may constitute

1 unprofessional conduct by the licentiate. A person who is alleged
2 to have violated this subdivision may assert any defense available
3 at law. As used in this subdivision, "willful" means a voluntary
4 and intentional violation of a known legal duty.

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

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

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

3 805.01. (a) As used in this section, the following terms have
4 the following definitions:

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

6 (2) "Formal investigation" means an investigation performed
7 by a peer review body based on ~~any of the allegations~~ *an allegation*
8 *that the licentiate committed any of the acts* listed in subdivision
9 (b).

10 (3) "Licentiate" has the same meaning as defined in Section
11 805.

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

14 (b) The chief of staff of a medical or professional staff or other
15 chief executive officer, medical director, or administrator of any
16 peer review body and the chief executive officer or administrator
17 of any licensed health care facility or clinic shall file a report with
18 the relevant agency within 15 days after ~~completion of a formal~~
19 ~~investigation of a licentiate if the investigation resulted in any of~~
20 ~~the following findings of fact: a peer review body concludes,~~
21 *following completion of a formal investigation of a licentiate, that*
22 *any of the following occurred:*

23 (1) The licentiate departed from the standard of care *and there*
24 *was patient harm, including, but not limited to, any of the adverse*
25 *events described in paragraph (1) of subdivision (b) of Section*
26 *1279.1 of the Health and Safety Code.*

27 (2) The licentiate suffered from mental illness or substance
28 abuse.

29 (3) The licentiate engaged in sexual misconduct.

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

34 (1) Any statement of charges.

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

36 (3) Any opinions, findings, or conclusions.

37 (4) Any peer review minutes or reports.

38 (d) The information disclosed pursuant to subdivision (c) shall
39 be kept confidential and shall not be subject to discovery, except
40 that the information may be reviewed as provided in subdivision

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

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

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

9 805.1. (a) The Medical Board of California, the Osteopathic
10 Medical Board of California, and the Dental Board of California
11 shall, without subpoena, be entitled to inspect and copy the
12 following unredacted documents in the record of any disciplinary
13 proceeding resulting in action that is required to be reported
14 pursuant to Section 805:

15 (1) Any statement of charges.

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

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

18 (4) Any peer review minutes or reports.

19 (b) The information so disclosed shall be kept confidential and
20 not subject to discovery, in accordance with Section 800, except
21 that it may be reviewed, as provided in subdivision (c) of Section
22 800, and may be disclosed in any subsequent disciplinary hearing
23 conducted pursuant to the Administrative Procedure Act (Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of
25 Title 2 of the Government Code).

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

28 805.5. (a) Prior to granting or renewing staff privileges for
29 any physician and surgeon, psychologist, podiatrist, or dentist, any
30 health facility licensed pursuant to Division 2 (commencing with
31 Section 1200) of the Health and Safety Code, or any health care
32 service plan or medical care foundation, or the medical staff of the
33 institution shall request a report from the Medical Board of
34 California, the Board of Psychology, the Osteopathic Medical
35 Board of California, or the Dental Board of California to determine
36 if any report has been made pursuant to Section 805 indicating
37 that the applying physician and surgeon, psychologist, podiatrist,
38 or dentist has been denied staff privileges, been removed from a
39 medical staff, or had his or her staff privileges restricted as
40 provided in Section 805. The request shall include the name and

1 California license number of the physician and surgeon,
2 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805
3 report shall not cause the 805 report to be a public record.

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

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

27 (c) Any institution described in subdivision (a) or its medical
28 staff that violates subdivision (a) is guilty of a misdemeanor and
29 shall be punished by a fine of not less than two hundred dollars
30 (\$200) nor more than one thousand two hundred dollars (\$1,200).

31 SEC. 7. Section 2027 of the Business and Professions Code is
32 amended to read:

33 2027. (a) The board shall post on the Internet the following
34 information in its possession, custody, or control regarding licensed
35 physicians and surgeons:

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

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

4 (3) Any felony convictions reported to the board after January
5 3, 1991.

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

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

15 (6) Any hospital disciplinary actions that resulted in the
16 termination or revocation of a licensee's hospital staff privileges
17 for a medical disciplinary cause or reason.

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

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

26 (9) Any information required to be disclosed pursuant to Section
27 803.1.

28 (b) (1) From January 1, 2003, the information described in
29 paragraphs (1) (other than whether or not the licensee is in good
30 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain
31 posted for a period of 10 years from the date the board obtains
32 possession, custody, or control of the information, and after the
33 end of that period shall be removed from being posted on the
34 board's Internet Web site. Information in the possession, custody,
35 or control of the board prior to January 1, 2003, shall be posted
36 for a period of 10 years from January 1, 2003. Settlement
37 information shall be posted as described in paragraph (2) of
38 subdivision (b) of Section 803.1.

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

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

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

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

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

SB 726

SB 726

Hospitals: Physician Employment: Pilot Project

To be presented at the Board Meeting

SB 819

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 819
Author: Committee on Business, Professions, and Economic Development
Bill Date: April 20, 2009, amended
Subject: Omnibus
Sponsor: Committee

STATUS OF BILL:

This bill is in the Senate 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 in this bill were those previously carried in SB 1779 (2008) which was vetoed.

ANALYSIS:

This bill proposes non-substantive and non-controversial changes to law. 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):

- 801.01 – Clarifying whether or not malpractice actions have to be in California to be reported. (This section will be deleted if AB 1070 passes out of the Assembly)
- 2089.5 – Specifying the type of residency programs; and technical changes.
- 2096 – Specifying the type of residency programs; and technical changes.
- 2102 – Since the Federation of State Medical Boards (FSMB) will not test anyone without a state license, this eliminates this option and makes technical changes.
- 2107 – Technical changes.
- 2135 – Technical changes as follows:
 - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
 - *Subdivision (d)* – Maintaining consistency among all licensing pathways.

- 2168.4 & 2169 – Making the renewal requirements for the special faculty permit the same as those for the physician’s certificate renewal.
- 2172 – Repeal; board no longer administers examinations.
- 2173 – Repeal; board no longer administers examinations.
- 2174 – Repeal; board no longer administers examinations.
- 2175 – Requiring the Board to maintain examination records until June 1, 2070.
- 2221 – Making the process by which an applicant’s probationary certificate can be modified or terminated consistent with the process that a licensee on probation must follow to modify or terminate probation.
- 2307 – Specify that recommendations can come from physicians licensed in any state; and technical changes.
- 2335 – Re-amending section from AB 253 (2007), the Board’s restructuring bill, due to subsequent section amendments in a bill that was signed afterward. This section was included in a bill that was signed after ours, which did not include the amendments we were requesting. Our amendments add 10 days to the 90-day period by which provisions and proposed decisions must be issued by the Board. This provision will make the requirements consistent with the Administrative Procedures Act.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support MBC provisions.
Staff Recommendation: Support MBC provisions.

April 26, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 819

Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)

March 10, 2009

An act to amend Sections 27, 101, 128.5, 144, 146, 149, 683, 733, 800, 801, 801.01, 803, 2089.5, 2096, 2102, 2107, 2135, 2168.4, 2175, 2221, 2307, 2335, 2486, 2488, 2570.5, 2570.6, 2570.7, 2570.185, 2760.1, 3503, 3517, 3518, 3625, 3633.1, 3635, 3636, 3685, 3753.5, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4161, 4174, 4231, 4301, 4305, 4329, 4330, 4857, 4980.30, 4980.43, 4996.2, 4996.17, 4996.18, 5801, 6534, 6536, 6561, 7616, 7629, 8740, and 8746 of, to add Sections 2169, 2570.36, 4036.5, 4980.04, 4990.09, 5515.5, and 9855.15 to, and to repeal Sections 2172, 2173, 2174, 4981, 4994.1, 4996.20, 4996.21, and 6761 of, the Business and Professions Code, to amend Section 8659 of the Government Code, to amend Sections 8778.5, 11150, and 11165 of the Health and Safety Code, and to amend Section 14132.100 of the Welfare and Institutions Code, relating to professions and vocations, ~~and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, Committee on Business, Professions and Economic Development. Professions and vocations.

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

Existing law requires certain boards and bureaus to disclose on the Internet information on licensees.

This bill would require the Cemetery and Funeral Bureau to disclose on the Internet information on specified licensees.

(2) Under existing law, if, upon investigation, a specified state regulatory agency has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with that agency, the agency is authorized to issue a specified citation.

This bill would add the Physical Therapy Board of California to those authorized agencies.

Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

Existing law requires specified healing arts licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report settlements over \$30,000 to the licensee's board if the settlement is for damages for death or personal injury caused by or is based on the licensee's alleged negligence, error, or omission in practice, or his or her rendering unauthorized professional services.

This bill would instead require that report if the settlement is based on the licensee's alleged negligence, error, or omission in practice in California or rendering unauthorized professional services in California.

(3) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. The act requires each applicant for a physician and surgeon's license to meet specified training and examinations requirements, authorizes the appointment of examination commissioners, requires that examinations be conducted in English, except as specified, allows the examinations to be conducted in specified locations, requires notice

of examinations to contain certain information, and requires examination records to be kept on file for a period of 2 years or more. The act authorizes a person whose certificate has been surrendered, revoked, suspended, or placed on probation, as specified, to petition for reinstatement of the certificate or modification of the penalty if specified requirements are met. Under existing law, any person who meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit that authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions.

This bill would revise the training requirements for a physician and surgeon's license, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2070. The bill would revise the requirements for a petition for reinstatement or modification, as specified. The bill would require the holder of a special faculty permit to meet the same continuing medical education requirements as the holder of a physician's and surgeon's certificate and would also require a special faculty permitholder to show that he or she meets these requirements at the time of permit renewal.

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(4) Existing law, the Occupational Therapy Practice Act, provides for the licensure of occupational therapists and the certification of occupational therapy assistants by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record. Existing law authorizes a limited permit to practice occupational therapy to be granted if specified education and examination requirements are met, but provides that if the person fails to qualify for or pass the first announced licensure examination, all limited permit privileges automatically cease upon due notice. Existing law requires an applicant applying for a license or certification to file with the board a written application provided by and satisfactory to the board, showing that he or she meets certain requirements, including, but not limited to, successful completion of an educational program's academic requirements approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) and successful completion of a period of supervised fieldwork experience. Existing law also specifies the curriculum requirements for an education program for occupational therapists and occupational therapy assistants.

This bill would require an occupational therapy assistant to document in the patient record the services provided to the patient, and would require an occupational therapist or assistant to document and sign the patient record legibly. The bill would revise the provisions related to limited permit privileges to instead provide that a person's failure to pass the licensure examination during the initial eligibility period would cause the privileges to automatically cease upon due notice. The bill would require that the applicant successfully complete the educational program's academic requirements approved by the board and accredited by ACOTE, or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program. The bill would also revise those curriculum requirements for an educational program. The bill would authorize an applicant who is a graduate of an educational program and is unable to provide evidence of having met the curriculum requirements to demonstrate passage of a specified examination as evidence of having successfully satisfied the curriculum requirements. The bill would require an applicant who completed AOTA's Career Mobility Program to demonstrate participation in the program and passage of a specified examination as evidence of having successfully satisfied the educational

program and curriculum requirements. The bill would revise the supervised fieldwork experience requirement. The bill would require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(5) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurses by the Board of Registered Nursing. Existing law authorizes a registered nurse whose license is revoked or suspended, or who is placed on probation, to petition for reinstatement of his or her license or modification of the penalty after a specified time period.

This bill would require a petition by a registered nurse whose initial license application is subject to a disciplinary decision to be filed after a specified time period from the date upon which his or her initial license was issued.

(6) Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician's assistants by the Physician Assistant Committee of the Medical Board of California. Existing law authorizes the committee to grant interim approval to an applicant for licensure as a physician assistant.

This bill would delete that authority to grant interim approval and would make conforming changes.

(7) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Bureau of Naturopathic Medicine. Existing law authorizes the bureau to grant a license to a person meeting certain requirements who has graduated from training prior to 1986 if the application is received prior to 2008, and requires licensees to obtain continuing education through specified continuing education courses. Existing law requires a licensee on inactive status to meet certain requirements in order to restore his or her license to active status, including paying a reactivation fee.

This bill would require an application for licensure by a person who graduated from training prior to 1986 to be received by the bureau prior to 2011, and would revise the standards for continuing education courses. The bill would delete the requirement that a licensee on inactive status pay a reactivation fee in order to restore his or her license to active status, and would instead require him or her to be current with all licensing fees.

Existing law authorizes the Director of Consumer Affairs to establish an advisory council related to naturopathic doctors composed of

members who receive no compensation, travel allowances, or reimbursement of expenses.

This bill would delete the requirement that the members of the advisory council receive no compensation, travel allowances, or reimbursement of expenses.

(8) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Existing law authorizes the board to direct a practitioner or applicant who is found to have violated the law to pay the costs of investigation and prosecution.

This bill would also authorize the board to direct a practitioner or applicant who is found to have violated a term or condition of board probation to pay the costs for investigation and prosecution.

Existing law exempts certain healing arts practitioners from liability for specified services rendered during a state of war, state of emergency, or local emergency.

This bill would also exempt respiratory care practitioners from liability for the provision of specified services rendered during a state of war, state of emergency, or local emergency.

(9) Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy.

Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines.

This bill would provide that any violation of this provision by any person or entity would subject the person to the fine.

Existing law prohibits a person from acting as a wholesaler of any dangerous drug or device without a license from the board. Existing law requires a nonresident wholesaler, as defined, to be licensed prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.

This bill would modify that definition and would also require a nonresident wholesaler to be licensed prior to selling, brokering, or distributing dangerous drugs or devices within this state. By subjecting these nonresident wholesalers to these licensure requirements which include, among other things, payment of specified fees, the bill would increase that part of the revenue in the Pharmacy Board Contingent Fund that is continuously appropriated and would thereby make an appropriation.

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

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

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(10) Existing law, the Veterinary Medicine Practice Act, provides for the licensure and regulation of veterinarians by the Veterinary Medical Board. Existing law prohibits the disclosure of information

about an animal receiving veterinary services, the client responsible for that animal, or the veterinary care provided to an animal, except under specified circumstances, including, but not limited to, as may be required to ensure compliance with any federal, state, county, or city law or regulation.

This bill would specify that such disclosure is prohibited except as may be required to ensure compliance with the California Public Records Act.

(11) Existing law provides for the licensure and regulation of educational psychologists, clinical social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of \$1,500 or less for more than 5 years from the date of issuance of the citation.

(12) Existing law, the Professional Fiduciaries Act, provides for the licensure and regulation of professional fiduciaries by the Professional Fiduciaries Bureau until July 1, 2011. Existing law also requires applicants to provide certain boards and bureaus with a full set of fingerprints for the purpose of conducting criminal history record checks. Existing law requires licensees to file and the bureau to maintain certain information in each licensee's file, including whether the licensee has ever been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or demonstrated a pattern of negligent conduct, as specified.

This bill would require the bureau to disclose on the Internet information on its licensees and would require applicants to the bureau to comply with that fingerprint requirement. The bill would require licensees to file and the bureau to maintain information regarding whether the licensee has ever been removed for cause or resigned as a conservator, guardian, trustee, or personal representative, as well as various other details relating to that removal or resignation. The bill would also make a conforming change.

(13) Existing law, the Architects Practice Act, provides for the licensure and regulation of architects by the California Architects Board. Under existing law, the board is composed of 5 architect members and 5 public members. Existing law requires that each appointment to the

board expire on June 30 of the 4th year following the year in which the previous term expired.

This bill would modify the term length for certain members of the board.

(14) Existing law provides a comprehensive scheme for the certification and regulation of interior designers. Under existing law, a stamp from an interior design organization certifies that an interior designer has passed a specified examination and that he or she has met certain other education or experience requirements, such as a combination of interior design education and diversified interior design experience that together total at least 8 years.

This bill would revise that provision by specifying that an interior designer may meet these requirements by having at least 8 years of interior design education, or at least 8 years of diversified interior design experience, or a combination of interior design education and diversified interior design experience that together total at least 8 years.

(15) Existing law provides for the registration of professional engineers and the licensure of land surveyors by the Board for Professional Engineers and Land Surveyors. Under existing law, in determining the qualifications of an applicant for registration or licensure, a majority vote of the board is required.

This bill would delete that majority vote requirement.

(16) Existing law, the Funeral Directors and Embalmers Law, provides for the licensure and regulation of funeral establishments and directors by the Cemetery and Funeral Bureau. Under existing law, every funeral establishment holding a funeral director's license on December 31, 1996, shall, upon application and payment of fees for renewal, be issued a funeral establishment license.

This bill would delete that provision.

(17) The Electronic and Appliance Repair Dealer Registration Law provides for registration and regulation of service contractors by the Bureau of Electronic and Appliance Repair. Existing law makes it unlawful to act as a service contractor unless that person maintains a valid registration.

This bill would make it an infraction to violate that provision. The bill would also make conforming changes. By creating a new crime, the bill would impose a state-mandated local program.

(18) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, pursuant to which medical benefits are provided to public assistance recipients

and certain other low-income persons. Existing law provides that federally qualified health center services and rural health clinic services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. For those purposes, a "visit" is defined as a face-to-face encounter between a patient of a federally qualified health center or a rural health clinic and a "physician," which is defined to include a medical doctor, osteopath, podiatrist, dentist, optometrist, and chiropractor.

This bill would instead provide that the term "physician" includes a physician and surgeon, podiatrist, dentist, optometrist, and chiropractor.

(19) 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.

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

Vote: ~~majority~~^{2/3}. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 27 of the Business and Professions Code
2 is amended to read:
3 27. (a) Every entity specified in subdivision (b) shall provide
4 on the Internet information regarding the status of every license
5 issued by that entity in accordance with the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of
7 Division 7 of Title 1 of the Government Code) and the Information
8 Practices Act of 1977 (Chapter 1 (commencing with Section 1798)
9 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public
10 information to be provided on the Internet shall include information
11 on suspensions and revocations of licenses issued by the entity
12 and other related enforcement action taken by the entity relative
13 to persons, businesses, or facilities subject to licensure or regulation
14 by the entity. In providing information on the Internet, each entity
15 shall comply with the Department of Consumer Affairs Guidelines
16 for Access to Public Records. The information may not include
17 personal information, including home telephone number, date of

1 birth, or social security number. Each entity shall disclose a
2 licensee's address of record. However, each entity shall allow a
3 licensee to provide a post office box number or other alternate
4 address, instead of his or her home address, as the address of
5 record. This section shall not preclude an entity from also requiring
6 a licensee, who has provided a post office box number or other
7 alternative mailing address as his or her address of record, to
8 provide a physical business address or residence address only for
9 the entity's internal administrative use and not for disclosure as
10 the licensee's address of record or disclosure on the Internet.

11 (b) Each of the following entities within the Department of
12 Consumer Affairs shall comply with the requirements of this
13 section:

14 (1) The Acupuncture Board shall disclose information on its
15 licensees.

16 (2) The Board of Behavioral Sciences shall disclose information
17 on its licensees, including marriage and family therapists, licensed
18 clinical social workers, and licensed educational psychologists.

19 (3) The Dental Board of California shall disclose information
20 on its licensees.

21 (4) The State Board of Optometry shall disclose information
22 regarding certificates of registration to practice optometry,
23 statements of licensure, optometric corporation registrations, branch
24 office licenses, and fictitious name permits of its licensees.

25 (5) The Board for Professional Engineers and Land Surveyors
26 shall disclose information on its registrants and licensees.

27 (6) The Structural Pest Control Board shall disclose information
28 on its licensees, including applicators, field representatives, and
29 operators in the areas of fumigation, general pest and wood
30 destroying pests and organisms, and wood roof cleaning and
31 treatment.

32 (7) The Bureau of Automotive Repair shall disclose information
33 on its licensees, including auto repair dealers, smog stations, lamp
34 and brake stations, smog check technicians, and smog inspection
35 certification stations.

36 (8) The Bureau of Electronic and Appliance Repair shall disclose
37 information on its licensees, including major appliance repair
38 dealers, combination dealers (electronic and appliance), electronic
39 repair dealers, service contract sellers, and service contract
40 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.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code, as amended by Section 1 of Chapter 31 of the Statutes of 2008, is amended to read:

101. The department is comprised of:

- (a) The Dental Board of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Veterinary Medical Board.
- (f) The California Board of Accountancy.
- (g) The California Architects Board.
- (h) The Bureau of Barbering and Cosmetology.
- (i) The Board for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The Bureau for Private Postsecondary and Vocational Education.
- (l) The Structural Pest Control Board.
- (m) The Bureau of Home Furnishings and Thermal Insulation.
- (n) The Board of Registered Nursing.
- (o) The Board of Behavioral Sciences.
- (p) The State Athletic Commission.
- (q) The Cemetery and Funeral Bureau.

- 1 (r) The State Board of Guide Dogs for the Blind.
- 2 (s) The Bureau of Security and Investigative Services.
- 3 (t) The Court Reporters Board of California.
- 4 (u) The Board of Vocational Nursing and Psychiatric
- 5 Technicians.
- 6 (v) The Landscape Architects Technical Committee.
- 7 (w) The Bureau of Electronic and Appliance Repair.
- 8 (x) The Division of Investigation.
- 9 (y) The Bureau of Automotive Repair.
- 10 (z) The State Board of Registration for Geologists and
- 11 Geophysicists.
- 12 (aa) The Respiratory Care Board of California.
- 13 (ab) The Acupuncture Board.
- 14 (ac) The Board of Psychology.
- 15 (ad) The California Board of Podiatric Medicine.
- 16 (ae) The Physical Therapy Board of California.
- 17 (af) The Arbitration Review Program.
- 18 (ag) The Hearing Aid Dispensers Bureau.
- 19 (ah) The Physician Assistant Committee.
- 20 (ai) The Speech-Language Pathology and Audiology Board.
- 21 (aj) The California Board of Occupational Therapy.
- 22 (ak) The Osteopathic Medical Board of California.
- 23 (al) The Bureau of Naturopathic Medicine.
- 24 (am) The Dental Hygiene Committee of California.
- 25 (an) The Professional Fiduciaries Bureau.
- 26 (ao) Any other boards, offices, or officers subject to its
- 27 jurisdiction by law.
- 28 SEC. 3. Section 128.5 of the Business and Professions Code
- 29 is amended to read:
- 30 128.5. (a) Notwithstanding any other provision of law, if at
- 31 the end of any fiscal year, an agency within the Department of
- 32 Consumer Affairs, except the agencies referred to in subdivision
- 33 (b), has unencumbered funds in an amount that equals or is more
- 34 than the agency's operating budget for the next two fiscal years,
- 35 the agency shall reduce license or other fees, whether the license
- 36 or other fees be fixed by statute or may be determined by the
- 37 agency within limits fixed by statute, during the following fiscal
- 38 year in an amount that will reduce any surplus funds of the agency
- 39 to an amount less than the agency's operating budget for the next
- 40 two fiscal years.

(b) Notwithstanding any other provision of law, if at the end of any fiscal year, the California Architects Board, the Board of Behavioral Sciences, the Veterinary Medical Board, the Court Reporters Board of California, the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, or the Bureau of Security and Investigative Services has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.

SEC. 4. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Registered Veterinary Technician Committee.
- (10) Board of Vocational Nursing and Psychiatric Technicians.
- (11) Respiratory Care Board of California.
- (12) Hearing Aid Dispensers Advisory Commission.
- (13) Physical Therapy Board of California.
- (14) Physician Assistant Committee of the Medical Board of California.
- (15) Speech-Language Pathology and Audiology Board.
- (16) Medical Board of California.

- 1 (17) State Board of Optometry.
- 2 (18) Acupuncture Board.
- 3 (19) Cemetery and Funeral Bureau.
- 4 (20) Bureau of Security and Investigative Services.
- 5 (21) Division of Investigation.
- 6 (22) Board of Psychology.
- 7 (23) The California Board of Occupational Therapy.
- 8 (24) Structural Pest Control Board.
- 9 (25) Contractors' State License Board.
- 10 (26) Bureau of Naturopathic Medicine.
- 11 (27) The Professional Fiduciaries Bureau.

12 (c) The provisions of paragraph (24) of subdivision (b) shall
13 become operative on July 1, 2004. The provisions of paragraph
14 (25) of subdivision (b) shall become operative on the date on which
15 sufficient funds are available for the Contractors' State License
16 Board and the Department of Justice to conduct a criminal history
17 record check pursuant to this section or on July 1, 2005, whichever
18 occurs first.

19 SEC. 5. Section 146 of the Business and Professions Code is
20 amended to read:

21 146. (a) Notwithstanding any other provision of law, a
22 violation of any code section listed in subdivision (c) or (d) is an
23 infraction subject to the procedures described in Sections 19.6 and
24 19.7 of the Penal Code when either of the following applies:

25 (1) A complaint or a written notice to appear in court pursuant
26 to Chapter 5C (commencing with Section 853.5) of Title 3 of Part
27 2 of the Penal Code is filed in court charging the offense as an
28 infraction unless the defendant, at the time he or she is arraigned,
29 after being advised of his or her rights, elects to have the case
30 proceed as a misdemeanor.

31 (2) The court, with the consent of the defendant and the
32 prosecution, determines that the offense is an infraction in which
33 event the case shall proceed as if the defendant has been arraigned
34 on an infraction complaint.

35 (b) Subdivision (a) does not apply to a violation of the code
36 sections listed in subdivisions (c) and (d) if the defendant has had
37 his or her license, registration, or certificate previously revoked
38 or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

- (1) Sections 2052 and 2054.
- (2) Section 2630.
- (3) Section 2903.
- (4) Section 3660.
- (5) Sections 3760 and 3761.
- (6) Section 4080.
- (7) Section 4825.
- (8) Section 4935.
- (9) Section 4980.
- (10) Section 4996.
- (11) Section 5536.
- (12) Section 6704.
- (13) Section 6980.10.
- (14) Section 7317.
- (15) Section 7502 or 7592.
- (16) Section 7520.
- (17) Section 7617 or 7641.
- (18) Subdivision (a) of Section 7872.
- (19) Section 8016.
- (20) Section 8505.
- (21) Section 8725.
- (22) Section 9681.
- (23) Section 9840.
- (24) Subdivision (c) of Section 9891.24.
- (25) Section 19049.

(d) Institutions that are required to register with the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code.

(e) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c) or (d), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation the absence of which was the basis for his or her conviction.

1 SEC. 6. Section 149 of the Business and Professions Code is
2 amended to read:

3 149. (a) If, upon investigation, an agency designated in
4 subdivision (e) has probable cause to believe that a person is
5 advertising in a telephone directory with respect to the offering or
6 performance of services, without being properly licensed by or
7 registered with the agency to offer or perform those services, the
8 agency may issue a citation under Section 148 containing an order
9 of correction that requires the violator to do both of the following:

10 (1) Cease the unlawful advertising.

11 (2) Notify the telephone company furnishing services to the
12 violator to disconnect the telephone service furnished to any
13 telephone number contained in the unlawful advertising.

14 (b) This action is stayed if the person to whom a citation is
15 issued under subdivision (a) notifies the agency in writing that he
16 or she intends to contest the citation. The agency shall afford an
17 opportunity for a hearing, as specified in Section 125.9.

18 (c) If the person to whom a citation and order of correction is
19 issued under subdivision (a) fails to comply with the order of
20 correction after that order is final, the agency shall inform the
21 Public Utilities Commission of the violation and the Public Utilities
22 Commission shall require the telephone corporation furnishing
23 services to that person to disconnect the telephone service furnished
24 to any telephone number contained in the unlawful advertising.

25 (d) The good faith compliance by a telephone corporation with
26 an order of the Public Utilities Commission to terminate service
27 issued pursuant to this section shall constitute a complete defense
28 to any civil or criminal action brought against the telephone
29 corporation arising from the termination of service.

30 (e) Subdivision (a) shall apply to the following boards, bureaus,
31 committees, commissions, or programs:

32 (1) The Bureau of Barbering and Cosmetology.

33 (2) The Funeral Directors and Embalmers Program.

34 (3) The Veterinary Medical Board.

35 (4) The Hearing Aid Dispensers Advisory Commission.

36 (5) The Landscape Architects Technical Committee.

37 (6) The California Board of Podiatric Medicine.

38 (7) The Respiratory Care Board of California.

39 (8) The Bureau of Home Furnishings and Thermal Insulation.

40 (9) The Bureau of Security and Investigative Services.

- 1 (10) The Bureau of Electronic and Appliance Repair.
- 2 (11) The Bureau of Automotive Repair.
- 3 (12) The Tax Preparers Program.
- 4 (13) The California Architects Board.
- 5 (14) The Speech-Language Pathology and Audiology Board.
- 6 (15) The Board for Professional Engineers and Land Surveyors.
- 7 (16) The Board of Behavioral Sciences.
- 8 (17) The State Board for Geologists and Geophysicists.
- 9 (18) The Structural Pest Control Board.
- 10 (19) The Acupuncture Board.
- 11 (20) The Board of Psychology.
- 12 (21) The California Board of Accountancy.
- 13 (22) The Bureau of Naturopathic Medicine.
- 14 (23) The Physical Therapy Board of California.

15 SEC. 7. Section 683 of the Business and Professions Code is
16 amended to read:

17 683. (a) A board shall report, within 10 working days, to the
18 State Department of Health Care Services the name and license
19 number of a person whose license has been revoked, suspended,
20 surrendered, made inactive by the licensee, or placed in another
21 category that prohibits the licensee from practicing his or her
22 profession. The purpose of the reporting requirement is to prevent
23 reimbursement by the state for Medi-Cal and Denti-Cal services
24 provided after the cancellation of a provider's professional license.

25 (b) "Board," as used in this section, means the Dental Board of
26 California, the Medical Board of California, the Board of
27 Psychology, the State Board of Optometry, the California State
28 Board of Pharmacy, the Osteopathic Medical Board of California,
29 the State Board of Chiropractic Examiners, and the California
30 Board of Occupational Therapy.

31 SEC. 8. Section 733 of the Business and Professions Code is
32 amended to read:

33 733. (a) No licentiate shall obstruct a patient in obtaining a
34 prescription drug or device that has been legally prescribed or
35 ordered for that patient. A violation of this section constitutes
36 unprofessional conduct by the licentiate and shall subject the
37 licentiate to disciplinary or administrative action by his or her
38 licensing agency.

39 (b) Notwithstanding any other provision of law, a licentiate
40 shall dispense drugs and devices, as described in subdivision (a)

1 of Section 4024, pursuant to a lawful order or prescription unless
2 one of the following circumstances exists:

3 (1) Based solely on the licentiate's professional training and
4 judgment, dispensing pursuant to the order or the prescription is
5 contrary to law, or the licentiate determines that the prescribed
6 drug or device would cause a harmful drug interaction or would
7 otherwise adversely affect the patient's medical condition.

8 (2) The prescription drug or device is not in stock. If an order,
9 other than an order described in Section 4019, or prescription
10 cannot be dispensed because the drug or device is not in stock, the
11 licentiate shall take one of the following actions:

12 (A) Immediately notify the patient and arrange for the drug or
13 device to be delivered to the site or directly to the patient in a
14 timely manner.

15 (B) Promptly transfer the prescription to another pharmacy
16 known to stock the prescription drug or device that is near enough
17 to the site from which the prescription or order is transferred, to
18 ensure the patient has timely access to the drug or device.

19 (C) Return the prescription to the patient and refer the patient.
20 The licentiate shall make a reasonable effort to refer the patient to
21 a pharmacy that stocks the prescription drug or device that is near
22 enough to the referring site to ensure that the patient has timely
23 access to the drug or device.

24 (3) The licentiate refuses on ethical, moral, or religious grounds
25 to dispense a drug or device pursuant to an order or prescription.
26 A licentiate may decline to dispense a prescription drug or device
27 on this basis only if the licentiate has previously notified his or
28 her employer, in writing, of the drug or class of drugs to which he
29 or she objects, and the licentiate's employer can, without creating
30 undue hardship, provide a reasonable accommodation of the
31 licentiate's objection. The licentiate's employer shall establish
32 protocols that ensure that the patient has timely access to the
33 prescribed drug or device despite the licentiate's refusal to dispense
34 the prescription or order. For purposes of this section, "reasonable
35 accommodation" and "undue hardship" shall have the same
36 meaning as applied to those terms pursuant to subdivision (1) of
37 Section 12940 of the Government Code.

38 (c) For the purposes of this section, "prescription drug or device"
39 has the same meaning as the definition in Section 4022.

1 (d) The provisions of this section shall apply to the drug therapy
2 described in Section 4052.3.

3 (e) This section imposes no duty on a licentiate to dispense a
4 drug or device pursuant to a prescription or order without payment
5 for the drug or device, including payment directly by the patient
6 or through a third-party payer accepted by the licentiate or payment
7 of any required copayment by the patient.

8 (f) The notice to consumers required by Section 4122 shall
9 include a statement that describes patients' rights relative to the
10 requirements of this section.

11 SEC. 9. Section 800 of the Business and Professions Code is
12 amended to read:

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

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

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

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

39 (4) Disciplinary information reported pursuant to Section 805.

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

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

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

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

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

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

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

3 SEC. 10. Section 801 of the Business and Professions Code is
4 amended to read:

5 801. (a) Except as provided in Section 801.01 and subdivisions
6 (b), (c), and (d) of this section, every insurer providing professional
7 liability insurance to a person who holds a license, certificate, or
8 similar authority from or under any agency mentioned in
9 subdivision (a) of Section 800 shall send a complete report to that
10 agency as to any settlement or arbitration award over three
11 thousand dollars (\$3,000) of a claim or action for damages for
12 death or personal injury caused by that person's negligence, error,
13 or omission in practice, or by his or her rendering of unauthorized
14 professional services. The report shall be sent within 30 days after
15 the written settlement agreement has been reduced to writing and
16 signed by all parties thereto or within 30 days after service of the
17 arbitration award on the parties.

18 (b) Every insurer providing professional liability insurance to
19 a person licensed pursuant to Chapter 13 (commencing with
20 Section 4980) or Chapter 14 (commencing with Section 4990)
21 shall send a complete report to the Board of Behavioral Sciences
22 as to any settlement or arbitration award over ten thousand dollars
23 (\$10,000) of a claim or action for damages for death or personal
24 injury caused by that person's negligence, error, or omission in
25 practice, or by his or her rendering of unauthorized professional
26 services. The report shall be sent within 30 days after the written
27 settlement agreement has been reduced to writing and signed by
28 all parties thereto or within 30 days after service of the arbitration
29 award on the parties.

30 (c) Every insurer providing professional liability insurance to
31 a dentist licensed pursuant to Chapter 4 (commencing with Section
32 1600) shall send a complete report to the Dental Board of
33 California as to any settlement or arbitration award over ten
34 thousand dollars (\$10,000) of a claim or action for damages for
35 death or personal injury caused by that person's negligence, error,
36 or omission in practice, or rendering of unauthorized professional
37 services. The report shall be sent within 30 days after the written
38 settlement agreement has been reduced to writing and signed by
39 all parties thereto or within 30 days after service of the arbitration
40 award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), or (c) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(f) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 11. Section 801.01 of the Business and Professions Code is amended to read:

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

(1) A settlement over thirty thousand dollars (\$30,000) or arbitration award of any amount or a civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal, of a claim or action for damages for death or personal injury caused by the licensee's alleged negligence, error, or omission in practice in California, or by his or her rendering of unauthorized professional services in California.

(2) A settlement over thirty thousand dollars (\$30,000) if it is based on the licensee's alleged negligence, error, or omission in

1 practice in California, or by the licensee's rendering of
2 unauthorized professional services in California, and a party to the
3 settlement is a corporation, medical group, partnership, or other
4 corporate entity in which the licensee has an ownership interest
5 or that employs or contracts with the licensee.

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

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

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

11 (3) A state or local governmental agency that self-insures the
12 licensee.

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

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

34 (e) If an insurer is required under subdivision (b) to send the
35 report, the insurer shall notify the claimant, or if the claimant is
36 represented by counsel, the claimant's counsel, that the insurer
37 has sent the report to the Medical Board of California, the
38 Osteopathic Medical Board of California, or the California Board
39 of Podiatric Medicine. If the claimant, or his or her counsel, has
40 not received this notice within 45 days after the settlement was

1 reduced to writing and signed by all of the parties or the arbitration
2 award was served on the parties or the date of entry of the civil
3 judgment, the claimant or the claimant's counsel shall make the
4 report to the appropriate board.

5 (f) If the licensee or his or her counsel is required under
6 subdivision (b) to send the report, the licensee or his or her counsel
7 shall send a copy of the report to the claimant or to his or her
8 counsel if he or she is represented by counsel. If the claimant or
9 his or her counsel has not received a copy of the report within 45
10 days after the settlement was reduced to writing and signed by all
11 of the parties or the arbitration award was served on the parties or
12 the date of entry of the civil judgment, the claimant or the
13 claimant's counsel shall make the report to the appropriate board.

14 (g) Failure of the licensee or claimant, or counsel representing
15 the licensee or claimant, to comply with subdivision (f) is a public
16 offense punishable by a fine of not less than fifty dollars (\$50) and
17 not more than five hundred dollars (\$500). A knowing and
18 intentional failure to comply with subdivision (f) or a conspiracy
19 or collusion not to comply with subdivision (f), or to hinder or
20 impede any other person in the compliance, is a public offense
21 punishable by a fine of not less than five thousand dollars (\$5,000)
22 and not more than fifty thousand dollars (\$50,000).

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

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

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

32 (B) The name and last known business and residential address
33 of every physician and surgeon or doctor of podiatric medicine
34 who was alleged to have acted improperly, whether or not that
35 person was a named defendant in the action and whether or not
36 that person was required to pay any damages pursuant to the
37 settlement, arbitration award, or judgment.

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

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

4 (E) A brief description or summary of the facts of each claim,
5 charge, or allegation, including the date of occurrence.

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

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

16 (H) The specialty or subspecialty of the physician and surgeon
17 or the doctor of podiatric medicine who was the subject of the
18 claim or action.

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

22 (3) Every professional liability insurer, self-insured
23 governmental agency, or licensee or his or her counsel that makes
24 a report under this section and has received a copy of any written
25 or electronic patient medical or hospital records prepared by the
26 treating physician and surgeon or podiatrist, or the staff of the
27 treating physician and surgeon, podiatrist, or hospital, describing
28 the medical condition, history, care, or treatment of the person
29 whose death or injury is the subject of the report, or a copy of any
30 deposition in the matter that discusses the care, treatment, or
31 medical condition of the person, shall include with the report,
32 copies of the records and depositions, subject to reasonable costs
33 to be paid by the Medical Board of California, the Osteopathic
34 Medical Board of California, or the California Board of Podiatric
35 Medicine. If confidentiality is required by court order and, as a
36 result, the reporter is unable to provide the records and depositions,
37 documentation to that effect shall accompany the original report.
38 The applicable board may, upon prior notification of the parties
39 to the action, petition the appropriate court for modification of any
40 protective order to permit disclosure to the board. A professional

1 liability insurer, self-insured governmental agency, or licensee or
2 his or her counsel shall maintain the records and depositions
3 referred to in this paragraph for at least one year from the date of
4 filing of the report required by this section.

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

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

16 SEC. 12. Section 803 of the Business and Professions Code is
17 amended to read:

18 803. (a) Except as provided in subdivision (b), within 10 days
19 after a judgment by a court of this state that a person who holds a
20 license, certificate, or other similar authority from the Board of
21 Behavioral Sciences or from an agency mentioned in subdivision
22 (a) of Section 800 (except a person licensed pursuant to Chapter
23 3 (commencing with Section 1200)) has committed a crime, or is
24 liable for any death or personal injury resulting in a judgment for
25 an amount in excess of thirty thousand dollars (\$30,000) caused
26 by his or her negligence, error or omission in practice, or his or
27 her rendering unauthorized professional services, the clerk of the
28 court that rendered the judgment shall report that fact to the agency
29 that issued the license, certificate, or other similar authority.

30 (b) For purposes of a physician and surgeon, osteopathic
31 physician and surgeon, or doctor of podiatric medicine, who is
32 liable for any death or personal injury resulting in a judgment of
33 any amount caused by his or her negligence, error or omission in
34 practice, or his or her rendering unauthorized professional services,
35 the clerk of the court that rendered the judgment shall report that
36 fact to the agency that issued the license.

37 SEC. 13. Section 2089.5 of the Business and Professions Code
38 is amended to read:

39 2089.5. (a) Clinical instruction in the subjects listed in
40 subdivision (b) of Section 2089 shall meet the requirements of this

1 section and shall be considered adequate if the requirements of
2 subdivision (a) of Section 2089 and the requirements of this section
3 are satisfied.

4 (b) Instruction in the clinical courses shall total a minimum of
5 72 weeks in length.

6 (c) Instruction in the core clinical courses of surgery, medicine,
7 family medicine, pediatrics, obstetrics and gynecology, and
8 psychiatry shall total a minimum of 40 weeks in length with a
9 minimum of eight weeks instruction in surgery, eight weeks in
10 medicine, six weeks in pediatrics, six weeks in obstetrics and
11 gynecology, a minimum of four weeks in family medicine, and
12 four weeks in psychiatry.

13 (d) Of the instruction required by subdivision (b), including all
14 of the instruction required by subdivision (c), 54 weeks shall be
15 performed in a hospital that sponsors the instruction and shall meet
16 one of the following:

17 (1) Is a formal part of the medical school or school of
18 osteopathic medicine.

19 (2) Has a residency program, approved by the Accreditation
20 Council for Graduate Medical Education (ACGME) or the Royal
21 College of Physicians and Surgeons of Canada (RCPSC), in family
22 practice or in the clinical area of the instruction for which credit
23 is being sought.

24 (3) Is formally affiliated with an approved medical school or
25 school of osteopathic medicine located in the United States or
26 Canada. If the affiliation is limited in nature, credit shall be given
27 only in the subject areas covered by the affiliation agreement.

28 (4) Is formally affiliated with a medical school or a school of
29 osteopathic medicine located outside the United States or Canada.

30 (e) If the institution, specified in subdivision (d), is formally
31 affiliated with a medical school or a school of osteopathic medicine
32 located outside the United States or Canada, it shall meet the
33 following:

34 (1) The formal affiliation shall be documented by a written
35 contract detailing the relationship between the medical school, or
36 a school of osteopathic medicine, and hospital and the
37 responsibilities of each.

38 (2) The school and hospital shall provide to the board a
39 description of the clinical program. The description shall be in
40 sufficient detail to enable the board to determine whether or not

1 the program provides students an adequate medical education. The
2 board shall approve the program if it determines that the program
3 provides an adequate medical education. If the board does not
4 approve the program, it shall provide its reasons for disapproval
5 to the school and hospital in writing specifying its findings about
6 each aspect of the program that it considers to be deficient and the
7 changes required to obtain approval.

8 (3) The hospital, if located in the United States, shall be
9 accredited by the Joint Commission on Accreditation of Hospitals,
10 and if located in another country, shall be accredited in accordance
11 with the law of that country.

12 (4) The clinical instruction shall be supervised by a full-time
13 director of medical education, and the head of the department for
14 each core clinical course shall hold a full-time faculty appointment
15 of the medical school or school of osteopathic medicine and shall
16 be board certified or eligible, or have an equivalent credential in
17 that specialty area appropriate to the country in which the hospital
18 is located.

19 (5) The clinical instruction shall be conducted pursuant to a
20 written program of instruction provided by the school.

21 (6) The school shall supervise the implementation of the
22 program on a regular basis, documenting the level and extent of
23 its supervision.

24 (7) The hospital-based faculty shall evaluate each student on a
25 regular basis and shall document the completion of each aspect of
26 the program for each student.

27 (8) The hospital shall ensure a minimum daily census adequate
28 to meet the instructional needs of the number of students enrolled
29 in each course area of clinical instruction, but not less than 15
30 patients in each course area of clinical instruction.

31 (9) The board, in reviewing the application of a foreign medical
32 graduate, may require the applicant to submit a description of the
33 clinical program, if the board has not previously approved the
34 program, and may require the applicant to submit documentation
35 to demonstrate that the applicant's clinical training met the
36 requirements of this subdivision.

37 (10) The medical school or school of osteopathic medicine shall
38 bear the reasonable cost of any site inspection by the board or its
39 agents necessary to determine whether the clinical program offered
40 is in compliance with this subdivision.

1 SEC. 14. Section 2096 of the Business and Professions Code
2 is amended to read:

3 2096. In addition to other requirements of this chapter, before
4 a physician's and surgeon's license may be issued, each applicant,
5 including an applicant applying pursuant to Article 5 (commencing
6 with Section 2100), shall show by evidence satisfactory to the
7 board that he or she has satisfactorily completed at least one year
8 of postgraduate training, which includes at least four months of
9 general medicine, in a postgraduate training program approved by
10 the Accreditation Council for Graduate Medical Education
11 (ACGME) or the Royal College of Physicians and Surgeons of
12 Canada (RCPSC).

13 The amendments made to this section at the 1987 portion of the
14 1987-88 session of the Legislature shall not apply to applicants
15 who completed their one year of postgraduate training on or before
16 July 1, 1990.

17 SEC. 15. Section 2102 of the Business and Professions Code
18 is amended to read:

19 2102. Any applicant whose professional instruction was
20 acquired in a country other than the United States or Canada shall
21 provide evidence satisfactory to the board of compliance with the
22 following requirements to be issued a physician's and surgeon's
23 certificate:

24 (a) Completion in a medical school or schools of a resident
25 course of professional instruction equivalent to that required by
26 Section 2089 and issuance to the applicant of a document
27 acceptable to the board that shows final and successful completion
28 of the course. However, nothing in this section shall be construed
29 to require the board to evaluate for equivalency any coursework
30 obtained at a medical school disapproved by the board pursuant
31 to this section.

32 (b) Certification by the Educational Commission for Foreign
33 Medical Graduates, or its equivalent, as determined by the board.
34 This subdivision shall apply to all applicants who are subject to
35 this section and who have not taken and passed the written
36 examination specified in subdivision (d) prior to June 1, 1986.

37 (c) Satisfactory completion of the postgraduate training required
38 under Section 2096. An applicant shall be required to have
39 substantially completed the professional instruction required in
40 subdivision (a) and shall be required to make application to the

1 board and have passed steps 1 and 2 of the written examination
2 relating to biomedical and clinical sciences prior to commencing
3 any postgraduate training in this state. In its discretion, the board
4 may authorize an applicant who is deficient in any education or
5 clinical instruction required by Sections 2089 and 2089.5 to make
6 up any deficiencies as a part of his or her postgraduate training
7 program, but that remedial training shall be in addition to the
8 postgraduate training required for licensure.

9 (d) Pass the written examination as provided under Article 9
10 (commencing with Section 2170). An applicant shall be required
11 to meet the requirements specified in subdivision (b) prior to being
12 admitted to the written examination required by this subdivision.

13 Nothing in this section prohibits the board from disapproving
14 any foreign medical school or from denying an application if, in
15 the opinion of the board, the professional instruction provided by
16 the medical school or the instruction received by the applicant is
17 not equivalent to that required in Article 4 (commencing with
18 Section 2080).

19 SEC. 16. Section 2107 of the Business and Professions Code
20 is amended to read:

21 2107. (a) The Legislature intends that the board shall have the
22 authority to substitute postgraduate education and training to
23 remedy deficiencies in an applicant's medical school education
24 and training. The Legislature further intends that applicants who
25 substantially completed their clinical training shall be granted that
26 substitute credit if their postgraduate education took place in an
27 accredited program.

28 (b) To meet the requirements for licensure set forth in Sections
29 2089 and 2089.5, the board may require an applicant under this
30 article to successfully complete additional education and training.
31 In determining the content and duration of the required additional
32 education and training, the board shall consider the applicant's
33 medical education and performance on standardized national
34 examinations, and may substitute approved postgraduate training
35 in lieu of specified undergraduate requirements. Postgraduate
36 training substituted for undergraduate training shall be in addition
37 to the postgraduate training required by Sections 2102 and 2103.

38 SEC. 17. Section 2135 of the Business and Professions Code
39 is amended to read:

1 2135. The board shall issue a physician and surgeon's
2 certificate to an applicant who meets all of the following
3 requirements:

4 (a) The applicant holds an unlimited license as a physician and
5 surgeon in another state or states, or in a Canadian province or
6 Canadian provinces, which was issued upon:

7 (1) Successful completion of a resident course of professional
8 instruction leading to a degree of medical doctor equivalent to that
9 specified in Section 2089. However, nothing in this section shall
10 be construed to require the board to evaluate for equivalency any
11 coursework obtained at a medical school disapproved by the board
12 pursuant to Article 4 (commencing with Section 2080).

13 (2) Taking and passing a written examination that is recognized
14 by the board to be equivalent in content to that administered in
15 California.

16 (b) The applicant has held an unrestricted license to practice
17 medicine, in a state or states, in a Canadian province or Canadian
18 provinces, or as a member of the active military, United States
19 Public Health Services, or other federal program, for a period of
20 at least four years. Any time spent by the applicant in an approved
21 postgraduate training program or clinical fellowship acceptable to
22 the board shall not be included in the calculation of this four-year
23 period.

24 (c) The board determines that no disciplinary action has been
25 taken against the applicant by any medical licensing authority and
26 that the applicant has not been the subject of adverse judgments
27 or settlements resulting from the practice of medicine that the
28 board determines constitutes evidence of a pattern of negligence
29 or incompetence.

30 (d) The applicant (1) has satisfactorily completed at least one
31 year of approved postgraduate training and is certified by a
32 specialty board approved by the American Board of Medical
33 Specialties or approved by the board pursuant to subdivision (h)
34 of Section 651; (2) has satisfactorily completed at least two years
35 of approved postgraduate training; or (3) has satisfactorily
36 completed at least one year of approved postgraduate training and
37 takes and passes the clinical competency written examination.

38 (e) The applicant has not committed any acts or crimes
39 constituting grounds for denial of a certificate under Division 1.5

1 (commencing with Section 475) or Article 12 (commencing with
2 Section 2220).

3 (f) Any application received from an applicant who has held an
4 unrestricted license to practice medicine, in a state or states, or
5 Canadian province or Canadian provinces, or as a member of the
6 active military, United States Public Health Services, or other
7 federal program for four or more years shall be reviewed and
8 processed pursuant to this section. Any time spent by the applicant
9 in an approved postgraduate training program or clinical fellowship
10 acceptable to the board shall not be included in the calculation of
11 this four-year period. This subdivision does not apply to
12 applications that may be reviewed and processed pursuant to
13 Section 2151.

14 SEC. 18. Section 2168.4 of the Business and Professions Code
15 is amended to read:

16 2168.4. (a) A special faculty permit expires and becomes
17 invalid at midnight on the last day of the permitholder's birth
18 month during the second year of a two-year term, if not renewed.

19 (b) A person who holds a special faculty permit shall show at
20 the time of license renewal that he or she continues to meet the
21 eligibility criteria set forth in Section 2168.1. After the first renewal
22 of a special faculty permit, the permitholder shall not be required
23 to hold a full-time faculty position, and may instead be employed
24 part-time in a position that otherwise meets the requirements set
25 forth in paragraph (1) of subdivision (a) of Section 2168.1.

26 (c) A person who holds a special faculty permit shall show at
27 the time of license renewal that he or she meets the continuing
28 medical education requirements of Article 10 (commencing with
29 Section 2190).

30 (d) In addition to the requirements set forth above, a special
31 faculty permit shall be renewed in accordance with Article 19
32 (commencing with Section 2420) in the same manner as a
33 physician's and surgeon's certificate.

34 (e) Those fees applicable to a physician's and surgeon's
35 certificate shall also apply to a special faculty permit and shall be
36 paid into the State Treasury and credited to the Contingent Fund
37 of the Medical Board of California.

38 SEC. 19. Section 2169 is added to the Business and Professions
39 Code, to read:

1 2169. A person who holds a special faculty permit shall meet
2 the continuing medical education requirements set forth in Article
3 10 (commencing with Section 2190).

4 SEC. 20. Section 2172 of the Business and Professions Code
5 is repealed.

6 SEC. 21. Section 2173 of the Business and Professions Code
7 is repealed.

8 SEC. 22. Section 2174 of the Business and Professions Code
9 is repealed.

10 SEC. 23. Section 2175 of the Business and Professions Code
11 is amended to read:

12 2175. State examination records shall be kept on file by the
13 board until June 1, 2070. Examinees shall be known and designated
14 by number only, and the name attached to the number shall be kept
15 secret until the examinee is sent notification of the results of the
16 examinations.

17 SEC. 24. Section 2221 of the Business and Professions Code
18 is amended to read:

19 2221. (a) The board may deny a physician's and surgeon's
20 certificate to an applicant guilty of unprofessional conduct or of
21 any cause that would subject a licensee to revocation or suspension
22 of his or her license; or, the board in its sole discretion, may issue
23 a probationary physician's and surgeon's certificate to an applicant
24 subject to terms and conditions, including, but not limited to, any
25 of the following conditions of probation:

26 (1) Practice limited to a supervised, structured environment
27 where the licensee's activities shall be supervised by another
28 physician and surgeon.

29 (2) Total or partial restrictions on drug prescribing privileges
30 for controlled substances.

31 (3) Continuing medical or psychiatric treatment.

32 (4) Ongoing participation in a specified rehabilitation program.

33 (5) Enrollment and successful completion of a clinical training
34 program.

35 (6) Abstention from the use of alcohol or drugs.

36 (7) Restrictions against engaging in certain types of medical
37 practice.

38 (8) Compliance with all provisions of this chapter.

39 (9) Payment of the cost of probation monitoring.

(b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant 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.

(d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her application, except that the board may, in its discretion and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the denial.

SEC. 25. Section 2307 of the Business and Professions Code is amended to read:

2307. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

1 (c) The petition shall state any facts as may be required by the
2 board. The petition shall be accompanied by at least two verified
3 recommendations from physicians and surgeons licensed in any
4 state who have personal knowledge of the activities of the petitioner
5 since the disciplinary penalty was imposed.

6 (d) The petition may be heard by a panel of the board. The board
7 may assign the petition to an administrative law judge designated
8 in Section 11371 of the Government Code. After a hearing on the
9 petition, the administrative law judge shall provide a proposed
10 decision to the board or the California Board of Podiatric Medicine,
11 as applicable, which shall be acted upon in accordance with Section
12 2335.

13 (e) The panel of the board or the administrative law judge
14 hearing the petition may consider all activities of the petitioner
15 since the disciplinary action was taken, the offense for which the
16 petitioner was disciplined, the petitioner's activities during the
17 time the certificate was in good standing, and the petitioner's
18 rehabilitative efforts, general reputation for truth, and professional
19 ability. The hearing may be continued from time to time as the
20 administrative law judge designated in Section 11371 of the
21 Government Code finds necessary.

22 (f) The administrative law judge designated in Section 11371
23 of the Government Code reinstating a certificate or modifying a
24 penalty may recommend the imposition of any terms and conditions
25 deemed necessary.

26 (g) No petition shall be considered while the petitioner is under
27 sentence for any criminal offense, including any period during
28 which the petitioner is on court-imposed probation or parole. No
29 petition shall be considered while there is an accusation or petition
30 to revoke probation pending against the person. The board may
31 deny without a hearing or argument any petition filed pursuant to
32 this section within a period of two years from the effective date
33 of the prior decision following a hearing under this section.

34 (h) This section is applicable to and may be carried out with
35 regard to licensees of the California Board of Podiatric Medicine.
36 In lieu of two verified recommendations from physicians and
37 surgeons, the petition shall be accompanied by at least two verified
38 recommendations from doctors of podiatric medicine licensed in
39 any state who have personal knowledge of the activities of the
40 petitioner since the date the disciplinary penalty was imposed.

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

3 SEC. 26. Section 2335 of the Business and Professions Code
4 is amended to read:

5 2335. (a) All proposed decisions and interim orders of the
6 Medical Quality Hearing Panel designated in Section 11371 of the
7 Government Code shall be transmitted to the executive director
8 of the board, or the executive director of the California Board of
9 Podiatric Medicine as to the licensees of that board, within 48
10 hours of filing.

11 (b) All interim orders shall be final when filed.

12 (c) A proposed decision shall be acted upon by the board or by
13 any panel appointed pursuant to Section 2008 or by the California
14 Board of Podiatric Medicine, as the case may be, in accordance
15 with Section 11517 of the Government Code, except that all of the
16 following shall apply to proceedings against licensees under this
17 chapter:

18 (1) When considering a proposed decision, the board or panel
19 and the California Board of Podiatric Medicine shall give great
20 weight to the findings of fact of the administrative law judge,
21 except to the extent those findings of fact are controverted by new
22 evidence.

23 (2) The board's staff or the staff of the California Board of
24 Podiatric Medicine shall poll the members of the board or panel
25 or of the California Board of Podiatric Medicine by written mail
26 ballot concerning the proposed decision. The mail ballot shall be
27 sent within 10 calendar days of receipt of the proposed decision,
28 and shall poll each member on whether the member votes to
29 approve the decision, to approve the decision with an altered
30 penalty, to refer the case back to the administrative law judge for
31 the taking of additional evidence, to defer final decision pending
32 discussion of the case by the panel or board as a whole, or to
33 nonadopt the decision. No party to the proceeding, including
34 employees of the agency that filed the accusation, and no person
35 who has a direct or indirect interest in the outcome of the
36 proceeding or who presided at a previous stage of the decision,
37 may communicate directly or indirectly, upon the merits of a
38 contested matter while the proceeding is pending, with any member
39 of the panel or board, without notice and opportunity for all parties
40 to participate in the communication. The votes of a majority of the

1 board or of the panel, and a majority of the California Board of
2 Podiatric Medicine, are required to approve the decision with an
3 altered penalty, to refer the case back to the administrative law
4 judge for the taking of further evidence, or to nonadopt the
5 decision. The votes of two members of the panel or board are
6 required to defer final decision pending discussion of the case by
7 the panel or board as a whole. If there is a vote by the specified
8 number to defer final decision pending discussion of the case by
9 the panel or board as a whole, provision shall be made for that
10 discussion before the 100-day period specified in paragraph (3)
11 expires, but in no event shall that 100-day period be extended.

12 (3) If a majority of the board or of the panel, or a majority of
13 the California Board of Podiatric Medicine vote to do so, the board
14 or the panel or the California Board of Podiatric Medicine shall
15 issue an order of nonadoption of a proposed decision within 100
16 calendar days of the date it is received by the board. If the board
17 or the panel or the California Board of Podiatric Medicine does
18 not refer the case back to the administrative law judge for the
19 taking of additional evidence or issue an order of nonadoption
20 within 100 calendar days, the decision shall be final and subject
21 to review under Section 2337. Members of the board or of any
22 panel or of the California Board of Podiatric Medicine who review
23 a proposed decision or other matter and vote by mail as provided
24 in paragraph (2) shall return their votes by mail to the board within
25 30 days from receipt of the proposed decision or other matter.

26 (4) The board or the panel or the California Board of Podiatric
27 Medicine shall afford the parties the opportunity to present oral
28 argument before deciding a case after nonadoption of the
29 administrative law judge's decision.

30 (5) A vote of a majority of the board or of a panel, or a majority
31 of the California Board of Podiatric Medicine, are required to
32 increase the penalty from that contained in the proposed
33 administrative law judge's decision. No member of the board or
34 panel or of the California Board of Podiatric Medicine may vote
35 to increase the penalty except after reading the entire record and
36 personally hearing any additional oral argument and evidence
37 presented to the panel or board.

38 SEC. 27. Section 2486 of the Business and Professions Code
39 is amended to read:

SB 821

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 821
Author: Committee on Business, Professions, and Economic Development
Bill Date: April 16, 2009, amended
Subject: Omnibus
Sponsor: Committee

STATUS OF BILL:

This bill is in the Senate 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.

ANALYSIS:

This bill proposes non-substantive and non-controversial changes to law. 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):

- **805(a)(2)** – Add the category of Special Faculty Permit holders to the definition of “Licentiate.”
- **821.5** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.
- **821.6** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.

FISCAL: None to the Board

POSITION: **Executive Committee Recommendation:** Support MBC provisions.
Staff Recommendation: Support MBC provisions.

April 26, 2009

AMENDED IN SENATE APRIL 16, 2009

SENATE BILL

No. 821

Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (Chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)

March 10, 2009

An act to amend Sections 805, ~~821.5, 821.6~~, 2530.2, 2532.2, 2532.7, 2570.2, 2570.3, 2570.4, 2570.5, 2570.6, 2570.7, 2570.9, 2570.10, 2570.13, 2570.16, 2570.18, 2570.20, 2570.26, 2570.28, 2571, 2872.2, 3357, 3362, 3366, 3456, 3740, 3750.5, 3773, 4101, 4112, 4113, 4160, 4196, 4510.1, 4933, 4980.45, 4980.48, 4982, 4982.2, 4989.22, 4989.54, 4992.1, 4992.3, 4996.23, 4996.28, 4996.5, and 4999.2 of, ~~and to add Sections 2532.25, 2570.17, 2570.186, 4013, 4146, 4989.49, 4992.2, and 4996.24 to, and to repeal Sections 821.5 and 821.6 of, the Business and Professions Code, and to amend Section 123105 of the Health and Safety Code, and to amend Section 3 of Chapter 294 of the Statutes of 2004, relating to healing arts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, Committee on Business, Professions and Economic Development. Healing arts: licensees.

(1) Existing law provides for the professional review of specified healing arts licentiates through a peer review process, and requires the peer review body to report to the relevant agency upon certain circumstances, *including circumstances related to an obsolete diversion program.*

This bill would include within the definition of "licentiate" a holder of a special faculty permit to practice medicine within a medical school. ~~Within the peer review provisions, the~~ The bill would also delete the

peer review provisions related to the obsolete diversion program references and would instead require the peer review body to report to the executive director of the Medical Board of California or a designee.

(2) Existing law provides for the licensure and regulation of speech-language pathologists and audiologists by the Speech-Language Pathology and Audiology Board. Existing law provides that an audiology aide is any person who meets the minimum requirements of the board and who works directly under the supervision of an audiologist.

This bill would prohibit an audiology aide from performing any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist, except if the board exempts certain functions performed by an industrial audiology aide and if the employer establishes a set of procedures or protocols.

Existing law requires an applicant for licensure as an audiologist to meet specified educational and curriculum standards, including possession of at least a master's degree in audiology.

This bill would revise the educational and curriculum standards for licensure as an audiologist, as specified, and instead require possession of a doctorate in audiology. The bill would apply those requirements to applicants who graduate from an approved educational institution on or after January 1, 2008. The bill would make conforming changes to provisions related to the issuance of a required professional experience (RPE) temporary license, as specified.

(3) The Occupational Therapy Practice Act provides for the licensure and regulation of occupational therapists and occupational therapist assistants. Existing law prohibits an occupational therapy assistant from supervising an aide engaged in client-related tasks. Existing law also defines "hand therapy" under the act to mean the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity. Existing law also provides for minimizing the risk of transmission of blood-borne infectious diseases.

This bill would authorize occupational therapy assistants to supervise aides engaged in client-related tasks, and make conforming changes. The bill would also redefine "hand therapy" by deleting the term "upper extremity" and replacing that term with "hand, wrist, and forearm." The bill would delete obsolete certification terms and replace them with licensure references. The bill would instead provide for minimizing the risk of transmission of infectious diseases.

Under the Occupational Therapy Practice Act, occupational therapists and occupational therapy assistants are subject to licensure and

regulation by the California Board of Occupational Therapy; and specified licensure fees, which are deposited into the Occupational Therapy Fund.

This bill would require the board to issue retired licenses to certain occupational therapists or occupational therapy assistants, as specified, subject to a \$25 fee.

Existing law requires occupational therapists to keep patient records for a minimum of 7 years. Under existing law, the board is authorized to investigate violations of the Occupational Therapy Practice Act.

This bill would authorize the board to inspect the books or records of, or require reports from, specified facilities providing occupational therapy treatment or services and its occupational therapy staff in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action. A licensee who fails to comply with this requirement would be subject to disciplinary action.

Existing law regulates telephone medical advice services, and requires all staff who provide medical advice services to be appropriately licensed, certified, or registered professionals, as specified.

This bill would add occupational therapists to the enumerated professionals authorized to provide telephone medical advice.

Existing law imposes specified recordkeeping and disclosure requirements on health care providers, as defined.

This bill would impose those requirements on occupational therapists.

(4) Existing law provides for the licensure and regulation of vocational nurses and psychiatric technicians by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law provides, upon application, for the issuance of an interim permit authorizing an applicant to practice vocational nursing or, in the case of a psychiatric technician, all skills in his or her basic course of study, pending the results of a licensing examination.

This bill would require the application for an interim permit to be submitted no later than 4 months after completion of a board-accredited program, and would limit the use of the permit to 9 months, as specified.

(5) Existing law provides for the licensure and regulation of hearing aid dispensers by the Hearing Aid Dispensers Bureau, and a person who violates that law is guilty of a misdemeanor. Existing law provides for the issuance of a temporary license to an applicant who has made application for licensure and who proves that he or she will be supervised and trained by a hearing aid dispenser, pending approval by

the board. A temporary license is effective and valid for 6 months, and may be renewed twice for an additional period of 6 months.

This bill would allow for the issuance of a new temporary license if more than 3 years have lapsed from the expiration or cancellation date of a previous temporary license.

Existing law requires a person engaging in the practice of fitting or selling hearing aids to notify the bureau in writing of his or her business address or addresses or changes in that address or addresses. Existing law requires a licensee to keep and maintain his or her business records for a 7-year period.

This bill would require the written notification to be given to the bureau within a 30-day period. The bill would also require a licensee to allow his or her business records, as specified, to be inspected by the bureau upon reasonable notice. Because a violation of those provisions would be a crime, the bill would impose a state-mandated local program.

Existing law allows the bureau to impose upon licensees specified licensure fees and penalties, including a fee for a continuing education course transcript and for a license confirmation letter.

This bill would delete those transcript and letter fee provisions.

(6) The Respiratory Care Practice Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. The act authorizes the board to deny, suspend, or revoke the license of any applicant or licensee who has committed a specified violation, including obtaining or possessing in violation of law or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, furnishing or administering to himself or herself or another a controlled substance, as defined.

This bill would clarify that the licensee is prohibited from obtaining, possessing, using, or administering to himself or herself in violation of law, or furnishing or administering to another, any controlled substance, as defined, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider. The bill would also subject to disciplinary action a licensee who uses alcoholic beverages to an extent that is injurious to self or others or if it impairs his or her ability to conduct with safety the practice of respiratory care. *For a violation thereof, the bill would specify that the board is authorized to place the license of an applicant or licensee on probation.* The bill would also require a renewing applicant for licensure to provide additional information requested by the board and, if the applicant fails

to provide that information within 30 days of the request, his or her license would be made inactive until the information is received.

(7) The Pharmacy Law provides for the licensure and regulation of pharmacists and pharmacy establishments by the California State Board of Pharmacy, and makes a knowing violation of the law a misdemeanor.

On and after July 1, 2010, this bill would require any facility licensed by the board to join the board's e-mail notification list and make specified e-mail address updates. The bill would also require ~~nonresident~~ *nonresident* pharmacies to obtain licensure from the board, and would make certain changes with regard to pharmacists-in-charge of a pharmacy, representatives-in-charge of the wholesale of any dangerous drug or device, and representatives-in-charge of veterinary food-animal drug retailers, and respective notification requirements. The bill would also allow a pharmacy to accept the return of needles and syringes from the public if contained in a sharps container, as defined. Because a knowing violation of those provisions would be a crime, the bill would impose a state-mandated local program.

(8) Existing law provides for the licensure and regulation of acupuncturists by the Acupuncture Board. Existing law provides that 5 members of the board shall constitute a quorum.

This bill would provide that 4 members, including at least one acupuncturist, shall constitute a quorum.

(9) Existing law provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor.

This bill would delete references to the employment of unlicensed interns and instead refer to marriage and family therapy interns or associate clinical social workers, and would apply specified disciplinary and probationary provisions to registered marriage and family therapy interns and associate clinical social workers. The bill would require any person that advertises services performed by a trainee, as defined, to include the trainee's name and supervisor information. Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would additionally modify the disciplinary provisions that apply to marriage and family therapists, as specified, and the licensure provisions that apply to an applicant pending investigation of a complaint.

(10) Existing law provides for the regulation of educational psychologists by the Board of Behavioral Sciences, and makes a

violation of the law a misdemeanor. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to drug use, telemedicine consent, subversion of an examination, and fraudulent advertising. The bill would define the term “advertising” for purposes of those provisions.

(11) Existing law provides for the regulation of clinical social workers by the Board of Behavioral Sciences. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to the subversion of an examination and advertising. The bill would define the term “advertising” for purposes of those provisions. The bill would additionally modify the licensure provisions that apply to an applicant pending investigation of a complaint. The bill would modify provisions related to the supervision and employment of clinical social workers or associate clinical social workers.

(12) Existing law appropriates specified sums from the State Dental Auxiliary Fund to the Committee on Dental Auxiliaries for operating expenses necessary to manage the dental hygiene licensing examination. Existing law requires the Dental Hygiene Committee of California to administer the dental hygiene licensing examination. Existing law also provides that on and after July 1, 2009, specified moneys are to be transferred from the State Dental Auxiliary Fund to the State Dental Hygiene Fund for purposes of carrying out the certain provisions of the Dental Practice Act, including the payment of any encumbrances, related to dental hygienists, dental hygienists in alternative practice, and dental hygienists in extended functions.

This bill would specify that the moneys for operating the dental hygiene licensing examination are to be transferred to the Dental Hygiene Committee of California from the State Dental Hygiene Fund.

~~(12)~~

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

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

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

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

1 SECTION 1. Section 805 of the Business and Professions Code
2 is amended to read:

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

5 (1) "Peer review body" includes:

6 (A) A medical or professional staff of any health care facility
7 or clinic licensed under Division 2 (commencing with Section
8 1200) of the Health and Safety Code or of a facility certified to
9 participate in the federal Medicare Program as an ambulatory
10 surgical center.

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

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

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

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

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

34 (4) "Staff privileges" means any arrangement under which a
35 licentiate is allowed to practice in or provide care for patients in
36 a health facility. Those arrangements shall include, but are not
37 limited to, full staff privileges, active staff privileges, limited staff
38 privileges, auxiliary staff privileges, provisional staff privileges,

1 temporary staff privileges, courtesy staff privileges, locum tenens
2 arrangements, and contractual arrangements to provide professional
3 services, including, but not limited to, arrangements to provide
4 outpatient services.

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

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

13 (7) "805 report" means the written report required under
14 subdivision (b).

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

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

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

26 (3) Restrictions are imposed, or voluntarily accepted, on staff
27 privileges, membership, or employment for a cumulative total of
28 30 days or more for any 12-month period, for a medical disciplinary
29 cause or reason.

30 (c) The chief of staff of a medical or professional staff or other
31 chief executive officer, medical director, or administrator of any
32 peer review body and the chief executive officer or administrator
33 of any licensed health care facility or clinic shall file an 805 report
34 with the relevant agency within 15 days after any of the following
35 occur after notice of either an impending investigation or the denial
36 or rejection of the application for a medical disciplinary cause or
37 reason:

38 (1) Resignation or leave of absence from membership, staff, or
39 employment.

1 (2) The withdrawal or abandonment of a licentiate's application
2 for staff privileges or membership.

3 (3) The request for renewal of those privileges or membership
4 is withdrawn or abandoned.

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

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

13 (f) A copy of the 805 report, and a notice advising the licentiate
14 of his or her right to submit additional statements or other
15 information pursuant to Section 800, shall be sent by the peer
16 review body to the licentiate named in the report.

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

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

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

37 (g) The reporting required by this section shall not act as a
38 waiver of confidentiality of medical records and committee reports.
39 The information reported or disclosed shall be kept confidential
40 except as provided in subdivision (c) of Section 800 and Sections

1 803.1 and 2027, provided that a copy of the report containing the
2 information required by this section may be disclosed as required
3 by Section 805.5 with respect to reports received on or after
4 January 1, 1976.

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

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

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

12 (k) A willful failure to file an 805 report by any person who is
13 designated or otherwise required by law to file an 805 report is
14 punishable by a fine not to exceed one hundred thousand dollars
15 (\$100,000) per violation. The fine may be imposed in any civil or
16 administrative action or proceeding brought by or on behalf of any
17 agency having regulatory jurisdiction over the person regarding
18 whom the report was or should have been filed. If the person who
19 is designated or otherwise required to file an 805 report is a
20 licensed physician and surgeon, the action or proceeding shall be
21 brought by the Medical Board of California. The fine shall be paid
22 to that agency but not expended until appropriated by the
23 Legislature. A violation of this subdivision may constitute
24 unprofessional conduct by the licensee. A person who is alleged
25 to have violated this subdivision may assert any defense available
26 at law. As used in this subdivision, "willful" means a voluntary
27 and intentional violation of a known legal duty.

28 (l) Except as otherwise provided in subdivision (k), any failure
29 by the administrator of any peer review body, the chief executive
30 officer or administrator of any health care facility, or any person
31 who is designated or otherwise required by law to file an 805
32 report, shall be punishable by a fine that under no circumstances
33 shall exceed fifty thousand dollars (\$50,000) per violation. The
34 fine may be imposed in any civil or administrative action or
35 proceeding brought by or on behalf of any agency having
36 regulatory jurisdiction over the person regarding whom the report
37 was or should have been filed. If the person who is designated or
38 otherwise required to file an 805 report is a licensed physician and
39 surgeon, the action or proceeding shall be brought by the Medical
40 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. 2. Section 821.5 of the Business and Professions Code is amended to read:~~

~~821.5. (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 Medical Board of California 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 under this section to the board's executive director or designee, who is not in the enforcement program, shall also notify the executive director or designee when it has completed or closed an investigation.~~

~~(b) The executive director or designee, upon receipt of a report pursuant to subdivision (a), shall contact the peer review body that~~

1 made the report within 60 days in order to determine the status of
2 the peer review body's investigation. The executive director or
3 designee shall contact the peer review body periodically thereafter
4 to monitor the progress of the investigation. At any time, if the
5 executive director or designee determines that the progress of the
6 investigation is not adequate to protect the public, the executive
7 director or designee shall notify the chief of enforcement of the
8 Medical Board of California, who shall promptly conduct an
9 investigation of the matter. Concurrently with notifying the chief
10 of enforcement, the executive director or designee shall notify the
11 reporting peer review body and the chief executive officer or an
12 equivalent officer of the hospital of its decision to refer the case
13 for investigation by the chief of enforcement.

14 (c) For purposes of this section "formal investigation" means
15 an investigation ordered by the peer review body's medical
16 executive committee or its equivalent, based upon information
17 indicating that the physician and surgeon may be suffering from
18 a disabling mental or physical condition that poses a threat to
19 patient care. "Formal investigation" does not include the usual
20 activities of the well-being or assistance committee or the usual
21 quality assessment and improvement activities undertaken by the
22 medical staff of a health facility in compliance with the licensing
23 and certification requirements for health facilities set forth in Title
24 22 of the California Code of Regulations, or preliminary
25 deliberations or inquiries of the executive committee to determine
26 whether to order a formal investigation.

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

32 (d) Information received by the board pursuant to this section
33 shall be deemed confidential. The records shall not be further
34 disclosed by the board, except as provided in subdivision (b).

35 (e) Upon receipt of notice from a peer review body that an
36 investigation has been closed and that the peer review body has
37 determined that there is no need for further action to protect the
38 public, the board shall purge and destroy all records in its
39 possession pertaining to the investigation unless the executive

1 director or designee has referred the matter to the chief of
2 enforcement pursuant to subdivision (b):

3 (f) A peer review body that has made a report under subdivision
4 (a) shall not be deemed to have waived the protections of Section
5 1157 of the Evidence Code. It is not the intent of the Legislature
6 in enacting this subdivision to affect pending litigation concerning
7 Section 1157 or to create any new confidentiality protection except
8 as specified in subdivision (d):

9 (g) The report required by this section shall be submitted on a
10 short form developed by the board. The board shall develop the
11 short form, the contents of which shall reflect the requirements of
12 this section, within 30 days of the effective date of this section.
13 The board shall not require the filing of any report until the short
14 form is made available by the board:

15 (h) This section shall become operative on January 1, 2010,
16 unless the regulations required to be adopted pursuant to Section
17 821.6 are adopted prior to that date, in which case this section shall
18 become operative on the effective date of the regulations:

19 SEC. 3. Section 821.6 of the Business and Professions Code
20 is amended to read:

21 821.6. The board shall adopt regulations to implement the
22 monitoring responsibility of the executive director or designee
23 described in subdivision (b) of Section 821.5, and the short form
24 required to be developed pursuant to subdivision (g), on or before
25 January 1, 2010:

26 SEC. 2. Section 821.5 of the Business and Professions Code
27 is repealed.

28 821.5. (a) A peer review body, as defined in Section 805, that
29 reviews physicians and surgeons, shall, within 15 days of initiating
30 a formal investigation of a physician and surgeon's ability to
31 practice medicine safely based upon information indicating that
32 the physician and surgeon may be suffering from a disabling mental
33 or physical condition that poses a threat to patient care, report to
34 the diversion program of the Medical Board the name of the
35 physician and surgeon under investigation and the general nature
36 of the investigation. A peer review body that has made a report to
37 the diversion program under this section shall also notify the
38 diversion program when it has completed or closed an
39 investigation:

(b) The diversion program administrator, 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 diversion program administrator shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the diversion program administrator determines that the progress of the investigation is not adequate to protect the public, the diversion program administrator shall notify the chief of enforcement of the Division of Medical Quality of the Medical Board of California, who shall promptly conduct an investigation of the matter. Concurrently with notifying the chief of enforcement, the diversion program administrator 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 "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.

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.

(d) Information received by the diversion program pursuant to this section shall be governed by, and shall be deemed confidential to the same extent as program records under, Section 2355. The records shall not be further disclosed by the diversion program, except as provided in subdivision (b).

(e) 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 diversion program shall purge and destroy all records in its possession pertaining to the investigation unless the diversion program administrator has referred the matter to the chief of enforcement pursuant to subdivision (b).

(f) 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 (d). "Pending litigation" shall include *Arnett v. Dal Cielo* (No. S048308), pending before the California Supreme Court.

(g) The report required by this section shall be submitted on a short form developed by the board. The board shall develop the short form, the contents of which shall reflect the requirements of this section, within 30 days of the effective date of this section. The board shall not require the filing of any report until the short form is made available by the board.

(h) This section shall become operative on January 1, 1997, unless the regulations required to be adopted pursuant to Section 821.6 are adopted prior to that date, in which case this section shall become operative on the effective date of the regulations.

SEC. 3. Section 821.6 of the Business and Professions Code is repealed.

821.6. The board shall adopt regulations to implement the monitoring responsibility of the diversion program administrator described in subdivision (b) of Section 821.5, and the short form required to be developed pursuant to subdivision (g), on or before January 1, 1997.

SEC. 4. 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 Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination

Medical Board of California
2008 Tracker II - Legislative Bills
4/30/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Unbilical Cord Blood Collection Program	Asm. Approps.	04/01/09
AB 82	Evans	Dependent Children: psychotropic medications	Asm. Approps.	04/14/09
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Asm. Approps.	03/25/09
AB 259	Skinner	Health Care Coverage: certified nurse-midwives: direct access	Asm. Health	
AB 361	Lowenthal	Workers' Compensation: treatment authorization	Asm. Insur.	04/28/09
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Asm. Approps.	04/14/09
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Asm. Health	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Asm. Hum. S.	
AB 456	Emmerson	State Agencies: period review	Asm. B&P (4/28)	04/14/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Asm. Trans. (4/30)	
AB 520	Carter	Public Records: limiting requests	Asm. Jud.	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Asm. Approps.	04/22/09
AB 657	Hernandez	Health Professions Workforce: task force	Asm. Approps.	04/27/09
AB 681	Hernandez	Confidentiality of Medical Information: psychotherapy	Asm. Jud.	
AB 721	Nava	Physical Therapists: scope of practice	Asm. B&P	04/13/09
AB 830	Cook	Drugs and Devices	Asm. Approps.	04/23/09
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Asm. Approps.	04/14/09
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Asm. Approps.	04/14/09
AB 931	Fletcher	Emergency Supplies: increase amount	Asm. Health (5/05)	03/26/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Asm. Approps.	04/22/09
AB 1005	Block	CA Board of Accountancy: live broadcast of board meetings	Asm. Floor	04/20/09
AB 1094	Conway	Disposal of Personal Information	Asm. B&P (4/28)	04/21/09

Medical Board of California
2008 Tracker II - Legislative Bills
4/30/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1113	Lowenthal	Prisoners: professional mental health providers: MFTs	Asm. Approps. (4/29)	
AB 1140	Niello	Healing Arts (spot)	Asm. B&P (5/5)	04/14/09
AB 1152	Anderson	Professional Corporations: licensed physical therapists	Asm. B&P (5/12)	
AB 1162	Carter	Health Facilities: licensure	Introduced	
AB 1168	Carter	Professions and Vocations (spot)	Introduced	
AB 1194	Strickland	State Agency Internet Web Sites: information	Asm. B&P	
AB 1317	Block	Assisted Oocute Production: advertisement	Asm. Health	
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Asm. B&P	
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Asm. B&P (5/5)	
AB 1540	Health Comm.	Health	Asm. Approps.	04/16/09
AB 1542	Health Comm.	Medical Records: centralized location	Asm. Health (5/12)	
AB 1544	Health Comm.	Health Facilities: licensure	Asm. Approps.	
SB 26	Simitian	Home-generated Pharmaceutical Waste	Sen. Approps. (5/4)	04/15/09
SB 33	Correa	Marriage and Family Therapy: licensure and registration	Sen. Floor	02/10/09
SB 39	Benoit	Torts: personal liability immunity	Sen. Jud. (5/5)	04/27/09
SB 43	Alquist	Health Prof.: cultural and linguistic competency information	Sen. Approps. (5/4)	04/20/09
SB 112	Oropeza	Hemodialysis Technicians	Sen. Approps.	04/01/09
SB 171	Pavley	Certified Employees: physician assistants: medical certificates	Sen. Floor	
SB 186	DeSaulnier	Workers' Compensation: treatment: predesignationof physician	Sen. Floor	
SB 238	Calderon	Medical Information: prescription refill requirements	Sen. Health	04/23/09

Medical Board of California
2008 Tracker II - Legislative Bills
4/30/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 268	Harman	Alcoholism or Drug Abuse Treatment Facilities: licensing	Sen. Approps.	
SB 294	Negete McLeod	Nurse Practitioners	Sen. Floor	03/31/09
SB 303	Alquist	Nursing Facility Residents: informed consent	Sen. Approps.	04/27/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Sen. Approps.	03/31/09
SB 368	Maldonado	Confidential Medical Information: unlawful disclosure	Sen. Health	04/01/09
SB 374	Calderon	Health Care Providers: resonable disclosure: reproductive choices	Sen. Floor	04/02/09
SB 395	Wyland	Medical Practice	Sen. Rules	
SB 442	Ducheny	Clinic Corporation: licensing	Sen. Approps.	04/28/09
SB 482	Padilla	Healing Arts: Medical Practice	Sen. Rules	04/14/09
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Sen. Approps.	
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Sen. G.O.	
SB 599	Negrete McLeod	Licensing Boards: disciplinary actions: posting	Sen. B&P	04/20/09
SB 606	Ducheny	Physicians and Surgeons: loan repayment	Sen. Approps.	03/31/09
SB 620	Wiggins	Healing Arts: osteopaths	Sen. Floor	
SB 630	Steinberg	Health care Coverage: reconstructive surgery: dental	Sen. Approps. (5/4)	
SB 719	Huff	State Agency Internet Web Sites: information searchability	Sen. Approps.	
SB 744	Strickland	Clinical Laboratories: public health labs	Sen. Approps.	04/22/09
SB 761	Aanestad	Health Manpower Pilot Projects	Sen. Approps.	04/22/09
SB 762	Aanestad	Professions and Vocations: healing arts	Sen. B&P	
SB 788	Wyland	Licensed Professional Clinical Counselors	Sen. B&P	04/29/09
SB 810	Leno	Single-Payer Health Care Coverage	Sen. Approps. (5/4)	04/23/09
SB 820	B&P Comm.	Consumer Affiars: professions and vocations	Sen. Approps.	04/21/09