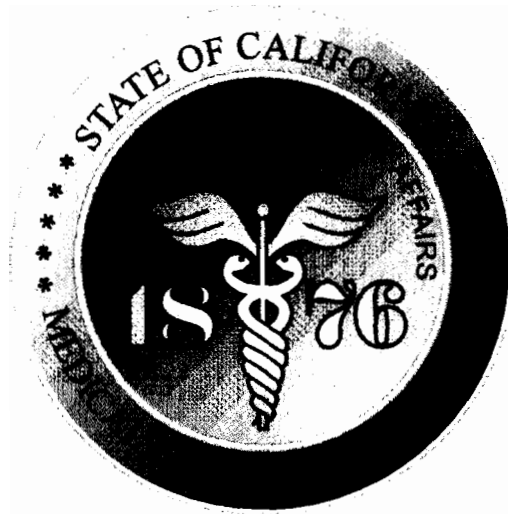


# LEGISLATIVE PACKET



January 29 – January 30, 2009  
Los Angeles, CA

## **TENTATIVE LEGISLATIVE CALENDAR**

**2009**

Jan. 1	Statutes of 2008 take effect.
Jan. 5	Legislature reconvenes.
Jan. 10	Budget Bill must be submitted by Governor.
Jan. 30	Last day to submit bill requests to the Office of Legislative Counsel.
Feb. 27	Last day for bills to be introduced.
Apr. 2	Spring Recess begins upon adjournment.
Apr. 13	Legislature reconvenes.
May 1	Last day for policy committees to hear and report Assembly fiscal bills for referral to fiscal committees.
May 15	Last day for policy committees to hear and report nonfiscal Assembly bills to the Assembly floor.
May 22	Last day for policy committees to meet prior to June 8.
May 29	Last day for fiscal committees to hear and report Assembly Bills to the Floor. Last day for fiscal committees to meet prior to June 8.
June 1 - 5	Floor session only. No committee may meet for any purpose.
June 5	Last day for Assembly to pass Assembly Bills.
June 8	Committee meetings may resume.
June 15	Budget Bill must be passed by midnight.
July 10	Last day for policy committees to hear and report bills to the Floor.
July 17	Summer Recess begins on adjournment, provided Budget Bill has been passed.
Aug. 17	Legislature reconvenes.
Aug. 28	Last day for fiscal committees to hear and report bills to the Floor.

Aug. 31 - Sept. 11 Floor session only. No committee may meet for any purpose.

Sept. 4 Last day to amend bills on Assembly floor.

Sept. 11 Last day for any bill to be passed. Interim Recess begins upon adjournment.

Oct. 11 Last day for Governor to sign bills.

**2010**

Jan. 1 Statutes of 2009 take effect.

Jan. 4 Legislature reconvenes.

## **2009 MEDICAL BOARD LEGISLATIVE PROPOSALS**

1. Wellness Committee codified in statute.

This proposal was placed in AB 2443 and that bill was vetoed. Board has elected to pursue this codification again due to the importance of the issue.

2. Set a “cap” or “ceiling” on the initial/renewal fee, allowing the board to set the fee in regulation, and allow the board to have between two and six months funding in its reserve. This action is based upon an audit by the Bureau of State Audits.

The “cap” was placed in AB 547, but the bill was vetoed. It did not contain the range in the reserve fund.

3. Develop an Initial Limited License.

There are applicants who wish to be licensed in California who are able to practice safely with a limited license. The board does not have the authority to issue an initial limited license. This proposal will address that concern and may assist in addressing some access to care issues facing patients in California.

4. Use of “M.D.” by residents.

There has been concern raised that residents are physicians but are not allowed the use of “M.D.” which confuses the patients. Some teaching hospitals have suggested a resident license or training license. Rather than create a new category of licensees, the Board approved the examination of revising the codes regarding the use of the term “M.D.”

5. Sunset Review - Extension of the Board.

The board (members) is set to sunset (become inoperative) July 1, 2010 and the statutes are repealed January 1, 2011. SB 963 had the extension of the board for another year while the legislature and administration determined how the sunset review process was to be reformed.

Approved additional concepts that could be included in this bill are:

- a. Certified Medical Records.

The board approved this proposal at its April 2008 meeting, but it was substantive, thus could not go into omnibus legislation for 2008. Medical records provided by a physician, clinic or hospital in the course of reviewing a complaint are not certified. If the case goes to investigation, then the records must be obtained again as certified records. This proposal would reduce the time for investigating complaints and eliminate duplication of work.

b. Vertical Enforcement/Prosecution - Sunset of Pilot.

This pilot is set to sunset (become inoperative) on July 1, 2010 and is repealed January 1, 2011 (see SB 797, page 20). The new evaluation report is due July 1, 2009.

c. Require reporting, at time of renewal, of any criminal, civil or disciplinary action.

This proposal would require a physician, at time of renewal and under penalty of perjury, to report any criminal (felony or misdemeanor convictions), civil (settlements over \$30,000, judgments, arbitration awards) or B&P 805 events. This will enable the board to obtain this information in a secondary manner since there is evidence that primary sources are not reporting all the information that should be reported to the board. This has been implemented by the DCA on each renewal form, but the codification was approved by the board

d. Require all physicians who have an active license and have not submitted fingerprints to the board to do so by January 1, 2012.

This proposal will allow the board to obtain and maintain a record of arrests of licensed physicians in California. This is currently done, by law for all physicians since 1986 upon application to become licensed in California. Pursuant to review of records, fingerprinting has been required since June 1968. There is a "gap" in the information for those licensed prior to 1968. Some of those physicians should submit information to the board regarding convictions, but do not. Those physicians licensed prior to 1968 have not been fingerprinted, therefore the Board may not be aware the physician has been arrested and convicted. In these situations, the board must rely on the physician notifying the board after a conviction.

A review of records shows that 11,000 to 15,000 licensees need to be fingerprinted. The cost is \$51 to each licensee. Further research needs to be completed with the Department of Justice to confirm the numbers.

e. B&P 801.01 Reporting Revisions.

This section of law continues to be confusing to reporting entities. Some have asked for changes and clarification to understand exactly what is required.

f. Obtain Medical Records Without Subpoena

This would allow the board to obtain records when there is reluctance on the part of the patient to give the board authorization to obtain the records.

g. Cap the Amount the Board can Assess for Licensee's Failure to Provide Medical Records

The board shall assess \$1,000 per day for failure by the licensee to provide to the board requested medical records within 15 days. There is no cap on this amount. There is a cap of \$10,000 on the amount the board may assess a health care facility for the same infraction.

6. Omnibus (usually carried by Senate Business and Professions Committee).

All of our proposals for clean up were placed in the Omnibus bill, SB 1779, and that bill was vetoed. In addition, the board had a proposal placed in AB 2442 regarding the repeal of the reporting sections related to peer reports coming to the diversion program administrator (B&P 821.5 and 821.6). There will be additional proposals presented by both licensing and enforcement that may be included in this bill.

- 801.01 – Clarifying whether or not malpractice actions have to be in California to be reported.
- 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.
- 2089.5 – Specify type of residency programs; and technical changes.
- 2096 – Specify type of residency programs; and technical changes.
- 2102 – Federation of State Medical Boards (FSMB) will not test anyone without a state license; and technical changes.
- 2107 – Technical changes.
- 2135 –
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency among all licensing pathways.
  - Technical changes.
- 2168.4 – 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 – Repeal; board no longer administers examinations.
- 2221 – Making the process by which an applicant’s probationary certificate can be modified or terminated consistent with the process that a probationary certificate is modified or terminated through enforcement
- 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.

**Proposals that may come from the Administration that MBC may wish to co-sponsor.**

Licensing/Accreditation of Outpatient Surgery Settings

A legal decision was made in the case of Capen v. Shewry that created an issue between licensing and accreditation of outpatient surgery settings. The Court's opinion stated that physician owned and operated surgical clinics are to be regulated by the Medical Board, when general anesthesia is used, and surgical clinics operated by non-physicians are to be regulated by the Department of Public Health. The problem with that opinion is that the board does not have the authority to regulate clinics, it has the authority to approve accrediting agencies who verify compliance with standards. CDPH has stopped issuing licenses to these clinics, stating it does not have the authority to do so based upon the Court opinion. The Administration tried to sponsor legislation in 2008 to fix this issue, but was unsuccessful. We believe interested parties will work with the Administration in the 2009 legislative session in an attempt to resolve this issue.



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# Memorandum

Date: January 22, 2009  
To: Members of the Medical Board of California  
From: Linda K. Whitney  
Subject: 2009 Tracker Legislation

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As of this mailing date, there is only one piece of legislation that has been introduced that directly impacts the Medical Board of California (Board). More related legislation may be introduced by the meeting date, and these will be presented to the Board at that time.

An Executive Committee meeting will be requested for mid to late March to review and take positions on legislation that has been introduced in the 2009 session. This meeting should take place before the policy committees take action on legislation in April.

The attached bill that has been identified for Board review is a place holder. It has been introduced to begin the discussions related to any improvements that the legislature will deem necessary in the peer review process.

The Board will not be asked at this meeting to take a position on this legislation, but to direct staff to continue the discussions with the author and interested parties in the development of this legislation.

If you have any questions, please do not hesitate to contact me at 916-263-2677 or [lwhitney@mbc.ca.gov](mailto:lwhitney@mbc.ca.gov).



**Introduced by Senator Aanestad**

January 20, 2009

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An act to add Section 805.3 to the Business and Professions Code, relating to physicians and surgeons.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 58, as introduced, Aanestad. Physicians and surgeons: peer review. Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California.

This bill require the board to conduct a pilot program to redesign the peer review process applicable to physicians and surgeons based on recommendations made in a specified report. The bill would state the intent of the Legislature to enact legislation that would establish guidelines for the board to follow in conducting that pilot program.

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 805.3 is added to the Business and
- 2 Professions Code, to read:
- 3 805.3. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) A legislatively mandated report released in July 2008,
- 6 "Comprehensive Study of Peer Review in California: Final
- 7 Report," highlighted variations among health care entities in

1 conducting, selecting, and applying criteria for peer review of  
2 physicians and surgeons.

3 (2) The report indicated that the peer review process fails in its  
4 purpose to ensure the quality and safety of medical care in  
5 California.

6 (3) In light of these serious patient safety concerns, an overhaul  
7 of the peer review process applicable to physicians and surgeons  
8 is necessary.

9 (b) The Medical Board of California shall conduct a pilot  
10 program to redesign the peer review process, as it applies to  
11 physicians and surgeons, based on the recommendations made in  
12 the report identified in subdivision (a).

13 (c) It is the intent of the Legislature to enact legislation that  
14 would establish guidelines for the Medical Board of California to  
15 follow in conducting the pilot program described in subdivision  
16 (b).

**ASSEMBLY BILL**

**No. 120**

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**Introduced by Assembly Member Hayashi**

January 15, 2009

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An act to amend Sections 2234, 2761, and 3541 of, and to add Section 686 to, the Business and Professions Code, and to amend Section 123462 of the Health and Safety Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 120, as introduced, Hayashi. Health care providers: reasonable disclosure: reproductive choices.

Existing law provides that every person has the right to choose or refuse birth control and that every woman has the right to choose to bear a child or to obtain an abortion. Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, nurse practitioners by the Board of Registered Nursing, and physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law specifies conduct deemed unprofessional by physicians and surgeons, nurse practitioners, and physician assistants and provides for investigation and discipline of that conduct by the respective licensing boards.

This bill would make legislative findings and declarations regarding a patient's right to health care services and information. This bill would provide that a patient is entitled to receive, and a physician and surgeon, nurse practitioner, and physician assistant are obligated to disclose, all information, including all available medical choices, reasonably necessary for the patient to give informed consent with respect to personal reproductive decisions. This bill would provide that failure to

fulfill this duty constitutes unprofessional conduct, unless the licensee objects based on ethical, moral, or religious grounds, as specified.

Because this bill would specify additional requirements under the Medical Practice Act, and the Nursing Practice Act, the violation of which would be a crime, this bill would create 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 686 is added to the Business and  
2 Professions Code, to read:

3 686. The Legislature hereby finds and declares that a  
4 professional or vocational license represents a privilege to practice  
5 in California. While the state respects the right of an individual  
6 licensee to refuse to perform health care services to which he or  
7 she objects on ethical, moral, or religious grounds, there are limits  
8 on these rights when they conflict with the superior right of patients  
9 to access health care services. Accordingly, the Legislature finds  
10 and declares that persons licensed under this division should not  
11 abandon a patient or otherwise withhold health care service or  
12 information from a patient without providing reasonable  
13 accommodation of the patient's right to access health care services  
14 and information. For purposes of this section, "reasonable  
15 accommodation" shall have the same meaning as applied to that  
16 term pursuant to subdivision (l) of Section 12940 of the  
17 Government Code.

18 SEC. 2. Section 2234 of the Business and Professions Code is  
19 amended to read:

20 2234. The Division of Medical Quality shall take action against  
21 any licensee who is charged with unprofessional conduct. In  
22 addition to other provisions of this article, unprofessional conduct  
23 includes, but is not limited to, the following:

1 (a) Violating or attempting to violate, directly or indirectly,  
2 assisting in or abetting the violation of, or conspiring to violate  
3 any provision of this chapter.

4 (b) Gross negligence.

5 (c) Repeated negligent acts. To be repeated, there must be two  
6 or more negligent acts or omissions. An initial negligent act or  
7 omission followed by a separate and distinct departure from the  
8 applicable standard of care shall constitute repeated negligent acts.

9 (1) An initial negligent diagnosis followed by an act or omission  
10 medically appropriate for that negligent diagnosis of the patient  
11 shall constitute a single negligent act.

12 (2) When the standard of care requires a change in the diagnosis,  
13 act, or omission that constitutes the negligent act described in  
14 paragraph (1), including, but not limited to, a reevaluation of the  
15 diagnosis or a change in treatment, and the licensee's conduct  
16 departs from the applicable standard of care, each departure  
17 constitutes a separate and distinct breach of the standard of care.

18 (d) Incompetence.

19 (e) The commission of any act involving dishonesty or  
20 corruption which is substantially related to the qualifications,  
21 functions, or duties of a physician and surgeon.

22 (f) Any action or conduct which would have warranted the  
23 denial of a certificate.

24 (g) The practice of medicine from this state into another state  
25 or country without meeting the legal requirements of that state or  
26 country for the practice of medicine. Section 2314 shall not apply  
27 to this subdivision. This subdivision shall become operative upon  
28 the implementation of the proposed registration program described  
29 in Section 2052.5.

30 (h) *Failure to fulfill the duty of reasonable disclosure to a*  
31 *patient pursuant to subdivision (e) of Section 123462 of the Health*  
32 *and Safety Code.*

33 SEC. 3. Section 2761 of the Business and Professions Code is  
34 amended to read:

35 2761. The board may take disciplinary action against a certified  
36 or licensed nurse or deny an application for a certificate or license  
37 for any of the following:

38 (a) Unprofessional conduct, which includes, but is not limited  
39 to, the following:

1 (1) Incompetence, or gross negligence in carrying out usual  
2 certified or licensed nursing functions.

3 (2) A conviction of practicing medicine without a license in  
4 violation of Chapter 5 (commencing with Section 2000), in which  
5 event the record of conviction shall be conclusive evidence thereof.

6 (3) The use of advertising relating to nursing which violates  
7 Section 17500.

8 (4) Denial of licensure, revocation, suspension, restriction, or  
9 any other disciplinary action against a health care professional  
10 license or certificate by another state or territory of the United  
11 States, by any other government agency, or by another California  
12 health care professional licensing board. A certified copy of the  
13 decision or judgment shall be conclusive evidence of that action.

14 (5) *Failure of a nurse practitioner to fulfill the duty of*  
15 *reasonable disclosure to a patient pursuant to subdivision (e) of*  
16 *Section 123462 of the Health and Safety Code.*

17 (b) Procuring his or her certificate or license by fraud,  
18 misrepresentation, or mistake.

19 (c) Procuring, or aiding, or abetting, or attempting, or agreeing,  
20 or offering to procure or assist at a criminal abortion.

21 (d) Violating or attempting to violate, directly or indirectly, or  
22 assisting in or abetting the violating of, or conspiring to violate  
23 any provision or term of this chapter or regulations adopted  
24 pursuant to it.

25 (e) Making or giving any false statement or information in  
26 connection with the application for issuance of a certificate or  
27 license.

28 (f) Conviction of a felony or of any offense substantially related  
29 to the qualifications, functions, and duties of a registered nurse,  
30 in which event the record of the conviction shall be conclusive  
31 evidence thereof.

32 (g) Impersonating any applicant or acting as proxy for an  
33 applicant in any examination required under this chapter for the  
34 issuance of a certificate or license.

35 (h) Impersonating another certified or licensed practitioner, or  
36 permitting or allowing another person to use his or her certificate  
37 or license for the purpose of nursing the sick or afflicted.

38 (i) Aiding or assisting, or agreeing to aid or assist any person  
39 or persons, whether a licensed physician or not, in the performance

1 of, or arranging for, a violation of any of the provisions of Article  
2 12 (commencing with Section 2220) of Chapter 5.

3 (j) Holding oneself out to the public or to any practitioner of  
4 the healing arts as a “nurse practitioner” or as meeting the standards  
5 established by the board for a nurse practitioner unless meeting  
6 the standards established by the board pursuant to Article 8  
7 (commencing with Section 2834) or holding oneself out to the  
8 public as being certified by the board as a nurse anesthetist, nurse  
9 midwife, clinical nurse specialist, or public health nurse unless the  
10 person is at the time so certified by the board.

11 (k) Except for good cause, the knowing failure to protect patients  
12 by failing to follow infection control guidelines of the board,  
13 thereby risking transmission of blood-borne infectious diseases  
14 from licensed or certified nurse to patient, from patient to patient,  
15 and from patient to licensed or certified nurse. In administering  
16 this subdivision, the board shall consider referencing the standards,  
17 regulations, and guidelines of the State Department of *Public*  
18 ~~Health Services~~ developed pursuant to Section 1250.11 of the  
19 Health and Safety Code and the standards, guidelines, and  
20 regulations pursuant to the California Occupational Safety and  
21 Health Act of 1973 (Part 1 (commencing with Section 6300),  
22 Division 5, Labor Code) for preventing the transmission of HIV,  
23 hepatitis B, and other blood-borne pathogens in health care settings.  
24 As necessary, the board shall consult with the Medical Board of  
25 California, the Board of Podiatric Medicine, the Dental Board of  
26 California, and the Board of Vocational Nursing and Psychiatric  
27 Technicians, to encourage appropriate consistency in the  
28 implementation of this subdivision.

29 The board shall seek to ensure that licentiates and others  
30 regulated by the board are informed of the responsibility of  
31 licentiates to minimize the risk of transmission of blood-borne  
32 infectious diseases from health care provider to patient, from  
33 patient to patient, and from patient to health care provider, and of  
34 the most recent scientifically recognized safeguards for minimizing  
35 the risks of transmission.

36 SEC. 4. Section 3541 of the Business and Professions Code is  
37 amended to read:

38 3541. ~~†~~*The following* shall constitute unprofessional conduct  
39 and a violation of this chapter for any person licensed under this  
40 chapter to violate, attempt:

1 (a) *Violating, attempting to violate, directly or indirectly, or*  
2 ~~assist assisting in or abet abetting~~ the violation of, or ~~conspire~~  
3 *conspiring to violate any provision or term of this article, the*  
4 *Moscone-Knox Professional Corporation Act, or any regulations*  
5 *duly adopted under those laws.*

6 (b) *Failing to fulfill the duty of reasonable disclosure to a patient*  
7 *pursuant to subdivision (e) of Section 123462 of the Health and*  
8 *Safety Code.*

9 SEC. 5. Section 123462 of the Health and Safety Code is  
10 amended to read:

11 123462. The Legislature finds and declares that every  
12 individual possesses a fundamental right of privacy with respect  
13 to personal reproductive decisions. Accordingly, it is the public  
14 policy of the State of California that:

15 (a) Every individual has the fundamental right to choose or  
16 refuse birth control.

17 (b) Every woman has the fundamental right to choose to bear  
18 a child or to choose and to obtain an abortion, except as specifically  
19 limited by this article.

20 (c) The state shall not deny or interfere with a woman's  
21 fundamental right to choose to bear a child or to choose to obtain  
22 an abortion, except as specifically permitted by this article.

23 (d) *Each person who seeks health care treatment, consultation,*  
24 *or information pertaining to the person's personal reproductive*  
25 *decisions from a physician and surgeon licensed pursuant to*  
26 *Chapter 5 (commencing with Section 2000) of Division 2 of the*  
27 *Business and Professions Code, a nurse practitioner licensed*  
28 *pursuant to Article 8 (commencing with Section 2834) of Chapter*  
29 *6 of Division 2 of the Business and Professions Code, or a*  
30 *physician assistant licensed pursuant to Chapter 7.7 (commencing*  
31 *with Section 3500) of Division 2 of the Business and Professions*  
32 *Code shall be entitled to receive all information reasonably*  
33 *necessary for the patient to give informed consent in determining*  
34 *whether to submit to medical treatment, including disclosure of*  
35 *all available medical choices.*

36 (e) *Each physician and surgeon, nurse practitioner, and*  
37 *physician assistant described in subdivision (d) has an affirmative*  
38 *duty of reasonable disclosure to his or her patient of all available*  
39 *medical choices with respect to the patient's personal reproductive*  
40 *decisions. Failure of a physician and surgeon, nurse practitioner,*



1 *or physician assistant to fulfill this duty shall constitute*  
2 *unprofessional conduct, unless all of the following circumstances*  
3 *exists:*

4 *(1) The licensee refuses on ethical, moral, or religious grounds*  
5 *to provide disclosure pertaining to an available medical choice.*

6 *(2) The licensee has previously notified his or her employer, in*  
7 *writing, of the medical choice or choices of which he or she objects*  
8 *to disclosing, and the licensee's employer can, without creating*  
9 *undue hardship, provide a reasonable accommodation of the*  
10 *licensee's objection. For purposes of this section, "reasonable*  
11 *accommodation" and "undue hardship" shall have the same*  
12 *meaning as applied to those terms, respectively, pursuant to*  
13 *subdivision (l) of Section 12940 of the Government Code.*

14 *(3) The licensee's employer shall have established protocols*  
15 *that ensure that the patient has timely access to reasonable*  
16 *disclosure of all medical choices pursuant to subdivision (d) despite*  
17 *the licensee's refusal to disclose the specified medical choice.*

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