LEGISLATIVE PACKET

MEDICAL BOARD MEETING

MAY 6, 2011
LOS ANGELES, CA

Medical Board of California
Tracker - Legislative Bill File
4/27/2011

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 352	Eng	Radiologist Assistants	Asm. B&P	Rec: Support	4/15/2011
AB 374	Hayashi	Athletic Trainers	Asm. Approps.	Rec: Oppose	4/25/2011
AB 507	Hayashi	Pain Management	Asm. Health	Rec: Neutral	4/13/2011
AB 536	Ma	Physicians and Surgeons: Expungement	Asm. Approps.	Rec: Support	4/11/2011
AB 589	Perea	Medical School Scholarships	Asm. Approps.	Rec: Support	4/11/2011
AB 783	Hayashi	Professional Corporations: Licensed PTs	Assembly	Rec: Support	4/7/2011
AB 824	Chesbro	Rural Hospitals: Physician Services	Asm. Health	Rec: Support in Concept	3/31/2011
AB 895	Halderman	Personal Income Tax: Physicians: Qual. Med. Svcs.	Asm. Rev. & Tax	Rec: Support	
AB 926	Hayashi	Physicians & Surgeons: Direct Employment	Asm. B&P	Rec: Support in Concept	
AB 958	Berryhill, B.	Regulatory Boards: Statutes of Limitation	Asm. B&P	Rec: Oppose	
AB 1127	Brownley	Physicians & Surgeons: Physician Interview	Asm. Approps	Sponsor/Support - Ltr 4/6	4/4/2011
AB 1267	Halderman	Physicians & Surgeons: Misdemeanor Incarceration	Asm. Approps.	Sponsor/Support - Ltr 4/18	4/12/2011
AB 1360	Swanson	Physicians & Surgeons: Employment	Asm. Health	Rec: Support in Concept	
SB 100	Price	Healing Arts : Outpatient Settings	Senate B&P	Support if Amended	4/25/2011
SB 233	Pavley	Emergency Services and Care: Physician Assistants	Senate Health	Rec: Support	3/31/2011
SB 380	Wright	Continuing Education: Nutrition Course	Senate Approps.	Rec: Neutral	4/7/2011
SB 541	Price	Regulatory Boards: Expert Consultants	Senate B&P	Sponsor/Support - Ltr 4/18	4/13/2011
SB 544	Price	Consumer Health Protection Enforcement Act	Senate B&P	Rec: Support if Amended	4/14/2011
SB 747	Kehoe	Cont. Ed.: lesbian, gay, bisexual & transgender patients	Senate Approps.	Rec: Neutral	4/25/2011
SB 824	Negrete McLeod	Opticians: Change of Ownership	Senate Approps.	Rec: Support	

Pink - Sponsored Bill

SPONSORED BILLS

AB 1127

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1127
Author:	Brownley
Bill Date:	April 4, 2011, amended
Subject:	Physicians and Surgeons: Unprofessional Conduct
Sponsor:	Medical Board of California
Position:	Sponsor/Support

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee

DESCRIPTION OF CURRENT LEGISLATION:

This bill would make it a violation of unprofessional conduct for a physician and surgeon who is the subject of an investigation by the Medical Board of California (the Board) to repeatedly fail, absent good cause, to attend and participate in an interview scheduled by mutual agreement of the physician and surgeon and the Board.

ANALYSIS:

This bill is sponsored by the Board. Currently, when the Board receives a complaint from a consumer, the Board must interview the physician to either close the case, or move forward with disciplinary action. The Board is having documented delays in investigations due to physicians intentionally not showing up for their physician interviews. Out of the total 3,568 cases opened over the last three year, 338 cases, or 9.5%, have required subpoenas to be issued for the purpose of requiring a subject physician to appear at a physician interview with the Board. This has resulted in case delays anywhere from 60 days to over a year.

In 2005, the board's enforcement program monitor released the final report that found, among other things, that the Board's case processing times were high and cited delays in physician interviews as a contributing factor. This bill will address this issue and is supported by the Center for Public Interest Law for this reason. Further, many other healing arts boards are in the process of putting this requirement in regulations as part of the Consumer Protection Enforcement Initiative.

The Board decided to sponsor this bill because it believes that it will help to expedite the closure of disciplinary cases and significantly reduce case delays by providing an incentive for physicians to attend and participate in physician interviews.

This bill was recently amended to address concerns raised by the California Medical Association, and they are now Neutral on the bill.

SUPPORT: Medical Board of California (Sponsor)
Center for Public Interest Law

OPPOSITION: None on file

FISCAL: None

POSITION: Sponsor/Support

April 12, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1127

Introduced by Assembly Member Brownley

February 18, 2011

An act to amend Section 2234 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as amended, Brownley. Physicians and surgeons: unprofessional conduct.

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 take action against any licensee who is charged with unprofessional conduct and describes acts constituting unprofessional conduct. Existing law makes a violation of that provision a crime.

This bill would provide that unprofessional conduct also includes, ~~among other things, the willful noncompliance by a certificate holder with the duty to cooperate with an investigation being conducted by the board~~ *the repeated failure, except for good cause, by a certificate holder who is the subject of a board investigation, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board.*

By changing the definition of 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.

the implementation of the proposed registration program described in Section 2052.5.

~~(h) The willful noncompliance by a certificate holder with the duty to cooperate with an investigation being conducted by the board. For the purposes of this subdivision, "willful noncompliance" includes, but is not limited to, repeated failure,~~

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend *and participate in* an interview scheduled by *the* mutual agreement of the certificate holder and the board. *This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.*

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

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MEDICAL BOARD OF CALIFORNIA
Executive Office

April 6, 2011

The Honorable Mary Hayashi, Chair
Assembly Business, Professions and Consumer Protection Committee
State Capitol, Room 3013
Sacramento, CA 95814

Re.: **AB 1127 (Brownley) – Sponsor/Support Position**

Dear Assembly Member Hayashi:

As sponsors of AB 1127, the Medical Board of California (Board) is pleased to support this legislation, and to assist in any way we can to secure its passage into law.

This bill would require physicians to cooperate with the Board by participating in physician interviews with the Board for disciplinary investigations. As amended, this bill would make the repeated failure to attend and participate in an interview scheduled by mutual agreement of the physician and the Board, absent good cause, a violation of unprofessional conduct. This bill specifies that it only applies to physicians that are the subject of the investigation.

The Board believes that this bill will help to expedite the closure of disciplinary cases by providing an incentive for physicians to cooperate and participate in physician interviews. When the Board receives a complaint, the Board must interview the physician to either close the case, or move forward with disciplinary action. The Board is having documented delays in investigations due to physicians intentionally not showing up for their physician interviews. Out of the total 3,568 cases opened over the last three years, 338 cases have required subpoenas to be issued for the purpose of requiring a subject physician to appear at a physician interview with the Medical Board, which equates to 9.5% of the total cases. This has related in case delays anywhere from 60 days to over a year. The Medical Board believes that this bill will significantly reduce the delays that result from a physician failing to cooperate with the Board by not participating in the physician interview.

Thank you for your support and for the assistance of your staff. Please contact me or Jennifer Simoes at (916) 263-2389 if you need additional information or assistance with this bill.

Sincerely,

Linda K. Whitney
Executive Director

cc: Assembly Member Brownley

University of San Diego

April 6, 2011

The Honorable Julia Brownley
State Capitol, Room 2163
Sacramento, CA 95814

Fax: (916) 319-2141

re: AB 1127 (Brownley) — **SUPPORT**

Dear Assemblymember Brownley:

The Center for Public Interest Law (CPIL) supports AB 1127 (Brownley), which would require physicians whose conduct is being investigated by the Medical Board of California (MBC) to cooperate in those investigations by attending and participating in interviews with Board investigators, and would make repeated failure to cooperate grounds for disciplinary action.

CPIL is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For 30 years, CPIL has studied occupational licensing and monitored California agencies that regulate business, professions, and trades, including the Medical Board of California (MBC) and other Department of Consumer Affairs (DCA) health care boards. CPIL's expertise has long been relied upon by the Legislature, the executive branch, and the courts where the regulation of licensed professions is concerned. For example, after numerous reports of problems at MBC's enforcement program were published in 2002, the DCA Director appointed me to the position of MBC Enforcement Monitor. Over a two-year period, I directed an in-depth investigation and review of MBC's enforcement and diversion programs. Two major pieces of reform legislation (SB 231 in 2005 and SB 1438 in 2006) were enacted, mirroring many of our recommendations.

AB 1127 would also implement a recommendation that we made as Enforcement Monitor. Specifically, we looked at the many steps of MBC's enforcement process and the average time each step consumes. While many physicians who are under investigation voluntarily consent to be interviewed by MBC investigators, some refuse (and/or initially consent but then cancel) — thus requiring the Board to obtain and issue an investigational subpoena. The bottom line is that physician refusal to cooperate with an interview request adds significantly to the already-excessive case processing time at the Medical Board — thus extending the cloud over the physician's head and potentially exposing patients to dangerous physicians. In Recommendation #24, we suggested that MBC "develop and enforce a consistent new policy on physician interviews. Physician interviews should proceed in a prompt and orderly sequence of requests, subpoenas, and enforcement, as

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Reply to: ☐ San Diego ☐ Sacramento

needed. ... "[C]ooperation **with this subject interview policy could be addressed in a clarified statutory duty of licensees to cooperate with MBC disciplinary inquiries, analogous to the obligation imposed on attorneys by Business and Professions Code section 6068(i).**"[1]

As we noted in our Enforcement Monitor report, lawyers are subject to a "cooperation" requirement concerning State Bar disciplinary investigations, and have been since 1985. Articulation of a similar requirement for physicians is appropriate and may in fact lead to earlier closure of the matter. As we stated in our report, "a policy of early and adequate subject interviews, firmly and consistently enforced by subpoena as necessary, speeds the investigative process and promotes prompt decisionmaking, which is ultimately in the interests of all parties."[2]

We also note that AB 1127 has been narrowly drafted to encompass only a "repeated failure, ... in the absence of good cause" as grounds for disciplinary action. This careful drafting should subject to disciplinary action only physicians who are demonstrably refusing to cooperate with a good faith investigation by their regulatory board — something that the Legislature should not countenance.

CPIL supports AB 1127 (Brownley), and urges your AYE vote.

Sincerely,

Julie D'Angelo Fellmeth

Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law

Former MBC Enforcement Monitor

cc: Honorable Mary Hayashi, Chair, and Members
Assembly Committee on Business, Professions and Consumer Protection

Ross Warren, Chief Consultant, Assembly Committee on Business, Professions and Consumer Protection

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[1] Julianne D'Angelo Fellmeth and Thomas A. Papageorge, *Initial Report of the Medical Board of California Enforcement Program Monitor* (Nov. 1, 2004) at 150.

[2] *Id.* at 143.

AB 1267

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1267
Author:	Halderman
Bill Date:	April 12, 2011, amended
Subject:	Physicians and Surgeons: Certificate
Sponsor:	Medical Board of California
Position:	Sponsor/Support

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize the Medical Board of California (the Board) to automatically place a physician's license on inactive status when a physician is incarcerated after the conviction of a misdemeanor for the period of incarceration. This bill would allow the Board to disclose the reason for the inactive status on the Board's Internet Web site.

ANALYSIS:

This bill is sponsored by the Board. Existing law, Business and Profession Code Section 2236.1, authorizes the Board to automatically suspend the license of a physician incarcerated for a felony. An automatic suspension is a disciplinary action that goes on the physician's license and is reported to the National Practitioner's Data Bank. Currently, the Board finds out when a physician is incarcerated because information is obtained from DOJ on arrests, and staff tracks the trial and the sentencing. The physician is also required to let us know when they are convicted.

After meeting with CMA on this bill and working with them on amendments, it was suggested that instead of an automatic suspension, that the license be put on inactive status. This achieves the same goal; the physician is not allowed to practice medicine while incarcerated. The difference from the original concept is that this is not a disciplinary action and does not negatively affect the physician's licensing record. This would be an internal action that changes the license status to inactive while the physician is incarcerated. The bill would still require disclosure on the Board's Internet Web site for the public, the fact that the physician is incarcerated would be disclosed.

When the physician is released from incarceration, even if the Board's investigation is not complete, the license would no longer be on inactive status and the notice of incarceration would be removed from the Board's Web site. The process for the Board to find out when a physician is released from incarceration for felonies now is that the physician's attorney lets the Attorney General's (AG) office know, and the AG's

office lets Board staff know. The same process would take place for misdemeanor incarcerations and the Medical Board would be able to change the status back internally in a short amount of time after notification (five or less working days).

The Medical Board of California fundamentally believes that physicians should not be practicing medicine while incarcerated. Currently, there is nothing prohibiting physicians incarcerated for misdemeanors from practicing medicine while incarcerated. This bill will protect consumers in California by not allowing incarcerated physicians to practice medicine and allowing for greater transparency by providing this information on Board's Internet Web site. Consumers have a right to know if their physician is incarcerated and physicians should cease practicing medicine until they are released from incarceration. This is an interim measure and would only be effective for the period of incarceration; the Board would still go through its normal enforcement process related to the investigation of the misdemeanor conviction.

The California Medical Association (CMA) is Opposed to this bill unless it is amended to take out the provisions that allow for public disclosure on the Board's Internet Web site.

SUPPORT: Medical Board of California (Sponsor)

OPPOSITION: CMA (unless amended)

FISCAL: None

POSITION: Sponsor/Support

April 26, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1267

Introduced by Assembly Member Halderman

February 18, 2011

An act to ~~amend Section 2236.1 of~~ *add Section 2236.2 to* the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, as amended, Halderman. Physicians and surgeons: certificate.

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 that a physician and surgeon's certificate be suspended automatically when the holder of the certificate is incarcerated after a felony conviction.

This bill would ~~additionally require that suspension when the holder of the certificate is incarcerated after a misdemeanor conviction. The bill would make other conforming and nonsubstantive, technical changes.~~ *require that a physician and surgeon's certificate be automatically placed on inactive status during any period of incarceration after a misdemeanor conviction. The bill would require the reason for this type of inactive status to be disclosed, as specified.*

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

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

SECTION 1. Section 2236.2 is added to the Business and Professions Code, to read:

2236.2. (a) Notwithstanding Article 9 (commencing with Section 700) of Chapter 1 of Division 2 or any other provision of law, a physician and surgeon's certificate shall be automatically placed on inactive status during any period of time that the holder of the certificate is incarcerated after conviction of a misdemeanor.

(b) The reason for the inactive status described in subdivision (a) shall be disclosed on the board's Internet Web site.

~~SECTION 1. Section 2236.1 of the Business and Professions Code is amended to read:~~

~~2236.1. (a) A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony or misdemeanor, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the physician and surgeon of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.~~

~~(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony or misdemeanor of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a physician and surgeon, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board. The issue of substantial relationship shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the board, in the discretion of the board.~~

~~(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 2237, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a physician and surgeon and no hearing shall be held on this~~

~~issue. Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.~~

~~(d) (1) Discipline may be ordered in accordance with Section 2227, or the board may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.~~

~~(2) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the board, in the discretion of the board. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a physician and surgeon. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.~~

~~(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.~~

~~(f) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.~~

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SB 541

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 541
Author:	Price
Bill Date:	April 13, 2011, amended
Subject:	Regulatory Boards: Expert Consultants
Sponsor:	Medical Board of California
Position:	Co-Sponsor/Support

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enable all boards and bureaus in the Department of Consumer Affairs (DCA) to continue to utilize expert consultants, in the same manner as in the past 25 plus years, without having to go through the formal contracting process.

ANALYSIS:

The Board has been hiring and paying experts for over 25 years using a signed agreement and statement of services, without going through a formal contracting process. DCA issued a memo on November 10, 2010 that stated all boards and bureaus must enter into a formal consulting services contract with each expert consultant they use to provide an opinion in an enforcement matter (from the initial review through testifying at a hearing). The memo further stated that each board would need to go through the required contracting process for each consultant utilized.

During the past calendar year, the Board referred approximately 2,900 cases to expert consultants performing the initial or triage review to determine the need to move the case forward for investigation. It utilized 281 expert consultants in one quarter to review completed investigations, which translates to 457 cases. Under the new DCA policy, the Board would be required to go through the contracting process for each expert consultant, even if the expert only reviews one case. The contract would need to be approved before the Board can utilize the expert's services and the Board would have to encumber the funding for the expert consultant once the contract is approved (again, before the expert's services are utilized).

Going through the formal contracting process in order to utilize the services of an expert consultant would create an enormous backlog for both DCA and the Board and would significantly impact the time required to complete the initial review and investigate complaints filed with the Board. In addition, this would severely limit the

Board's ability to take disciplinary actions against physicians and result in tremendous case delays. This could mean cases would be lost due to the statute of limitations expiring.

SUPPORT: Medical Board of California (Co-Sponsor); Contractor's State License Board (Co-Sponsor); and all other Boards and Bureaus under DCA would be supportive of this bill.

OPPOSITION: None on file

FISCAL: None – without this bill, workload will increase by requiring the Board to go through the formal contracting process for each expert consultant and pro rata would increase as DCA would have to increase staffing in order to process these in a timely manner.

POSITION: Co-Sponsor/Support

April 25, 2011

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL No. 541

Introduced by Senator Price

February 17, 2011

An act to ~~amend Sections 7000.5 and 7011 of~~ *add Section 40 to* the Business and Professions Code, relating to ~~contractors~~ *profession and vocations, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License ~~Board.~~ *Regulatory boards: expert consultants.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.~~

~~This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.~~

Vote: ~~majority~~ 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 40 is added to the Business and Professions Code, to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.

(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time

in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

~~SECTION 1. Section 7000.5 of the Business and Professions Code is amended to read:~~

~~7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.~~

~~(b) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.~~

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

~~SEC. 2. Section 7011 of the Business and Professions Code is amended to read:~~

~~7011. (a) The board, by and with the approval of the director, shall appoint a registrar of contractors and fix his or her compensation.~~

~~(b) The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.~~

~~(c) For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer, and, subject to Section 159.5, other assistants and subordinates as may be necessary.~~

~~(d) Appointments shall be made in accordance with the provisions of civil service laws.~~

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

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POTENTIAL NEW LEGISLATION

POTENTIAL PILOT RELATED TO UCLA'S INTERNATIONAL MEDICAL GRADUATE PROGRAM: TRAINING BICULTURAL & BILINGUAL HISPANIC FAMILY PHYSICIANS FOR CALIFORNIA OPERATED BY DR. DOWLING & DR. BHOLAT

ORAL REPORT
AND
POSSIBLE SUPPORT OF
LEGISLATIVE CONCEPT

2011 LEGISLATION

AB 352

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 352
Author: Eng
Bill Date: April 15, 2011, amended
Subject: Radiologist Assistants
Sponsor: American Society of Radiologic Technologists

STATUS OF BILL:

This bill is currently in Assembly Business, Professions and Consumer Protection Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Radiologist Assistant Practice Act, which establishes the Radiologist Assistant Advisory Council (RAAC) of the Medical Board of California (the Board), and would require the Board to license radiologist assistants (RAs).

ANALYSIS:

Existing law establishes the Physician Assistant Committee (PAC) of the Board, which consists of nine members, one of which must a physician member of the Board, four must be physician assistants (PAs), and four must be public members.

This bill would enact the Radiologist Assistant Practice Act. This bill would require the board to create and appoint the RAAC, consisting of members of the public that have an interest in RA practice and qualified physicians and surgeons, defined as a radiologists or other physicians and surgeons supervising RAs within his or her specialty or usual and customary practice. A qualified physician and surgeon must hold (or be exempt from holding) an operator supervisor permit pursuant to the Radiologic Technology Act (RTA). The RAAC members must have a license in good standing and are not required to be Medical Board Members. This bill requires that at least one-half of the RAAC members must be RAs certified by the American Registry of Radiologic Technologists or radiology practitioner assistants (RPAs) certified by the Certification Board for Radiology Practitioner Assistants. The RAAC would make recommendations to the Board on the following:

- The establishment of standards and issuance of approval for programs.
- The scope of practice for RAs, using the guidance of the American Society of Radiologic Technologists, the American Registry of Radiologic Technologists, the American College of Radiology, and the Certification Board for Radiology Practitioner Assistants.

According to the intent language in this bill, the purpose of this bill is to establish a new category of health manpower to address the growing shortage of medical imaging health care services in California. The intent language also states that this bill is intended to encourage the more effective utilization of the skills of radiologists or other qualified physicians and surgeons by enabling them to delegate health care tasks to qualified RAs when the delegation is consistent with the patient's health and welfare. This bill also intends to allow for innovative development of programs for the education, training, and utilization of RAs.

This bill allows licensed RAs to perform medical services set forth by regulations of the Board when the services are rendered under the supervision of a qualified physician and surgeon. This bill defines supervision to mean that the qualified physician and surgeon must be present on the premises and available to the RA when the medical services are rendered and must oversee the activities of, and responsibility for, the medical services rendered by the RA. This bill only allows physicians and surgeons to supervise up to two RAs at any one time. This bill prohibits the RA from interpreting images, making diagnoses, or prescribing medications or therapies. Although the scope would be defined in regulations, the bill requires the scope to include obtaining patient consent prior to beginning an examination or procedure, obtaining medical imaging necessary for diagnosis, and providing initial observations to the qualified physicians and surgeon. However, it is not clear whether these observations are of the patient, medical imaging, or both.

This bill would require the RA and his or her qualified physician and surgeon to establish written guidelines for the adequate scope of the RA. This bill allows this requirement to be satisfied by adopting protocols for some or all of the tasks performed by the RA. This bill requires the protocols adopted to comply with the following requirements:

- Must set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the supervision of radiologic technologists (RTs) by RAs in the performance of medical imaging procedures and follow up care.
- Must be developed by the qualified physician and surgeon, or adopted from, or referenced to, texts or other sources.
- Must be signed and dated by the qualified physician and surgeon and RA.
- Must be available at each practice site.

This bill allows the Board to establish alternative mechanisms for the adequate supervision of an RA. This bill also allows RAs to supervise RTs in the performance of medical imaging procedures using fluoroscopy.

This bill allows the Board to adopt regulations that are necessary to implement this bill. The Board is required to adopt any necessary regulations by July 1, 2013, which gives the Board 18 months to adopt regulations in order to implement this bill.

Beginning July 1, 2013, this bill requires the board to issue a license to each RA applicant that meets the following requirements:

- Provides evidence of successful completion of an approved program.
- Is certified as a RA by the American Registry of Radiologic Technologists or as a RPA by the Certification Board for Radiology Practitioner Assistants.
- Is certified by the State Department of Public Health as a diagnostic radiologic technologist and holds a radiologic technologist fluoroscopy permit.
- Is not subject to denial.
- Pays all fees, including an application, license, and renewal fees. These fees would be set by the Board, in an amount sufficient to cover the costs of implementing this bill.

Note – the sponsors believe there are only 50-75 potential RA applicants in California.

Beginning July 1, 2013, this bill requires the Board to recognize the approval of training programs for RAs approved by a national accrediting organization. This bill requires that RA training programs accredited by a national accrediting agency approved by the Board are deemed to be approved by the Board. This bill specifies that if no national accrediting organization is approved by the Board, the Board may examine and pass upon the qualification of, and may issue certificates of approval for, programs for the education and training of RAs that meet Board standards. This bill allows the Board to examine and issue certificates to approved programs that satisfy requirements established by regulations.

This bill would require licensees to complete 50 hours of continuing education every two years and requires the Board to establish procedures related to renewals and allows the Board to establish any needed enforcement procedures in regulations. This bill sets forth enforcement processes and procedures, similar to that of a physician and surgeon and physician assistant. This bill also allows osteopathic physicians and surgeons to use or employ RAs.

Lastly, this bill would create the RA Fund which, upon appropriation by the Legislature, shall be used to employ necessary personnel and to carry out the provisions in this bill.

According to the American Society of Radiologic Technologists (ASRT), one of the sponsors of this bill, RAs are advanced-level radiologic technologists who enhance patient care by extending the capacity of the radiologists. RAs are radiologist extenders who have completed an advanced medical imaging academic program. According to the author's office, "the workload for radiologists has been increasing more and more, and creating this new position of a RA will allow a licensed, educated, and trained professionals to perform some of the functions of a radiologist, this will relieve radiologists of some of their workload so they can concentrate on interpreting imaging test results and making diagnoses, thereby increasing the quality of care for patients throughout California."

With health care reform on the horizon, there is an increased need for physician extenders due to the workforce shortages. This bill will allow RAs to be radiologist

extenders and perform some functions currently being done by a radiologist that they are trained and educated to do. The supervision elements in this bill are modeled after physician assistants and require physician supervision and protocols to be followed. The RAAC is modeled after the Midwifery Advisory Council, which will result in minimal fiscal impact to the Board. According to the author's office, RAs are licensed and regulated in 29 other states, and similar approaches have been successfully adopted in five other states. This bill will also help to promote access to care, which is in line with the Board's mission. This bill does include a provision that allows RAAC to adopt regulations, it was left in by error and amendments will remove this from the bill.

SUPPORT: American Society of Radiologic Technologists (co-sponsor); Radiology Practitioner Assistant Society (co-sponsor); Society of Radiology Physician Extenders; American Registry of Radiologic Technologists; California Radiological Society; Loma Linda University, School of allied Health Professions, Department of Radiation Technology; and several individuals

OPPOSITION: None on File.

FISCAL: Implementing and administering this new licensing category will require one half AGPA position, which could be reduced to a technician level once the regulations are in place and the program is operational, and administrative and travel costs related to the RAAC created by this bill, at approximately $93,000 for the first year and $37,000 ongoing per year. The Board will be able to set the application, licensing, and renewal fees, which will eventually cover the costs of the program.

POSITION: Recommendation: Support

AMENDED IN ASSEMBLY APRIL 15, 2011

AMENDED IN ASSEMBLY MARCH 25, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 352

Introduced by Assembly Member Eng

February 10, 2011

An act to add Chapter 7.75 (commencing with Section 3550) to Division 2 of the Business and Professions Code, relating to radiologist assistants.

LEGISLATIVE COUNSEL'S DIGEST

AB 352, as amended, Eng. Radiologist assistants.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law also provides for the certification and regulation of radiologic technologists by the State Department of Public Health.

This bill would enact the Radiologist Assistant Practice Act, which would require the licensure and regulation of radiologist assistants by ~~the Radiologist Assistant Committee of the~~ Medical Board of California and would prescribe the services that may be performed by a radiologist assistant under the supervision of a qualified physician and surgeon, as defined. The bill would establish the Radiologist Assistant ~~Committee~~ *Advisory Council* of the Medical Board of California ~~for purposes of implementing the act, the 7 members of which would be appointed by the Governor~~ *and require the council to make recommendations to the board concerning the establishment of standards and issuance of approval of programs for radiologist assistants*. The bill would require

a radiologist assistant to meet specified licensure and programmatic requirements, including completion of an approved program that is certified by the ~~committee~~ *board*, as specified. The bill would require a radiologist assistant to pay a licensure fee to be set by the ~~committee~~ *board* and deposited into the Radiologist Assistant Fund which would be created by the bill in the State Treasury. The bill would make it a crime for a person to practice as a radiologist assistant or osteopathic radiologist assistant without a license or for a radiologist assistant or osteopathic radiologist assistant to practice outside the scope of his or her practice, as specified, thereby imposing a state-mandated local program. The bill would set forth disciplinary provisions and procedures.

This bill would require the ~~committee~~ *board* to adopt regulations relating to the licensure of radiologist assistants and certification of approved programs by July 1, ~~2012~~ *2013*, and would require the ~~committee~~ *board* to commence licensure and certification on that date or as soon as possible thereafter.

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

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

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

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

SECTION 1. Chapter 7.75 (commencing with Section 3550) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 7.75. RADIOLOGIST ASSISTANTS

Article 1. General Provisions

3550. (a) In its concern with the growing shortage and geographic maldistribution of medical imaging health care services in California, the Legislature intends to establish in this chapter a framework for development of a new category of health manpower designated as the radiologist assistant.

(b) The purpose of this chapter is to encourage the more effective utilization of the skills of radiologists *or other qualified physician and surgeons* by enabling them to delegate health care tasks to qualified radiologist assistants where this delegation is consistent with the patient's health and welfare and with the laws and regulations relating to radiologist assistants.

(c) It is also the intent of this chapter to license radiologist assistants and radiologist practitioner assistants and to categorize both groups under the title of radiologist assistant.

(d) This chapter is established to encourage the utilization of radiologist assistants by radiologists *or other qualified physician and surgeons* and to provide that existing legal constraints should not be an unnecessary hindrance to the more effective use of medical imaging health care services. It is also the purpose of this chapter to allow for innovative development of programs for the education, training, and utilization of radiologist assistants.

3550.1. This chapter shall be known and cited as the Radiologist Assistant Practice Act.

3550.2. As used in this chapter:

(a) "Approved program" means a radiologist assistant program or a radiologist practitioner assistant program for the education and training of radiologist assistants that has been formally approved by the ~~committee~~ *board* for the licensure of radiologist assistants.

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

(c) ~~"Committee"~~ *"Council"* means the Radiologist Assistant ~~Committee~~ *Advisory Council* of the Medical Board of California.

(d) "Medical imaging" means any procedure intended for use in the diagnosis or treatment of disease or other medical conditions, and includes, but is not limited to, X-rays, nuclear medicine, and other procedures, and that excludes echocardiography and diagnostic sonography.

~~(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the committee. The program manager shall have background experience in dealing with substance abuse issues.~~

~~(f)~~

(e) "Qualified physician and surgeon" means a radiologist or another physician and surgeon supervising a radiologist assistant within his or her specialty or usual and customary practice. A

qualified physician and surgeon shall either hold, or be exempt from holding, an operator supervisor permit pursuant to the Radiologic Technology Act, as defined in Section 27 of the Health and Safety Code, for ionizing radiation, fluoroscopy, or the use and handling of nuclear medicine material, as appropriate for procedures that are being supervised.

~~(g)~~

(f) "Radiologist" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California and certified by, or board-eligible for, the American Board of Radiology.

~~(h)~~

(g) "Radiologist assistant" means a person who meets the requirements of Section 3552.2 and the other requirements of this chapter.

~~(i)~~

(h) "Radiology practitioner assistant" means a person who is certified by the Certification Board for Radiology Practitioner Assistants.

~~(j)~~

(i) "Regulations" means the rules and regulations as contained in the California Code of Regulations.

~~(k)~~

(j) "Supervision" means the qualified physician and surgeon is physically present on the premises and available to the radiologist assistant when medical services are rendered and oversees the activities of, and accepts responsibility for, the medical services rendered by the radiologist assistant.

3550.3. (a) Notwithstanding any other provision of law, a radiologist assistant licensed pursuant to Section 3552.2 may perform those medical services as set forth by the regulations of the board when the services are rendered under the supervision of a qualified physician and surgeon who meets the requirements of subdivision (a) of Section 3550.4. *Those medical services performed by a radiologist assistant shall include, but not be limited to, obtaining patient consent prior to beginning an examination or procedure and obtaining medical imaging necessary for diagnosis and providing initial observations to the qualified physician and surgeon.*

(b) (1) A radiologist assistant and his or her qualified physician and surgeon shall establish written guidelines for the adequate supervision of the radiologist assistant. This requirement may be satisfied by the qualified physician and surgeon adopting protocols for some or all of the tasks performed by the radiologist assistant. Radiologist assistants shall not interpret images, make diagnoses, or prescribe medications or therapies. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

(A) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, supervision of radiologic technologists by the radiologist assistant in the performance of medical imaging procedures, and followup care.

(B) Protocols shall be developed by the qualified physician and surgeon or adopted from, or referenced to, texts or other sources.

(C) Protocols shall be signed and dated by the qualified physician and surgeon and the radiologist assistant.

(D) Protocols shall be available at each practice site.

(2) Notwithstanding any other provision of law, the board ~~or the committee~~ may establish other alternative mechanisms for the adequate supervision of the radiologist assistant.

(c) A radiologist assistant licensed under this chapter may supervise a radiologic technologist in the performance of medical imaging procedures using fluoroscopy and is exempted from the provisions of Section 107110 of the Health and Safety Code and Section 30463 of Title 17 of the California Code of Regulations.

3550.4. (a) Notwithstanding any other provision of law, a radiologist assistant licensed by the ~~committee~~ *board* shall be eligible for employment or supervision by any qualified physician and surgeon, as defined in subdivision ~~(f)~~ *(e)* of Section 3550.2. A qualified physician and surgeon shall possess a current and valid license to practice medicine and may not be on disciplinary probation for improper use of a radiologist assistant or subject to a disciplinary condition imposed by the board prohibiting employment or supervision of a radiologist assistant.

(b) No qualified physician and surgeon shall supervise more than two radiologist assistants at any one time.

3550.5. (a) Notwithstanding any other provision of law, a radiologist assistant may perform those medical services permitted pursuant to Section 3550.3 during any state of war emergency, state of emergency, or local emergency, as defined in Section 8558 of the Government Code, and at the request of a responsible federal, state, or local official or agency, or pursuant to the terms of a mutual aid operation plan established and approved pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), regardless of whether the radiologist assistant's qualified physician and surgeon is available to supervise the radiologist assistant, so long as a licensed physician and surgeon is available to render the appropriate supervision. "Appropriate supervision" shall not require the personal or electronic availability of a qualified physician and surgeon if that availability is not possible or practical due to the emergency. The local health officers and their designees, who are licensed as physicians and surgeons, may act as qualified physicians and surgeons during emergencies.

(b) No responsible official or mutual aid operation plan shall invoke this section except in the case of an emergency that endangers the health of individuals. Under no circumstances shall this section be invoked as the result of a labor dispute or other dispute concerning collective bargaining.

~~3550.6. (a) A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency that occurs outside both the place and course of that person's employment shall not be liable for any civil damages as a result of any acts or omissions by that person in rendering the emergency care.~~

~~(b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering emergency care is grossly negligent.~~

~~(c) In addition to the immunity specified in subdivision (a), the provisions of Article 17 (commencing with Section 2395) of Chapter 5 shall apply to a person licensed under this chapter when acting pursuant to delegated authority from a qualified physician and surgeon.~~

~~3550.7.~~

3550.6. No person other than one who has been licensed to practice as a radiologist assistant shall practice as a radiologist

assistant or in a similar capacity to a radiologist or hold himself or herself out as a "radiologist assistant."

Article 2. Administration

3551. There is established a Radiologist Assistant ~~Committee~~ *Advisory Council* of the Medical Board of California. ~~The committee consists of seven members.~~ *The board shall create and appoint the council consisting of qualified physician and surgeon licensees of the board in good standing, who are not required to be members of the board, and members of the public who have an interest in radiologist assistant practice. At least one-half of the council members shall be radiologist assistants certified by the American Registry of Radiologic Technologists or radiology practitioner assistants certified by the Certification Board for Radiology Practitioner Assistants. The council shall make recommendations on matters specified by the board and pursuant to Section 3551.7.*

~~3551.1. Protection of the public shall be the highest priority for the Radiologist Assistant Committee of the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.~~

~~3551.2. (a) The members of the committee shall include a member of the board, a physician and surgeon representative of a California medical school who is a radiologist, an educator participating in an approved program for the education of radiologist assistants, a radiologist who is not a member of the board, two radiologist assistants, one of whom is certified as a radiologist assistant by the American Registry of Radiologic Technologists and one of whom is certified by the Certification Board for Radiology Practitioner Assistants, and a public member.~~

~~(b) Each member of the committee shall hold office for a term of four years expiring on January 1, and shall serve until the appointment and qualification of a successor or until one year shall have elapsed since the expiration of the term for which the member was appointed, whichever first occurs. No member shall serve for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired terms.~~

~~(c) The Governor shall appoint each of the members of the committee.~~

~~3551.3. The committee shall elect annually a chairperson and a vice chairperson from among its members.~~

~~3551.4. Each member of the committee shall receive a per diem and expenses as provided in Section 103.~~

~~3551.5. The Governor may remove from office any member of the committee, as provided in Section 106.~~

3551.6. ~~(a) The committee~~ *council* may convene from time to time as deemed necessary by the ~~committee~~ *board*.

~~(b) The committee shall receive permission of the director to meet more than six times annually. The director shall approve meetings that are necessary for the committee to fulfill its legal responsibilities.~~

3551.7. It shall be the duty of the ~~committee~~ *council* to do all of the following:

(a) ~~Establish standards and issue licenses for approved~~ *Make recommendations to the board concerning the establishment of standards and issuance of approval for* programs.

(b) Make recommendations to the board concerning the scope of practice for radiologist assistants using the guidance of the American Society of Radiologic Technologists, the American Registry of Radiologic Technologists, the American College of Radiology, and the Certification Board for Radiology Practitioner Assistants.

~~(c) Require the licensure of radiologist assistant applicants who meet the requirements of this chapter.~~

~~(d)~~

(c) Adopt regulations pursuant to Section 3552.1.

3551.8. The ~~committee~~ *board* may adopt, amend, and repeal regulations as may be necessary to enable it to carry into effect the provisions of this chapter~~; provided, however, that the board shall adopt, amend, and repeal such regulations as may be necessary to enable it to implement the provisions of this chapter under its jurisdiction~~. All regulations shall be in accordance with, and not inconsistent with, the provisions of this chapter. All regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~3551.9. Four members of the committee shall constitute a quorum for transacting any business. The affirmative vote of a majority of those present at a meeting of the committee shall be required to carry any motion.~~

3552. Except as provided in Sections 159.5 and 2020, the ~~committee~~ *board* shall employ within the limits of the Radiologist Assistant Fund all personnel necessary to carry out the provisions of this chapter~~, including an executive officer who shall be exempt from civil service~~. The board ~~and committee~~ shall make all necessary expenditures to carry out the provisions of this chapter from the fund established by Section 3553. The ~~committee~~ *board* may accept contributions to effect the purposes of this chapter.

Article 3. Licensure and Certification

3552.1. (a) The ~~committee~~ *board* shall adopt regulations consistent with Sections 3551.7 and 3552.2 for the consideration of applications for licensure as a radiologist assistant.

(b) The ~~committee~~ *board* shall adopt regulations consistent with Sections 3551.7 and 3552.3 for the certification of approved programs.

(c) The ~~committee~~ *board* shall adopt the regulations described in this section no later than July 1, ~~2012~~ *2013*.

3552.2. Commencing July 1, ~~2012~~ *2013*, or as soon as possible thereafter, the ~~committee~~ *board* shall issue ~~under the name of the board~~ a license to each radiologist assistant applicant who meets all of the following requirements:

(a) Provides evidence of successful completion of an approved program.

(b) Is certified as a radiologist assistant by the American Registry of Radiologic Technologists or as a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants.

(c) Is certified by the State Department of Public Health as a diagnostic radiologic technologist and holds a radiologic technologist fluoroscopy permit.

(d) Is not subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3554.

(e) Pays all fees required under Section 3553.1.

3552.3. Commencing July 1, ~~2012~~ *2013*, or as soon as possible thereafter, the ~~committee~~ *board* shall ~~approve training programs for radiologist assistants housed in academic institutions accredited by a regional accrediting organization. The committee may~~ *recognize the approval of training programs for radiologist assistants approved by a national accrediting organization. Radiologist assistant training programs accredited by a national accrediting agency approved by the board shall be deemed approved by the board under this section. If no national accrediting organization is approved by the board, the board may examine and pass upon the qualification of, and may issue certificates of approval for, programs for the education and training of radiologist assistants that meet the board standards. The board may* examine and issue certificates to approved programs that satisfy the requirements of the regulations ~~described in~~ *adopted pursuant to* Section 3552.1.

~~3552.4. (a) Every radiologist assistant applicant who has complied with subdivision (a) of Section 3552.2 and has filed an application with the committee may, between the date of receipt of notice that the application is on file and the date of receipt of his or her license, practice as a radiologist assistant on interim approval under the supervision of a qualified physician and surgeon. Prior to practicing under interim approval, applicants shall notify the committee in writing of any and all qualified physicians and surgeons under whom they will be performing services. If the applicant fails to take the next succeeding certification examination, fails to pass the examination, or fails to receive a license, all privileges under this section shall automatically cease upon written notification sent to the applicant by the committee.~~

~~(b) The~~

3552.4. The applicant shall provide evidence satisfactory to the ~~committee~~ *board* that an application has been filed and accepted for the examination and that the organization certifying radiologist assistants has been requested to verify the applicant's certification status to the ~~committee~~ *board* in order for the applicant to maintain interim approval. The applicant shall be deemed to have failed the examination unless the applicant provides evidence to the ~~committee~~ *board* within 30 days after scores have been released that he or she has passed the examination.

~~3552.5. (a) The committee may issue under the name of the board a probationary license to a radiologist assistant applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:~~

~~(1) Practice is limited to a supervised, structured environment where the applicant's activities are supervised by another radiologist assistant.~~

~~(2) Continuing medical or psychiatric treatment.~~

~~(3) Ongoing participation in a specified rehabilitation program.~~

~~(4) Enrollment in and successful completion of a clinical training program.~~

~~(5) Abstention from the use of alcohol or drugs.~~

~~(6) Restrictions against engaging in certain types of medical services.~~

~~(7) Compliance with all provisions of this chapter.~~

~~(b) The committee and the board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee.~~

~~(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the committee and the board.~~

~~(d) These proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~3552.6. The committee shall keep current a register of licensed radiologist assistants. This register shall show the name of each licensee and his or her last known address of record, including those persons practicing under interim approval pursuant to Section 3552.4. Any interested person may obtain a copy of the register in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) upon application to the committee together with a sum as may be fixed by the committee, which amount shall not exceed the cost of the register so furnished.~~

Article 4. Revenue

3553. Within 10 days after the beginning of each calendar month, the board shall report to the Controller the amount and source of all collections made under this chapter and at the same time pay all those sums into the State Treasury, where they shall

be credited to the Radiologist Assistant Fund, which fund is hereby created. All money in the fund shall, upon appropriation by the Legislature, be used to carry out the purpose of this chapter.

3553.1. Fees to be paid by radiologist assistants for ~~licensure~~ *application, licensure,* and renewal shall be set by the ~~committee~~ *board* in an amount sufficient to cover the reasonable and necessary costs of implementing and administering this chapter.

3553.2. The ~~committee~~ *board* shall report to the appropriate policy and fiscal committees of each house of the Legislature whenever the board approves a fee increase pursuant to Section 3553.1.

3553.4. (a) All radiologist assistant licenses shall expire at 12 midnight of the last day of the birth month of the licensee during the second year of a two-year term if not renewed.

(b) The ~~committee~~ *board* shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates.

(c) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the ~~committee~~ *board*, accompanied by the prescribed renewal fee.

3553.5. The ~~committee~~ *board* shall require a licensee to complete continuing education, as deemed acceptable by the ~~committee~~ *board*, as a condition of license renewal under Section 3553.4. The ~~committee~~ *board* shall not require more than 50 hours of continuing education every two years.

3553.6. (a) A suspended license is subject to expiration and shall be renewed as provided in this chapter, but that renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to practice or engage in the activity to which the license relates, or engage in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(b) A revoked license is subject to expiration as provided in this chapter. If the license is reinstated after expiration, the licensee, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated.

Article 5. Denial, Suspension, and Revocation

3554. (a) The ~~committee~~ *board* may deny, issue with terms and conditions, suspend or revoke, or impose probationary conditions upon a radiologist assistant license ~~after a hearing~~ as required in Section 3554.1 for unprofessional conduct that includes, but is not limited to, *a violation described under Section 2234,* a violation of this chapter, a violation of the Radiologic Technology Act, as defined in Section 27 of the Health and Safety Code, a violation of the applicable regulations adopted by the ~~committee or the~~ board, or a breach of an ethics rule established by a recognized national certification organization of radiologist assistants.

(b) The ~~committee~~ *board* may deny, approve with terms and conditions, suspend or revoke, or impose probationary conditions upon an approved program after a hearing as required in Section 3554.1 for a violation of this chapter or the regulations adopted pursuant to this chapter.

~~(c) The committee may deny, approve with terms and conditions, suspend or revoke, or impose probationary conditions upon, a radiologist assistant license, after a hearing as required in Section 3554.1, for unprofessional conduct that includes, except for good cause, the knowing failure of a licensee to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the committee shall consult with the board to encourage appropriate consistency in the implementation of this subdivision. The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most~~

~~recent scientifically recognized safeguards for minimizing the risk of transmission of bloodborne infectious diseases.~~

~~(d)~~

(c) The ~~committee~~ *board* may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

3554.1. Any proceedings involving the denial, suspension, or revocation of the application for licensure or the license of a radiologist assistant or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

3554.2. The ~~committee~~ *board* may hear any matters filed pursuant to subdivisions (a) and (b) of Section 3554, or may assign any such matter to a hearing officer. ~~The board may hear any matters filed pursuant to subdivision (c) of Section 3554, or may assign any such matter to a hearing officer.~~ If a matter is heard by ~~the committee or the~~ board, the hearing officer who presided at the hearing shall be present during ~~the committee's or~~ board's consideration of the case, and, if requested, assist and advise the ~~committee or the~~ board.

3554.3. (a) A person whose license has been revoked or suspended, or who has been placed on probation, may petition the ~~committee~~ *board* for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked for unprofessional conduct, except that the ~~committee~~ *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, reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from ~~radiologists~~ *qualified physician and surgeons* licensed either by the board or the Osteopathic Medical

Board of California who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the ~~committee~~ *board*. The ~~committee~~ *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 ~~committee~~ *board* that shall be acted upon in accordance with the Administrative Procedure Act.

(d) The ~~committee~~ *board* or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued as the ~~committee~~ *board* or administrative law judge finds necessary.

(e) The ~~committee~~ *board* or administrative law judge, when hearing a petition for reinstating a license or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The ~~committee~~ *board* may deny, without a hearing or argument, any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

3554.4. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense that is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The ~~committee~~ *board* may order the license suspended or revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending

the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

Article 6. Penalties

3555. Any person who violates Section 3550.3 or ~~3550.7~~ *3550.6* shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both.

3555.5. Whenever any person has engaged in any act or practice that constitutes an offense against this chapter, the superior court of any county, on application of the board, may issue an injunction or other appropriate order restraining the conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. The board ~~or the committee~~ may commence action in the superior court under the provisions of this section.

Article 7. Osteopathic Radiologist Assistants

3557. (a) Notwithstanding any other provision of law, qualified physicians and surgeons licensed by the Osteopathic Medical Board of California may use or employ radiologist assistants provided (1) each radiologist assistant so used or employed is a graduate of an approved program and is licensed by the ~~committee~~ *board*, and (2) the scope of practice of the radiologist assistant is the same as that which is approved by the Medical Board of California ~~or the committee~~ for radiologist assistants in the same or similar specialty.

(b) Any person who violates subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

AB 374

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 374
Author: Hayashi
Bill Date: April 25, 2011, amended
Subject: Athletic Trainers
Sponsor: California Athletic Trainers Association

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Athletic Trainers Practice Act, which establishes the Athletic Trainer Licensing Committee within the Medical Board of California (the Board) to license athletic trainers.

ANALYSIS:

Existing law establishes the Physician Assistant Committee (PAC) of the Board, which consists of nine members, one of which must a physician member of the Board, four must be physician assistants (PAs), and four must be public members.

The bill would enact the Athletic Trainers Practice act, effective January 1, 2013, that establishes the Athletic Trainer Licensing Committee (ATLC) within the Board. The ATLC would consist of seven members: four licensed athletic trainers; one public member; and two physicians and surgeons licensed by the Board, or by the Osteopathic Medical Board, or doctors of chiropractic licensed by the State Board of Chiropractic Examiners. Two of the licensed athletic trainers and one public member shall be appointed by the Governor, and the Senate and the Assembly must each appoint a licensed athletic trainer and a physician and surgeon, osteopathic physician and surgeon, or a doctor of chiropractic.

This bill defines the practice of athletic training as the professional treatment of a patient for risk management and injury prevention; the clinical evaluation and assessment of a patient for an injury or illness, or both; the immediate care and treatment of a patient for an injury or illness, or both; and the rehabilitation and reconditioning of a patient injury or illness, or both. This bill requires an athletic trainer to refer a patient to an appropriate licensed health care provider when the treatment or management of the injury, illness, or condition is not within the scope of practice of an athletic trainer. This bill also specifies that athletic trainers are not authorized to perform grade 5 joint mobilizations. This bill requires an athletic trainer to render treatment under the direction of a physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic, who is required to order and oversee the athletic trainer and is responsible for the

activities performed. The direction must be provided by verbal order when the directing physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic is present and by written order when the directing physician and surge, osteopathic physician and surgeon, or doctor of chiropractic is not present. This bill also allows ATLC to establish alternative mechanisms for the adequate supervision of an athletic trainer.

This bill authorizes the ATLC to adopt regulations to implement this bill and allows the committee to consult professional standards issued by the National Athletic Trainers' Association, the Board of Certification, Inc., or any other nationally recognized professional association. This bill requires the ATLC to approve education and training programs for athletic trainers. This bill also states that protection of the public is the highest priority for ATLC.

This bill requires ATLC to issue athletic trainer licenses to applicants that have done the following:

- Submitted an application developed by ATLC that includes evidence that the applicant has completed athletic trainer certification eligibility requirements from an athletic training education program at a four-year college or university approved by ATLC.
- Passed an athletic training certification from a nationally accredited athletic trainer certification agency approved by ATLC.
- Possess an emergency cardiac care certification from a certification body approved by ATLC that adheres to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.
- Paid the application fee established by ATLC.

The athletic trainer license is valid for three years and subject to renewal requirements. ATLC is required to establish license application and renewal fees to cover the costs of carrying out the provisions in this bill. This bill also sets out the administrative process for athletic trainer license renewal.

According to the sponsor, athletic trainers are on site at professional, collegiate and some high school games. An example of care provided is that an athletic trainer will treat an athlete that gets hurt during a soccer game by administering advanced first-aid techniques and refer the athlete to the team orthopedist. There are approximately 2,500 potential athletic trainer licensees in California.

Board staff is suggesting an oppose position on this bill. The ATLC should not reside within the Board. It would be more appropriately placed in the Physical Therapy Board or as a semi-independent board (like the Physician Assistant Committee) under the Department of Consumer Affairs. It seems that the scope of practice for athletic trainers overlaps with that of physical therapists, as they both utilize heat, light, electricity, and exercise in the physical rehabilitation or reconditioning of an injury. This bill also proposes that athletic trainers operate under the direction of a physician and surgeon; the term "direction" lacks definition in law. The more common term to use is under physician "supervision". With physician assistants and nurse practitioners standardized procedures are developed when acting without the presence of a physician. Lastly, the

scope of an athletic trainer is very broad in that they are allowed to clinically evaluate and assess a patient for an injury or illness or both, immediately care and treat a patient for an injury or illness or both, and rehabilitate and recondition a patient for an injury or illness or both. This seems to be very broad authority for the care and treatment of patients by an athletic trainer.

SUPPORT: California Athletic Trainers Association (Sponsor); California Community College Athletic Trainers' Association; California Medical Association; Fishermen's Union of America; and hundreds of individuals

OPPOSITION: California Federation of Teachers; California Physical Therapy Association; Occupational Therapy Association of California; American Nurses Association

FISCAL: This bill will result in significant fiscal impact to the Board. The Board believes that implementing and administering this program will require two staff, and will result in costs of approximately $400,000 for the first year (which includes costs for the ATLC, IT costs, licensing and enforcement costs). Assuming 2,500 potential licensees within the first 18 months, assuming an application fee of $150, a renewal fee of $250, and 200 new licensees each year, in the first year, the application fees will only generate $120,000. The fees for renewals and new licenses will put more money into the fund in the future; however, this bill only requires a renewal ever three years. This program will not generate enough funding to fully support the operations of the ATLC.

POSITION: Recommendation: Oppose in this form; the Board could be neutral if the scope of practice is more clearly defined, if supervision is more clearly defined, and if the ATLC is moved to another board or is an independent board.

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 374

Introduced by Assembly Member Hayashi

February 14, 2011

An act to add Chapter 5.8 (commencing with Section 2697.2) to Division 2 of, and to repeal Section 2697.8 of, the Business and Professions Code, relating to athletic trainers~~, and making an appropriation therefor~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 374, as amended, Hayashi. Athletic trainers.

Existing law provides for the regulation of various professions and vocations, including those of an athlete agent.

This bill would, commencing January 1, 2013, provide for the licensure and regulation of athletic trainers, as defined, by an Athletic Trainer Licensing Committee, to be established by the bill within the Medical Board of California. Under the bill, the committee would be comprised of 7 members, as specified, appointed by the Governor, subject to Senate confirmation, the Senate Committee on Rules, and the Speaker of the Assembly. The bill would prohibit a person from practicing as an athletic trainer or using certain titles without a license issued by the committee. The bill would require an applicant for licensure to meet certain educational requirements, pass a specified examination, *hold specified athletic trainer certification*, possess emergency cardiac care certification, and submit an application and pay fees established by the committee. The bill would specify that a license shall be valid for 3 years and is subject to renewal upon the completion of specified requirements including the payment of a renewal fee. The

bill would define the practice of athletic training and prescribe supervision and other requirements on athletic trainers. The bill would create the Athletic Trainers Account, within the Contingent Fund of the Medical Board of California, would direct the deposit of the application and renewal fees into this account, and would ~~continuously appropriate those funds to the committee for purposes of the act~~ *make those fees available to the committee subject to appropriation by the Legislature.*

Vote: majority. Appropriation: ~~yes~~ *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 the following:

(a) California is one of only three states that does not currently regulate the practice of athletic training. This continued lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will come to California to practice, thereby putting the public in danger and degrading the standards of the profession as a whole.

(b) There is a pressing and immediate need to regulate the profession of athletic training in order to protect the public health, safety, and welfare. This need is particularly important because athletic trainers often work with schoolage children.

SEC. 2. Chapter 5.8 (commencing with Section 2697.2) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.8. ATHLETIC TRAINERS

2697.2. This chapter shall be known and may be cited as the Athletic Trainers Practice Act.

2697.4. For the purposes of this chapter, the following definitions shall apply:

(a) "Athletic trainer" means a person who meets the requirements of this chapter and is licensed by the committee.

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

(c) "Committee" means the Athletic Trainer Licensing Committee.

2697.6. (a) No person shall engage in the practice of athletic training unless licensed pursuant to this chapter.

(b) No person shall use the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," "a.t.," "a.t.l.," "c.a.t.," "a.t.c.," or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer unless that person is licensed pursuant to this chapter.

2697.8. (a) There is established an Athletic Trainer Licensing Committee within the Medical Board of California. The committee shall consist of seven members.

(b) The seven committee members shall include the following:

(1) Four licensed athletic trainers. Initially, the committee shall include four athletic trainers who have satisfied the requirements of subdivision (a) of Section 2697.12 and who will satisfy the remainder of the licensure requirements described in Section 2697.12 as soon as it is practically possible.

(2) One public member.

~~(3) Two physicians and surgeons licensed by the board or two osteopathic physicians and surgeons licensed by the Osteopathic Medical Board of California, or one of each.~~

(3) Two licensees, in any combination, chosen from the following: physicians and surgeons licensed by the board, osteopathic physicians and surgeons licensed by the Osteopathic Medical Board of California, or doctors of chiropractic licensed by the State Board of Chiropractic Examiners.

(c) Subject to confirmation by the Senate, the Governor shall appoint two of the licensed athletic trainers and the public member. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a licensed athletic trainer and a physician and surgeon ~~or~~, an osteopathic physician and surgeon, *or a doctor of chiropractic* as described in paragraph (3) of subdivision (b).

(d) (1) All appointments shall be for a term of four years and shall expire on June 30 of the year in which the term expires. Vacancies shall be filled for any unexpired term.

(2) Notwithstanding paragraph (1), for initial appointments made on or after January 1, 2013, the public member appointed by the Governor shall serve a term of one year. Two of the athletic trainers appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve terms of three years, and the remaining members shall serve terms of four years.

(e) Each member of the committee shall receive per diem and expenses as provided in Section 103.

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. The repeal of this section renders the committee subject to the review required by Article 7.5 (commencing with Section 9147.7) of the Government Code.

2697.10. (a) The committee shall adopt, repeal, and amend regulations as may be necessary to enable it to carry into effect the provisions of this chapter. All regulations shall be in accordance with the provisions of this chapter.

(b) In promulgating regulations, the committee may consult the professional standards issued by the National Athletic Trainers' Association, the Board of Certification, Inc., or any other nationally recognized professional association.

(c) The committee shall approve programs for the education and training of athletic trainers.

(d) Protection of the public shall be the highest priority for the committee in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

2697.12. The committee shall issue an athletic trainer license to an applicant who meets all of the following requirements:

~~(a) Has submitted an application developed by the committee that includes evidence that the applicant has done either of the following:~~

~~(1) Graduated from a college or university after completing an athletic training education program approved by the committee and accredited by the Commission on Accreditation of Athletic Training Education or its predecessors or successors.~~

~~(2) Completed certification eligibility requirements for an athletic training certification program approved by the committee and available through the Board of Certification, Inc., its predecessors or successors, or another other nationally recognized and accredited athletic training certification agency.~~

~~(b) Has passed an examination approved by the committee, such as the examination offered by the Board of Certification, Inc., its predecessors or successors, or another examination offered by~~

~~another nationally recognized and accredited athletic training certification agency.~~

(a) Has submitted an application developed by the committee that includes evidence that the applicant has completed athletic trainer certification eligibility requirements from an athletic training education program at a four-year college or university approved by the committee.

(b) Has passed an athletic training certification examination offered by a nationally accredited athletic trainer certification agency approved by the committee.

(c) Holds current athletic training certification from a nationally accredited athletic trainer certification agency approved by the committee.

~~(c)~~

(d) Possesses an emergency cardiac care certification from a certification body, approved by the committee, that adheres to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.

~~(d)~~

(e) Has paid the application fee established by the committee.

2697.14. A license issued by the committee pursuant to Section 2697.12 shall be valid for three years and thereafter shall be subject to the renewal requirements described in Sections 2697.16 and 2697.18.

2697.16. The committee shall establish license application and renewal fees in an amount sufficient to cover the reasonable regulatory costs of carrying out the provisions of this chapter.

2697.18. The committee shall renew a license if an applicant meets all of the following requirements:

(a) Pays the renewal fee as established by the committee.

(b) Submits proof of satisfactory completion of continuing education, as determined by the committee.

(c) Submits proof of current emergency cardiac care certification meeting the requirements of subdivision (c) of Section 2697.12.

(d) Demonstrates that his or her license is otherwise in good standing, including~~, if applicable~~, that the applicant for renewal ~~satisfies the requirements described in paragraph (2) of subdivision (a) of Section 2697.12.~~ *possesses a current, unencumbered certification from a nationally accredited athletic trainer certification agency approved by the committee.*

2697.20. (a) The practice of athletic training is the professional treatment of a patient for risk management and injury prevention~~,~~; the clinical evaluation and assessment of a patient for an injury or illness ~~or both,~~ *or both;* the immediate care and treatment of a patient for an injury or illness ~~or both,~~ *or both;* and the rehabilitation and reconditioning of a patient's injury or illness, or both. *An athletic trainer shall refer a patient to an appropriate licensed health care provider when the treatment or management of the injury, illness, or condition is not within the scope of practice of an athletic trainer.*

(b) No licensee shall provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not qualified to perform by his or her education, training, or experience, or that he or she is otherwise prohibited by law from performing.

(c) Nothing in this chapter shall authorize an athletic trainer to perform grade 5 joint mobilizations.

~~(b)~~

(d) An athletic trainer shall render treatment under the direction of a physician and surgeon licensed by the board ~~or~~, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, *or a doctor of chiropractic licensed by the State Board of Chiropractic Examiners* who shall order and oversee the athletic trainer and shall be responsible for the athletic training activities performed by the athletic trainer. This direction shall be provided by verbal order when the directing physician and surgeon ~~or~~, osteopathic physician and surgeon, *or doctor of chiropractic* is present and by written order or by athletic training treatment plans or protocols, to be established by the physician and surgeon, *osteopathic physician and surgeon, or doctor of chiropractic*, when the directing physician and surgeon ~~or~~, osteopathic physician and surgeon, *or doctor of chiropractic* is not present.

~~(c)~~

(e) Notwithstanding any other provisions of law and consistent with the provisions of this chapter, the committee may establish other alternative mechanisms for the adequate supervision of an athletic trainer.

~~(d) No licensee shall provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not~~

~~qualified to perform by his or her education, training, or experience or that he or she is otherwise prohibited by law from performing~~

2697.22. The requirements of this chapter do not apply to ~~an athletic~~ *the following:*

(a) An athletic trainer licensed in another state who is in California ~~for a limited time~~ *temporarily* to engage in the practice of athletic training for, among other things, an athletic or ~~sport~~ *sporting* event.

(b) An athletic trainer licensed, certified, or registered in another state who is invited by a sponsoring organization, such as the United States Olympic Training Center, to temporarily provide athletic training services under his or her state's scope of practice.

(c) A student enrolled in an athletic training education program, while participating in educational activities under the supervision and guidance of an athletic trainer licensed under this chapter.

(d) A member of the United States Armed Forces, licensed, certified, or registered in another state, as part of his or her federal employment in California for a limited time.

2697.24. Nothing in this chapter shall be construed to limit, impair, or otherwise apply to the practice of any person licensed and regulated under any other chapter of Division 2 (commencing with Section 500).

2697.26. The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon an athletic trainer's license after a hearing for unprofessional conduct that includes, but is not limited to, a violation of this chapter or the regulations adopted by the committee pursuant to this chapter.

2697.28. There is established in the Contingent Fund of the Medical Board of California the Athletic Trainers Account. All fees collected pursuant to this chapter shall be paid into the account. ~~Notwithstanding Section 13340 of the Government Code, funds in the account shall be continuously appropriated to the committee~~ *These fees shall be available to the committee, upon appropriation by the Legislature,* for the regulatory purpose of carrying out the provisions of this chapter.

2697.30. This chapter shall become operative on January 1, 2013.

O

AB 507

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 507
Author: Hayashi
Bill Date: April 13, 2011, Amended
Subject: Pain Management
Sponsor: American Cancer Society

STATUS OF BILL:

This bill is currently in Assembly Health Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would repeal existing law that allows the Department of Justice (DOJ) employ physicians for interviewing and examining patients related to prescription possession and use of controlled substances. This bill would also make changes to existing law related to severe chronic intractable pain.

ANALYSIS:

Existing law allows DOJ to employ physicians in order to examine patients related to prescription possession and use of controlled substances. This bill would repeal this law.

> DOJ may have issues with this law being repealed; however, these issues have not been relayed to the Medical Board of California (the Board).

Existing law also allows physicians to refuse to prescribe opiate medication for patients who request the treatment for severe chronic intractable pain, but requires physicians to inform patients that there are physicians who specialize in the treatment of severe chronic intractable pain with methods that include the use of opiates.

This bill would continue to allow physicians to refuse to prescribe opiate medication for patients who request the treatment for "pain or a condition causing pain". However, this bill requires physicians to refer patients to physicians who treat pain or a condition causing pain, with methods that include the use of opiates.

> This is problematic because it requires a physician to refer the patient to another physician. If the physician does not know of another physician to refer the patient to, the physician would be in violation of law. This bill should be amended to be permissive, to provide an exclusion for physicians who do not know of another physician to refer their patient to, or to provide a referral to a Web site that would contain a list of physicians such as one or more of the American Board of Medical Specialties

certified physician sites (see attached). The other changes in this bill are technical in nature.

According to the author, this bill seeks to fix ambiguities and inconsistencies in existing law surrounding pain practice that unduly restrict health care practice and interfere with patient access to effective pain treatment. The author states that this bill will remove remaining legal barriers to optimal pain management for patients with cancer, HIV/AIDS, and other diseases or conditions causing pain.

SUPPORT: American Cancer Society (Sponsor)
California Academy of Physician Assistants

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support if Amended to be permissive or flexible in referrals to pain medicine physicians.

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Specialties & Subspecialties

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Approved ABMS Member Board General and Subspecialty Certificates

General Certificate(s)	Subspecialty Certificates
American Board of Allergy and Immunology	
Allergy and Immunology	No Subspecialties
American Board of Anesthesiology	
Anesthesiology	Critical Care Medicine Hospice and Palliative Mec Pain Medicine Pediatric Anesthesiology [1] Sleep Medicine [2]
American Board of Colon and Rectal Surgery	
Colon and Rectal Surgery	No Subspecialties
American Board of Dermatology	
Dermatology	Dermatopathology Pediatric Dermatology
American Board of Emergency Medicine	
Emergency Medicine	Emergency Medical Servic Hospice and Palliative Mec Medical Toxicology Pediatric Emergency Medi

	Sports Medicine
	Undersea and Hyperbaric I
American Board of Family Medicine	
Family Medicine	Adolescent Medicine
	Geriatric Medicine
	Hospice and Palliative Mec
	Sleep Medicine
	Sports Medicine
American Board of Internal Medicine	
Internal Medicine	Adolescent Medicine
	Advanced Heart Failure an Cardiology
	Cardiovascular Disease
	Clinical Cardiac Electrophy
	Critical Care Medicine
	Endocrinology, Diabetes a
	Gastroenterology
	Geriatric Medicine
	Hematology
	Hospice and Palliative Mec
	Infectious Disease
	Interventional Cardiology
	Medical Oncology
	Nephrology
	Pulmonary Disease
	Rheumatology
	Sleep Medicine
	Sports Medicine
	Transplant Hepatology
American Board of Medical Genetics	
Clinical Biochemical Genetics*	Medical Biochemical Gene
Clinical Cytogenetics*	Molecular Genetic Patholo
Clinical Genetics (MD)*	
Clinical Molecular Genetics*	
American Board of Neurological Surgery	

Neurological Surgery	No Subspecialties
American Board of Nuclear Medicine	
Nuclear Medicine	No Subspecialties
American Board of Obstetrics and Gynecology	
Obstetrics and Gynecology	Critical Care Medicine Female Pelvic Medicine an Reconstructive Surgery Gynecologic Oncology Hospice and Palliative Mec Maternal and Fetal Medicir Reproductive Endocrinolog
American Board of Ophthalmology	
Ophthalmology	No Subspecialties
American Board of Orthopaedic Surgery	
Orthopaedic Surgery	Orthopaedic Sports Medici Surgery of the Hand
American Board of Otolaryngology	
Otolaryngology	Neurotology Pediatric Otolaryngology Plastic Surgery Within the I Sleep Medicine
American Board of Pathology	
Anatomic Pathology and Clinical Pathology* Pathology - Anatomic* Pathology - Clinical*	Blood Banking/Transfusion Cytopathology Dermatopathology Neuropathology Pathology - Chemical Pathology - Forensic Pathology - Hematology Pathology - Medical Microt Pathology - Molecular Gen

	Pathology - Pediatric
American Board of Pediatrics	
Pediatrics	Adolescent Medicine Child Abuse Pediatrics Developmental-Behavioral Hospice and Palliative Mec Medical Toxicology Neonatal-Perinatal Medicir Neurodevelopmental Disat Pediatric Cardiology Pediatric Critical Care Med Pediatric Emergency Medi Pediatric Endocrinology Pediatric Gastroenterology Pediatric Hematology-Onc Pediatric Infectious Diseas Pediatric Nephrology Pediatric Pulmonology Pediatric Rheumatology Pediatric Transplant Hepat Sleep Medicine Sports Medicine
American Board of Physical Medicine and Rehabilitation	
Physical Medicine and Rehabilitation	Hospice and Palliative Mec Neuromuscular Medicine Pain Medicine Pediatric Rehabilitation Me Spinal Cord Injury Medicin Sports Medicine
American Board of Plastic Surgery	
Plastic Surgery	Plastic Surgery Within the I Surgery of the Hand
American Board of Preventive Medicine	

Aerospace Medicine*	Medical Toxicology
Occupational Medicine*	Undersea and Hyperbaric I
Public Health and General Preventive Medicine*	
American Board of Psychiatry and Neurology	
Psychiatry*	Addiction Psychiatry
Neurology*	Child and Adolescent Psyc
Neurology with Special Qualification in Child Neurology*	Clinical Neurophysiology
	Epilepsy[4]
	Forensic Psychiatry
	Geriatric Psychiatry
	Hospice and Palliative Mec
	Neurodevelopmental Disat
	Neuromuscular Medicine
	Pain Medicine
	Psychosomatic Medicine
	Sleep Medicine
	Vascular Neurology
American Board of Radiology	
Diagnostic Radiology*	Hospice and Palliative Mec
Radiation Oncology*	Neuroradiology
Medical Physics*	Nuclear Radiology
	Pediatric Radiology
	Vascular and Interventiona
American Board of Surgery	
Surgery*	Complex General Surgical
Vascular Surgery*	Hospice and Palliative Mec
	Pediatric Surgery
	Surgery of the Hand
	Surgical Critical Care
American Board of Thoracic Surgery	
Thoracic Surgery	Congenital Cardiac Surger
American Board of Urology	
Urology	Female Pelvic Medicine an

Reconstructive Surgery
Pediatric Urology

*Specific disciplines within the specialty where certification is offered.
[1]Approved 2011; first issue to be determined
[2]Approved 2011; first issue November 2011
[3]Approved 2010; first issue to be determined
[4]Approved 2010; first issue 2013

To find out the requirements associated with a specific board, call the board directly. A listing of conta
Member Boards is available on this Web site.

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 507

Introduced by Assembly Member Hayashi

February 15, 2011

~~An act to amend Section 4301 of the Business and Professions Code, and~~ *An act* to amend Sections 124960 and 124961 of, and to repeal Section 11453 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Hayashi. Pain management.

~~(1) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacy technicians by the California State Board of Pharmacy.~~

~~Existing law requires the board to take action against any holder of a license who is guilty of unprofessional conduct, as defined, including, but not limited to, the clearly excessive furnishing of controlled substances in violation of prescribed statutory provisions relating to the prescription of a controlled substance.~~

~~This bill would exempt from this provision any holder of a license who has a medical basis for furnishing dangerous drugs or prescription controlled substances, including for pain or a condition causing pain.~~

~~(2)~~

(1) Existing law authorizes the Department of Justice to employ a physician to interview and examine any patient in connection with the prescription, possession, or use of a controlled substance, requires the

patient to submit to the interview and examination, and authorizes the physician to testify in prescribed administrative proceedings.

This bill would repeal that provision.

~~(3)~~

(2) Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

This bill would conform findings and declarations and other references to severe chronic intractable pain and to the California Intractable Pain Treatment Act.

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 4301 of the Business and Professions Code is amended to read:~~

~~4301. The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:~~

~~(a) Gross immorality.~~

~~(b) Incompetence.~~

~~(c) Gross negligence.~~

~~(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code. Any holder of a license who has a medical basis for furnishing dangerous drugs or prescription controlled substances, including for pain or a condition causing pain, shall not be subject to disciplinary action pursuant to this section.~~

~~(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall~~

~~include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.~~

~~(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.~~

~~(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.~~

~~(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.~~

~~(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering, or offering to sell, furnish, give away, or administer, any controlled substance to an addict.~~

~~(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.~~

~~(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.~~

~~(*l*) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not~~

~~involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.~~

~~(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program. The record of the compromise is conclusive evidence of unprofessional conduct.~~

~~(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.~~

~~(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.~~

~~(p) Actions or conduct that would have warranted denial of a license.~~

~~(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.~~

~~(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a) of Section 256b of Title 42 of the United States Code.~~

~~(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code. For purposes of this section, "long-term care facility" shall have the same meaning given the term in Section 1418 of the Health and Safety Code.~~

~~SEC. 2.~~

SECTION 1. Section 11453 of the Health and Safety Code is repealed.

~~SEC. 3.~~

SEC. 2. Section 124960 of the Health and Safety Code is amended to read:

124960. The Legislature finds and declares all of the following:

(a) The state has a right and duty to control the illegal use of opiate drugs.

(b) Inadequate treatment of acute and chronic pain originating from cancer or noncancerous conditions is a significant health problem.

(c) For some patients, pain management is the single most important treatment a physician can provide.

(d) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain should have access to proper treatment of his or her pain.

(e) Due to the complexity of their problems, many patients suffering from pain or a condition causing pain, including, but not limited to, intractable pain may require referral to a physician with

expertise in the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. In some cases, pain or a condition causing pain, including, but not limited to, intractable pain is best treated by a team of clinicians in order to address the associated physical, psychological, social, and vocational issues.

(f) In the hands of knowledgeable, ethical, and experienced pain management practitioners, opiates administered for pain or a condition causing pain, including, but not limited to, intractable pain can be safe.

(g) Opiates can be an accepted treatment for patients in pain or a condition causing pain, including, but not limited to, intractable pain who have not obtained relief from any other means of treatment.

(h) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain has the option to request or reject the use of any or all modalities to relieve his or her pain.

(i) A physician treating a patient who suffers from pain or a condition causing pain, including, but not limited to, intractable pain may prescribe a dosage deemed medically necessary to relieve pain as long as the prescribing is in conformance with Section 2241.5 of the Business and Professions Code.

(j) A patient who suffers from pain or a condition causing pain, including, but not limited to, intractable pain, has the option to choose opiate medication for the treatment of the severe chronic intractable pain as long as the prescribing is in conformance with the provisions of Section 2241.5 of the Business and Professions Code.

(k) The patient's physician may refuse to prescribe opiate medication for a patient who requests the treatment for pain or a condition causing pain, including, but not limited to, intractable pain. However, that physician shall refer the patient to physicians who treat pain or a condition causing pain, including, but not limited to, intractable pain with methods that include the use of opiates.

~~SEC. 4.~~

SEC. 3. Section 124961 of the Health and Safety Code is amended to read:

124961. Nothing in this section shall be construed to alter any of the provisions set forth in Section 2241.5 of the Business and

Professions Code. This section shall be known as the Pain Patient's Bill of Rights.

(a) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain has the option to request or reject the use of any or all modalities in order to relieve his or her pain.

(b) A patient who suffers from pain or a condition causing pain, including, but not limited to, intractable pain has the option to choose opiate medications to relieve that pain without first having to submit to an invasive medical procedure, which is defined as surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device, as long as the prescribing physician acts in conformance with the provisions of the California Intractable Pain Treatment Act, Section 2241.5 of the Business and Professions Code.

(c) The patient's physician may refuse to prescribe opiate medication for the patient who requests a treatment for pain or a condition causing pain, including, but not limited to, intractable pain. However, that physician shall refer the patient to physicians who treat pain and whose methods include the use of opiates.

(d) A physician who uses opiate therapy to relieve pain or a condition causing pain, including, but not limited to, intractable pain may prescribe a dosage deemed medically necessary to relieve the patient's pain, as long as that prescribing is in conformance with Section 2241.5 of the Business and Professions Code.

(e) A patient may voluntarily request that his or her physician provide an identifying notice of the prescription for purposes of emergency treatment or law enforcement identification.

(f) Nothing in this section shall do either of the following:

(1) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices or other provisions set forth in the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or the regulations adopted thereunder.

(2) Limit the applicability of any federal statute or federal regulation or any of the other statutes or regulations of this state that regulate dangerous drugs or controlled substances.

O

AB 536

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 536
Author: Ma
Bill Date: April 11, 2011, amended
Subject: Physicians and Surgeons
Sponsor: Union of American Physician and Dentists

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Medical Board of California (the Board) to remove misdemeanor or felony convictions posted by the Board on the Internet within 90 days of receiving a certified copy of an expungement order from the licensee.

ANALYSIS:

Current law requires the Board to post information regarding licensed physicians and surgeons on its Internet Web site, including all felony convictions reported to the Board after January 3, 1991 and any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

According to the author's office, the Board has kept criminal misdemeanor or felony convictions that have been legally expunged on its Web site. The author's office believes this leads the public to assume the physician is guilty of the described behavior, which can be economically disastrous for the physician and disrupt the delivery of health care services to consumers.

This bill would require the Board to remove the misdemeanor or felony convictions within 90 days of receiving a certified copy of the expungement order. The Board strives to keep accurate information on its Web site. This bill will help to ensure that information posted and available to consumers is accurate and complete.

SUPPORT: Union of American Physicians and Dentists (Sponsor)
American Federation of State, County and Municipal Employees

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support

April 26, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

AMENDED IN ASSEMBLY MARCH 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 536

Introduced by Assembly Member Ma

February 16, 2011

An act to add Section 2027.1 to the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 536, 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 a licensee is in good standing. Existing law requires that specified information remain posted for 10 years and prohibits the removal of certain other information.

This bill would require the board to remove expunged misdemeanor or felony convictions posted pursuant to those provisions within 90 days of receiving a *certified* copy of the expungement order from the licensee.

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 2027.1 is added to the Business and Professions Code, to read:

2027.1. Notwithstanding subdivision (b) of Section 2027, the board shall remove an expunged misdemeanor or felony conviction posted pursuant to Section 2027 within 90 days of receiving a *certified* copy of the expungement order from the licensee.

O

AB 589

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 589
Author: Perea
Bill Date: April 11, 2011, amended
Subject: Medical School Scholarships
Sponsor: California Medical Association

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would create the Steven M. Thompson Medical School Scholarship Program (STMSSP) within the Health Professions Education Foundation (HPEF).

ANALYSIS:

The Steven M. Thompson Loan Repayment Program (STLRP) was created in 2002 via legislation which was co-sponsored by the Medical Board of California (the Board). The STLRP encourages recently licensed physicians to practice in underserved locations in California by authorizing a plan for repayment of their student loans (up to $105,000) in exchange for a minimum three years of service. In 2006, the administration of STLRP was transitioned from the Board to HPEF. Since 1990, HPEF has administered statewide scholarship and loan repayment programs for a wide range of health professions students and recent graduates and is funded through grants and contributions from public and private agencies, hospitals, health plans, foundations, corporations, as well as through a surcharge on the renewal fees of various health professionals, including a $25 fee paid by physicians and surgeons.

AB 589 would create the STMSSP in HPEF. STMSSP participants must commit in writing to three years of full-time professional practice in direct patient care in an eligible setting. The maximum amount per total scholarship is $105,000 to be distributed over the course of medical school.

The committee charged with selecting scholarship recipients must use guidelines that provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and who meet one or more of the following criteria:

- Speak a Medi-Cal threshold language.
- Come from an economically disadvantaged background.
- Have experience working in medically underserved areas or with medically underserved populations.

The selection committee must give preference to applicants who have committed to practicing in a primary specialty and who will serve in a practice setting in a super-medically underserved area. The selection committee must also include a factor ensuring geographic distribution of placements.

The STMSSP would be funded by funds transferred from the Managed Care Administrative Fines and Penalties Fund that are in excess of the first $1,000,000, including accrued interest, as the first $1,000,000 funds the STLRP (this bill would not reduce the funding to the current STLRP). HPEF may seek and receive matching funds from foundations and private sources to be placed in the STMSSP account.

According to the author's office, this bill will address shortages of physician services that exist in over 200 regions in California identified as medically underserved areas. The purpose of this bill is to make medical school more financially accessible for students who are willing to pursue careers in primary care. According to the author's office, this bill will help to address the geographical disparity of physician supply in California, as well as the increasing cost of medical education, which is a barrier to entry for students from economically disadvantaged backgrounds. The author's office believes this bill will provide underserved communities with greater access to medical care. This bill is consistent with the mission of the Medical Board of promoting access to care.

SUPPORT: California Medical Association (Sponsor)

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support

April 18, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 589

Introduced by Assembly Member Perea

February 16, 2011

~~An act to amend Section 128555 of the Health and Safety Code,~~ *An act to amend Section 1341.45 of, and to add Article 6 (commencing with Section 128560) to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code,* relating to health professions.

LEGISLATIVE COUNSEL'S DIGEST

AB 589, as amended, Perea. ~~Physicians and surgeons: loan repayment.~~ *Medical school scholarships.*

Existing law establishes the Medically Underserved Account for Physicians within the Health Professions Education Fund that is managed by the Health Professions Education Foundation and the Office of Statewide Health Planning and Development. Under existing law, the primary purpose of the account is to fund the Steven M. Thompson Physician Corps Loan Repayment Program, which provides for the repayment of prescribed educational loans, not to exceed $105,000, obtained by a physician and surgeon who practices in a medically underserved area of the state. ~~Under existing law, specified funds placed in the account for those purposes are continuously appropriated for the repayment of loans and may be used for any other authorized purpose.~~

~~This bill would instead provide for an unspecified amount of loan repayment.~~

Existing law provides for the licensing and regulation of health care service plans by the Department of Managed Health Care and imposes certain requirements on health care service plans. Existing law imposes

various fines and administrative penalties for certain violations of these provisions that are deposited in the Managed Care Administrative Fines and Penalties Fund. Existing law requires the first $1,000,000 in the fund to be transferred each year to the Medically Underserved Account for Physicians for the purposes of the Steven M. Thompson Physician Corps Loan Repayment Program. Existing law requires all remaining funds to be transferred each year to the Major Risk Medical Insurance Fund for purposes of the Major Risk Medical Insurance Program.

This bill would establish within the Health Professions Education Foundation the Steven M. Thompson Medical School Scholarship Program (STMSSP) managed by the foundation and the Office of Statewide Health Planning and Development to promote the education of medical doctors and doctors of osteopathy, as specified. This bill would provide up to $105,000 in scholarships to selected participants who agree in writing prior to entering an accredited medical or osteopathic school to serve in an eligible setting.

This bill would establish the Steven M. Thompson Medical School Scholarship Account within the Health Professions Education Fund to fund the STMSSP. This bill, beginning January 1, 2014, would require all remaining funds after the first $1,000,000 to be transferred each year from the Managed Care Administrative Fines and Penalties Fund to the account, for purposes of the STMSSP, upon appropriation by the Legislature.

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 1341.45 of the Health and Safety Code is amended to read:

1341.45. (a) There is hereby created in the State Treasury the Managed Care Administrative Fines and Penalties Fund.

(b) The fines and administrative penalties collected pursuant to this chapter, on and after the operative date of this section, shall be deposited into the Managed Care Administrative Fines and Penalties Fund.

(c) The fines and administrative penalties deposited into the Managed Care Administrative Fines and Penalties Fund shall be transferred by the department, beginning September 1, 2009, and annually thereafter, as follows:

(1) The first one million dollars ($1,000,000) shall be transferred to the Medically Underserved Account for Physicians within the Health Professions Education Fund and shall, upon appropriation by the Legislature, be used for the purposes of the Steven M. Thompson Physician Corps Loan Repayment Program, as specified in Article 5 (commencing with Section 128550) or Chapter 5 of Part 3 of Division 107 and, notwithstanding Section 128555, shall not be used to provide funding for the Physician Volunteer Program.

(2) ~~Any~~ *(A) Prior to January 1, 2014, any* amount over the first one million dollars ($1,000,000), including accrued interest, in the fund shall be transferred to the Major Risk Medical Insurance Fund created pursuant to Section 12739 of the Insurance Code and shall, upon appropriation by the Legislature, be used for the Major Risk Medical Insurance Program for the purposes specified in Section 12739.1 of the Insurance Code.

(B) Beginning January 1, 2014, any amount over the first one million dollars ($1,000,000), including accrued interest, in the fund shall be transferred to the Steven M. Thompson Medical School Scholarship Account within the Health Professions Education Fund, created pursuant to Section 128580, and shall, upon appropriation by the Legislature, be used by the Office of Statewide Health Planning and Development for the Steven M. Thompson Medical School Scholarship Program for the purposes specified in Article 6 (commencing with Section 128560) of Chapter 5 of Part 3 of Division 107.

(d) Notwithstanding subdivision (b) of Section 1356 and Section 1356.1, the fines and administrative penalties authorized pursuant to this chapter shall not be used to reduce the assessments imposed on health care service plans pursuant to Section 1356.

SEC. 2. Article 6 (commencing with Section 128560) is added to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 6. Steven M. Thompson Medical School Scholarship Program

128560. (a) There is hereby established within the Health Professions Education Foundation, the Steven M. Thompson Medical School Scholarship Program.

(b) It is the intent of this article that the foundation and the office provide the ongoing program management for the program.

(c) For the purposes of this article, the foundation shall consult with the committee established pursuant to subdivision (b) of Section 128551.

128565. For purposes of this article, the following definitions shall apply:

(a) "Account" means the Steven M. Thompson Medical School Scholarship Account established within the Health Professions Education Fund pursuant to this article.

(b) "Foundation" means the Health Professions Education Foundation.

(c) "Medi-Cal threshold languages" means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000 LEP individuals eligible for Medi-Cal residing in a county, 1,000 LEP individuals eligible for Medi-Cal residing in a single ZIP Code, or 1,500 LEP individuals eligible for Medi-Cal residing in two contiguous ZIP Codes.

(d) "Medically underserved area" means an area defined as a health professional shortage area in Part 5 (commencing with Sec. 5.1) of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225.

(e) "Medically underserved population" means the persons served by the Medi-Cal program, the Healthy Families Program, and uninsured populations.

(f) "Office" means the Office of Statewide Health Planning and Development (OSHPD).

(g) "Practice setting" means either of the following:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, each of which is located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A medical practice located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(h) "Primary specialty" means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(i) "Program" means the Steven M. Thompson Medical School Scholarship Program.

(j) "Selection committee" means the advisory committee of not more than seven members established pursuant to subdivision (b) of Section 128551.

(k) "Super-medically underserved area" means an area defined as medically underserved pursuant to subdivision (d) that also meets a heightened criteria of physician shortage as determined by the foundation.

128570. (a) Persons participating in the program shall be persons who agree in writing prior to entering an accredited medical or osteopathic school to serve in an eligible practice setting, pursuant to subdivision (g) of Section 128565, for at least three years. The program shall be used only for the purpose of promoting the education of medical doctors and doctors of osteopathy and related administrative costs.

(b) A program participant shall commit to three years of full-time professional practice once the participant has achieved full licensure pursuant to Article 4 (commencing with Section 2080) of Chapter 5 or Section 2099.5 of the Business and Professions Code and after completing an accredited residency program. The obligated professional service shall be in direct patient care in an eligible practice setting pursuant to subdivision (g) of Section 128565.

(1) Leaves of absence shall be permitted for serious illness, pregnancy, or other natural causes. The selection committee shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Awarding of scholarship funds shall be deferred until the participant is back to full-time status.

(2) Full-time status shall be defined by the selection committee. The selection committee may establish exemptions from this requirement on a case-by-case basis.

(c) The maximum allowable amount per total scholarship shall be one hundred five thousand dollars ($105,000). These moneys

shall be distributed over the course of a standard medical school curriculum. The distribution of funds shall increase over the course of medical school, increasing to ensure that at least 45 percent of the total scholarship award is distributed upon matriculation in the final year of school.

(d) In the event the program participant does not complete the minimum three years of professional service pursuant to the contractual agreement between the foundation and the participant, the office shall recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

128575. (a) The selection committee shall use guidelines that meet all of the following criteria to select scholarship recipients:

(1) Provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and who meet one or more of the following criteria:

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have experience working in medically underserved areas or with medically underserved populations.

(2) Give preference to applicants who have committed to practicing in a primary specialty.

(3) Give preference to applicants who will serve in a practice setting in a super-medically underserved area.

(4) Include a factor ensuring geographic distribution of placements.

(b) The selection committee may award up to 20 percent of the available scholarships to program applicants who will practice specialties outside of a primary specialty.

(c) The foundation, in consultation with the selection committee, shall develop a process for outreach to potentially eligible applicants.

128580. (a) The Steven M. Thompson Medical School Scholarship Account is hereby established within the Health Professions Education Fund. The primary purpose of this account is to provide funding for the ongoing operations of the program provided for under this article. This account shall receive money from the Managed Care Administrative Fines and Penalties Fund pursuant to Section 1341.45.

(b) Funds in the account shall be used to fund scholarships pursuant to agreements made with recipients and as follows:

(1) Scholarships shall not exceed one hundred five thousand ($105,000) per recipient.

(2) Scholarships shall not exceed the amount of the educational expenses incurred by the recipient.

(c) Effective January 1, 2014, the foundation may seek and receive matching funds from foundations and private sources to be placed in the account. "Matching funds" shall not be construed to be limited to a dollar-for-dollar match of funds.

(d) Funds placed in the account for purposes of this article, including, but not limited to, funds received pursuant to subdivision (c) shall, upon appropriation by the Legislature, be used for the purposes of this article.

(e) The account shall be used to pay for the cost of administering the program, not to exceed 5 percent of the total appropriation for the program.

(f) The office and the foundation shall manage the account established by this section prudently in accordance with other provisions of law.

~~SECTION 1. Section 128555 of the Health and Safety Code is amended to read:~~

~~128555. (a) The Medically Underserved Account for Physicians is hereby established within the Health Professions Education Fund. The primary purpose of this account is to provide funding for the ongoing operations of the Steven M. Thompson Physician Corps Loan Repayment Program provided for under this article. This account also may be used to provide funding for the Physician Volunteer Program provided for under this article.~~

~~(b) All moneys in the Medically Underserved Account contained within the Contingent Fund of the Medical Board of California shall be transferred to the Medically Underserved Account for Physicians on July 1, 2006.~~

~~(c) Funds in the account shall be used to repay loans as follows per agreements made with physicians:~~

~~(1) Funds paid out for loan repayment may have a funding match from foundations or other private sources.~~

~~(2) Loan repayments may not exceed _____ dollars ($_____) per individual licensed physician.~~

~~(3) Loan repayments may not exceed the amount of the educational loans incurred by the physician participant.~~

~~(d) Effective January 1, 2006, the foundation may seek and receive matching funds from foundations and private sources to be placed in the account. "Matching funds" shall not be construed to be limited to a dollar-for-dollar match of funds.~~

~~(e) Funds placed in the account for purposes of this article, including funds received pursuant to subdivision (d), are, notwithstanding Section 13340 of the Government Code, continuously appropriated for the repayment of loans. This subdivision shall not apply to funds placed in the account pursuant to Section 1341.45.~~

~~(f) The account shall also be used to pay for the cost of administering the program and for any other purpose authorized by this article. The costs for administration of the program may be up to 5 percent of the total state appropriation for the program and shall be subject to review and approval annually through the state budget process. This limitation shall only apply to the state appropriation for the program.~~

~~(g) The office and the foundation shall manage the account established by this section prudently in accordance with the other provisions of law.~~

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AB 783

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 783
Author:	Hayashi
Bill Date:	April 7, 2011, amended
Subject:	Professional Corporations: Licensed Physical Therapists
Sponsor:	California Medical Association, California Orthopaedic Association, and the Podiatric Medical Association

STATUS OF BILL:

This bill is on the Assembly Third Reading File.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would add licensed physical therapists and occupational therapists to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of a medical corporation.

ANALYSIS:

Since 1990, the Physical Therapy Board has allowed physical therapist's to be employed by medical corporations. On September 29, 2010, the California Legislative Counsel issued a legal opinion that concluded a physical therapist may not be employed by a professional medical corporation and stated that only professional physical therapy corporations or naturopathic corporations may employ physical therapists. This issue came to the Legislature's attention when existing law was amended to add naturopathic doctor corporations and physical therapists were listed as professionals allowed to be employed by these corporations. Because the medical corporation section of law did not specifically list physical therapists, the issue was brought to the forefront and to the California Legislative Counsel for an opinion. On November 3, 2010, the Physical Therapy Board voted to rescind the 1990 resolution that authorized the forming of a general corporation employing physical therapists.

Currently, many physical therapists are employed by medical corporations. According to the author's office, this bill was introduced to "prevent the unnecessary loss of employment during this economic recession by allowing medical and podiatric medical corporations to continue to employ physical therapists, as they have done for over 21 years".

The Occupational Therapy Association of California requested that this bill be amended

to clarify that occupational therapists are allowed to be employed by medical corporations because they work in numerous health care settings throughout California and should have the choice to be employed by medical corporations; this amendment was taken.

The Medical Board has received complaints regarding physicians who are employing physical therapists. Neither the Medical Board nor the Physical Therapy Board have taken action against licensees as of yet. This bill will codify the practice that has been allowed for over 20 years and allow physicians in medical corporations to employ physical therapists.

FISCAL: None to the Board

SUPPORT: CMA (Co-sponsor), California Orthopaedic Association (Co-sponsor); California Podiatric Medical Association (co-sponsor); California Chiropractic Association; California Hospital Association; California Labor Federation; California Nurses Association; California Teamsters Public Affairs Council; Kaiser Permanente; Western States Council of the United Food and Commercial Workers; and Numerous individuals

OPPOSITION: California Physical Therapy Association; Capitol Physical Therapy, inc.; and Numerous individuals

POSITION: Recommendation: Support

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 783

Introduced by Assembly Member Hayashi

February 17, 2011

An act to amend Section 2406 of the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to ~~professional corporations, and declaring the urgency thereof, to take effect immediately.~~ *professional corporations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 783, as amended, Hayashi. Professional corporations: licensed physical *therapists and occupational* therapists.

Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation ~~or a~~, podiatric medical corporation, *or a chiropractic corporation,* subject to certain limitations.

This bill would add licensed physical therapists *and licensed occupational therapists* to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also make conforming changes to a related provision.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~ *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 2406 of the Business and Professions Code is amended to read:

2406. A medical corporation or podiatry corporation is a corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, podiatrists, chiropractors, acupuncturists, naturopathic doctors, physical therapists, or, in the case of a medical corporation only, physician assistants, marriage and family therapists, or clinical social workers are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the board.

SEC. 2. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed physical therapists.
(12) Licensed occupational therapists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.

(10) Naturopathic doctors.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.

(10) Licensed physical therapists.
(11) Licensed occupational therapists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to authorize licensed physical therapists to be shareholders, officers, directors, or professional employees of~~

~~medical corporations and podiatric medical corporations as soon as possible, it is necessary that this act take effect immediately.~~

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AB 824

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 824
Author: Chesbro
Bill Date: February 17, 2011, introduced
Subject: Rural Hospitals: Physician Services
Sponsor: California Hospital Association

STATUS OF BILL:

This bill is currently in Assembly Health Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes findings and declarations related to the difficulty of hospitals recruiting and retaining physicians. This bill allows rural hospitals, as defined, to employ up to 10 physicians and surgeons to provide medical services at the hospital or any other health facility that the rural hospital owns or operates. This bill also requires the Medical Board of California (the Board) to deliver a report to the Legislature regarding the demonstration project by January 1, 2019.

ANALYSIS:

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

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

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

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of

California have participated, employing a total of six physicians. The last date for physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

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

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

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

This bill allows rural hospitals to employ one or more physicians and surgeons, but no more than 10 at one time, to provide medical services at the rural hospital or other health facility that the rural hospital owns or operates. This bill defines rural hospital as all of the following: a general acute care hospital (GACH) located in an area designated as nonurban by the United States Census Bureau; a GACH located in a rural-urban commuting area code of 4 or greater as designated by the United States Department of Agriculture; or a rural GACH as defined in subdivision (a) of Section 1250 of the Health and Safety Code. According to the Sponsor, there are 69 rural hospitals and they would all meet the requirements of this bill. This would allow potentially 690 physicians to be directly employed by rural hospitals; however it is unlikely that all rural hospitals would participate and that they would all hire 10 physicians.

This bill allows a rural hospital whose service area includes a medically underserved area (which is defined as an area defined in federal regulations or an area of the state where unmet priority needs for physicians exists as determined by the California Healthcare Workforce Policy Commission), a medically underserved population (which are defined as the Medi-Cal, Healthy Families and uninsured population), or that has been federally designated as a health professional shortage area, to employ up to 10 physicians at one time to provide medical services. The Board would be able to authorize employment of additional physicians if it deems appropriate. The rural hospital

may retain all or part of the income generated by the physician and surgeon for medical services billed and collected by the rural hospital, if the physician and surgeon approves the charges.

A rural hospital may participate in the pilot program if the following conditions are met: the rural hospital documents that it has been unsuccessful in recruiting one or more primary care or specialty physicians for at least 12 continuous months (unless there is an unexpected or sudden vacancy that needs to be filled immediately); and the chief executive officer of the rural hospital certifies to the Board that the inability to recruit primary care or specialty physicians has negatively impacted patient care in the community and that there is a critical unmet need in the community.

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

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

- Voluntarily desires to be employed by the hospital.
- Will exercise independent medical judgment in all matters relating to the provision of medical care to his or her patients.
- Will report immediately to the Board any action or event that the physician reasonably and in good faith believes constitutes a compromise of his or her independent medical judgment in providing patient care.

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

If a report is filed with the Board and the Board believes that a rural hospital has violated this prohibition, the Board shall refer the matter to the Department of Public Health (DPH), which shall investigate the matter. If the department believes that the rural hospital has violated the prohibition, it shall notify the rural hospital. Certain due process procedures are set forth and penalties are outlined.

Lastly, this bill requires the Board to deliver a report to the Legislature regarding the demonstration project by January 1, 2019. The report must include an evaluation of the effectiveness of the demonstration project in improving access to health care in rural and medically underserved areas and the demonstration project's impact on consumer protection as it relates to intrusions into the practice of medicine. This bill sunsets the direct employment of physicians' pilot project on January 1, 2022.

The written policy and statement should be more appropriately submitted to both the Board and the DPH, so both agencies are aware of the policy the hospital has established for the physicians as it relates to public protection. Further, employment protection must be provided for all employed physicians, so that any report filed with the Board does not lead to retaliatory action by the hospital.

The intent of the original pilot was to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities. This was seen as one avenue through which to improve access to care for underserved populations. In the past, the Board has supported expansion of the pilot project in order to allow us to collect the required data; however, expanding to potentially 690 physicians may not be limited enough to protect consumers.

It is important to note that there are three bills that allow for various pilot programs allowing direct employment of physicians pending in the 2011 legislative session.

SUPPORT: California Hospital Association (Sponsor); Association of California Healthcare Districts; Barton Memorial Hospital; California Center for Rural Policy, Humboldt State University; California State Association of Counties; Catalina Island Medical Center; Eastern Plumas Health Care; El Centro Regional Medical Center; George L. Mee Memorial Hospital; John C. Fremont Healthcare District; Lompoc Valley Medical Center; Modoc Medical Center Regional Council of Rural Counties; St. Joseph Health System – Humboldt County; Sutter Amador Hospital; Tehachapi Valley Healthcare District; and Trinity Hospital.

OPPOSITION: California Chapter of the American College of Emergency Physicians and California Medical Association

FISCAL: Within existing resources to monitor the program, potentially $50,000 to do the evaluation study in 2019.

POSITION: Recommendation: Support in Concept

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 824

Introduced by Assembly Member Chesbro

February 17, 2011

~~An act to amend Section 1179 of the Health and Safety Code, relating~~ *An act to add and repeal Chapter 6.5 (commencing with Section 124871) of Part 4 of Division 106 of the Health and Safety Code, relating* to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 824, as amended, Chesbro. ~~Rural health.~~ *Rural hospitals: physician services.*

Existing law requires the Secretary of the California Health and Welfare Agency to establish an Office of Rural Health within the agency and sets forth its powers and duties relating to promoting a strong working relationship between state government, prescribed entities, and rural consumers and relating to developing health initiatives and maximizing existing resources without duplication. ~~Existing law makes related findings and declarations, including, but not limited to, recognizing the need to take a comprehensive approach to strengthen and coordinate rural health programs and health care delivery systems.~~

~~This bill would revise those findings and declarations to, instead, recognize the need to take a comprehensive approach, which includes federal health care reform, to strengthen and coordinate rural health programs and health care delivery systems.~~

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

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

This bill would, until January 1, 2022, establish a demonstration project authorizing a rural hospital, as defined, that meets specified conditions, to employ up to 10 physicians and surgeons at one time, except as provided, to provide medical services at the rural hospital or other health facility that the rural hospital owns or operates, and to retain all or part of the income generated by the physicians and surgeons for medical services billed and collected by the rural hospital if the physician and surgeon in whose name the charges are made approves the charges. The bill would require a rural hospital that employs a physician and surgeon pursuant to those provisions to develop and implement a policy regarding the independent medical judgment of the physician and surgeon. The bill would require these physicians and surgeons to biennially sign a specified statement.

The bill would impose various duties on the department and the Medical Board of California including a requirement that the board deliver a report to the Legislature regarding the demonstration project by January 1, 2019.

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

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

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

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

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

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

(d) Allowing rural hospitals to directly employ physicians will allow rural hospitals to provide economic security adequate for a physician to relocate and reside in the communities served by the rural hospitals and will help rural hospitals recruit physicians to provide medically necessary services in these communities and further enhance technological developments such as the adoption of electronic medical records.

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

(f) Direct employment of physicians by the University of California hospitals, county hospitals, and community clinics has proved to be a successful recruitment tool for those entities and provided physicians with much sought after economic and professional security.

(g) It is the intent of the Legislature by enacting this act to establish a demonstration project authorizing a rural hospital that meets the conditions set forth in Chapter 6.5 (commencing with Section 124871) of Part 4 of Division 106 of the Health and Safety Code to employ physicians directly and to charge for their professional services.

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

(i) It is the further intent of the Legislature to increase the number of physicians in rural communities to address the unprecedented physician shortage and not to redistribute the current physicians, by allowing rural hospitals to directly hire physicians currently working in health clinics in these communities.

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

CHAPTER 6.5. RURAL HOSPITAL PHYSICIAN AND SURGEON SERVICES DEMONSTRATION PROJECT

124871. For purposes of this chapter, "rural hospital" means all of the following:

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

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

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

124872. (a) Notwithstanding Article 18 (commencing with Section 2400) of Chapter 5 of Division 2 of the Business and Professions Code and in addition to other applicable laws, a rural hospital whose service area includes a medically underserved area, a medically underserved population, or that has been federally designated as a health professional shortage area may employ one or more physicians and surgeons, not to exceed 10 physicians and surgeons at one time, except as provided in subdivision (c), to provide medical services at the rural hospital or other health facility, as defined in Section 1250, that the rural hospital owns or operates. The rural hospital may retain all or part of the income generated by the physician and surgeon for medical services billed and collected by the rural hospital, if the physician and surgeon in whose name the charges are made approves the charges.

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

(1) The rural hospital documents that it has been unsuccessful in recruiting one or more primary care or speciality physicians for at least 12 continuous months beginning July 1, 2010. An exception shall be provided to the 12 month recruiting process when there is an unexpected or sudden vacancy that needs to be filled immediately.

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

to, the number of patients referred for care outside the community, the number of patients who experienced delays in treatment, and the length of the treatment delays.

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

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

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

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

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

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

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

(d) A rural hospital shall not interfere with, control, or direct a physician and surgeon's exercise of his or her independent medical judgment in providing medical care to patients. If, pursuant to a report to the Medical Board of California required by paragraph (3) of subdivision (a), the Medical Board of California believes that a rural hospital has violated this prohibition, the Medical Board of California shall refer the matter to the State Department of Public Health, which shall investigate

the matter. If the department concludes that the rural hospital has violated the prohibition, it shall notify the rural hospital. The rural hospital shall have 20 working days to respond in writing to the department's notification, following which the department shall make a final determination. If the department finds that the rural hospital violated the prohibition, it shall assess a civil penalty of five thousand dollars ($5,000) for the first violation and twenty-five thousand dollars ($25,000) for any subsequent violation that occurs within three years of the first violation. If no subsequent violation occurs within three years of the most recent violation, the next civil penalty, if any, shall be assessed at the five thousand dollar ($5,000) level. If the rural hospital disputes a determination by the department regarding a violation of the prohibition, the rural hospital may request a hearing pursuant to Section 131071. Penalties, if any, shall be paid when all appeals have been exhausted and the department's position has been upheld.

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

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

(b) This chapter shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

~~SECTION 1. Section 1179 of the Health and Safety Code is amended to read:~~

~~1179. The Legislature finds and declares all of the following:~~

~~(a) Outside of California's four major metropolitan areas, the majority of the state is rural. In general, the rural population is older, sicker, poorer, and more likely to be unemployed, uninsured, or underinsured. The lack of primary care, specialty providers and transportation continue to be significant barriers to access to health services in rural areas.~~

~~(b) There is no coordinated or comprehensive plan of action for rural health care in California to ensure the health of California's rural residents. Most of the interventions that have taken place on behalf of rural communities have been limited in scope and purpose and were not conceived or implemented with any comprehensive or systematic approach in mind. Because health planning tends to focus on approaches for population centers, the unique needs of rural communities may not be addressed. A comprehensive plan and approach is necessary to obtain federal support and relief, as well as to realistically institute state and industry interventions.~~

~~(c) Rural communities lack the resources to make the transition from present practices to managed care, and to make other changes that may be necessary as the result of health care reform efforts. With numerous health care reform proposals being debated and with the extensive changes in the current health care delivery system, a comprehensive and coordinated analysis must take place regarding the impact of these proposals on rural areas.~~

~~(d) Rural areas lack the technical expertise and resources to improve and coordinate their local data collection activities, which are necessary for well-targeted health planning, program development, and resource development. Data must be available to local communities to enable them to plan effectively.~~

~~(e) The Legislature recognizes the need to take a comprehensive approach, which includes federal health care reform, to strengthen and coordinate rural health programs and health care delivery systems in order to:~~

~~(1) Facilitate access to high quality health care for California's rural communities.~~

~~(2) Promote coordinated planning and policy development among state departments and between the State and local public and private providers.~~

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AB 895

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 895
Author:	Halderman
Bill Date:	February 17, 2011, introduced
Subject:	Personal Income Tax: Physicians: Qualified Medical Services
Sponsor:	Author

STATUS OF BILL:

This bill is currently in Assembly Revenue and Taxation Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would provide a tax credit for physicians of up to $5,000 for providing medical services or emergency medical services free of charge or at a reduced rate at a local community clinic or in an emergency department of a hospital.

ANALYSIS:

Currently, there is a shortage of health care providers in California. Many physicians who would like to volunteer their services are unable to do so due to the cost of medical malpractice insurance. In 2010, the Medical Board sponsored a bill, SB 1031 (Corbett), which would have provided medical malpractice coverage to volunteer physicians who are providing uncompensated medical care to low-income or underserved patients in order to promote access to care.

This bill would provide a tax credit of up to $5,000 for physicians and surgeons and osteopathic physicians and surgeons who provide qualified medical services. This bill defines qualified medical services as medical services or emergency medical services provided free of charge or at a reduced rate at a local community clinic or in an emergency department of a general acute care hospital. The amount of the tax credit is 25 percent of the value of the qualified medical services personally provided by the physician and surgeon. This bill includes a sunset date of December 1, 2017.

According to the author's office, underpayment and non-payment by Medi-Cal contributed to the closure of her medical practice in underserved rural central California. The author was unable to cover basic operating costs when providing uncompensated and undercompensated care to rural populations. The author believes this a chronic problem in rural areas where the physician workforce is scare and reimbursement rates are unsustainable. The author believes that this bill will provide an incentive for California physicians provide uncompensated care, and will help physicians recoup losses incurred when providing uncompensated care. The author believes this bill will help California improve access to medical care for consumers who might otherwise go untreated.

This bill will provide an incentive for physicians who volunteer their services in community clinics and emergency departments. The Board has been supportive in the past of any measure that promotes physicians to volunteer and helps to increase access to care for California consumers.

SUPPORT: California Medical Association

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support

April 18, 2011

ASSEMBLY BILL No. 895

Introduced by Assembly Members Halderman and Portantino

February 17, 2011

An act to add and repeal Section 17053.90 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 895, as introduced, Halderman. Personal income tax: physicians: qualified medical services.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2012, and before January 1, 2017, in an amount equal to 25% of the value of qualified medical services, as defined, personally provided by a qualified taxpayer during the taxable year.

This bill would take effect immediately as a tax levy.

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

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

SECTION 1. Section 17053.90 is added to the Revenue and Taxation Code, to read:

17053.90. (a) For each taxable year beginning on or after January 1, 2012, and before January 1, 2017, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to 25 percent of the value of qualified medical

services personally provided by a qualified taxpayer during the taxable year.

(b) For purposes of this section:

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

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

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

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

(c) The amount of credit allowed to any qualified taxpayer by this section shall not exceed five thousand dollars ($5,000) per taxable year.

(d) (1) The value of medical services provided shall be determined according to the usual, reasonable, and customary rate as described in Section 1300.71(a)(3)(B) of Title 28 of the California Code of Regulations.

(2) In the case of medical services being provided at a reduced rate, the amount used to calculate the value of the qualified medical services provided shall be the difference between the value of the medical services provided, as determined by paragraph (1), and the reduced rate charged.

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

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

(g) If the credit allowed by this section exceeds the "net tax" for the taxable year, the excess may be carried over to reduce the "net tax" for the succeeding eight taxable years, or until the credit has been exhausted, whichever occurs first.

(h) This section shall remain in effect only until December 1, 2017, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (g).

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

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AB 926

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 926
Author: Hayashi
Bill Date: February 18, 2011, Introduced
Subject: Physicians and Surgeons: Direct Employment
Sponsor: Author

STATUS OF BILL:

This bill is currently in Assembly Business, Professions and Consumer Protection Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill makes findings and declarations related to communities having difficulty in recruiting and retaining physicians and surgeons. This bill establishes a pilot project that would provide for the direct employment of a total of 50 physicians and surgeons by qualified district hospitals. This bill requires the Medical Board of California (the Board) to report to the Legislature on the evaluation of the effectiveness of the pilot project in improving access to health care in rural and medically underserved areas and the project's impact on consumer protection as it relates to intrusions into the practice of medicine by October 1, 2020. This bill also will be amended to contain an urgency clause.

ANALYSIS:

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

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

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

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

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

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

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

This bill would create a new pilot program that would provide for the direct employment of a total of 50 physicians and surgeons by qualified district hospitals, up to five physicians and surgeons per each district hospital. This bill defines a qualified district hospital as a hospital that meets all of the following requirements:

- Must be organized and governed pursuant to Local Health Care District Law.
- Must provide a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days.
- Must be located in a county with a total population of less than 750,000.
- Must have net losses from operations in fiscal year 2008-09, as reported to the Office of Statewide Health Planning and Development.

A qualified district hospital may directly employ a licensee if all of the following conditions are satisfied:

- The total number of physicians and surgeons employed by all qualified district hospitals does not exceed 50.
- The medical staff and elected trustees of the qualified district hospital concur by an affirmative vote of each body that the physician and surgeon's employment is in the best interest of the communities served by the hospital.
- The licensee enters into or renews a written employment contract with the qualified district hospital prior to December 31, 2015, for a term not in excess of four years. The contract shall provide for a mandatory dispute resolution under the auspices of the Board for disputes directly relating to the licensee's clinical practice.
- The total number of licensees employed by the qualified district hospital must not exceed five at any time.
- The qualified district hospital notifies the Board in writing that the hospital plans to enter into a written contract with the licensee and the board has confirmed that the licensee's employment is within the maximum number permitted. The Board must provide written confirmation to the hospital within five working days of receipt of the written notification to the board.

This bill would also require the Board to report to the Legislature on the evaluation of the effectiveness of the pilot project in improving access to health care in rural and medically underserved areas and the project's impact on consumer protection as it relates to intrusions into the practice of medicine by October 1, 2020. This bill will be amended to contain an urgency clause.

It remains unclear what impact, if any, would be realized by changing the past limit of 20 physicians statewide to 50, or by increasing the number of physicians at each hospital from two to five. As SB 376 was being debated before the Legislature, the Board discussed the potential impact of the bill with the author's office. While recognizing that the limitations of the pilot (a statewide total of 20 participants with no more than two physicians at any one hospital) would make only a small first-step towards increasing access to healthcare, the Board anticipated that all 20 slots soon would be filled. After the Governor signed the bill and the law took effect on January 1, 2004, staff was prepared to promptly process the applications as they were submitted. The Board recognized that to have an adequate base of physicians to use in preparing a valid analysis of the pilot, as many as possible of the 20 positions would need to be filled. However, such a significant response failed to materialize. Unexpectedly, the first application was not received until six months after the pilot became operational, and that hospital elected to hire a physician for only three years instead of the four years allowed by the pilot. Further, during the years that the pilot was operational, only six physicians were hired by five eligible hospitals. So, unless there is an unexpected groundswell of interest in the revised pilot, this workload could be accomplished within existing resources. Again, expanding the pool of available positions to be filled could increase access to health care.

Another important issue to note is that this bill contains one provision that was included in last year's SB 726 (Ashburn), which requires the Board to establish a dispute resolution process. Per Senator Ashburn's office last year, "the board" in this context was intended to mean the hospital board, not the Medical Board. If this is the case with this bill,

an amendment is needed to clarify "hospital board". Staff is working with the author's office on amendments to the sections of the bill that require mandatory dispute resolution for disputes directly relating to clinical practice. The Board does not have a dispute resolution process at this time and implementing one would be costly and result in a significant fiscal impact.

The Board supported the concept of expanding the pilot program in some manner in one of the three bills from the 2009/10 legislative session. This bill keeps the pilot reasonably small with potentially enough physicians to fully evaluate the impact of the direct employment of physicians by both district hospitals and rural hospitals.

FISCAL: Within existing resources to monitor the program, potentially $50,000 to do the evaluation study in 2020.

SUPPORT: None on file

OPPOSITION: Association of California Health Care Districts

POSITION: Recommendation: Support in Concept

April 26, 2011

ASSEMBLY BILL No. 926

Introduced by Assembly Member Hayashi

February 18, 2011

An act to add and repeal Section 2401.1 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 926, as introduced, Hayashi. Physicians and surgeons: direct employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law established, until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50% of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorized the direct employment of not more than 20 physicians and surgeons by all of those hospitals to provide medically necessary services in rural and medically underserved communities. Existing law imposed specified duties on the Medical Board of California with regard to the pilot project.

This bill would, until January 1, 2022, reenact the pilot project to allow all qualified district hospitals to employ not more than 50 physicians and surgeons, under circumstances described above. The bill would require the Medical Board of California to report to the Legislature by October 1, 2020, on the effectiveness of the pilot project.

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

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

SECTION 1. Section 2401.1 is added to the Business and Professions Code, to read:

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

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

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

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

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

(b) A pilot project to provide for the direct employment of a total of 50 physicians and surgeons by qualified district hospitals is hereby established in order to improve the recruitment and retention of physicians and surgeons in rural and other medically underserved areas.

(c) For purposes of this section, a qualified district hospital means a hospital that meets all of the following requirements:

(1) Is a district hospital organized and governed pursuant to the Local Health Care District Law (Division 23 (commencing with Section 32000) of the Health and Safety Code).

(2) Provides a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days.

(3) Is located in a county with a total population of less than 750,000.

(4) Has net losses from operations in fiscal year 2008–09, as reported to the Office of Statewide Health Planning and Development.

(d) In addition to the requirements of subdivision (c), and in addition to other applicable laws, a qualified district hospital may directly employ a licensee pursuant to subdivision (b) if all of the following conditions are satisfied:

(1) The total number of physicians and surgeons employed by all qualified district hospitals under this section does not exceed 50.

(2) The medical staff and the elected trustees of the qualified district hospital concur by an affirmative vote of each body that the physician and surgeon's employment is in the best interest of the communities served by the hospital.

(3) The licensee enters into or renews a written employment contract with the qualified district hospital prior to December 31, 2015, for a term not in excess of four years. The contract shall provide for mandatory dispute resolution under the auspices of the board for disputes directly relating to the licensee's clinical practice.

(4) The total number of licensees employed by the qualified district hospital does not exceed five at any time.

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

(e) (1) The board shall report to the Legislature not later than October 1, 2020, on the evaluation of the effectiveness of the pilot project in improving access to health care in rural and medically underserved areas and the project's impact on consumer protection as it relates to intrusions into the practice of medicine.

(2) The report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

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

(g) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2022, deletes or extends that date.

O

AB 958

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 958
Author: Berryhill, B.
Bill Date: February 18, 2011, introduced
Subject: Regulatory Boards: Limitations Periods
Sponsor: Author

STATUS OF BILL:

This bill is currently in Assembly Business, Professions, and Consumer Protection Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would significantly reduce the time periods for the statute of limitations for all boards and bureaus under the Department of Consumer Affairs (DCA). This bill would require an accusation to be filed within one year after any board discovers the act or omission alleged as the grounds for discipline, or within four years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first.

ANALYSIS:

Existing law sets the statute of limitations for the Medical Board at three years to file the accusation after the Board discovers the act or omission alleged as the grounds for discipline, or within seven years after the act or omission alleged as the grounds for discipline occurs, whichever occurs first. Existing law also gives more time for sexual misconduct, although it gives three years to file the accusation, it gives 10 years from the time when the act or omission occurred.

This bill would significantly lower the statute of limitations for all boards under DCA. According to the author's office, this bill was introduced to, "foster a more cooperative relationship with business as well as ensure that the public good is met". The author's office believes that California licensing laws should be on the same level as the criminal statutes of limitations. The author's office believes that "treating Californians who are licensed worse than we treat most criminals is unacceptable and needs to be changed. AB 958 attempts to make this distinction and treat licensees fairly."

This bill will have a detrimental effect on the Board's enforcement program. In order to meet these new statute of limitations requirements, the Board would have to essentially double its enforcement staff, which would not be possible at this time due to the hiring freeze. As an example of current timelines, in 2009/10 the average time it took the Board to process a complaint, investigate, and have the Attorney General's Office prepare and file the accusation was 510 days, or just less than two years.

In addition, there are many steps in the enforcement investigation process that are not under the control of the Board. Currently, when the Board receives a complaint from a consumer, medical records are obtained and reviewed before the case can be sent to the field for investigation. Once the case is in the field a comprehensive review takes place, the Board must interview the physician to either close the case, or move forward with an expert review and possibly disciplinary action. The Board is having documented delays in investigations due to physicians intentionally not showing up for their physician interviews; the Board is trying to address this issue through legislation. Also, when the Board completes its investigation, the case is forwarded to the Attorney General's (AG's) office to prepare and file the accusation. The Board does not have control over any delays that might occur at the AG's office.

The Board is currently working on internal and legislative ways to bring down case investigation timelines. Mandating a drastic change in the statute of limitations timelines will put consumers in California at risk and put impossible time constraints on both the boards within DCA and the AG's office.

SUPPORT: None on file

OPPOSITION: None on file

FISCAL: This bill will result in significant fiscal impact to the Board. The Board would need to essentially double its enforcement staff to be able to comply with the proposed statute of limitations.

POSITION: Recommendation: Oppose

ASSEMBLY BILL No. 958

Introduced by Assembly Member Bill Berryhill

February 18, 2011

An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

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 110.5 is added to the Business and Professions Code, to read:

110.5. (a) Notwithstanding any other provision of law and except as provided in subdivisions (b) and (c), any accusation filed

against a licensee of a board described in Section 101, pursuant to Section 11503 of the Government Code, shall be filed within one year after the board discovers the act or omission alleged as the ground for disciplinary action, or within four years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) If an alleged act or omission involves a minor, the four-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

(c) If a licensee intentionally conceals evidence of wrongdoing, the four-year limitations period provided for by subdivision (a) shall be tolled during that period of concealment.

SEC. 2. Section 1670.2 of the Business and Professions Code is repealed.

~~1670.2. (a) Except as otherwise provided in this section, any proceeding initiated by the board against a licensee for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).~~

~~(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.~~

~~(d) If an alleged act or omission involves any conduct described in subdivision (c) of Section 1680 committed on a minor, the seven-year limitations period in subdivision (a) and the 10-year limitations period in subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in subdivision (c) of Section 1680 not committed on a minor shall~~

~~be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2005.~~

~~(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 3. Section 2230.5 of the Business and Professions Code is repealed.

~~2230.5. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).~~

~~(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.~~

~~(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary~~

~~action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 4. Section 2960.05 of the Business and Professions Code is repealed.

~~2960.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 5. Section 3137 of the Business and Professions Code is repealed.

~~3137. (a) Except as otherwise provided in this section, any accusation filed against a licensee pursuant to Section 11503 of the Government Code for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).~~

~~(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.~~

~~(d) If an alleged act or omission involves any conduct described in Section 726 committed on a minor, the 10-year limitations period in subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in Section 726 shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2006.~~

~~(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for~~

~~prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 6. Section 3750.51 of the Business and Professions Code is repealed.

~~3750.51. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 7. Section 4982.05 of the Business and Professions Code is repealed.

~~4982.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section~~

~~11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

~~(g) For purposes of this section, "discovers" means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:~~

~~(1) The date the board received a complaint or report describing the act or omission.~~

~~(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.~~

~~(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.~~

SEC. 8. Section 4990.32 of the Business and Professions Code is repealed.

~~4990.32. (a) Except as otherwise provided in this section, an accusation filed pursuant to Section 11503 of the Government Code against a licensee or registrant under the chapters the board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~(b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~(c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~(d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for~~

~~prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

~~(g) For purposes of this section, "discovers" means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:~~

~~(1) The date the board received a complaint or report describing the act or omission.~~

~~(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.~~

~~(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.~~

SEC. 9. Section 5561 of the Business and Professions Code is repealed.

~~5561. All accusations against licensees charging the holder of a license issued under this chapter with the commission of any act constituting a cause for disciplinary action shall be filed with the board within five years after the board discovers, or through the use of reasonable diligence should have discovered, the act or omission alleged as the ground for disciplinary action, whichever occurs first, but not more than 10 years after the act or omission alleged as the ground for disciplinary action. However, with respect to an accusation alleging a violation of Section 5579, the accusation may be filed within three years after the discovery by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 5579.~~

SEC. 10. Section 5661 of the Business and Professions Code is repealed.

~~5661. All accusations against a licensee shall be filed within three years after the board discovers, or through the use of reasonable diligence should have discovered, the act or omission alleged as the ground for disciplinary action or within six years after the act or omission alleged as the ground for disciplinary action, whichever occurs first. However, with respect to an accusation alleging a violation of Section 5667, the accusation may be filed within three years after the discovery by the board~~

~~of the alleged facts constituting the fraud or misrepresentation prohibited by Section 5667.~~

~~If any accusation is not filed within the time provided in this section, no action against a licensee shall be commenced under this article.~~

SEC. 11. Section 7686.5 of the Business and Professions Code is repealed.

~~7686.5. All accusations against licensees shall be filed with the bureau within two years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the bureau, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within three years after such discovery.~~

SEC. 12. Section 9884.20 of the Business and Professions Code is repealed.

~~9884.20. All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation.~~

SEC. 13. Section 9889.8 of the Business and Professions Code is repealed.

~~9889.8. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.~~

O

AB 1360

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1360
Author: Swanson
Bill Date: February 18, 2011, introduced
Subject: Physicians and Surgeons: Employment
Sponsor: Author

STATUS OF BILL:

This bill is in Assembly Health Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill allows for the direct employment of physicians by health care districts and clinics owned or operated by health care districts if specific requirements are met. This bill allows a health care district to apply to the Medical Board of California (the Board) to employ up to five primary or specialty care physicians and surgeons. The health care district can also apply to the Medical Board to employ up to five additional physicians and surgeons if more documentation on the need is submitted to the Board. Lastly, this bill requires the Office of Statewide Health Planning and Development (OSHPD), in consultation with the Department of Public Health and the Board to conduct an efficacy study of the program and report the results to the Legislature by June 1, 2020.

ANALYSIS:

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

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

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

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

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

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

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

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

This bill would allow direct employment of up to five primary or specialty care physicians and surgeons by health care districts and clinics owned or operated by health care districts. The health care district would also be able to apply to the Medical Board to employ up to five additional physicians and surgeons if more documentation on the need is submitted to the Board. According to the author's office, there are 75 health care districts and 71 of these districts qualify under the provisions of this bill. This would equate to potentially 355 physicians that would be allowed to be employed by health care districts, and even more if the Board authorized employment of more physicians for health care districts.

In order to apply to the Board for direct employment of physicians, health care districts would be required to have a service area that includes a Medically Underserved Area (MUA) or a Medically Underserved Population (MUP) as defined in Section 127928 of the Health and Safety Code, or has been federally designated as a Health

Professional Shortage Area (HPSA). The health care district would also need to meet the following requirements:

- The district board conducts a public hearing and adopts a formal resolution declaring that a need exists for the district to recruit and directly employ one or more physicians and surgeons to serve unmet community need.
- The resolution shall include specific findings and declarations related to patients in the community's lack to access of care, that the community lacks sufficient numbers of physician and surgeons, and that the district has been actively recruiting physicians and surgeons for at least 12 consecutive months.
- The district would be prohibited from actively recruiting a physician and surgeon who is currently employed by a federally qualified health center, a rural health center, or other community clinic not affiliated with the district.
- Once the resolution is adopted by the district board, the executive officer of the district shall submit an application to the Board with a copy of the resolution and relevant documentation of the district's inability to recruit a physician and surgeon. The Board then shall approve and authorize the employment of up to five primary or specialty care surgeons by the district.
- If the Board receives and reviews subsequent documentation of the need for additional primary or specialty care physicians and surgeons by the district, the Board shall approve and authorize the employment of up to five additional primary or specialty care physicians and surgeons by the district.
- Employment contracts with physicians and surgeons are for a period of 10 years, but can be renewed or extended until December 31, 2022.

This bill also requires the Office of Statewide Health Planning and Development (OSHPD), in consultation with the Department of Public Health and the Board to conduct an efficacy study of the program to evaluate the following: improvement in physician and surgeon recruitment and retention in the districts participating in the program; impacts on physician and surgeon and health care access in the communities served by these districts; impacts on patient outcomes; degree of patient and participating physician and surgeon satisfaction; and impacts on the independence and autonomy of medical decision making by employed physicians and surgeons. The study must be completed and the results reported to the Legislature by June 1, 2020. This reporting requirement becomes inoperative on June 1, 2024.

This bill specifies that a health care district that employs physicians under this bill must not interfere with, control, or otherwise direct a physician and surgeon's professional judgment.

The intent of the original pilot was to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities. This was seen as one avenue through which to improve access to care for underserved populations. In the past, the Board has supported expansion of the pilot project in order to allow us to collect the required data; however, expanding to potentially 355 physicians may not be limited enough to protect consumers. According to the sponsor, health care districts are public entities and should be able to hire physicians as state and county agencies do.

The California Medical Association (CMA) believes that this bill should apply to rural areas only, that 50 percent of the patient population should be uninsured, Medicare or Medi-Cal eligible, and most importantly believe that medical staff and the community should have input on the hiring of physicians by the health care districts, as the original pilot program required.

It is important to note that there are three bills that allow for various pilot programs allowing direct employment of physicians pending in the 2011 legislative session.

FISCAL: Unknown

SUPPORT: American Federation of State, County and Municipal Employees (AFSCME) (Sponsor); Association of California Health Care Districts; and Health Access California

OPPOSITION: California Medical Association; California Society of Anesthesiologists; and California Primary Care Association

POSITION: Recommendation: Support in Concept

ASSEMBLY BILL No. 1360

Introduced by Assembly Member Swanson

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1360, as introduced, Swanson. Physicians and surgeons: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law established, until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50% of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorized the direct employment of a total of 20 physicians and surgeons by those hospitals to provide medically necessary services in rural and medically underserved communities.

This bill would authorize a health care district, as defined, and a clinic owned or operated by a health care district, as specified, to employ physicians and surgeons if the health care district's service area includes a Medically Underserved Area (MUA) or a Medically Underserved Population (MUP), or has been federally designated as a Health Professional Shortage Area (HPSA); the district board conducts a public hearing and adopts a formal resolution declaring the need for the district

to recruit and directly employ one or more physicians and surgeons; and the executive officer of the district provides specified documentation to the Medical Board of California. Upon receipt of that documentation, the bill would require the Medical Board of California to approve the employment of up to 5 primary or specialty care physicians and surgeons by the district, and, upon receipt of additional documentation after that employment, to approve an additional 5 primary or specialty care physicians and surgeons. The bill would provide that a district may, until December 31, 2022, enter into, renew, or extend any employment contract with a physician and surgeon for up to 10 years. The bill would require the Office of Statewide Health Planning and Development, in consultation with the State Department of Public Health and the Medical Board of California, to report to the Legislature by June 1, 2020, with regard to the efficacy of the employment of physicians and surgeons by health care districts, as specified.

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

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

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

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

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

(c) Notwithstanding Section 2400, a narcotic treatment program operated under Section 11876 of the Health and Safety Code and regulated by the State Department of Alcohol and Drug Programs,

may employ licensees and charge for professional services rendered by those licensees. However, the narcotic treatment program shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.

(d) *(1)* Notwithstanding Section 2400, ~~a hospital owned and operated by a~~ health care district *operated* pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code may employ ~~a licensee pursuant to Section 2401.1, and~~ *physicians and surgeons, and* may charge for professional services rendered by ~~the licensee,~~ *a physician and surgeon,* if the physician and surgeon in whose name the charges are made approves the charges. ~~However, the hospital shall not interfere with, control, or otherwise direct the physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.~~, *and if all of the following conditions are met:*

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

(B) The district board conducts a public hearing and adopts a formal resolution declaring that a need exists for the district to recruit and directly employ one or more physicians and surgeons to serve unmet community need.

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

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

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

(iii) The district has been actively working to recruit one or more physicians and surgeons to address unmet community need, or to fill an impending vacancy, for a minimum of 12 consecutive months, beginning July 1, 2010, without success.

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

(D) The resolution shall also do the following:

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

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

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

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

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

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

into, renew, or extend employment contracts with physicians and surgeons pursuant to this subdivision until December 31, 2022.

(5) The Office of Statewide Health Planning and Development, in consultation with the State Department of Public Health and the Medical Board of California, shall conduct an efficacy study of the program under this subdivision to evaluate improvement in physician and surgeon recruitment and retention in the districts participating in the program, impacts on physician and surgeon and health care access in the communities served by these districts, impacts on patient outcomes, degree of patient and participating physician and surgeon satisfaction, and impacts on the independence and autonomy of medical decisionmaking by employed physicians and surgeons. This study shall be completed and its results reported to the Legislature no later than June 1, 2020.

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

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

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

(g) (1) The report to be submitted pursuant to paragraph (5) of subdivision (d) shall be submitted in compliance with Section 9795 of the Government Code.

(2) The requirement for submitting the report imposed under paragraph (5) of subdivision (d) shall become inoperative on June 1, 2024, pursuant to Section 10231.5 of the Government Code.

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SB 100

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 100
Author:	Price
Bill Date:	April 25, 2011, amended
Subject:	Healing Arts
Sponsor:	Author
Board Position:	Support if Amended

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill covers a variety of subjects. This bill will allow outpatient settings to be licensed by the California Department of Public Health (CDPH) or accredited by an accreditation agency approved by the Medical Board of California (the Board). This bill also contains new requirements for outpatient setting accreditation and licensing and for information sharing between CDPH and the Board. In addition, this bill includes requirements on the supervision of laser and intense pulse laser device procedures, advertising, and disclosing outpatient setting information to the public.

The April 25th amendments make significant changes to this bill. First, they take out all provisions regarding licensing of outpatient settings by the California Department of Public Health (CDPH). They also take out all provisions related to advertising. Lastly, they add to requirements for accreditation agencies, outpatient settings and the Board.

ANALYSIS of 4/25 AMENDED BILL:

The April 25th amendments significantly amend this bill. The amendments remove all provisions from the bill regarding licensing of outpatient settings by CDPH. They also take out all provisions related to advertising. Lastly, they add to requirements for accreditation agencies, outpatient settings, and the Board. The new requirements that have been added to this bill are as follows:

Amends H&S Code Section 1248.15

This section was amended to do the following:

- Require outpatient settings to submit for approval by an accreditation agency at the time accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan must include, at a minimum, that when a patient is

being transferred to a local accredited or licensed acute care hospital, the outpatient setting must: (1) notify the individual designated by the patient to be notified in case of an emergency; (2) ensure that the mode of transfer is consistent with the patient's medical condition; (3) ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer, and (4) continue to provide appropriate care to the patient until the transfer can be effectuated.

This language has been added to address concerns that detailed procedures are not in place at these settings.

- Allow the Board to adopt regulations to specify procedures that should be performed in an accredited setting for facilities or clinics that are outside the definition of an outpatient setting.

  This is to address the concern that some procedures are being performed in facilities that do not have to be accredited.

- Require the accrediting agency as part of the accreditation process to conduct a reasonable investigation of the prior history of the outpatient setting, including all licensed physicians and surgeons who have an ownership interest therein, to determine whether there have been any adverse accreditation decisions rendered against them. "Conducting a reasonable investigation" for the purposes of this section means querying the Medical Board of California and the Osteopathic Medical Board of California to ascertain if either the outpatient setting has, or if its owners are licensed physicians and surgeons, if those physicians and surgeons have, been subject to an adverse accreditation decision.

  This will proactively help to ensure that outpatient settings have not had adverse actions and are not owned by physicians that have adverse actions, which will promote consumer protection.

- An outpatient setting shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4

  This subjects the outpatient setting to the never events reporting requirements and fines associated.

<u>Amends H&S Code Section 1248.2</u>

This section was amended to require that the listing of information that the Board must obtain and maintain to be posted on the Board's Internet Web site. In addition, the list now must include any owner's medical license number and also requires accrediting agencies to provide and update the Board on all outpatient settings that are accredited.

This will ensure that the Board is provided this information and that consumers have access to this information.

Amends H&S Code Section 1248.25

This section now requires the accrediting agency to report to the Board within three business days (instead of immediately) when an outpatient settings' accreditation has been revoked.

Amends H&S Code Section 1248.35

This section was amended to do the following:

- Require outpatient settings to correct identified deficiencies within a set time and specify that failure to comply results in the accrediting agency issuing a reprimand or suspending or revoking the accreditation.

- Require an outpatient setting to comply with a corrective action within a timeframe specified by the accrediting agency, if the outpatient setting does not comply, the accrediting agency shall issue a reprimand, and may either place the outpatient setting on probation, suspend or revoke the accreditation of an outpatient setting, and shall notify the board of its action.

- Require the accreditation agency, upon receipt of a complaint from the Board that an outpatient setting poses an immediate risk to public safety, to inspect an outpatient setting and report its findings within five business days. Accreditation agencies shall investigate any other complaints received by the Board and report its findings to the Board within 30 days.

  This will help to ensure than inspections are done timely and will promote consumer protection.

- Require the inspection results to be kept on file with the Board and the accreditation agency along with the plan of correction and comments. It also specifies that inspection reports, lists of deficiencies, and plans of corrections are public records open to public inspection.

  The inspection reports should be confidential until the final report is done. If there is an issue that the accrediting agency is working with the outpatient setting on to correct, it should not be made public until the final report and results are complete.

- Require that if one accrediting agency denies, revokes, or suspends accreditation, the action shall apply to all other accreditation agencies. Recent amendments allow an outpatient setting to re-apply for accreditation with the same agency, or with another agency if the outpatient setting discloses the full accreditation report. It is the responsibility of the outpatient setting to disclose the accreditation report.

  This is to prohibit "accreditation shopping"; however, the recent amendments allow the outpatient setting to possibly be accredited if the full accreditation report is disclosed.

- Require an accreditation agency that has suspended, revoked or denied accreditation for an outpatient setting to do the following:
    - Notify the Board.
    - Send a notification letter to the outpatient setting stating that the setting is no longer allowed to perform procedures that require accreditation.
    - Require the outpatient setting to remove its accreditation certification and post the notification letter in a conspicuous location, accessible to public view.

      This will help to ensure that both the Board and consumers are notified and made aware when an outpatient setting is no longer accredited.

- Allow the Board to take any appropriate action it deems necessary if an outpatient settings accreditation has been suspended, revoked, or denied.

Amend H&S Code Section 1248.7

This newly amended section will require the Board to investigate all complaints concerning a violation of this chapter. Requires the Board, upon discovery that an outpatient setting in operation but not accredited, the Board or the local district attorney must bring an action to enjoin the outpatient setting's operation. This bill would specify that if an outpatient setting is operating without accreditation, it shall be prima facie evidence that a violation of law has occurred and additional proof shall not be necessary to enjoin the outpatient setting's operation.

Currently, if the Board receives this type of complaint, it would be forwarded to the District Attorney. This bill now requires the Board to investigate these complaints, which will add to the Board's workload. This workload would be given to the Board's Operation Safe Medicine Unit, which will be dissolved beginning July of 2011 if it is not included in the budget.

Amends H&S Code Section 1248.85

Lastly, this bill specifies that a survey shall not constitute an inspection.

This should be amended to say that a physical inspection is required. According to the accrediting agencies, they call their inspections surveys, and they are always done in person, never by paper only, which is the situation this provision is trying to address.

FISCAL: The newly required evaluations that must be performed by the Board every three years will result in additional workload for the Board, as will the requirement for the Board to investigate all complaints related to outpatient settings in operation that are not accredited.

SUPPORT: The Board (if amended)

OPPOSITION: None on File

POSITION: Support if Amended – Technical amendments are needed to make only the final inspection reports available to the public and to specify that inspections should be physical inspections, instead of saying a survey shall not constitute an inspection.

April 26, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL **No. 100**

Introduced by Senator Price

January 11, 2011

~~An act to amend Sections 651 and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1204, 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.55, and 1279 of, and to add Sections 1204.6, 1204.7, and 1204.8 to, the Health~~ *An act to amend Section 2023.5 of the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.7, and 1248.85 of the Health* and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 100, as amended, Price. Healing arts.

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

This bill would require certain healing arts licensees to include in advertisements, as defined, certain words or designations following their names indicating the particular educational degree they hold or

healing art they practice, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

~~(2) Existing~~

(1) Existing law provides for the licensure and regulation of various healing arts practitioners by boards under the Department of Consumer Affairs. Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by January 1, 2013, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

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

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

~~(4) Under existing law, the State Department of Public Health licenses and regulates clinics, including surgical clinics, as defined.~~

~~This bill would expand the definition of surgical clinics to include a surgical clinic owned in whole or in part by a physician and would require, until the department promulgates regulations for the licensing of surgical clinics, the department to use specified federal conditions of coverage.~~

~~(5)~~

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

This bill would include, among those specified aspects, the submission for approval by an accreditation agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in

the event of serious complications or side effects from surgery. *This bill would, as part of the accreditation process, authorize the accrediting agency to conduct a reasonable investigation, as defined, of the prior history of the outpatient setting.* The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined. By changing the definition of a crime, this bill would impose a state-mandated local program.

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

~~This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The bill would also require the board to give the department notice of all accredited, certified, and licensed outpatient settings and to notify the department of accreditation standards, changes in the accreditation of an outpatient setting, or any disciplinary actions and corrective actions.~~

This bill would, instead, require the board to obtain and maintain the list for all accredited outpatient settings, and to notify the public by placing the information on its Internet Web site, whether the setting is accredited or the setting's accreditation has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accreditation agency to ~~immediately~~ report *within 3 business days* to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would also apply the denial of accreditation, or the revocation or suspension of accreditation by one accrediting agency, to all other accrediting agencies.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California,

or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified, and would specify that it may also be inspected by the board and the department, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

~~Existing law authorizes the Medical Board of California to terminate approval of an accreditation agency if the agency is not meeting the criteria set by the board.~~

~~This bill would also authorize the board to issue a citation to the agency, including an administrative fine, in accordance with a specified system established by the board.~~

Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

~~(5) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.~~

~~This bill would state the intent of the Legislature that the department, as part of its periodic inspections of acute care hospitals, inspect the peer review process utilized by those hospitals.~~

Existing law authorizes the board or the local district attorney to bring an action to enjoin a violation or threatened violation of the licensing provisions for outpatient settings in the superior court in and for the county in which the violation occurred or is about to occur.

This bill would require the board to investigate all complaints concerning a violation of these provisions and, with respect to any complaints, or upon discovery that an outpatient setting is not in compliance with a specified provision, would require the board or the local district attorney to bring an action to enjoin the outpatient setting's operation as specified.

~~(6)~~

(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:

~~SECTION 1. (a) It is the intent of the Legislature to clarify Capen v. Shewry (2007) 147 Cal.App.4th 680 and give surgical clinics that are owned in whole or in part by physicians the option to be licensed by the State Department of Public Health. It is further the intent of the Legislature that this clarification shall not be construed to permit the practice of medicine in prohibition of the corporate practice of medicine pursuant to Section 2400 of the Business and Professions Code.~~

~~(b) It is the further intent of the Legislature to continue to give physicians and surgeons the option to obtain licensure from the State Department of Public Health if they are operating surgical clinics, or an accreditation through an accrediting agency approved by the Medical Board of California pursuant to Chapter 1.3 (commencing with Section 1248) of Division 2 of the Health and Safety Code.~~

~~(c) It is the further intent of the Legislature, in order to ensure patient protection, to provide appropriate oversight by the State Department of Public Health, and to allow corrective action to be taken against an outpatient setting if there is reason to believe that there may be risk to patient safety, health, or welfare, that an outpatient setting shall be deemed licensed by the State Department of Public Health.~~

~~SEC. 2. Section 651 of the Business and Professions Code is amended to read:~~

~~651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely~~

~~to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.~~

~~(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:~~

~~(1) Contains a misrepresentation of fact.~~

~~(2) Is likely to mislead or deceive because of a failure to disclose material facts.~~

~~(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.~~

~~(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.~~

~~(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.~~

~~(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.~~

~~(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.~~

~~(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.~~

~~(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.~~

~~(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.~~

~~(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.~~

~~(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.~~

~~(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).~~

~~(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.~~

~~(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.~~

~~(h) Advertising by any person so licensed may include the following:~~

~~(1) A statement of the name of the practitioner.~~

~~(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.~~

~~(3) A statement of office hours regularly maintained by the practitioner.~~

~~(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.~~

~~(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.~~

~~(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.~~

~~(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:~~

~~(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.~~

~~(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.~~

~~(III) Successful completion of oral and written examinations based on psychometric principles.~~

~~(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.~~

~~(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.~~

~~(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the~~

~~physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.~~

~~For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.~~

~~For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.~~

~~The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.~~

~~(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association~~

~~meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.~~

~~For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.~~

~~The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.~~

~~(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.~~

~~(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.~~

~~(8) A statement of publications authored by the practitioner.~~

~~(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.~~

~~(10) A statement of his or her affiliations with hospitals or clinics.~~

~~(11) A statement of the charges or fees for services or commodities offered by the practitioner.~~

~~(12) A statement that the practitioner regularly accepts installment payments of fees.~~

~~(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.~~

~~(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.~~

~~(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.~~

~~(16) A statement, or statements, providing public health information encouraging preventative or corrective care.~~

~~(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.~~

~~(i) (1) Advertising by the following licensees shall include the designations as follows:~~

~~(A) Advertising by a chiropractor licensed under Chapter 2 (commencing with Section 1000) shall include the designation "D.C." or the word "chiropractor" immediately following the chiropractor's name.~~

~~(B) Advertising by a dentist licensed under Chapter 4 (commencing with Section 1600) shall include the designation "D.D.S." or "D.M.D." 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 "M.D." 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 "D.O." 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 "D.P.M." immediately following the podiatrist's name.~~

~~(F) Advertising by a registered nurse licensed under Chapter 6 (commencing with Section 2700) shall include the designation "R.N." 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 "L.V.N." immediately following the licensed vocational nurse's name.~~

~~(H) Advertising by a psychologist licensed under Chapter 6.6 (commencing with Section 2900) shall include the designation "Ph.D." immediately following the psychologist's name.~~

~~(I) Advertising by an optometrist licensed under Chapter 7 (commencing with Section 3000) shall include the applicable designation or word described in Section 3098 immediately following the optometrist's name.~~

~~(J) Advertising by a physician assistant licensed under Chapter 7.7 (commencing with Section 3500) shall include the designation "P.A." 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 "N.D." immediately following the naturopathic doctor's name. However, if the naturopathic doctor uses the term or designation "Dr." in an advertisement, he or she shall further identify himself by any of the terms listed in Section 3661.~~

~~(2) For purposes of this subdivision, "advertisement" includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.~~

~~(3) Advertisements do not include any of the following:~~

~~(A) A medical directory released by a health care service plan or a health insurer.~~

~~(B) A billing statement from a health care practitioner to a patient.~~

~~(C) An appointment reminder from a health care practitioner to a patient.~~

~~(4) This subdivision shall not apply until January 1, 2013, to any advertisement that is published annually and prior to July 1, 2012.~~

~~(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.~~

~~(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.~~

~~(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.~~

~~(f) 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. 3.~~

SECTION 1. Section 2023.5 of the Business and Professions Code is amended to read:

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

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

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

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

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

(c) On or before January 1, 2013, the board shall adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse

light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by the federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.

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

~~SEC. 4. 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. Section 1204 of the Health and Safety Code is amended to read:~~

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

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

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

~~(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for~~

~~services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.~~

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

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

~~(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours, including a surgical clinic that is owned in whole or in part by a physician. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.~~

~~(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal 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.~~

~~SEC. 6. Section 1204.6 is added to the Health and Safety Code, to read:~~

~~1204.6. Until the department promulgates regulations for the licensing of surgical clinics, the department shall use the federal conditions of coverage, as set forth in Subpart C of Part 416 of Title 42 of the Code of Federal Regulations, as those conditions existed on May 18, 2009, as the basis for licensure for facilities licensed pursuant to paragraph (1) of subdivision (b) of Section 1204.~~

~~SEC. 7. Section 1204.7 is added to the Health and Safety Code, to read:~~

~~1204.7. (a) An outpatient setting, as defined in subdivision (a) of Section 1248, that is accredited by an accrediting agency approved by the Medical Board of California, shall be deemed licensed by the department and shall be required to pay an annual licensing fee as established pursuant to Section 1266.~~

~~(b) The department shall have only that authority over outpatient settings specified in Chapter 3.1 (commencing with Section 1248).~~

~~(c) The department shall notify the Medical Board of California of any action taken against an outpatient setting and, if licensure of an outpatient setting is revoked or suspended by the department for any reason, then accreditation shall be void by operation of law. Notwithstanding Sections 1241 and 131071, proceedings shall not be required to void the accreditation of an outpatient setting under these circumstances.~~

~~SEC. 8. Section 1204.8 is added to the Health and Safety Code, to read:~~

~~1204.8. A clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 or an outpatient setting, as defined in Section 1248, shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4.~~

~~SEC. 9.~~

SEC. 2. 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.

(2) "Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55.

(3) "Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the board pursuant to Sections 1248.15 and 1248.4.

~~SEC. 10. Section 1248.15 of the Health and Safety Code is amended to read:~~

~~1248.15. (a) The board shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:~~

~~(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.~~

~~(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.~~

~~(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.~~

~~(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:~~

~~(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.~~

~~(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.~~

~~(D) The outpatient setting shall submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.~~

~~(E) The outpatient setting shall submit for approval by an accreditation agency at the time accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations.~~

~~(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of Public Health, and the appropriate licensing authority.~~

~~(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.~~

~~(4) Outpatient settings shall have a system for maintaining clinical records.~~

~~(5) Outpatient settings shall have a system for patient care and monitoring procedures.~~

~~(6) (A) Outpatient settings shall have a system for quality assessment and improvement.~~

~~(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.~~

~~(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.~~

~~(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the board. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.~~

~~(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.~~

~~(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.~~

~~(10) Outpatient settings shall have a written discharge criteria.~~

~~(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.~~

~~(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the board to protect the public health and safety.~~

~~(d) No accreditation standard adopted or approved by the board, and no standard included in any certification program of any accreditation agency approved by the board, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.~~

~~(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.~~

SEC. 3. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ *board* shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

(iii) Submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(D) In addition to the requirements imposed in subparagraph (C), the outpatient setting shall submit for approval by an accreditation agency at the time of accreditation a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan shall include, at a minimum, that if a patient is being transferred to a local accredited or licensed acute care hospital, the outpatient setting shall do all of the following:

(i) Notify the individual designated by the patient to be notified in case of an emergency.

(ii) Ensure that the mode of transfer is consistent with the patient's medical condition.

(iii) Ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer.

(iv) Continue to provide appropriate care to the patient until the transfer is effectuated.

~~(D)~~

(E) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of ~~Health Services~~ *Public Health*, and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of* the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of* the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of* the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the

outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division~~ *board*. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ *board* to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division~~ *board*, and no standard included in any certification program of any accreditation agency approved by the ~~division~~ *board*, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be

afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.

(f) The board may adopt regulations it deems necessary to specify procedures that should be performed in an accredited outpatient setting for facilities or clinics that are outside the definition of outpatient setting as specified in Section 1248.

(g) As part of the accreditation process, the accrediting agency shall conduct a reasonable investigation of the prior history of the outpatient setting, including all licensed physicians and surgeons who have an ownership interest therein, to determine whether there have been any adverse accreditation decisions rendered against them. For the purposes of this section, "conducting a reasonable investigation" means querying the Medical Board of California and the Osteopathic Medical Board of California to ascertain if either the outpatient setting has, or, if its owners are licensed physicians and surgeons, if those physicians and surgeons have, been subject to an adverse accreditation decision.

(h) An outpatient setting shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4.

~~SEC. 11.~~

SEC. 4. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the board under this chapter.

~~(b) The board shall submit to the State Department of Public Health the information required pursuant to paragraph (3) of subdivision (d) within 10 days of the accreditation of an outpatient setting.~~

~~(c) The board shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies~~

~~approved by the board, and shall 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. The board shall provide notice to the department within 10 days when an outpatient setting's accreditation has been revoked, suspended, or placed on probation. The department shall notify the board within 10 days if the license of a surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204, has been revoked.~~

~~(d) (1) The board shall, on or before February 1, 2012, provide the department with a list of all outpatient settings that are accredited as of January 1, 2012.~~

~~(2) Beginning April 1, 2012, the board shall provide the department with an updated list of outpatient settings every three months.~~

(b) The board shall obtain and maintain a list of accredited outpatient settings from the information provided by the accreditation agencies approved by the board, and shall notify the public by placing the information on its Internet Web site whether an outpatient setting is accredited or the setting's accreditation has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

~~(3)~~

(c) The list of outpatient settings shall include all of the following:

~~(A) Name, address, and telephone number of the owner.~~

(1) Name, address, and telephone number of any owners, and their medical license numbers.

~~(B)~~

(2) Name and address of the facility.

~~(C)~~

(3) The name and telephone number of the accreditation agency.

~~(D)~~

(4) The effective and expiration dates of the accreditation.

~~(e) The board shall provide the department with all accreditation standards approved by the board, free of charge. Accreditation standards provided to the department by the board shall not be subject to public disclosure provisions of the California Public~~

~~Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code).~~

(d) Accrediting agencies approved by the board shall notify the board and update the board on all outpatient settings that are accredited.

~~SEC. 12.~~

SEC. 5. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the board, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. The accreditation agency shall ~~immediately report~~ *report within three business days* to the board if the outpatient setting's certificate for accreditation has been denied.

~~SEC. 13.~~

SEC. 6. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. (a) Every outpatient setting which is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided.

(3) The Medical Board of California or the accreditation agency may enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the

standards under which it was approved, the accreditation agency may do any of the following:

(1) Require correction of any identified deficiencies within a set timeframe. Failure to comply shall result in the accrediting agency issuing a reprimand or suspending or revoking the outpatient setting's accreditation.

~~(1)~~

(2) Issue a reprimand.

~~(2)~~

(3) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the board or the accreditation agency, to correct the deficiencies.

~~(3)~~

(4) Suspend or revoke the outpatient setting's certification of accreditation.

(d) *(1)* Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the ~~outpatient center. During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view. Within 10 days after the~~ *outpatient setting. During the allotted time to correct the deficiencies, the plan of correction, which includes the deficiencies, shall be conspicuously posted by the outpatient setting in a location accessible to public view. Within 10 days after the* adoption of the plan of correction, the accrediting agency shall send a list of deficiencies and the corrective action to be taken to both the board and the department. The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

~~(e) The department may enter and inspect an outpatient setting upon receipt of a notice of corrective action or if it has reason to believe that there may be risk to patient safety, health, or welfare.~~

~~(f) An outpatient setting that does not comply with a corrective action may be required by the department to pay similar penalties assessed against a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204, and may have its license suspended or revoked pursuant to Article 5 (commencing with Section 1240) of Chapter 1.~~

~~(g) If the licensee disputes a determination by the department regarding the alleged deficiency, the alleged failure to correct a deficiency, the reasonableness of the proposed deadline for correction, or the amount of the penalty, the licensee may, within 10 days, request a hearing pursuant to Section 130171. Penalties shall be paid when appeals have been exhausted and the department's position has been upheld.~~

~~(h) Moneys collected by the department as a result of administrative penalties imposed under this section shall be deposited into the Internal Departmental Quality Improvement Account established pursuant to Section 1280.15. These moneys shall be tracked and available for expenditure, upon appropriation by the Legislature, to support internal departmental quality improvement activities.~~

~~(i) If, after an inspection authorized pursuant to this section, the department finds a violation of a standard of the facility's accrediting agency or any provision of this chapter or the regulations promulgated thereunder, or if the facility fails to pay a licensing fee or an administrative penalty assessed under this chapter, the department may take any action pursuant to Article 5 (commencing with Section 1240) of Chapter 1 and shall report the violation to the board and may recommend that accreditation be revoked, canceled, or not renewed.~~

~~(j) Reports on the results of any inspection conducted pursuant to subdivision (a) shall be kept on file with the board or the accreditation agency along with the plan of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.~~

(2) If an outpatient setting does not comply with a corrective action within a timeframe specified by the accrediting agency, the accrediting agency shall issue a reprimand, and may either place the outpatient setting on probation or suspend or revoke the accreditation of the outpatient setting, and shall notify the board of its action. This section shall not be deemed to prohibit an outpatient setting that is unable to correct the deficiencies, as specified in the plan of correction, for reasons beyond its control, from voluntarily surrendering its accreditation prior to initiation of any suspension or revocation proceeding.

~~(k)~~

(e) The accreditation agency shall, within 24 hours, report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

(f) The accreditation agency, upon receipt of a complaint from the board that an outpatient setting poses an immediate risk to public safety, shall inspect the outpatient setting and report its findings of inspection to the board within five business days. If an accreditation agency receives any other complaint from the board, it shall investigate the outpatient setting and report its findings of investigation to the board within 30 days.

(g) Reports on the results of any inspection shall be kept on file with the board and the accreditation agency along with the plan of correction and the comments of the outpatient setting. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

~~(l)~~

(h) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies. *An outpatient setting that is denied accreditation is permitted to reapply for accreditation with the same accrediting agency. The outpatient setting also may apply for accreditation from another accrediting agency, but only if it discloses the full accreditation report of the accrediting agency that denied accreditation. Any outpatient setting that has been denied accreditation shall disclose the accreditation*

report to any other accrediting agency to which it submits an application.

(i) If an outpatient setting's certification of accreditation has been suspended or revoked, or if the accreditation has been denied, the accreditation agency shall do all of the following:

(1) Notify the board of the action.

(2) Send a notification letter to the outpatient setting of the action. The notification letter shall state that the setting is no longer allowed to perform procedures that require outpatient setting accreditation.

(3) Require the outpatient setting to remove its accreditation certification and to post the notification letter in a conspicuous location, accessible to public view.

(j) The board may take any appropriate action it deems necessary pursuant to Section 1248.7 if an outpatient setting's certification of accreditation has been suspended or revoked, or if accreditation has been denied.

~~SEC. 14.~~

SEC. 7. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. The board shall evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

~~SEC. 15. Section 1248.55 of the Health and Safety Code is amended to read:~~

~~1248.55. (a) If the accreditation agency is not meeting the criteria set by the board, the board may terminate approval of the agency or may issue a citation to the agency in accordance with the system established under subdivision (b).~~

~~(b) The board may establish, by regulation, a system for the issuance of a citation to an accreditation agency that is not meeting the criteria set by the board. This system shall meet the requirements of Section 125.9 of the Business and Professions Code, as applicable, except that both of the following shall apply:~~

~~(1) Failure of an agency to pay an administrative fine assessed pursuant to a citation within 30 days of the date of the assessment, unless the citation is being appealed, may result in the board's~~

~~termination of approval of the agency. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal fee established under Section 1248.6. Approval of an agency shall not be renewed without payment of the renewal fee and fine.~~

~~(2) Administrative fines collected pursuant to the system shall be deposited in the Outpatient Setting Fund of the Medical Board of California established under Section 1248.6.~~

~~(c) Before terminating approval of an accreditation agency, the board shall provide the accreditation agency with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the requirements of this chapter, as well as the opportunity for a hearing on the matter in compliance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(d) (1) If approval of the accreditation agency is terminated by the board, outpatient settings accredited by that agency shall be notified by the board and, except as provided in paragraph (2), shall be authorized to continue to operate for a period of 12 months in order to seek accreditation through an approved accreditation agency, unless the time is extended by the board for good cause.~~

~~(2) The board may require that an outpatient setting, that has been accredited by an accreditation agency whose approval has been terminated by the board, cease operations immediately if the board is in possession of information indicating that continued operation poses an imminent risk of harm to the health of an individual. In such cases, the board shall provide the outpatient setting with notice of its action, the reason underlying it, and a subsequent opportunity for a hearing on the matter. An outpatient setting that is ordered to cease operations under this paragraph may reapply for a certificate of accreditation after six months and shall notify the board promptly of its reapplication. The board shall notify the department of any action taken pursuant to this section for an outpatient setting. Upon cancellation, revocation, nonrenewal, or any other loss of accreditation, an outpatient setting's license shall be void by operation of law. Notwithstanding Sections 1241 and 131071, no proceedings shall be required to void the license of an outpatient setting.~~

~~SEC. 16. Section 1279 of the Health and Safety Code is amended to read:~~

~~1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.~~

~~(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.~~

~~(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.~~

~~(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.~~

~~(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.~~

~~(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.~~

~~(g) Notwithstanding any other of law, the department shall inspect for compliance with provisions of state law and regulations during a state periodic inspection or at the same time as a federal periodic inspection, including, but not limited to, an inspection required under this section. If the department inspects for compliance with state law and regulations at the same time as a~~

~~federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.~~

~~(h) The department shall emphasize consistency across the state and in its district offices when conducting licensing and certification surveys and complaint investigations, including the selection of state or federal enforcement remedies in accordance with Section 1423. The department may issue federal deficiencies and recommend federal enforcement actions in those circumstances where they provide more rigorous enforcement action.~~

~~(i) It is the intent of the Legislature that the department, pursuant to its existing regulations, inspect the peer review process utilized by acute care hospitals as part of its periodic inspection of those hospitals pursuant to this section.~~

SEC. 8. Section 1248.7 of the Health and Safety Code is amended to read:

1248.7. ~~The Division of Medical Quality~~ *(a) The board shall investigate all complaints concerning a violation of this chapter. With respect to any complaints, or upon discovery that an outpatient setting is not in compliance with Section 1248.1, the board or the local district attorney shall bring an action to enjoin the outpatient setting's operation. The board* or the local district attorney may bring an action to enjoin a violation or threatened violation of this chapter in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the Division of Medical Quality shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss.

~~With~~

(b) With respect to any and all actions brought pursuant to this section alleging an actual or threatened violation of any requirement of this chapter, the court shall, if it finds the allegations to be true, issue an order enjoining the person or facility from continuing the violation. *For purposes of Section 1248.1, if an outpatient setting is operating without a certificate of accreditation, this shall be prima facie evidence that a violation of Section 1248.1*

has occurred and additional proof shall not be necessary to enjoin the outpatient setting's operation.

SEC. 9. Section 1248.85 of the Health and Safety Code is amended to read:

1248.85. ~~Nothing in this~~ *This* chapter shall *not* preclude an approved accreditation agency from adopting additional standards consistent with Section 1248.15, establishing procedures for the conduct of surveys, selecting surveyors to perform accreditation surveys, or establishing and collecting reasonable fees for the conduct of accreditation surveys. *A survey shall not constitute an inspection for purposes of Section 1248.35.*

~~SEC. 17.~~

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

O

SB 233

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 233
Author: Pavley
Bill Date: March 31, 2011, amended
Subject: Emergency Services and Care
Sponsor: California Academy of Physician Assistants

STATUS OF BILL:

This bill is currently in Senate Health Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would explicitly clarify that a physician assistant (PA) can provide treatment and consultation in an emergency care setting.

ANALYSIS:

Existing law allows PAs to provide evaluation, consultation, and treatment, as long as these services are performed pursuant to a PA's scope of practice and delegation of services agreement and under the supervision of a physician and surgeon.

The existing definition of "emergency services and care" in the health and safety code does not specifically list a PA as being allowed to give this treatment. Existing law says, "other appropriate personnel under the supervision of a physician". According to the author's office, an issue recently arose at Mission Hospital in Orange County, in which a PA was prohibited by the hospital from providing a "consult" in the emergency room. The hospital pointed to the existing law that this bill is proposing to amend as the reasoning because it does not explicitly authorize a PA to perform consulting and treatment in an emergency room setting.

This bill will clarify existing law to explicitly authorize PAs to perform consulting and treatment, which is also in line with the Federal Emergency Medical Treatment and Labor Act (EMTALA), which permits PAs to provide consults in the emergency department. This bill would make state law consistent with federal law.

This bill will be amended to accept amendments suggested by Senate Health Committee that would include in the definition of "consultation" language to clarify that emergency services and care may be performed by appropriate personnel acting pursuant to their scope of practice and licensure under the supervision of a physician and surgeon. The purpose of these amendments is to not limit other mid-range practitioners in emergency departments from providing appropriate services.

SUPPORT: California Academy of Physician Assistants (Sponsor)

OPPOSITION: California Chapter of American College of Emergency Physicians

FISCAL: None

POSITION: Recommendation: Support

April 26, 2011

AMENDED IN SENATE MARCH 31, 2011

SENATE BILL **No. 233**

Introduced by Senator Pavley

February 9, 2011

An act to amend Section 1317.1 of the Health and Safety Code, relating to emergency services.

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Pavley. Emergency services and care.

Existing law provides for the licensure and regulation of health facilities. A violation of these provisions is a crime. Existing law requires emergency services and care to be provided to any person requesting the services or care for any condition in which the person is in danger of loss of life, or serious injury or illness. For the purposes of these provisions, emergency services and care is defined to include medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition or active labor, within the capability of the facility. Existing law also defines consultation as the rendering of an opinion, advice, or prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and specialty physicians, includes review of the patient's record, examination, and treatment of the patient in person by a specialty physician who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient.

This bill would expand the definition of emergency services and care to include care, treatment, and surgery by a physician assistant in

compliance with prescribed provisions. This bill would also expand the definition of consultation to authorize physician assistants to provide a consultation.

By expanding the definition of a crime, this 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:

SECTION 1. Section 1317.1 of the Health and Safety Code, as amended by Section 1 of Chapter 423 of the Statutes of 2009, is amended to read:

1317.1. Unless the context otherwise requires, the following definitions shall control the construction of this article and Section 1371.4:

(a) (1) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery by a physician and surgeon, or physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code *and who practices under the supervision of a qualified physician and surgeon, pursuant to Division 13.8 (commencing with Section 1399.502) of Title 16 of the California Code of Regulations*, necessary to relieve or eliminate the emergency medical condition, within the capability of the facility.

(2) (A) "Emergency services and care" also means an additional screening, examination, and evaluation by a physician, or other personnel to the extent permitted by applicable law and within the scope of their licensure and clinical privileges, to determine if a psychiatric emergency medical condition exists, and the care and

treatment necessary to relieve or eliminate the psychiatric emergency medical condition, within the capability of the facility.

(B) The care and treatment necessary to relieve or eliminate a psychiatric emergency medical condition may include admission or transfer to a psychiatric unit within a general acute care hospital, as defined in subdivision (a) of Section 1250, or to an acute psychiatric hospital, as defined in subdivision (b) of Section 1250, pursuant to subdivision (k). Nothing in this subparagraph shall be construed to permit a transfer that is in conflict with the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(C) For the purposes of Section 1371.4, emergency services and care as defined in subparagraph (A) shall not apply to Medi-Cal managed care plan contracts entered into with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000), Chapter 8 (commencing with Section 14200), and Chapter 8.75 (commencing with Section 14590) of Part 3 of Division 9 of the Welfare and Institutions Code, to the extent that those services are excluded from coverage under those contracts.

(D) This paragraph does not expand, restrict, or otherwise affect the scope of licensure or clinical privileges for clinical psychologists or other medical personnel.

(b) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction of any bodily organ or part.

(c) "Active labor" means a labor at a time at which either of the following would occur:

(1) There is inadequate time to effect safe transfer to another hospital prior to delivery.

(2) A transfer may pose a threat to the health and safety of the patient or the unborn child.

(d) "Hospital" means all hospitals with an emergency department licensed by the state department.

(e) "State department" means the State Department of Public Health.

(f) "Medical hazard" means a material deterioration in medical condition in, or jeopardy to, a patient's medical condition or expected chances for recovery.

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

(h) "Within the capability of the facility" means those capabilities that the hospital is required to have as a condition of its emergency medical services permit and services specified on Services Inventory Form 7041 filed by the hospital with the Office of Statewide Health Planning and Development.

(i) "Consultation" means the rendering of an opinion, advice, or prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and specialty physicians and surgeons, or physician assistants practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code *and who practices under the supervision of a qualified physician and surgeon, pursuant to Division 13.8 (commencing with Section 1399.502) of Title 16 of the California Code of Regulations*, includes review of the patient's medical record, examination, and treatment of the patient in person by a specialty physician and surgeon, or physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code *and who practices under the supervision of a qualified physician and surgeon, pursuant to Division 13.8 (commencing with Section 1399.502) of Title 16 of the California Code of Regulations*, who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient.

(j) A patient is "stabilized" or "stabilization" has occurred when, in the opinion of the treating provider, the patient's medical condition is such that, within reasonable medical probability, no material deterioration of the patient's condition is likely to result from, or occur during, the release or transfer of the patient as provided for in Section 1317.2, Section 1317.2a, or other pertinent statute.

(k) (1) "Psychiatric emergency medical condition" means a mental disorder that manifests itself by acute symptoms of sufficient severity that it renders the patient as being either of the following:

(A) An immediate danger to himself or herself or to others.

(B) Immediately unable to provide for, or utilize, food, shelter, or clothing, due to the mental disorder.

(2) This subdivision does not expand, restrict, or otherwise affect the scope of licensure or clinical privileges for clinical psychologists or medical personnel.

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

O

SB 380

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 380
Author:	Wright
Bill Date:	April 7, 2011, amended
Subject:	Continuing Education: Nutrition Course
Sponsor:	California Academy of Preventive Medicine

STATUS OF BILL:

This bill is in Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require specified physicians and surgeons to complete a one-time continuing medical education (CME) course within a four year period in the subject of nutrition and lifestyle behavior for the prevention and treatment of chronic diseases.

ANALYSIS:

Existing law requires physicians and surgeons to complete at least 50 hours of approved CME during each two year license renewal cycle. Currently, physicians and surgeons only have a mandatory one-time CME requirement of 12 credit hours in the subject of pain management and the treatment of the terminally ill. There is also a mandate in existing law that requires general internists and family physicians who have a patient population of which over 25 percent are 65 years of age or older to complete at least 20 percent of all mandatory CME in a course in the field of geriatric medicine or the care of older patients.

This bill requires practicing primary care physicians and all other physicians and surgeons who provide care or consultation for chronic disease to complete a mandatory continuing education course in the subject of nutrition and lifestyle behavior for the prevention and treatment of chronic diseases. This is a one-time requirement of seven credit hours that must be completed by December 31, 2016. Physicians licensed on and after January 1, 2012 must complete the requirement within four years or by their second renewal date. This bill allows the board to verify completion of the requirement on the annual renewal form. This bill does not apply to physicians and surgeons practicing in pathology or radiology specialty areas or who do not reside in California.

This bill makes findings and declarations related to health care costs for chronic disease treatment and the last World Health Organization Report that concluded diet was a major factor in the cause of chronic diseases. The findings also state that practicing physicians rate their

nutrition knowledge and skills as inadequate. Every physician has the opportunity to treat patients at risk for chronic disease or that suffer from poor nutrition or lifestyle choices. According to the author's office, chronic conditions are avoidable, but responsible for 7 out of 10 deaths among Americans each year. The author's office believes that education is the key in prevention and reducing health care costs, but states that medical students receive fewer than 20 contact hours of nutrition instruction during their entire medical school careers. One of the Board's medical consultants confirmed this to be true. The Board's medical consultant also stated the little emphasis is put on nutrition and lifestyle behavior as it relates to preventing and treating chronic diseases in medical schools and residencies.

Although the Board usually opposes mandated CME, because of the prevalence of preventable chronic diseases in California, the fact that medical students do not receive much training in nutrition instruction, because this bill has been narrowed to only apply to practicing primary care physicians and all other physicians and surgeons who provide care or consultation for chronic disease, and because this bill only mandates a one-time requirement of seven credit hours over a four-year period, staff is suggesting that the Board take a neutral position. This is one of two bills that mandate a one-time CME requirement in the Legislature this year.

SUPPORT: California Academy of Preventive Medicine (Sponsor); American College for Lifestyle Medicine; Center for Science in the Public Interest; Physicians Committee for Responsible Medicine; and Dr. John MacDougall, M.D.

OPPOSITION: California Academy of Family Physicians; California Medical Association; and California Orthopaedic Association

FISCAL: Minimal and absorbable

POSITION: Recommendation: Neutral

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL **No. 380**

Introduced by Senator Wright

February 15, 2011

An act to add Section 2190.7 to the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, as amended, Wright. Continuing education: nutrition course.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under that act, the board is required to adopt and administer standards for the continuing education of physicians and surgeons. Existing law ~~specifically~~ requires physicians and surgeons to complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients, except that it does not apply to physicians *and surgeons* practicing in pathology or radiology specialty areas. ~~Existing law also authorizes the board to adopt regulations exempting certain other physicians and surgeons.~~

This bill would require *specified* physicians and surgeons to complete, by December 31, 2016, *or as otherwise specified,* a mandatory continuing education course in the subject of nutrition and lifestyle behavior for the *prevention and* treatment of chronic diseases, except that it would not apply to physicians *and surgeons* practicing in pathology or radiology specialty areas. ~~The bill would authorize the board to adopt regulations exempting from this continuing education~~

~~requirement physicians who do not engage in direct patient care, do not provide patient consultations,~~ or *who* do not reside in California.

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) In 2008, U.S. health care spending was about $7,681 per resident and accounted for 16.2 percent of the nation's gross domestic product; this is among the highest of all industrialized countries. Expenditures in the United States on health care surpassed $2.3 trillion in 2008, more than three times the $714 billion spent in 1990, and over eight times the $253 billion spent in 1980.

(b) It is estimated that health care costs for chronic disease treatment account for over 75 percent of national health expenditures.

(c) Seven out of 10 deaths among Americans each year are from chronic diseases. Heart disease, cancer, and stroke account for more than 50 percent of all deaths each year.

(d) The last major report from the World Health Organization in March 2003 concluded diet was a major factor in the cause of chronic diseases.

(e) Dramatic increases in chronic diseases have been seen in Asian countries since the end of WWII with the increase in the gross national product and change to the western diet.

(f) Only 19 percent of students believed that they had been extensively trained in nutrition counseling. Fewer than 50 percent of primary care physicians include nutrition or dietary counseling in their patient visits.

(g) Practicing physicians continually rate their nutrition knowledge and skills as inadequate. More than one-half of graduating medical students report that the time dedicated to nutrition instruction is inadequate.

SEC. 2. Section 2190.7 is added to the Business and Professions Code, to read:

2190.7. (a) All ~~physicians and surgeons~~ *practicing primary care physicians and all other physicians and surgeons who provide*

care or consultation for chronic diseases shall complete a mandatory continuing education course in the subject of nutrition and lifestyle behavior for the *prevention and* treatment of chronic diseases. For the purposes of this section, this course shall be a one-time requirement of seven credit hours within the required minimum established by regulation, to be completed by December 31, 2016. ~~All physicians and surgeons~~

(b) All physicians and surgeons subject to subdivision (a) who are licensed on and after January 1, 2012, shall complete this requirement within four years of their initial license or by their second renewal date, whichever occurs first. The board may verify completion of this requirement on the renewal application form.

~~(b) By regulatory action, the board may exempt a physician and surgeon by practice status category from the requirement in subdivision (a) if the physician and surgeon does not engage in direct patient care, does not provide patient consultations, or does not reside in the State of California.~~

(c) This section shall not apply to physicians and surgeons practicing in pathology or radiology specialty areas *or who do not reside in the State of California.*

O

SB 544

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 544
Author: Price
Bill Date: April 14, 2011, amended
Subject: Consumer Health Protection Enforcement Act
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enact the Consumer Health Protection Enforcement Act which includes various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards.

ANALYSIS:

This bill states the legislative findings on the need to timely investigate and prosecute licensed health care professionals who have violated the law. The legislature also indicates the importance of providing the healing arts boards with the regulatory tools and authorities needed in order for them to be able to reduce the timeframe for investigating and prosecuting violations of the law by healing arts professionals to between 12 and 18 months.

This bill sets forth numerous requirements for all healing arts boards within the Department of Consumer Affairs (DCA). However, this analysis will only cover the sections of the bill that are new requirements for the Medical Board of California (the Board). Specifically this bill:

- Requires a state agency immediately provide all records about a licensee upon receipt of a written request for records from a board for the purposes of an investigation. The records shall include confidential records, medical records, and records related to closed or open investigations.

  This will help the Board obtain more information for its investigations.

- Requires a state agency to notify a board if it is conducting an investigation on an individual and has knowledge that the individual is a licentiate of the board. The notification must include the name, address and professional license type and number of the individual and the name, address, and telephone number a person that can be contacted for further

information on the investigation. This bill requires the state agency to cooperate with the board and provide any requested information.

This will help the Board obtain more information for its investigations.

- Requires a board to maintain the confidentiality of any personally identifying information contained in the records and does not allow the records to be shared, sold, or transferred to a third party.

  This section may need to provide for further confidentiality protections for materials received, not just for personally identifying information, but also for investigation records.

- Requires local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities and employers of a licensee of a board to provide records to a board before receiving payment from a board. The records must include confidential records, medical records and records related to closed or open investigations.

  This will help the Board obtain information for its investigations without requiring any payment up front.

- Allows boards to contract for investigative services with the Department of Justice (DOJ).

  This allows boards to contract with DOJ, but does not require the Board to utilize DOJ's investigative services.

- Establishes a Health Quality Enforcement Unit in the Division of Investigation and states the primary responsibility of that unit is to investigate complaints within the jurisdiction of the healing arts boards.

  This section should specifically exempt the Medical Board, as the Board has its own investigation unit and Health Quality Section.

- Adds to existing law to say that the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient shall be considered a crime substantially related to the practice of medicine.

  It is not clear what "attempted" sexual misconduct means. The Board could only enforce a conviction of sexual misconduct that is currently defined in the Penal Code.

- Restates existing law in the Medical Practice Act related to a conviction of a charge violating any statute or regulation regulating dangerous drugs and controlled substances being considered unprofessional conduct. This bill

adds to existing law to say that the record of conviction is conclusive evidence and a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction.

Although the Medical Practice Act does already include some of these requirements, this section adds to existing law to say that the conviction is conclusive evidence.

- States that discipline may be ordered against a license or a license may be denied when the time for appeal has lapsed or the judgment for conviction has been affirmed on appeal, or when an order granting probation is made, irrespective of a subsequent order.

  This section is unnecessary as it's already covered under the Medical Practice Act; the Board should be exempted from this section.

- Adds sections related to licensees using, prescribing, or self-administering controlled substances, dangerous drugs, or alcoholic beverages if they present a danger to themselves or the public, and related discipline.

  The Board should be excluded from these sections as the Medical Practice Act (Section 2239) already has provisions related to these areas and existing law is more comprehensive.

- Specifies that it is unprofessional conduct for licensees to fail to furnish information in a timely manner to the board or the board's investigators if requested and fail to cooperate and participate in any investigation or disciplinary proceeding pending. This bill specifies that a licensee is not required to waive any constitutional or statutory privilege or to comply within an unreasonable period of time.

  This would provide incentive for physicians to cooperate with investigations, including physician interviews. The Board currently has a sponsored bill that would narrowly require cooperation with interviews, this would give broader authority.

- Requires DOJ to ensure that subsequent reports and disposition information are submitted to boards within 30 days of notification of updates. Requires the Office of the Attorney General (AG) to serve or submit an accusation within 60 calendar days of receipt from a board. Requires the AG to serve or submit a default decision within five days following the filing of a notice of defense. Requires the AG to set a hearing date within three days of receiving a notice of defense, unless a board instructs otherwise.

  It is important to point out that these changes are only made in the Business and Professions Code, not the Government Code, which

would be appropriate for new requirements for the AG's Office. Further, it is unclear what the enforcement mechanism would be if the AG's Office does not comply with the requirements.

- Amends existing law to allow a licensing agency to issue a limited or restricted license to a licentiate if it determines that the licentiate's ability to practice his or her professions safely is impaired due to mental or physical illness affecting competency.

  This would only apply to licentiates, not applicants. This would be valuable for licensees. A clarification should be added to state that limiting or restricting a license is not considered to be discipline.

- Requires boards to query the National Practitioners Data Bank (NPDB) before: granting a license to an applicant residing in another state; granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state; and granting a petition for reinstatement of a revoked or surrendered license. This bill allows boards to query the NPDB before issuing a license. This bill also allows boards to charge a fee to cover the costs of the queries.

  This bill will have a fiscal and workload impact on the Board as it will require the Board to query the NPDB before renewing a license. Although it allows the Board to charge a fee to cover the cost, currently renewals are handled through an automated system. This required query will extend the renewal time frames and could possibly result in lapse of licenses. Further, this section is unnecessary as the Board already receives a daily listing of actions from the NPDB and Board staff reviews this list to see if action has been listed for licensees. The Board should be exempted from this section.

- Adds new provisions related to unlicensed practice. Any person who is unlicensed to practice and engages in practice and any person that fraudulently buys, sells or obtains a license is guilty of a public crime, punishable by a fine of up to $100,000. Any person who supervises the practice of a healing art and is unlicensed, is also guilty of the same crime and subject to the same penalty.

  The Board has supported similar legislation in the past. This will incentivize local district attorneys to prosecute unlicensed practice crimes by raising the fines from the current amount of $1,200 to $100,000.

- Lastly, this bill adds to existing law that any proposed decision or decision that contains any finding of fact that a physician and surgeon has committed a sex offense, shall contain an order revoking the license and the order shall not stay the revocation. Sex offense includes:

- Any offense for which sex offender registration is required.
- Any offense described in specific sections of the penal code.
- Any attempt to commit any specified offense.
- Any offense committed or attempted in any other states or against the laws of the United States, which , if committed or attempted in this state, would have been punishable.

  It is unclear to Board staff on how this section could be enforced. The Board could enforce this for licensees that have been convicted of sex offenses defined in the Penal Code. However, enforcing an "attempt" to commit an offense would be hard to do since the Board would have no way of knowing if the offense was attempted unless a conviction for the attempt was made. The Board would also have no way of knowing if an offense was committed or attempted in any other state unless DOJ had record of the conviction.

The Board believes that overall the additional enforcement measures included in the bill will help to improve consumer protection. Applying existing law in the Medical Practice Act to other boards under DCA will also help to improve consumer protection for other healing arts boards. However, the Board suggests that some amendments be made in order for this bill not to weaken existing law and in order for the Board to be able to implement this bill.

SUPPORT: None on file

OPPOSITION: None on file

FISCAL: The section of the bill that requires queries to the NPDB for renewals would result in costs, however, the bill allows the Board to charge a fee to cover the additional costs.

POSITION: Recommendation: Support if Amended

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL **No. 544**

Introduced by Senator Price

February 17, 2011

~~An act to add Section 1623 to the Business and Professions Code, relating to dentistry.~~ *An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and*

Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Price. ~~Dental Board of California: collection of fees, fines, and cost recovery.~~ *Professions and vocations: regulatory boards.*

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.

The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.

This bill would make it a crime to engage in the practice of healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that 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, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants

within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.~~

~~This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.~~

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

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

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

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

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

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

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions. Consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this act will improve efficiency and increase accountability within the healing arts boards of the Department of Consumer Affairs, and will remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this act will provide healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

SEC. 3. Section 40 is added to the Business and Professions Code, to read:

40. (a) Notwithstanding any other provision of law, for purposes of a board investigation, a state agency shall, upon receiving a request in writing from a board for records about a particular licensee, immediately provide to the board all records about a licensee in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a board, the state agency shall notify the board that it is conducting an investigation against one of its licentiates. The notification of investigation to the board shall include the name, address, and, if known, the professional license type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the board in providing any requested information.

(c) A board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by federal or state law.

SEC. 4. Section 42 is added to the Business and Professions Code, to read:

42. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a board shall provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. These records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.

SEC. 5. Section 44 is added to the Business and Professions Code, to read:

44. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

SEC. 6. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director *or his or her designee* may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by ~~the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine~~ *any of the healing arts boards described in Division 2 (commencing with Section 500)*. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, *for their consideration.*

(b) The director shall report to the Chairpersons of the Senate *Committee on* Business ~~and~~, Professions ~~Committee~~ *and Economic Development* and the Assembly *Committee on* Health ~~Committee~~ annually~~, commencing March 1, 1995,~~ regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

SEC. 7. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary *to* properly ~~to~~ investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the

Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as described in Division 2 (commencing with Section 500), shall not be required to be employees of the Division of Investigation and a healing arts board may contract for investigative services provided by the Department of Justice.

~~(c)~~

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

SEC. 8. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. *There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards described in Section 720.*

Except as provided in Section ~~160, investigators who have the authority of peace officers,~~ *16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services,* as specified in ~~subdivision (a) of Section 160~~ *Section 160 of this code* and in subdivision ~~(a)~~ *(b)* of Section 830.3 of the Penal Code, shall be in the division and *the personnel* shall be appointed by the director.

SEC. 9. Section 505 is added to the Business and Professions Code, to read:

505. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of complaints closed or resolved without discipline, prior to accusation.

(2) The total number of complaints and reports referred for formal investigation.

(3) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(4) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(5) The total number of final licensee disciplinary actions taken, by category.

(6) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(7) The average time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(8) The total number of licensees in diversion or on probation for alcohol or drug abuse, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(9) The total number of probation violation reports and probation revocation filings, and their dispositions.

(10) The total number of petitions for reinstatement, and their dispositions.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) A board that complies with Section 2313 shall not be subject to the requirements of this section.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on October 1, 2016.

SEC. 10. Section 726 of the Business and Professions Code is amended to read:

726. *(a)* The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division; *and* under any initiative act referred to in this division ~~and under Chapter 17 (commencing with Section 9000) of Division 3~~.

(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

~~This~~

(c) This section shall not apply to sexual contact between a ~~physician and surgeon~~ *licensee* and his or her spouse or person in an equivalent domestic relationship when that ~~physician and surgeon~~ *licensee* provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

SEC. 11. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 12. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

SEC. 13. Section 736 is added to the Business and Professions Code, to read:

736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or conviction of any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or conviction of any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(c) A violation of subdivision (a) is a misdemeanor, and upon conviction shall be punished by a fine of up to ten thousand dollars ($10,000), or by imprisonment in the county jail of up to six months, or by both that fine and imprisonment.

SEC. 14. Section 737 is added to the Business and Professions Code, to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if requested by the board.

(b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. However, this subdivision shall not be construed to deprive a

licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require a licensee to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

SEC. 15. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) ~~A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either~~ *licensee of a healing arts board described in this division shall report any* of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or ~~information or of the conviction~~ *the charging of a felony, or of the arrest, conviction, or disciplinary action.*

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000) *and shall constitute unprofessional conduct.*

SEC. 16. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from ~~the Board of Behavioral Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200))~~ *a healing arts board described*

in this division, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the ~~agency~~ *board* that issued the license.

SEC. 17. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the ~~Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board,~~ *appropriate healing arts board described in this division* and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 18. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to ~~the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other~~

~~appropriate allied health board, as applicable,~~ *appropriate healing arts board described in this division* where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the *appropriate healing arts* board.

SEC. 19. Section 803.7 is added to the Business and Professions Code, to read:

803.7. The Department of Justice shall ensure that subsequent reports and subsequent disposition information authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

SEC. 20. Section 803.8 is added to the Business and Professions Code, to read:

803.8. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

(c) The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.

SEC. 21. Section 822 of the Business and Professions Code is amended to read:

822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper, *including issuing a limited or restricted license.*

The licensing agency shall not reinstate a revoked or suspended certificate or license *or lift any restrictions or limitations* until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

SEC. 22. Section 857 is added to the Business and Professions Code, to read:

857. (a) Each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California shall query the federal National Practitioner Data Bank prior to any of the following:

(1) Granting a license to an applicant who is currently residing in another state.

(2) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.

(3) Granting a petition for reinstatement of a revoked or surrendered license.

(b) Notwithstanding subdivision (a), a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California may query the federal National Practitioner Data Bank prior to issuing any license.

(c) A healing arts board shall charge a fee to cover the actual cost to conduct the queries described in this section.

SEC. 23. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(A) Any person who does not hold a current and valid license to practice a healing art under this division to engage in that practice.

(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.

(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific healing arts licensing provisions for which he or she engaged in unauthorized practice.

(b) Notwithstanding any other provision of law, any person who is licensed under this division, and who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art under this division, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 24. Section 1688 is added to the Business and Professions Code, to read:

1688. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 25. Section 1688.1 is added to the Business and Professions Code, to read:

1688.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 39. Section 2246 of the Business and Professions Code is amended to read:

2246. *(a)* Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 40. Section 2533.5 is added to the Business and Professions Code, to read:

2533.5. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 41. Section 2533.6 is added to the Business and Professions Code, to read:

2533.6. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section

SB 747

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 747
Author:	Kehoe
Bill Date:	April 25, 2011, amended
Subject:	Continuing Education: Lesbian, Gay, Bisexual, and Transgender Patients
Sponsor:	Equality California

STATUS OF BILL:

This bill is in Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require physicians and surgeons, registered nurses, licensed vocational nurses, psychologists, physician assistants, psychiatric technicians, marriage and family therapists, and clinical social workers to complete a one-time continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual and transgender (LGBT) persons.

ANALYSIS:

Existing law requires physicians and surgeons to complete at least 50 hours of approved CME during each two year license renewal cycle. Currently, physicians and surgeons only have a mandatory one-time CME requirement of 12 credit hours in the subject of pain management and the treatment of the terminally ill. There is also a mandate in existing law that requires general internists and family physicians who have a patient population of which over 25 percent are 65 years of age or older to complete at least 20 percent of all mandatory CME in a course in the field of geriatric medicine or the care of older patients.

This bill requires physicians and surgeons and other healing arts professionals to complete a one-time continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to LGBT persons. This is a one-time requirement of two to five hours in duration that must be completed by January 1, 2017. Physicians licensed on or after January 1, 2013 shall complete the requirement within four years of their initial license issuance date or by their second renewal date. The course must contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." This bill allows the Medical Board of California (the Board) to enforce this requirement in the same manner it enforces other required continuing education requirements.

According to the sponsor, the LGBT community has specific medical needs and concerns and it is critical that health care professionals receive necessary training to understand those needs and provide improved patient care. The sponsor points to a public call made in 1996 by the American Medical Association (AMA) to improve the education of health care personnel regarding best practices for improving care to LGBT patients. That call was reiterated by a past president of the AMA in 2005. The sponsor believes that improving the capacity of health care providers to adequately serve LGBT patients is an issue that needs immediate attention. The sponsor argues that members of the LGBT community receive sub-par medical and mental health care when compared to care provided to the general population. Additionally, some LGBT patients may require specialized care because of the unique nature of their medical and mental health issues.

Although the Board usually opposes mandated CME, because of the Board's interest in preventing and addressing health disparities and promoting cultural competency, because of the fact that every physician and surgeon in California may have the opportunity to provide services and treat LGBT patients, and because this bill is a one-time requirement of only two to five hours in duration over a four-year period, staff is suggesting that the Board take a neutral position on this bill. This is one of two bills that mandate a one-time CME requirement in the Legislature this year.

SUPPORT: Equality California (Sponsor); California Communities United Institute; California National Organization for Women; California STD Controllers Association; Dr. Susan Love Research Foundation; Gay and Lesbian Medical Association; Lesbian and Gay Psychotherapy Association of Southern California, inc.; LGBT Psychotherapists Association of the San Francisco Bay Area; Mental Health America of Northern California; and Numerous health care providers and individuals

OPPOSITION: California Academy of Family Physicians; California Association of Marriage and Family Therapists; California Orthopaedic Association; and California Psychological Association

FISCAL: Minimal and absorbable

POSITION: Recommendation: Neutral

April 26, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 4, 2011

SENATE BILL No. 747

Introduced by Senator Kehoe

February 18, 2011

An act to amend Sections 2190.1, 2811.5, 2892.5, 2915, 3524.5, 4517, 4980.54, and 4996.22 of~~, and to add Section 2070.5 to,~~ the Business and Professions Code, and to amend Section 1337.3 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 747, as amended, Kehoe. Continuing education: lesbian, gay, bisexual, and transgender patients.

Existing law provides for licensing and regulation of various healing arts professions and generally requires licensees to complete continuing education courses in order to remain eligible to renew their licenses or certifications. Existing law imposes various training requirements for certified nurse assistants regulated by the State Department of Public Health.

This bill would require physicians and surgeons, physician assistants, registered nurses, licensed vocational nurses, nurse practitioners, psychologists, marriage and family therapists, licensed clinical social workers, psychiatric technicians, ~~medical assistants,~~ and certified nurse assistants to complete at least one course of 2 to 5 hours in duration that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons, as specified. The bill would require the applicable licensing or certifying entity to enforce these requirements. The new requirements would become effective on January 1, 2013.

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 2070.5 is added to the Business and Professions Code, to read:~~

~~2070.5. On and after January 1, 2013, the board shall require all medical assistants to take at least one training course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this section. The board shall enforce this requirement in the same manner as it enforces other requirements applicable to medical assistants.~~

~~SEC. 2.~~

SECTION 1. Section 2190.1 of the Business and Professions Code is amended to read:

2190.1. (a) The continuing medical education standards of Section 2190 may be met by educational activities that meet the standards of the board and serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or improve the quality of care provided for patients, including, but not limited to, educational activities that meet any of the following criteria:

(1) Have a scientific or clinical content with a direct bearing on the quality or cost-effective provision of patient care, community or public health, or preventive medicine.

(2) Concern quality assurance or improvement, risk management, health facility standards, or the legal aspects of clinical medicine.

(3) Concern bioethics or professional ethics.

(4) Are designed to improve the physician-patient relationship.

(b) (1) On and after July 1, 2006, all continuing medical education courses shall contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(2) Notwithstanding the provisions of paragraph (1), a continuing medical education course dedicated solely to research or other issues that does not include a direct patient care component and a course offered by a continuing medical education provider that is not located in this state are not required to contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(3) Associations that accredit continuing medical education courses shall develop standards before July 1, 2006, for compliance with the requirements of paragraph (1). The associations may develop these standards in conjunction with an advisory group that has expertise in cultural and linguistic competency issues.

(4) A physician and surgeon who completes a continuing education course meeting the standards developed pursuant to paragraph (3) satisfies the continuing education requirement for cultural and linguistic competency.

(c) In order to satisfy the requirements of subdivision (b), continuing medical education courses shall address at least one or a combination of the following:

(1) Cultural competency. For the purposes of this section, "cultural competency" means a set of integrated attitudes, knowledge, and skills that enables a health care professional or organization to care effectively for patients from diverse cultures, groups, and communities. At a minimum, cultural competency is recommended to include the following:

(A) Applying linguistic skills to communicate effectively with the target population.

(B) Utilizing cultural information to establish therapeutic relationships.

(C) Eliciting and incorporating pertinent cultural data in diagnosis and treatment.

(D) Understanding and applying cultural and ethnic data to the process of clinical care.

(2) Linguistic competency. For the purposes of this section, "linguistic competency" means the ability of a physician and surgeon to provide patients who do not speak English or who have limited ability to speak English, direct communication in the patient's primary language.

(3) A review and explanation of relevant federal and state laws and regulations regarding linguistic access, including, but not

limited to, the federal Civil Rights Act (42 U.S.C. Sec. 1981, et seq.), Executive Order 13166 of August 11, 2000, of the President of the United States, and the Dymally-Alatorre Bilingual Services Act (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code).

(d) On and after January 1, 2013, the board shall require all of its licensees under this chapter to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(e) Notwithstanding subdivision (a), educational activities that are not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, including, but not limited to, medical office management, billing and coding, and marketing shall not be deemed to meet the continuing medical education standards for licensed physicians and surgeons.

(f) Educational activities that meet the content standards set forth in this section and are accredited by the California Medical Association or the Accreditation Council for Continuing Medical Education may be deemed by the Division of Licensing to meet its continuing medical education standards.

~~SEC. 3.~~

SEC. 2. Section 2811.5 of the Business and Professions Code is amended to read:

2811.5. (a) Each person renewing his or her license under Section 2811 shall submit proof satisfactory to the board that,

during the preceding two-year period, he or she has been informed of the developments in the registered nurse field or in any special area of practice engaged in by the licensee, occurring since the last renewal thereof, either by pursuing a course or courses of continuing education in the registered nurse field or relevant to the practice of the licensee, and approved by the board, or by other means deemed equivalent by the board.

(b) For purposes of this section, the board shall, by regulation, establish standards for continuing education. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to licensees, including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension studies, and home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) The board shall encourage continuing education in spousal or partner abuse detection and treatment. In the event the board establishes a requirement for continuing education coursework in spousal or partner abuse detection or treatment, that requirement shall be met by each licensee within no more than four years from the date the requirement is imposed.

(d) In establishing standards for continuing education, the board shall consider including a course in the special care needs of individuals and their families facing end-of-life issues, including, but not limited to, all of the following:

(1) Pain and symptom management.

(2) The psycho-social dynamics of death.

(3) Dying and bereavement.

(4) Hospice care.

(e) In establishing standards for continuing education, the board may include a course on pain management.

(f) This section shall not apply to licensees during the first two years immediately following their initial licensure in California or any other governmental jurisdiction.

(g) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best

practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(h) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for licensees residing in another state or country, or for reasons of health, military service, or other good cause.

(i) This section shall apply to all persons licensed under this chapter, including nurse practitioners.

~~SEC. 4.~~

SEC. 3. Section 2892.5 of the Business and Professions Code is amended to read:

2892.5. (a) Each person renewing his or her license under the provisions of this chapter shall submit proof satisfactory to the board that, during the preceding two-year period, he or she has informed himself or herself of developments in the vocational nurse field or in any special area of vocational nurse practice, occurring since the issuance of his or her certificate, or the last renewal thereof, whichever last occurred, either by pursuing a course or courses of continuing education approved by the board in the vocational nurse field or relevant to the practice of such licensee, and approved by the board; or by other means deemed equivalent by the board.

(b) For purposes of this section, the board shall, by regulation, establish standards for continuing education. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to licensees including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension studies, and

home study programs. The standards shall take cognizance of specialized areas of practice. The continuing education standards established by the board shall not exceed 30 hours of direct participation in a course or courses approved by the board, or its equivalent in the units of measure adopted by the board.

(c) This section shall not apply to the first license renewal following the initial issuance of a license.

(d) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(e) The board may, in accordance with the intent of this section, make exceptions from continuing education for licensees residing in another state or country, or for reasons of health, military service, or other good cause.

~~SEC. 5.~~

SEC. 4. Section 2915 of the Business and Professions Code is amended to read:

2915. (a) Except as provided in this section, on or after January 1, 1996, the board shall not issue any renewal license unless the applicant submits proof that he or she has completed no less than 18 hours of approved continuing education in the preceding year. On or after January 1, 1997, except as provided in this section, the board shall issue renewal licenses only to those applicants who have completed 36 hours of approved continuing education in the preceding two years.

(b) Each person renewing his or her license issued pursuant to this chapter shall submit proof of compliance with this section to the board. False statements submitted pursuant to this section shall be a violation of Section 2970.

(c) A person applying for relicensure or for reinstatement to an active license status shall certify under penalty of perjury that he or she is in compliance with this section.

(d) (1) The continuing education requirement shall include, but shall not be limited to, courses required pursuant to Sections 25 and 28. The requirement may include courses pursuant to Sections 32 and 2914.1.

(2) (A) The board shall require a licensed psychologist who began graduate study prior to January 1, 2004, to take a continuing education course during his or her first renewal period after the operative date of this section in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement.

(B) Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under subdivision (a).

(C) A licensed psychologist whose practice does not include the direct provision of mental health services may apply to the board for an exemption from the requirements of this paragraph.

(3) Continuing education instruction approved to meet the requirements of this section shall be completed within the State of California, or shall be approved for continuing education credit by the American Psychological Association or its equivalent as approved by the board.

(e) The board may establish a policy for exceptions from the continuing education requirement of this section.

(f) The board may recognize continuing education courses that have been approved by one or more private nonprofit organizations that have at least 10 years' experience managing continuing education programs for psychologists on a statewide basis, including, but not limited to:

(1) Maintaining and managing related records and data.
(2) Monitoring and approving courses.
(g) The board shall adopt regulations as necessary for implementation of this section.
(h) A licensed psychologist shall choose continuing education instruction that is related to the assessment, diagnosis, and intervention for the client population being served or to the fields of psychology in which the psychologist intends to provide services, that may include new theoretical approaches, research, and applied techniques. Continuing education instruction shall include required courses specified in subdivision (d).
(i) A psychologist shall not practice outside his or her particular field or fields of competence as established by his or her education, training, continuing education, and experience.
(j) On and after January 1, 2013, the board shall require every person licensed under this chapter to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board under this chapter on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.
(k) The administration of this section may be funded through professional license fees and continuing education provider and course approval fees, or both. The fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.
(*l*) Continuing education credit may be approved for those licensees who serve as commissioners on any examination pursuant to Section 2947, subject to limitations established by the board.

~~SEC. 6.~~

SEC. 5. Section 3524.5 of the Business and Professions Code is amended to read:

3524.5. (a) The committee may require a licensee to complete continuing education as a condition of license renewal under Section 3523 or 3524. The committee shall not require more than 50 hours of continuing education every two years. The committee shall, as it deems appropriate, accept certification by the National Commission on Certification of Physician Assistants (NCCPA), or another qualified certifying body, as determined by the committee, as evidence of compliance with continuing education requirements.

(b) On and after January 1, 2013, the board shall require all of its licensees under this chapter to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

~~SEC. 7.~~

SEC. 6. Section 4517 of the Business and Professions Code is amended to read:

4517. (a) The board may, in its discretion, provide for a continuing education program in connection with the professional functions and courses described in this chapter. The number of course hours that the board may require in a continuing education program shall not exceed the number of course hours prescribed for licensed vocational nurses pursuant to Section 2892.5.

(b) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

~~SEC. 8.~~

SEC. 7. Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations as specified in subdivision (d) of Section 4980.40 and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) Except as provided in subdivision (e), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of

required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

(1) An accredited school or state-approved school that meets the requirements set forth in Section 4980.36 or 4980.37. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, or a mental health professional association, approved by the board.

(g) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (f), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(h) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(i) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(j) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that

provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(k) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (f) shall be deemed to be an approved provider.

(*l*) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

~~SEC. 9.~~

SEC. 8. Section 4996.22 of the Business and Professions Code is amended to read:

4996.22. (a) (1) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of social work in the preceding two years, as determined by the board.

(2) The board shall not renew any license of an applicant who began graduate study prior to January 1, 2004, pursuant to this chapter unless the applicant certifies to the board that during the applicant's first renewal period after the operative date of this

section, he or she completed a continuing education course in spousal or partner abuse assessment, detection, and intervention strategies, including community resources, cultural factors, and same gender abuse dynamics. On and after January 1, 2005, the course shall consist of not less than seven hours of training. Equivalent courses in spousal or partner abuse assessment, detection, and intervention strategies taken prior to the operative date of this section or proof of equivalent teaching or practice experience may be submitted to the board and at its discretion, may be accepted in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph shall be applied to the 36 hours of approved continuing education required under paragraph (1).

(b) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(c) The board may establish exceptions from the continuing education requirement of this section for good cause as defined by the board.

(d) The continuing education shall be obtained from one of the following sources:

(1) An accredited school of social work, as defined in Section 4991.2, or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional social work association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, and a mental health professional association, approved by the board.

(e) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2) of subdivision (d), shall adhere to the procedures established by the board. The board may revoke or deny the right

of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(f) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding, or the practice, of social work.

(2) Aspects of the social work discipline in which significant recent developments have occurred.

(3) Aspects of other related disciplines that enhance the understanding, or the practice, of social work.

(g) A system of continuing education for licensed clinical social workers shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(h) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

(i) On and after January 1, 2013, the board shall require all of its licensees to take at least one continuing education course that provides instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons licensed by the board before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly licensed by the board on and after January 1, 2013, shall complete the course within four years of their initial license issuance date or their second license renewal date, whichever occurs first. The course shall be between two and five hours in duration and shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and Transgender Patients." The board may specify the required contents of the course by regulation consistent with this subdivision. The board shall enforce this requirement in the same manner as it enforces other required continuing education requirements.

(j) The board may adopt regulations as necessary to implement this section.

(k) The board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Science Examiners Fund. The fees

related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (d) shall be deemed to be an approved provider.

~~SEC. 10.~~

SEC. 9. Section 1337.3 of the Health and Safety Code is amended to read:

1337.3. (a) The state department shall prepare and maintain a list of approved training programs for nurse assistant certification. The list shall include training programs conducted by skilled nursing or intermediate care facilities, as well as local agencies and education programs. In addition, the list shall include information on whether a training center is currently training nurse assistants, their competency test pass rates, and the number of nurse assistants they have trained. Clinical portions of the training programs may be obtained as on-the-job training, supervised by a qualified director of staff development or licensed nurse.

(b) It shall be the duty of the state department to inspect a representative sample of training programs. The state department shall protect consumers and students in any training program against fraud, misrepresentation, or other practices that may result in improper or excessive payment of funds paid for training programs. In evaluating a training center's training program, the state department shall examine each training center's trainees' competency test passage rate, and require each program to maintain an average 60 percent test score passage rate to maintain its participation in the program. The average test score passage rate shall be calculated over a two-year period. If the state department determines that any training program is not complying with regulations or is not meeting the competency passage rate requirements, notice thereof in writing shall be immediately given to the program. If the program has not been brought into compliance within a reasonable time, the program may be removed from the approved list and notice thereof in writing given to it. Programs removed under this article shall be afforded an opportunity to request reinstatement of program approval at any time. The state department's district offices shall inspect facility-based centers as part of their annual survey.

(c) Notwithstanding Section 1337.1, the approved training program shall consist of at least the following:

(1) A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care, and consistent with federal training requirements for facilities participating in the Medicare or Medicaid programs.

(2) (A) A certification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution.

(B) In addition to the 60 classroom hours of training required under subparagraph (A), the certification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(4) On and after January 1, 2013, at least two, but not more than five, hours of the classroom training shall provide instruction on cultural competency, sensitivity, and best practices for providing adequate care to lesbian, gay, bisexual, and transgender persons. Persons certified by the state department under this article before January 1, 2013, shall complete the course no later January 1, 2017. Persons who are newly certified by the state department under this article on and after January 1, 2013, shall complete the course within four years of their initial certificate issuance date or their second certificate renewal date, whichever occurs first. The instruction shall contain content similar to the content described in the publication of the Gay and Lesbian Medical Association entitled "Guidelines for Care of Lesbian, Gay, Bisexual and

Transgender Patients." The state department may specify the required contents of the course by regulation consistent with this paragraph. The state department shall enforce this requirement in the same manner as it enforces other required training requirements.

(d) The state department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989.

(e) On or before January 1, 2004, the state department, in consultation with the State Department of Education, the American Red Cross, and other appropriate organizations, shall do the following:

(1) Review the current examination for approved training programs for certified nurse assistants to ensure the accurate assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services.

(2) Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job post-certification hours to educational credits.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the state department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the certification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

(h) The Chancellor of the California Community Colleges shall provide to the state department a standard process for approval of

college credit. The state department shall make this information available to all training programs in the state.

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SB 824

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 824
Author:	Negrete McLeod
Bill Date:	February 18, 2011, introduced
Subject:	Opticians: Regulation
Sponsor:	LensCrafters (co-sponsor), Target Optical (co-sponsor), and Sears Optical (co-sponsor)

STATUS OF BILL:

This bill is currently in Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require a registered dispensing optician (RDO) acquiring ownership of a business to file the notice with the Medical Board of California (the Board) within 10 days of the completion of the transfer of ownership. This bill would also make the RDO selling or transferring the ownership interest responsible for complying with all laws relating to the place of business until the cancellation notice is received by the Board.

ANALYSIS:

Existing law requires individuals, corporations, and firms to apply to the Board for registration as a dispensing optician. When the Board approves an application, it issues a certificate of dispensing optician to the applicant. Each certificate shall be displayed at all times in a conspicuous place at the certified place of business.

According to the sponsors, the requirement that the certificate be posted is hard to comply with during a change of ownership, as the registration documents must be furnished to the Board. This can leave an RDO without a certificate for a period of time while the registration is being processed. Recently Sears and Target Optical went through an internal change of ownership. Their interpretation of the law required each store to file new registrations the same day the switch in ownership occurred, which was time consuming. They believe this bill will provide a process that allows the RDO to remain open while the documents are being processed.

Currently, the Board sometimes has issues receiving both the new RDO application and the notice of cancellation for the RDO selling or transferring the ownership in the same time period. The Board first has to process the notice of cancellation before the new certificate of dispensing optician can be issued to the applicant. The Board believes that putting a 10 day timeline on both parties to get their required paper work in to the Board will make this process run more smoothly and effectively for the Board. This bill also makes it clear that the RDO selling or

transferring ownership is the responsible party until the notice of cancellation is received by the Board.

SUPPORT: LensCrafters (co-sponsor); Target Optical (co-sponsor); and Sears Optical (co-sponsor)

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support

April 8, 2011

SENATE BILL No. 824

Introduced by Senator Negrete McLeod

February 18, 2011

An act to add Section 2553.1 to the Business and Professions Code, relating to opticians.

LEGISLATIVE COUNSEL'S DIGEST

SB 824, as introduced, Negrete McLeod. Opticians: regulation.

Existing law requires that dispensing opticians register with the Division of Licensing of the Medical Board of California. Under existing law, a registered dispensing optician is required to obtain and display a separate certificate of registration at each location where his or her business is conducted. Existing law makes a violation of laws regulating a registered dispensing optician a misdemeanor.

This bill would require a registered dispensing optician acquiring ownership of a business to file a notice with the board within 10 days of the completion of the transfer of ownership to him or her. The bill would specify that until receipt of the notice by the board, the registered dispensing optician selling or transferring the interest remains responsible for complying with all laws regulating the business.

Because a violation of laws regulating registered dispensing opticians is a crime, this bill would impose a state-mandated local program by creating a new crime.

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

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

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

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

SECTION 1. Section 2553.1 is added to the Business and Professions Code, to read:

2553.1. If a registered dispensing optician sells or transfers in any matter on ownership interest in his or her place of business, the registered dispensing optician assuming the ownership of the business shall record with the board a written notice of the change of ownership, providing all information required by the board. The registered dispensing optician shall file the notice with the board no later than 10 calendar days after the change of ownership is completed. The registered dispensing optician selling or transferring the ownership interest in his or her business shall be responsible for complying with all laws relating to the place of business until the notice is received by the board. This section does not apply to a change of location of business by a registered dispensing optician.

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

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TRACKER II

Medical Board of California
Tracker II - Legislative Bills
4/26/2011

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 70	Monning	CHHS: Public Health: Federal Grant Opportunities	Asm. Health	
AB 127	Logue	Regulations: Effective Date	Asm. B&P	
AB 137	Portantino	Health Care Coverage: Mammographies	Asm. Health	
AB 172	Eng	Public Contracts: Information: Web site	Asm. Approps	03/31/11
AB 174	Monning	Health Information Exchange	Asm. Health	03/21/11
AB 186	Williams	Reportable Diseases and Conditions	Asm. 3rd Reading	03/30/11
AB 242	Rev. & Tax	Income Taxes: Federal Health Care	Asm. Approps	03/14/11
AB 273	Valadao	Regulations: Economic Impacts Review	Asm. B&P	
AB 300	Ma	Safe Body Art Act	Sen. Rules	03/10/11
AB 377	Solorio	Pharmacy	Asm. B&P	04/14/11
AB 386	Galgiani	Prisons: Telemedicine Systems	Asm. Health	03/31/11
AB 389	Mitchell	Bleeding Disorders	Asm. 3rd Reading	03/30/11
AB 393	Wagner	APA: Legislative Intent	Asm.	
AB 415	Logue	Healing Arts: Telehealth: Medi-Cal	Asm. Health	03/31/11
AB 425	Nestande	State Regulations: Review	Asm. B&P	
AB 428	Portantino	Health Care Coverage: Fertility Preservation	Asm. Health	
AB 439	Skinner	Health Care Information	Asm. Judiciary	04/07/11
AB 499	Atkins	Minors: Medical Care: Consent	Asm. Judiciary	
AB 530	Smyth	Regulations: Economic and Technical Information	Asm. B&P	03/31/11
AB 655	Hayashi	Healing Arts: Peer Review	Asm. B&P	
AB 673	Perez, J.	Office of Multicultural Health: LGBT Communities	Asm. Approps	

Medical Board of California
Tracker II - Legislative Bills
4/26/2011

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 675	Hagman	Continuing Education	Asm. B&P	04/05/11
AB 678	Pan	Medi-Cal: Supplemental Provider Reimbursement	Asm. Approps	03/25/11
AB 714	Atkins	Health Care Coverage: California Health Benefit Exchange	Asm. Health	04/14/11
AB 740	Blumenfield	Personal Services Contracts	Asm. Approps	
AB 778	Atkins	Health Care Service Plans: Vision Care	Asm. Health	04/12/11
AB 847	Lowenthal, B.	Pharmacy: Clinics	Asm. Health	
AB 916	Perez, M.	Promotores: Medically Underserved Communities: Federal Grants	Asm. Approps	
AB 917	Olsen	State Agencies: Sunset Review	Asm.	
AB 922	Monning	Office of Health Consumer Assistance	Asm. Approps	03/29/11
AB 951	Perea	State Employees: Memorandum of Understanding	Asm. Pub. Emp	
AB 991	Olsen	State Gov't: Licenses: California Licensing & Permit Center	Asm. B&P	04/13/11
AB 1003	Smyth	Professional and Vocational Licenses	Asm.	
AB 1078	Grove	Legislature: Former Members: State Boards and Commissions	Asm.	
AB 1088	Eng	State Agencies: Collection of Demographic Data	Asm. B&P	
AB 1192	Garrick	Immunization Information: Pertussis	Asm. Health	04/13/11
AB 1213	Nielsen	Regulations	Asm. B&P	04/12/11
AB 1217	Fuentes	Assisted Reproductive Technology: Parentage	Asm. Health	04/14/11
AB 1280	Hill	Ephedrine: Retail Sale	Asm. Pub. Safety	03/25/11
AB 1296	Bonilla	Health Care Eligibilty, Enrollment, and Retention Act	Asm. Hum. Svcs.	
AB 1322	Bradford	Regulations: Principles of Regulation	Asm. B&P	04/15/11
AB 1328	Pan	Clinical Laboratories	Asm. B&P	03/31/11
ABX1 3	Logue	Regulations: 5-Year Review and Report	Asm.	

Medical Board of California
Tracker II - Legislative Bills
4/26/2011

BILL	AUTHOR	TITLE	STATUS	AMENDED
ABX1 4	Logue	Regulations: Effective Date	Asm.	
ABX1 5	Logue	Regulations: Legislative Notice	Asm.	
ABX1 6	Logue	Regulations: Economic Impacts Review	Asm.	
AJR 10	Brownley	School-Based Health Centers	Asm. 3rd Reading	
SB 38	Padilla	Radiation Control: Health Facilities and Clinics: Records	Sen. 3rd Reading	03/29/11
SB 41	Yee	Hypodermic Needles and Syringes	Sen. Pub. Safety	
SB 227	Wyland	Business and Professions: Licensure	Sen.	
SB 231	Emmerson	Regulatory Boards: Healing Arts	Sen.	
SB 236	Anderson	California Public Records Act	Sen.	
SB 252	Vargas	Public Contracts: Personal Services	Sen. Judiciary	04/14/11
SB 347	Rubio	Graduate Medical Education Payments: Medi-Cal	Sen. Health	03/21/11
SB 360	DeSaulnier	Controlled Substance Utilization Review and Eval. System	Sen. Pub. Safety	04/14/11
SB 396	Huff	Regulations: Review Process	Sen. Env. Quality	04/07/11
SB 399	Huff	Healing Arts: Advertising	Sen.	
SB 538	Price	Nursing	Sen. B&P	03/21/11
SB 553	Fuller	Regulations: Effective Date	Sen. G.O.	04/05/11
SB 616	DeSaulnier	Medi-Cal: Grants	Sen. Approps	03/22/11
SB 628	Yee	Acupuncture: Regulation	Sen. B&P	03/22/11
SB 667	Runner	Naturopathic Doctor	Sen. B&P	03/31/11
SB 728	Hernandez	Health Care Coverage	Sen. Approps	03/25/11
SB 746	Lieu	Tanning Facilities	Sen. B&P	03/22/11

Medical Board of California
Tracker II - Legislative Bills
4/26/2011

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 850	Leno	Medical Records: Confidential Information	Sen. Judiciary	
SB 924	Walters	Physical Therapists: Direct Access to Services	Sen. B&P	03/30/11