LEGISLATIVE PACKET

MEDICAL BOARD MEETING

NOVEMBER 5, 2010
LONG BEACH, CA

A. 2010 TRACKER

Medical Board of California
Tracker - Legislative Bill File
10/26/2010

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 526	Fuentes	Public Protection and Physician Health Program Act of 2009	Sen. Approps. - Dead	Oppose	8/19/2009
AB 583	Hayashi	Disclosure of Education and Office Hours	Chapter #436	Support	8/20/2010
AB 646	Swanson	Physician employment: district hospital pilot project	Sen. Health - Dead	Support in Concept	4/13/2010
AB 648	Chesbro	Rural Hospitals: physician employment	Sen. B&P - Dead	Support in Concept	5/28/2009
AB 933	Fong	Workers' Compensation: utilization review	Vetoed	Support (Ltr. 8/30)	8/17/2010
AB 977	Skinner	Pharmacists: immunizations	Sen. B&P - Dead	Support (ltr. 6/3)	6/1/2010
AB 1310	Hernandez	Healing Arts: database	Sen. Approps. - Dead	Support	6/29/2009
AB 1767	Hill	Expert Reviewers & HPEF Sunset Extension	Chapter #451	Sponsor/Support (Ltr. 8/19)	6/7/2010
AB 2148	Tran	Personal Income Tax: charitable deductions	Asm. Approps. - Dead	Support (ltr. 5/10)	5/18/2010
AB 2386	Gilmore	Armed Forces: Medical Personnel	Chapter #151	Neutral	5/28/2010
AB 2566	Carter	Cosmetic surgery: employment of physicians	Vetoed	Support (Ltr. 8/24)	
AB 2699	Bass	Healing Arts: Licensure Exemption	Chapter #270	Oppose (ltr. 8/4)	8/27/2010
SB 294	Negrete McLeod	DCA: Regulatory Boards - Sunset Dates	Chapter #695	No Position Required	8/17/2010
SB 700	Negrete McLeod	Peer Review	Chapter #505	Support (Ltr. 8/30)	8/20/2010
SB 726	Ashburn	Hospitals: employment of physician; pilot project revision	Sen. B&P - Dead	Support in Concept (ltr. 5/10)	8/20/2009
SB 1031	Corbett	Medical Malpractice Insurance	Asm. B&P - Dead	Sponsor/Support (ltr. 5/10)	5/28/2010
SB 1069	Pavley	Physician Assistants	Chapter #512	Support (Ltr. 8/30)	8/16/2010
SB 1111	Negrete McLeod	Regulatory Boards	Sen. B&P - Dead		4/12/2010
SB 1150	Negrete McLeod	Healing Arts: advertisements	Asm. Approps. - Dead	Support (ltr. 5/10)	
SB 1172	Negrete McLeod	Diversion Programs	Chapter #517	Support (Ltr. 8/24)	6/22/2010
SB 1410	Cedillo	Medicine: licensure examinations	Vetoed	Oppose (Ltr. 8/26)	6/23/2010
SB 1489	B&P Comm.	Omnibus	Chapter #653	Support MBC Provisions (Ltr. 8/25)	8/12/2010

Pink - Sponsored Bill; Green - Chaptered Bill; Peach - Vetoed Bill; Grey - Dead Bill

AB 583

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 583
Author:	Hayashi
Chapter:	#436
Subject:	Disclosure of Education and Office Hours
Sponsor:	CA Medical Association and CA Society of Plastic Surgeons
Board Position:	Support

DESCRIPTION OF CURRENT LEGISLATION:

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

This bill was amended to require physicians to communicate to their patients the required information either in writing or to prominently display the information, instead of wearing the information on a name tag, as was previously one of the options. This bill now also exempts specified practitioners from the requirements of this bill if they satisfy specified requirements. The amendments no longer require physicians who supervise outside locations to post the hours they are present.

ANALYSIS:

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

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

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

This bill will also require a physician, when supervising more than one location, to post the hours the physician is present. In addition, the public may not know that when they seek care at a physician's office, the physician may not be present. By requiring physicians to post when they are present in the office it will help the patient better understand the physician's availability.

The amendments taken August 17th require physicians to communicate to their patients the required information either in writing or to prominently display the information, instead of wearing the information on a name tag, as was previously one of the options. This bill now also exempts specified practitioners from the requirements of this bill if they satisfy other requirements. The amendments no longer require physicians who supervise outside locations to post the hours they are present.

FISCAL: Minor and absorbable enforcement costs

IMPLEMENTATION:

- Newsletter Article
- Notify/Train Board Staff
- Add to cite and fine table via regulations

October 20, 2010

Assembly Bill No. 583

CHAPTER 436

An act to add Section 680.5 to the Business and Professions Code, relating to health care practitioners.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 583, Hayashi. Health care practitioners: disclosure of education.

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

This bill would require each of those health care practitioners to disclose the type of license and, except as specified, the highest level of academic degree he or she holds either in a prominent display in his or her office or in writing, in a specified format given to a patient on his or her initial office visit. The bill would require a physician and surgeon, and an osteopathic physician and surgeon, who is certified in a medical specialty, as specified, to also disclose, in either of those manners the name of the certifying board or association. The bill would exempt specified health care practitioners, including, without limitation, persons working in certain licensed laboratories and health care facilities, as specified, from these requirements.

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

SECTION 1. Section 680.5 is added to the Business and Professions Code, to read:

680.5. (a) (1) A health care practitioner licensed under Division 2 (commencing with Section 500) shall communicate to a patient his or her name, state-granted practitioner license type, and highest level of academic degree, by one or both of the following methods:

(A) In writing at the patient's initial office visit.

(B) In a prominent display in an area visible to patients in his or her office.

(2) An individual licensed under Chapter 6 (commencing with Section 2700) or Chapter 9 (commencing with Section 4000) is not required to disclose the highest level of academic degree he or she holds.

(b) A person licensed under Chapter 5 (commencing with Section 2000) or under the Osteopathic Act, who is certified by (1) an American Board of Medical Specialties member board, (2) a board or association with

requirements equivalent to a board described in paragraph (1) approved by that person's medical licensing authority, or (3) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in the person's specialty or subspecialty, shall disclose the name of the board or association by either method described in subdivision (a).

(c) A health care practitioner who chooses to disclose the information required by subdivisions (a) and (b) pursuant to subparagraph (A) of paragraph (1) of subdivision (a) shall present that information in at least 24-point type in the following format:

HEALTH CARE PRACTITIONER INFORMATION

1. Name and license.....
2. Highest level of academic degree.....
3. Board certification (ABMS/MBC).....

(d) This section shall not apply to the following health care practitioners:

(1) A person who provides professional medical services to enrollees of a health care service plan that exclusively contracts with a single medical group in a specific geographic area to provide or arrange for professional medical services for the enrollees of the plan.

(2) A person who works in a facility licensed under Section 1250 of the Health and Safety Code or in a clinical laboratory licensed under Section 1265.

(3) A person licensed under Chapter 3 (commencing with Section 1200), Chapter 7.5 (commencing with Section 3300), Chapter 8.3 (commencing with Section 3700), Chapter 11 (commencing with Section 4800), Chapter 13 (commencing with Section 4980), or Chapter 14 (commencing with Section 4990.1).

(e) A health care practitioner, who provides information regarding health care services on an Internet Web site that is directly controlled or administered by that health care practitioner or his or her office personnel, shall prominently display on that Internet Web site the information required by this section.

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AB 933

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 933
Author:	Fong
Chapter:	VETOED (see attached veto message)
Subject:	Workers' Compensation: medical treatment
Sponsor:	American Federation of State, County, and Municipal Employees California Society of Industrial Medicine and Surgery California Society of Physical Medicine and Rehabilitation Union of American Physicians and Dentists
Board Position:	Support

DESCRIPTION OF CURRENT LEGISLATION:

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

Amendments recently taken do not impact the Medical Board.

ANALYSIS:

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

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

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

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

Amendments to this bill taken June 14, August 2, and August 17, 2010 do not impact the Board's support position.

FISCAL: None to the Board

IMPLEMENTATION:

None

BILL NUMBER: AB 933
VETOED: 09/23/2010

To the Members of the California State Assembly:

I am returning Assembly Bill 933 without my signature.

This bill would require a physician conducting utilization review in the workers' compensation system to be licensed in California. Such a requirement would be inconsistent with how utilization review is conducted in other areas of medicine and not in line with best practices nationwide. The proponents of this measure have not demonstrated a need for this disparity in treatment.

For this reason, I am returning this bill without my signature.

Sincerely,

Arnold Schwarzenegger

Assembly Bill No. 933

Passed the Assembly August 24, 2010

Chief Clerk of the Assembly

Passed the Senate August 23, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 933, Fong. Workers' compensation: medical treatment.

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

Existing law, for purposes of workers' compensation, defines "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology, as specified, and who either has at least 2 years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

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

Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

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

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

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

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

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

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

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

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

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

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

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

(c) Each utilization review process shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the

schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines. These policies and procedures, and a description of the utilization process, shall be filed with the administrative director and shall be disclosed by the employer to employees, physicians, and the public upon request.

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

(e) No person other than a physician licensed by California state law who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

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

(1) Developed with involvement from actively practicing physicians.

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

Occupational and Environmental Medicine Occupational Medical Practice Guidelines.

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

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

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

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

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

(2) When the employee's condition is such that the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, delay, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the

employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

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

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees

shall be levied upon insurers or self-insured employers making reports required by this section.

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

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

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

(i) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed to be an exclusive remedy for the administrative director. These penalties shall be

deposited in the Workers' Compensation Administration Revolving Fund.

Approved _____, 2010

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Governor

AB 1767

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1767
Author:	Hill
Chapter:	#451
Subject:	Healing Arts: Expert Reviewers and HPEF sunset extension
Sponsor:	Medical Board of California
Board Position:	Sponsor/Support

DESCRIPTION OF CURRENT LEGISLATION:

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

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

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

ANALYSIS:

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

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

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

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

physician providing expertise to the Board.

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

FISCAL: Minimal and Absorbable

IMPLEMENTATION:

- Newsletter Article
- Notify/Train Board Staff
- Notify Health Professions Education Foundation/OSHPD
- Notify Attorney General's Office
- Inform Expert Reviewers and provide information during their Board training

Assembly Bill No. 1767

CHAPTER 451

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

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, Hill. Healing arts.

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

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

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

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

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

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

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

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

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

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

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

determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

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

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

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

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

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

(g) This section shall remain in effect only until January 1, 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. 4. Section 128335 of the Health and Safety Code, as added by Chapter 317 of the Statutes of 2005, is amended to read:

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

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

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

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

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

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

O

AB 2386

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2386
Author: Gilmore
Chapter: #151
Subject: Armed Forces: medical personnel
Sponsor: Author
Board Position: Neutral

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

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

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

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

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

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

FISCAL: Minimal and absorbable

IMPLEMENTATION:

- Newsletter Article
- Notify/Train Board Staff
- Revise existing military form and create new form with added fields (i.e. state individual is licensed, license number, etc.) to implement this bill.
- Post new form on the Board's Website.
- Work with contact at U.S. military (provided by the author's office) to perform outreach.

Assembly Bill No. 2386

CHAPTER 151

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

[Approved by Governor August 17, 2010. Filed with Secretary of State August 17, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, Gilmore. Armed Forces: medical personnel.

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

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

This bill, until January 1, 2016, would authorize a hospital to enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant, or registered nurse to provide medical care in the hospital if the health care professional holds a valid license in good standing in another state or territory, the medical care is provided as part of a training or educational program designed to promote the combat readiness of the health care professional, and the agreement complies with federal law. The bill would exempt those health care professionals from licensure or relicensure by the State of California while practicing under an agreement, but would require those health care professionals to register with the board that licenses that health care profession in this state and to wear a specified name tag while working.

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

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

714. (a) A hospital may enter into an agreement with the Armed Forces of the United States to authorize a physician and surgeon, physician assistant,

or registered nurse to provide medical care in the hospital if all of the following apply:

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

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

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

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

(c) (1) If an agreement is entered into pursuant to subdivision (a), no board under this division that licenses physicians and surgeons, physician assistants, or registered nurses may require a person under subdivision (a) to obtain or maintain any license to practice his or her profession or render services in the State of California.

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

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

O

AB 2566

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 2566
Author:	Carter
Chaptered:	VETOED (see attached veto message)
Subject:	Cosmetic Surgery: employment of physicians
Sponsor:	American Society for Dermatological Surgery Association
Board Position:	Support

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

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

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

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

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

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

FISCAL: None to the Board

IMPLEMENTATION:

None

BILL NUMBER: AB 2566
VETOED: 09/29/2010

To the Members of the California State Assembly:

I am returning Assembly Bill 2566 without my signature.

I vetoed a similar measure last year. The reason for the veto remains the same. Existing law already addresses the issues highlighted by the sponsors and author. The real problem is that the sponsors want enforcement of this issue moved up on the prioritization of enforcement issues pending with the Medical Board (Board). California currently ranks 41st in the county for taking serious disciplinary action against doctors and this bill attempts to move those serious disciplinary actions behind businesses that operate "medi-spas" providing skin peels, dermabrasion and laser hair removal.

Good doctors are the backbone of our health delivery system. I believe the members of the Board want to protect patients. I just don't agree that the Board's time is better spent on medi-spa enforcement when other physicians should be more quickly investigated and prohibited from practicing medicine when they have caused serious patient harm or death.

Sincerely,

Arnold Schwarzenegger

Assembly Bill No. 2566

Passed the Assembly April 29, 2010

_____

Chief Clerk of the Assembly

Passed the Senate August 23, 2010

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2566, Carter. Practice of medicine: cosmetic surgery: employment of physicians and surgeons.

Existing law, the Medical Practice Act, establishes the Medical Board of California within the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

The Medical Practice Act restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law makes it unlawful to knowingly make, or cause to be made, any false or fraudulent claim for payment of a health care benefit, or to aid, abet, solicit, or conspire with any person to do so, and makes a violation of this prohibition a public offense.

This bill would make a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is owned and operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists, and that contracts with or employs these licensees to facilitate the offer or provision of those procedures or treatments that may only be provided by these licensees, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

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

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

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

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

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

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

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

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

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

Approved _____, 2010

_____

Governor

AB 2699

MEDICAL BOARD OF CALIFORNIA
DRAFT LEGISLATIVE ANALYSIS

Bill Number: AB 2699
Author: Bass
Chapter: #270
Subject: Healing Arts: Licensure Exemption
Sponsor: Los Angeles County Board of Supervisors
Board Position: Oppose

DESCRIPTION OF CURRENT LEGISLATION:

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

This bill was amended to apply to any individual licensed under Division 2 of the Business and Professions Code, relating to healing arts. The amendments limit the sponsored event to 10 days and to require that the sponsoring entity be a non-profit entity or a community-based organization. This bill was amended to require each board to notify the sponsoring entity within 20 calendar days if the request is approved or denied (using specified requirements). The amendments require the health care practitioner to submit to the appropriate board, on a form prescribed by each board, a request for authorization to practice without a license. Each health care practitioner must pay a fee, which must be determined by each board by regulation. The amendments also require the participating practitioner to provide a copy of his or her license in each state where the individual is licensed and require that the license be in good standing in each state where the individual is licensed. The amendments also specify a termination process for each board to terminate authorization for a health care practitioner to provide health care services. Lastly, this bill was amended to include a sunset date of January 1, 2014

ANALYSIS:

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

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

- They must submit to the respective board in California a valid copy of his or her license or certificate and a photo identification issued by the state that he or she is

licensed or certified.

- The services must be provided to uninsured or underinsured persons on a short-term voluntary basis (no longer than 10 days per sponsored event).
- The services must be provided in association with a sponsoring entity that complies with specified requirements.
- The services must be provided without charge to the recipient, or to a third party on behalf of the recipient.

The sponsoring entity, which may be a non-profit or community-based organization, must register with the appropriate licensing board on a form that includes the name of the sponsoring entity, its officers or organization officials, contract information, and any information required by the licensing board, and this information must also be provided to the county health department in the county where the health care services will be provided. Within 15 days of the provision of health care services, the sponsoring entity must file a report with the licensing board and the county health department that includes the date, place, type, and general description of the services provided, and a listing of the health care practitioners who participated in providing those services. The sponsoring entity must maintain a list of health care practitioners associated with providing health care services and maintain a copy of each practitioner's current license or certification. The sponsoring entity must require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings. This bill allows a licensing board to revoke the registration of a sponsoring entity if they do not comply with these provisions.

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

The August 2, 2010 amendments change the bill to apply to any individual licensed under Division 2 of the Business and Professions Code, relating to healing arts. The amendments limit the sponsored event to 10 days and to require that the sponsoring entity be a non-profit entity or a community-based organization. These amendments also require each board to notify the sponsoring entity within 20 calendar days if the request is approved or denied (using specified requirements). The health care practitioner must submit to the appropriate board, on a form prescribed by each board, a request for authorization to practice without a license and must pay a fee (determined by each board by regulation). These amendments also include a process that each board must follow to terminate authorization for a health care practitioner to provide health care services in California.

The August 27, 2010 amendments require the participating practitioner to provide a copy of his or her license in each state where the individual is licensed and requires that the license be in good standing in each state where the individual is licensed. These amendments also added a sunset date to the bill of January 1, 2014

FISCAL:

The recent amendments place more requirements on each board, resulting in a fiscal impact to the Medical Board. The Board is assuming 10 events per year with approximately 20 out of state physicians participating in each event. The Board is also assuming that these events will result in two enforcement cases per year. The Medical Board will require .5 Associate Governmental Program Analyst (AGPA) to do the following: Create a new form for the health care practitioner to submit for authorization to practice medicine without a license; Develop regulations to establish the nominal fee, per the direction in the bill; Answer technical questions on the new registration program; Evaluate applications for authorization; Maintain the database; Work directly with professional entities, legislators, local elected officials (city and county), medical groups, and other regulatory Boards at the Department of Consumer Affairs.

IMPLEMENTATION:

- Submit legislative BCP to DCA.
- Newsletter Article
- Notify/Train staff
- Identify staff resources to manage program
- Work with DCA on uniform implementation plan
- Potential regulatory proposal to discuss at the January 2011 Board Meeting

Assembly Bill No. 2699

CHAPTER 270

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

[Approved by Governor September 23, 2010. Filed with Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, Bass. Healing arts: licensure exemption.

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

This bill would also provide, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill would also require an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board. The bill would require the applicable licensing board to notify the sponsoring entity, as defined, of the sponsored event whether the board approves or denies a request for authorization to provide these services within 20 days of receipt of the request. The bill would also prohibit a contract of liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions.

Because this bill would expand the definition of certain crimes, the bill would create a state-mandated local program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Health care practitioner" means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) "Sponsored event" means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) "Sponsoring entity" means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

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

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

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

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

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

(c) The board may deny a health care practitioner authorization to practice without a license if the health care practitioner fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.

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

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

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

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

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

(E) Any additional information required by the board.

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

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

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

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

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care

practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j) (1) The board may terminate authorization for a health care practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(*l*) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

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

O

SB 294

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 294
Author:	Negrete McLeod
Chapter:	#695
Subject:	Professions and Vocations: Regulation
Sponsor:	Author
Board Position:	None

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

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

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

FISCAL: None

IMPLEMENTATION:

- Newsletter Article
- Notify Board Staff
- Prepare for performing a Sunset evaluation/report in late 2012, in anticipation of legislation in 2013.

October 20, 2010

Senate Bill No. 294

CHAPTER 695

An act to amend Sections 2001, 2020, 2531, 2569, 2570.19, 2701, 2708, 2920, 2933, 3010.5, 3014.6, 3504, 3512, 3685, 3686, 3710, 3716, 4620, 4928, 4934, 4990, 4990.04, 5000, 5015.6, 5510, 5517, 5552.5, 5620, 5621, 5622, 5810, 6510, 6710, 6714, 7000.5, 7011, 7200, 7303, 8000, 8005, 8520, 8528, 8710, 11506, 18602, 18613, 22259 of, to amend and repeal Section 2531.75 of, and to add Section 4614 to, the Business and Professions Code, and to amend Section 94950 of the Education Code, relating to professions and vocations.

[Approved by Governor September 30, 2010. Filed with Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 294, Negrete McLeod. Professions and vocations: regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This bill would repeal these provisions on January 1, 2013.

Under existing law, the State Athletic Commission is responsible for licensing and regulating boxing, kickboxing, and martial arts matches and is required to appoint an executive officer. Existing law repeals these provisions on January 1, 2011.

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

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

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

(4) Existing law, until January 1, 2016, provides for the voluntary certification of massage practitioners and massage therapists by a nonprofit Massage Therapy Organization that is governed by a board of directors, and imposes certain duties on that organization. Existing law prohibits a city, county, or city and county from enacting an ordinance that requires a certificate holder to obtain any other license, permit, or other authorization

to engage in the practice of massage in addition to the certificate issued by the organization.

This bill would repeal these provisions on January 1, 2015. The bill would specify that establishing a uniform standard of certification and regulation of massage practitioners and massage therapists is a matter of statewide concern, and the massage therapy provisions apply to all cities and counties, including charter cities and charter counties.

(5) This bill would incorporate additional changes in Section 2570.19 of the Business and Professions Code proposed by SB 999 and SB 1489, to be operative if SB 999 and SB 1489, or either of them, and this bill become effective on or before January 1, 2011, and this bill is enacted last.

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

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

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

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

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

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

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

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

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

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

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

SB 700

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 700
Author: Negrete McLeod
Chapter: #505
Subject: Peer Review
Sponsor: Author
Board Position: Support

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

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

Specifically, this bill does the following:

- Adds a definition of what peer review is by specifying that it is the process in which the basic qualifications, staff privileges, employment, outcomes and conduct of licentiates are reviewed to determine if licensees may continue to practice in the facility and if so, under what, if any, parameters.

- Rewrites for clarity the section that requires an 805 report to be filed within 15 days from the date when;
    1. A peer review body denies or rejects a licensee's application for staff privileges or membership for a medical disciplinary cause or reason;
    2. A licensee's staff privileges, membership, or employment are revoked for a medical disciplinary cause or reason;
    3. Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a total of 30 days or more within any 12 month period for medical disciplinary reasons;
    4. A licensee resigns or takes a leave of absence from staff

privileges, membership or employment;

5. A licensee withdraws or abandons his or her application for staff privileges, membership, or employment;
6. A licensee withdraws or abandons his or her request for renewal of staff privileges, membership, or employment after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason after receiving notice that his or her application for staff privileges, membership, or employment is denied or will be denied for a medical disciplinary cause or reason.
7. A summary suspension of staff privileges, membership, or employment is imposed for a period in excess of 14 days.

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

- Requires an 805 report to be maintained electronically for dissemination for a period of three years after receipt.

- Adds that minutes or reports of a peer review are included in the documents that the Board may inspect. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.

- Prohibits the Board from disclosing to the public any peer review summaries completed by a hospital if a court finds that the peer review was not conducted in good faith. This makes reporting fair for licensees who have a bogus report filed against them.

- Entitles the Board to inspect and copy specified unredacted documents relating to any disciplinary proceeding resulting in an action that is required to be reported pursuant to Section 805 without subpoena. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.

- Requires the Board to remove from the Internet Website any information concerning a hospital disciplinary action that is posted if a court finds that the peer review was not done in good faith. The licensee must notify the Board of that finding. This makes reporting fair for licensees who have a bogus report filed against them.

- Requires the Board to post a factsheet on the internet that explains and

provides information on 805 reporting. The will help consumers understand the process and what this reporting means.

The August 20, 2010 amendments delete the allowance, that was in the bill, for the Board to inspect and copy specified unredacted documents relating to any disciplinary proceeding resulting in an action that is required to be reported pursuant to Section 805 without a subpoena. The amendments also delete from the bill the reporting of a formal investigation to the Board by a peer review body within 15 days of investigations related to a physicians' ability to practice medicine safely, based upon information they may be suffering from a disabling mental or physical condition that poses a threat to patient care. These sections would have given the Board broader authority to obtain information.

FISCAL: Minimal and absorbable

IMPLEMENTATION:

- Newsletter Article
- Notify/Train Board Staff
- Develop and post the factsheet by 1/1/10

Senate Bill No. 700

CHAPTER 505

An act to amend Sections 800, 803.1, 805, 805.1, 805.5, 2027, and 2220 of, and to add Section 805.01 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law provides for the professional review of specified healing arts licentiates through a peer review process.

This bill would define the term "peer review" for purposes of those provisions.

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

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

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

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

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

This bill would specify that the boards have the authority to also inspect, as permitted by other applicable law, any certified copy of medical records in the record of the disciplinary proceeding.

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

Under this bill, if a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who

is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

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

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

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

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

The bill would make related technical and nonsubstantive changes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

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

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

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

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

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

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

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

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

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

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

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

(4) Approved postgraduate training.

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

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

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

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

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

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

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

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are

higher than average because they specialize in cases or patients who are at very high risk for problems.

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

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

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

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

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

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

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

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

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

(1) (A) "Peer review" means both of the following:

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

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

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

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

(B) "Peer review body" includes:

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

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

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

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

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

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

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges,

active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the

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

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

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

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

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

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

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

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

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

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file a report with the relevant agency within 15 days after a peer review body makes a final decision or recommendation regarding the disciplinary action, as specified in subdivision (b) of Section 805, resulting in a final proposed action to be taken against a licentiate based on the peer review body's determination, following formal investigation of the licentiate, that any of the acts listed in paragraphs (1) to (4), inclusive, may have occurred, regardless of whether a hearing is held pursuant to Section 809.2. The licentiate shall receive a notice of the proposed action as set forth in Section 809.1, which shall also include a notice advising the licentiate of the right to submit additional explanatory or exculpatory statements electronically or otherwise.

(1) Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, to the extent or in such a manner as to be dangerous or injurious to any person or to the public. This paragraph shall not be construed to affect or require the imposition of immediate suspension pursuant to Section 809.5.

(2) The use of, or prescribing for or administering to himself or herself, any controlled substance; or the use of any dangerous drug, as defined in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licentiate, any other person, or the public, or to the extent that such use impairs the ability of the licentiate to practice safely.

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

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

(c) The relevant agency shall be entitled to inspect and copy the following documents in the record of any formal investigation required to be reported pursuant to subdivision (b):

(1) Any statement of charges.

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

(3) Any opinions, findings, or conclusions.

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

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

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

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

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

805.1. (a) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action that is required to be reported pursuant to Section 805:

(1) Any statement of charges.

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

(3) Any opinion, findings, or conclusions.

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

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

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

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon,

psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

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

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

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 7. Section 2027 of the Business and Professions Code is amended to read:

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

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

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

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

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

judge and the Medical Board of California unless an appeal of that decision is pending.

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

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

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

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

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

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

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

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

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

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

(d) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web

sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

SEC. 8. Section 2220 of the Business and Professions Code is amended to read:

2220. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.

(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

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SB 1069

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1069
Author: Pavley
Chapter: #512
Subject: Physician Assistants
Sponsor: California Academy of Physician Assistants
Board Position: Support

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize physician assistants to perform physical examinations, order durable medical equipment, and certify disability for the purpose of unemployment insurance eligibility.

This bill was amended to delete the amending provision to authorize physician assistants to certify disability for the purpose of unemployment insurance eligibility.

ANALYSIS:

Physician Assistants practice medicine under the supervision of physicians and surgeons and the duties of physician assistants are determined by the supervising physician and by current law. Current California law authorizes physician assistants to perform and certify specified medical examinations; this bill will permit physician assistants to perform other similar examinations and certifications.

The author and the sponsor of this bill believe that allowing physician assistants to perform physical examinations and sign all corresponding forms, order durable medical equipment, and certify disability for the purpose of unemployment insurance eligibility will help to expand access to health care by furthering a physician's ability to delegate specified health care tasks.

This bill was amended on May 5, 2010 to make a minor, technical change.

This bill was amended on August 16, 2010 to delete authorization in the bill to allow physician assistants to certify disability for the purpose of unemployment insurance eligibility.

FISCAL: None

IMPLEMENTATION:

- Newsletter Article

Senate Bill No. 1069

CHAPTER 512

An act to amend Section 3501 of, and to add Sections 3502.2 and 3502.3 to, the Business and Professions Code, to amend Sections 44336, 49406, 49423, 49455, 87408, 87408.5, and 87408.6 of, and to add Section 49458 to, the Education Code, and to amend Section 2881 of the Public Utilities Code, relating to physician assistants.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, Pavley. Physician assistants.

Existing law, the Physician Assistant Practice Act, is administered by the Physician Assistant Committee of the Medical Board of California and provides for the licensure and regulation of physician assistants. Existing law provides that a physician assistant may perform the medical services that are set forth by the regulations of the board when the services are rendered under the supervision of a licensed physician and surgeon. Existing law requires a physician assistant and his or her supervising physician to establish written guidelines for the adequate supervision of the physician assistant. Existing law provides that those requirements may be satisfied by adopting protocols for some or all of the tasks performed by the physician assistant, as specified.

This bill would provide that a physician assistant acts as the agent of the supervising physician when performing authorized activities, and would authorize a physician assistant to perform physical examinations and other specified medical services, as defined, and sign and attest to any document evidencing those examinations and other services, as required pursuant to specified provisions of law. The bill would further provide that a delegation of services agreement may authorize a physician assistant to order durable medical equipment and make arrangements with regard to home health services or personal care services. The bill would make conforming changes to provisions in the Education Code and the Public Utilities Code with regard to the performance of those examinations and services and acceptance of those attestations. The bill would also authorize a physician assistant to perform a physical examination that is required for participation in an interscholastic athletic program, as specified.

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

SECTION 1. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

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

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) "Regulations" means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

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

(k) "Delegation of services agreement" means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

(*l*) "Other specified medical services" means tests or examinations performed or ordered by a physician assistant practicing in compliance with this chapter or regulations of the board promulgated under this chapter.

(m) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations promulgated by the board under this chapter.

SEC. 2. Section 3502.2 is added to the Business and Professions Code, to read:

3502.2. Notwithstanding any other provision of law, a physician assistant may perform the physical examination and any other specified medical services that are required pursuant to Section 2881 of the Public Utilities Code and Sections 44336, 49406, 49423, 49455, 87408, 87408.5, and

87408.6 of the Education Code, practicing in compliance with this chapter, and may sign and attest to any certificate, card, form, or other documentation evidencing the examination or other specified medical services.

SEC. 3. Section 3502.3 is added to the Business and Professions Code, to read:

3502.3. (a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the board's regulations for inclusion in a delegation of services agreement, a delegation of services agreement may authorize a physician assistant to do any of the following:

(1) Order durable medical equipment, subject to any limitations set forth in Section 3502 or the delegation of services agreement. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.

(2) For individuals receiving home health services or personal care services, after consultation with the supervising physician, approve, sign, modify, or add to a plan of treatment or plan of care.

(b) Nothing in this section shall be construed to affect the validity of any delegation of services agreement in effect prior to the enactment of this section or those adopted subsequent to enactment.

SEC. 4. Section 44336 of the Education Code is amended to read:

44336. When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

SEC. 5. Section 49406 of the Education Code is amended to read:

49406. (a) Except as provided in subdivision (h), no person shall be initially employed by a school district in a certificated or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code. This examination shall consist of either an approved intradermal tuberculin test or any other test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), which, if positive, shall be followed by an X-ray of the lungs in accordance with subdivision (f) of Section 120115 of the Health and Safety Code.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and

surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent or his or her designee may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are test negative by either the tuberculin skin test or any other test for tuberculosis infection recommended by the CDC and licensed by the FDA shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee's test remains negative. Once an employee has a documented positive test for tuberculosis infection conducted pursuant to this subdivision which has been followed by an X-ray, the foregoing examination is no longer required, and a referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent of schools a certificate from the examining physician and surgeon or physician assistant showing the employee was examined and found free from active tuberculosis. The county board of education may require, by rule, that all their certificates be filed in the office of the county superintendent of schools or shall require their files be maintained in the office of the county superintendent of schools if a majority of the governing boards of the districts within the county so petition the county board of education, except that in either case a district or districts with a common board having an average daily attendance of 60,000 or more may elect to maintain the files for its employees in that district. "Certificate," as used in this section, means a certificate signed by the examining physician and surgeon or physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code or a notice from a public health agency or unit of the American Lung Association that indicates freedom from active tuberculosis. The latter, regardless of form, shall constitute evidence of compliance with this section. Nothing in this section shall prevent the governing board, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent physical examination than required by this section, but the rule shall provide for reimbursement on the same basis as required in this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse that person in a like manner prescribed in this section for employees.

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for

the examination that is reimbursable to employees of the district complying with the provisions of this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a school year whose functions do not require frequent or prolonged contact with pupils.

The governing board may, however, require an examination described in subdivision (b) and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around school premises would constitute a health hazard to pupils.

(g) If the governing board of a school district determines by resolution, after hearing, that the health of pupils in the district would not be jeopardized thereby, this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one school or school district to another shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate which shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has a certificate on file which contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to a school or school district subject to this section shall be deemed to meet the requirements of subdivision (a) if that person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has a certificate on file which contains that showing.

(i) Any governing board or county superintendent of schools providing for the transportation of pupils under contract authorized by Section 39800, 39801, or any other provision of law shall require as a condition of the contract the examination for active tuberculosis, as provided by subdivision (a), of all drivers transporting these pupils, provided that private contracted drivers who transport these pupils on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

SEC. 6. Section 49423 of the Education Code is amended to read:

49423. (a) Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician and surgeon or ordered for him or her by a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, may be assisted by the school nurse or other designated school personnel or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements identified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon or physician assistant detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken and a written statement from the parent, foster parent, or guardian of the pupil indicating the desire that the school district assist the pupil in the matters set forth in the statement of the physician and surgeon or physician assistant.

(2) In order for a pupil to carry and self-administer prescription auto-injectable epinephrine pursuant to subdivision (a), the school district shall obtain both a written statement from the physician and surgeon or physician assistant detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer auto-injectable epinephrine, and a written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction as a result of self-administering medication pursuant to this paragraph.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if that pupil uses auto-injectable epinephrine in a manner other than as prescribed.

SEC. 7. Section 49455 of the Education Code is amended to read:

49455. Upon first enrollment in a California school district of a child at a California elementary school, and at least every third year thereafter until the child has completed the eighth grade, the child's vision shall be appraised by the school nurse or other authorized person under Section 49452. This evaluation shall include tests for visual acuity and color vision; however, color vision shall be appraised once and only on male children, and the results of the appraisal shall be entered in the health record of the pupil. Color vision appraisal need not begin until the male pupil has reached the first grade. Gross external observation of the child's eyes, visual performance, and perception shall be done by the school nurse and the classroom teacher. The evaluation may be waived, if the child's parents so

desire, by their presenting of a certificate from a physician and surgeon, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or an optometrist setting out the results of a determination of the child's vision, including visual acuity and color vision.

The provisions of this section shall not apply to any child whose parents or guardian file with the principal of the school in which the child is enrolling, a statement in writing that they adhere to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depend for healing upon prayer in the practice of their religion.

SEC. 8. Section 49458 is added to the Education Code, to read:

49458. When a school district or a county superintendent of schools requires a physical examination as a condition of participation in an interscholastic athletic program, the physical examination may be performed by a physician and surgeon or physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code.

SEC. 9. Section 87408 of the Education Code is amended to read:

87408. (a) When a community college district wishes to employ a person in an academic position and that person has not previously been employed in an academic position in this state, the district shall require a medical certificate showing that the applicant is free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students. The medical certificate shall be submitted directly to the governing board by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure. The medical examination shall have been conducted not more than six months before the submission of the certificate and shall be at the expense of the applicant. A governing board may offer a contract of employment to an applicant subject to the submission of the required medical certificate. Notwithstanding Section 87031, the medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

(b) The governing board of a community college district may require academic employees to undergo a periodic medical examination by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure, to determine that the employee is free from any communicable disease, including, but not limited to, active tuberculosis, unfitting the applicant to instruct or associate with students. The periodic medical examination shall be at the expense of the district. The medical certificate shall become a part of the personnel

record of the employee and shall be open to the employee or his or her designee.

SEC. 10. Section 87408.5 of the Education Code is amended to read:

87408.5. (a) When a community college district wishes to employ a retirant who is retired for service, and such person has not been previously employed as a retirant, such district shall require, as a condition of initial employment as a retirant, a medical certificate showing that the retirant is free from any disabling disease unfitting him or her to instruct or associate with students. The medical certificate shall be completed and submitted directly to the community college district by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure. A medical examination shall be required for the completion of the medical certificate. The examination shall be conducted not more than six months before the completion and submission of the certificate and shall be at the expense of the retirant. The medical certificate shall become a part of the personnel record of the employee and shall be open to the employee or his or her designee.

(b) The community college district that initially employed the retirant, or any district that subsequently employs the retirant, may require a periodic medical examination by a physician and surgeon licensed under the Business and Professions Code, a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, or a commissioned medical officer exempted from licensure, to determine that the retirant is free from any communicable disease unfitting him or her to instruct or associate with students. The periodic medical examination shall be at the expense of the community college district. The medical certificate shall become a part of the personnel record of the retirant and shall be open to the retirant or his or her designee.

SEC. 11. Section 87408.6 of the Education Code is amended to read:

87408.6. (a) Except as provided in subdivision (h), no person shall be initially employed by a community college district in an academic or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code. This examination shall consist of an approved intradermal tuberculin test or any other test for tuberculosis infection recommended by the federal Centers for Disease Control and Prevention (CDC) and licensed by the federal Food and Drug Administration (FDA), that, if positive, shall be followed by an X-ray of the lungs.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and

surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent, or his or her designee, may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are skin test negative, or negative by any other test recommended by the CDC and licensed by the FDA, shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee remains test negative by either the tuberculin skin test or any other test recommended by the CDC and licensed by the FDA. Once an employee has a documented positive skin test or any other test that has been recommended by the CDC and licensed by the FDA that has been followed by an X-ray, the foregoing examinations shall no longer be required, and referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent a certificate from the examining physician and surgeon or physician assistant showing the employee was examined and found free from active tuberculosis. "Certificate," as used in this subdivision, means a certificate signed by the examining physician and surgeon or physician assistant, or a notice from a public health agency or unit of the American Lung Association that indicates freedom from active tuberculosis. The latter, regardless of form, shall constitute evidence of compliance with this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse the person in a like manner prescribed for employees in subdivision (e).

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a college year whose functions do not require frequent or prolonged contact with students.

The governing board may, however, require the examination and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around college premises would constitute a health hazard to students.

(g) If the governing board of a community college district determines by resolution, after hearing, that the health of students in the district would not be jeopardized thereby, this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one campus or community college district to another shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the college previously employing him or her that it has a certificate on file that contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to the community college district subject to this section shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has the certificate on file.

(i) Any governing board of a community college district providing for the transportation of students under contract shall require as a condition of the contract the examination for active tuberculosis, as provided in subdivision (a), of all drivers transporting the students, provided that privately contracted drivers who transport the students on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

(j) Examinations required pursuant to subdivision (i) shall be made available without charge by the local health officer.

SEC. 12. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to any subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with

an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. In addition, a physician assistant may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hearing impaired to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), and (c), to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2014. The commission shall require that the programs implemented under this

section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(f) The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(g) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2014, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(h) The commission shall prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(i) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

(j) The commission shall structure the programs required by this section so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

O

SB 1172

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1172
Author: Negrete McLeod
Chapter: #517
Subject: Regulatory Boards: Diversion Programs
Sponsor: Author
Board Position: Support

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require all healing arts boards under the Department of Consumer Affairs (DCA) to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensees probation or diversion program. This bill allows a healing arts board to adopt regulations authorizing the board to order a licensee to cease practice for major violations or when ordered to undergo a clinical diagnostic evaluation.

This bill was amended to remove the provision that allowed a licensee to petition to return to practice after being issued a cease and desist order.

Other amendments that were taken that do not impact the Board include deletion of the external audit requirements, deletion of the provisions that prohibited the Board from disclosing to the public that a licensee is participating in a diversion program, and deletion of the provisions that prohibited waiving confidentiality for records pertaining to substance abuse treatment services. Lastly, this bill was amended to exempt the Board of Registered (BRN) nursing from the provisions in this bill.

ANALYSIS:

Senate Bill 1441 (Ridley-Thomas, 2008) established the Substance Abuse Coordination Committee within the DCA. This committee was responsible for formulating uniform and specific standards in specified areas for each healing arts board must use in dealing with substance-abusing licensees. These sixteen standards are required whether or not a board chooses to have a formal diversion program.

Many of the uniform standards established under SB 1441 do not require statutes for implementation; however, current law does not give all boards the authority to order a cease practice. Therefore this authority needs to be codified in law in order to fully implement the uniform standards established by the Substance Abuse Coordination Committee.

This bill would require all healing arts boards to order a licensee to cease practice if he or she tests positive for alcohol or any dangerous drugs. This bill also allows a healing arts board to adopt regulations authorizing the board to order a licensee to cease practice for major violations

or when ordered to undergo a clinical diagnostic evaluation. The requirement to order a licensee to cease practice is regardless of whether or not the board has a diversion program.

The April 27, 2010 amendments remove the provisions allowed a licensee to petition to return to practice after being issued a cease and desist order. They also removed the provisions that prohibited a licentiate from waiving confidentiality for records pertaining to substance abuse treatment services and that

The May 11, 2010 amendments delete the provisions that required an external audit of DCA's services relating to the treatment and rehabilitation of impaired physicians and other board's licensees that would have been required to be performed once every three years, along with the report of the audit that would have been required to be submitted to the legislature by June 30 of each year.

The June 22, 2010 amendments remove the provisions that prohibit the Board from disclosing to the public that a licensee is participating in a board diversion program unless participation was ordered as a term of probation. The amendments also exempt the BRN from the requirements of this bill.

FISCAL: None

IMPLEMENTATION:

- Newsletter Article
- Notify/Train Board Staff
- Update disciplinary guidelines regulations

Senate Bill No. 1172

CHAPTER 517

An act to amend Section 156.1 of, and to add Sections 315.2 and 315.4 to, the Business and Professions Code, relating to regulatory boards.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.

This bill would specify that those records and documents shall be kept for 3 years and kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law.

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, veterinarians, and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. The bill would provide that these provisions do not affect the Board of Registered Nursing.

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

SECTION 1. Section 156.1 of the Business and Professions Code is amended to read:

156.1. (a) Notwithstanding any other provision of law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs shall retain all records and documents pertaining to those services until such time as these records and documents have been reviewed for audit by the department. These records and documents shall be retained for three years from the date of the last treatment or service rendered to that licentiate, after which time the records and documents may be purged and destroyed by the contract vendor. This provision shall supersede any other provision of law relating to the purging or destruction of records pertaining to those treatment and rehabilitation programs.

(b) Unless otherwise expressly provided by statute or regulation, all records and documents pertaining to services for the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs provided by any contract vendor to the department or to any board within the department shall be kept confidential and are not subject to discovery or subpoena.

(c) With respect to all other contracts for services with the department or any board within the department other than those set forth in subdivision (a), the director or chief deputy director may request an examination and audit by the department's internal auditor of all performance under the contract. For this purpose, all documents and records of the contract vendor in connection with such performance shall be retained by such vendor for a period of three years after final payment under the contract. Nothing in this section shall affect the authority of the State Auditor to conduct any examination or audit under the terms of Section 8546.7 of the Government Code.

SEC. 2. Section 315.2 is added to the Business and Professions Code, to read:

315.2. (a) A board, as described in Section 315, shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

SEC. 3. Section 315.4 is added to the Business and Professions Code, to read:

315.4. (a) A board, as described in Section 315, may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315.

(b) An order to cease practice under this section shall not be governed by the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A cease practice order under this section shall not constitute disciplinary action.

(d) This section shall have no effect on the Board of Registered Nursing pursuant to Article 3.1 (commencing with Section 2770) of Chapter 6 of Division 2.

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SB 1410

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1410
Author: Cedillo
Chapter: VETOED (see attached veto message)
Subject: Medicine: licensure examinations
Sponsor: Author
Board Position: Oppose

DESCRIPTION OF CURRENT LEGISLATION:

This bill would delete the limitation that an applicant for licensure may only make four attempts to obtain a passing score on Step III of the United States Medical Licensing Examination (USMLE).

This bill has an urgency clause and would take effect immediately upon passage. This bill also contains provisions to make the removal of the limitation of attempts retroactive to January 1, 2007.

This bill was amended to require the Medical Board of California (Board) to adopt a resolution at a public meeting every time it adopts a passing score, prohibits the Board from delegating the responsibility to adopt the passing score to any other entity, and requires the passing score to be a numerical score and not a percentage. The amendments state the intent of the Legislature that the Board complies with the court's holding in Marquez v. Medical board of California. The amendments also remove the urgency clause and the retroactive provision, so this bill will now take effect on January 1, 2011 and will no longer make the removal of limitation attempts retroactive to January 1, 2007.

ANALYSIS:

Currently, applicants for licensure are required to pass Step III within four attempts in order to be eligible to be licensed as a physician in California. This bill would give applicants an unlimited number of attempts to take and ass the examination.

The limitation was established in 2006 by AB 1796 (Bermudez, Chapter 843) which was sponsored by the Board. In the interests of furthering the Board's mission of consumer protection, this limitation was deemed necessary to allow the Board to better assess applicants' ability to practice medicine safely. The requirement to past Step III within four attempts was designed to assure that physicians who are issued full and unrestricted licenses are current in their medical knowledge at the time they receive their initial license.

Subsequent legislation, SB 1048 (Chapter 588, 2007), included provisions to allow an applicant who obtains a passing score on Step III of the USMLE in more than four attempts to be considered for licensure if the applicant has been licensed in another state for at least four years.

This bill would repeal these provisions as well as they would be unnecessary if applicants have unlimited attempts to pass the exam.

Previous study of the issue of physicians' ability to practice medicine safely with regard to the number of attempts needed to pass Step III of the USMLE indicate that there is a correlation between the number of times a physician has to take the exam to obtain a passing score and his or her competency as a physician. Of the physicians found to have taken Step III of the USMLE more than four times in order to pass, there were a large number found to be substandard by the report submitted to the Federation of State Medical Boards (FSMB).

Allowing applicants for licensure unlimited attempts to pass Step III of the USMLE allows for substandard physicians to be practicing in California and puts patients at risk. The number of attempts needed to pass required exams is not disclosed to the public. Consumers do not know they are being treated by a physician who had to take the very exam that indicates their ability and readiness to treat them multiple times before they were considered adequate for licensure. In the interests of patient protection, the competency of a physician should be evaluated and questioned when that physician continues to retake Step III of the USMLE without any limitation. The current requirement of licensure in another state for four years with a clear record and board certification provides this consumer protection.

The May 19, 2010 amendments continue to repeal the four attempt limit for licensing applicants to pass the USMLE Step III and now require the Board to adopt a resolution at a public meeting every time it adopts a passing score. The amendments also prohibit the Board from delegating the responsibility to adopt the passing score to any other entity and require the passing score to be a numerical score and not a percentage. The Board re-adopted the FSMB's passing score at the April Board Meeting by resolution; however this bill is contrary to FSMB's passing score, which is a percentage, not a numerical score. The amendments also state the intent of the Legislature that the Board comply with the court's holding in Marquez v. Medical board of California, which the Board believes it has already done.

The June 23, 2010 amendments remove the urgency clause and the retroactive provision, so this bill will now take effect on January 1, 2011 and will no longer make the removal of limitation attempts retroactive to January 1, 2007.

The Department of Consumer Affairs is also opposed to this bill, attached is their letter of opposition.

FISCAL: None

IMPLEMENTATION:
None

October 20, 2010

BILL NUMBER: SB 1410
VETOED: 09/29/2010

To the Members of the California State Senate:

I am returning Senate Bill 1410 without my signature.

This measure weakens California's existing licensing requirements for California physicians and potentially puts patients at risk by giving substandard physicians an unlimited number of attempts to pass the final step of the United States Medical Licensing Examination. In addition, physicians are able to eventually obtain licensure in California if they can be licensed in another state for at least four years without any adverse licensure action.

For these reasons, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger

Senate Bill No. 1410

Passed the Senate August 25, 2010

_____

Secretary of the Senate

Passed the Assembly August 19, 2010

_____

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 2177 of, and to add Sections 2177.5 and 2177.7 to, the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 1410, Cedillo. Medicine: licensure examinations.

Existing law, the Medical Practice Act, requires the Medical Board of California to issue a physician's and surgeon's certificate to a qualified applicant. Under the act, an applicant for a physician's and surgeon's certificate is required to include specified information with his or her application and to obtain a passing score on an entire examination or on each part of an examination. Existing law authorizes applicants to take the written examinations conducted or accepted by the board in separate parts, and requires the board to adopt by resolution the passing score for each examination or each part of an examination. Existing law requires an applicant to obtain a passing score on Step III of the United States Medical Licensing Examination within not more than 4 attempts of taking that part of the examination.

This bill would delete the prohibition on taking Step III of the United States Medical Licensing Examination more than 4 times. The bill would also require the board to accept as a passing score from an applicant the passing score that was adopted by the board and in effect on the date the applicant registered for that examination or part of the examination. The bill would further require the board to act by passing a resolution every time it adopts a passing score for an entire examination or for each part of an examination that is required for certification, subject to specified requirements and in conformity with the court's holding in Marquez v. Medical Board of California (2010) 182 Cal.App.4th 548.

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

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

(a) Under Section 2177 of the Business and Professions Code, an applicant who is seeking a physician's and surgeon's certificate in California must obtain a passing score on Step III of the United States Medical Licensing Examination (USMLE) within not more than four attempts in order to be eligible for a certificate. The examination has three steps. However, only Step III has a limit on the number of times that an applicant may attempt to pass the step.

(b) The USMLE is administered by the Federation of State Medical Boards (FSMB), a national nonprofit entity. Periodically, the FSMB recommends passing scores to the various state medical boards. It is left to the discretion of each state board to determine whether to adopt the recommended score. Historically, the Medical Board of California (MBC) has not had a formal procedure regarding adoption of the FSMB recommended passing score.

(c) When an applicant registers for the USMLE, he or she has an eligibility period of three months in which to take the examination. Multiple examination dates are available within the three-month period. The lack of a formal adoption process within the MBC, combined with a three-month window to take the examination after registration, has created some confusion as the MBC may increase the accepted passing score at any time without public record, input, or notification to applicants who have already registered for the examination.

(d) Furthermore, prior to the enactment of Chapter 843 of the Statutes of 2006 (AB 1796), California did not limit the number of times an applicant may take any part of the USMLE. Under the new law, which places an arbitrary limit of attempts on Step III of the examination, highly qualified and much needed physicians and surgeons are being denied a license to practice medicine in California. Their only option is to move to another state, become licensed and practice there, and return four years later.

(e) Failing to pass the USMLE under an arbitrary cap on the number of attempts does not translate into a lack of competency in providing high-quality medical care. Furthermore, existing law does not take into consideration learning disabilities, a history of poor performance on standardized tests, hardships, or other variables that may impede the ability of an individual to pass the examination, essentially discriminating against certain applicants.

(f) Twenty-seven states in the United States and two territories have more lenient policies regarding the USMLE, which may

include having no cap or allowing for more attempts than California. Those states and territories include AL, AZ, CO, CT, DE, FL, GU, HI, IA, IL, KS, MA, MI, MN, MS, MT, NM, NV, NJ, NY, NC, ND, OH, OK, PA, TN, VA, VI, and WY. In fact, AZ, CO, CT, DE, GU, HI, IA, KS, MA, MI, MN, MS, MT, NJ, NY, NC, ND, OH, PA, TN, VI, VA, and WY have no limit on the number of times an applicant may take the examination.

(g) Lastly, even though Assembly Bill 1796 was signed by the Governor, he expressed concerns with the measure. The Governor issued a signing message stating that Assembly Bill 1796 failed to provide the appropriate exceptions to the requirement that physicians and surgeons applying for licensure pass Step III of the USMLE within four attempts, and that Assembly Bill 1796 may have unintended consequences. The Governor requested that the MBC address his concerns. Subsequently, the MBC requested that language be added to Section 2177 of the Business and Professions Code that would cross-reference Section 2135.5 of the Business and Professions Code to exempt from the four-attempt limitation an applicant who holds an unlimited and restricted license as a physician and surgeon in another state and who has held that license continuously for a minimum of four years prior to the date of application. This amendment was added by Chapter 588 of the Statutes of 2007 (SB 1048), which was an omnibus bill for the Senate Committee on Business and Professions.

(h) The inclusion of those changes by Senate Bill 1048 has proven to be an inadequate approach to addressing the need for flexibility and consideration of other factors that may contribute to an individual failing to pass Step III of the USMLE within four attempts. It is now viewed by the Legislature as unreasonable to require an individual to leave the state, go through all the steps necessary to obtain licensure in another state, and then return to California after four years to obtain a license to practice medicine.

(i) It is further unreasonable for the MBC to change the passing score for an examination once an applicant has registered for that examination without any formal procedure or notification to the applicant.

SEC. 2. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the board.

(b) Applicants may elect to take the written examinations conducted or accepted by the board in separate parts.

(c) An applicant shall have obtained a passing score on Step III of the United States Medical Licensing Examination in order to be eligible for a physician's and surgeon's certificate.

SEC. 3. Section 2177.5 is added to the Business and Professions Code, to read:

2177.5. Notwithstanding subdivision (a) of Section 2177, the board shall accept as a passing score on an examination or part of an examination from an applicant the passing score that was adopted by the board and in effect on the date the applicant registered for that examination or part of the examination.

SEC. 4. Section 2177.7 is added to the Business and Professions Code, to read:

2177.7. (a) Pursuant to Sections 2177 and 2184, the board shall adopt a resolution every time the board adopts a passing score for an entire examination or for each part of an examination that is required for certification under this article.

(b) The resolution required pursuant to subdivision (a) shall be adopted or readopted at a public meeting of the board, and subject to public input and an affirmative vote of a majority of board members present at the meeting constituting at least a quorum.

(c) The board shall not delegate to any other entity, whether by contract or resolution, the responsibility to adopt the passing score described in this section. If the board adopts the recommended passing score of another entity as its passing score for an examination or any part of an examination and that entity subsequently changes that recommended passing score, the board's passing score shall not be changed unless the board readopts that recommended passing score, or adopts some other score, by resolution pursuant to this section.

(d) The passing score to be adopted pursuant to this section shall be stated as a numerical score and shall not be stated as a percentage of correct answers.

SEC. 5. (a) It is the intent of the Legislature in enacting Section 4 of this act that the Medical Board of California comply with the

court's holding in Marquez v. Medical Board of California (2010) 182 Cal.App.4th 548.

(b) Sections 2177 and 2184 of the Business and Professions Code unambiguously require the Medical Board of California to establish a passing score for Step III of the United States Medical Licensing Examination and to do so by resolution.

(c) The board shall adopt a passing score by means of a formal, memorialized public vote. This single, unambiguous statutory requirement is intended to keep the board accountable to the Legislature, the medical professions, medical license applicants, and the public, and to prevent the board from delegating this responsibility to anyone else.

Approved _____, 2010

_____

Governor

SB 1469

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 1489
Author:	Senate Business, Professions and Economic Development Committee
Chapter:	#653
Subject:	Omnibus
Sponsor:	Committee
Board Position:	Sponsor/Support

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act.

The provisions relating to the Medical Board (the Board) are in the Business and Professions Code and are as follows (only these sections of the bill are attached):

- **2065 & 2177** – Deletes and corrects obsolete references related to the Board's Division of Licensing and exams.
- **2096 & 2102** – Reinstates postgraduate training requirement for licensure.
- **2184** – Allows the Board to consider good cause or reason, time spent in various training programs, and current and active practice in another state or Canadian province, when addressing the period of validity of the written examination scores required for licensure.
- **2516** – Clarifies provisions related to the reporting requirements for licensed midwives.

This bill was amended to include the reporting requirements for midwives and to provide clarifying amendments to Section 2184.

FISCAL: None to the Board

IMPLEMENTATION:

- Newsletter Article
- Notify/Train Board Staff

October 20, 2010

Senate Bill No. 1489

CHAPTER 653

An act to amend Sections 2065, 2096, 2102, 2103, 2177, 2184, 2516, 2530.2, 2539.1, 2539.6, 2570.19, 3025.1, 3046, 3057.5, 3147, 3147.6, 3147.7, 3365.5, 4013, 4017, 4028, 4037, 4052.3, 4059, 4072, 4076.5, 4101, 4119, 4127.1, 4169, 4181, 4191, 4196, 4425, 4426, 4980.40.5, 4980.43, 4980.80, 4982.25, 4984.8, 4989.54, 4990.02, 4990.12, 4990.18, 4990.22, 4990.30, 4990.38, 4992.36, 4996.17, 4996.23, 4999.46, 4999.54, 4999.58, and 4999.90 of, to add Section 4200.1 to, to add and repeal Sections 4999.57 and 4999.59 of, to repeal Sections 2026, 4980.07, 4982.2, and 4984.6 of, and to repeal Article 3 (commencing with Section 4994) of Chapter 14 of Division 2 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 30, 2010. Filed with Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1489, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires an applicant for a physician's and surgeon's certificate whose professional instruction was acquired in a country other than the United States or Canada to provide evidence satisfactory to the board of, among other things, satisfactory completion of at least one year of specified postgraduate training.

This bill would require the applicant to instead complete at least 2 years of that postgraduate training.

Existing law requires an applicant for a physician's and surgeon's certificate to obtain a passing score on the written examination designated by the board and makes passing scores on a written examination valid for 10 years from the month of the examination for purposes of qualification for a license. Existing law authorizes the board to extend this period of validity for good cause or for time spent in a postgraduate training program.

This bill would apply this 10-year period of validity to passing scores obtained on each step of the United States Medical Licensing Examination and would also authorize the board to extend that period for an applicant who is a physician and surgeon in another state or a Canadian province and who is currently and actively practicing medicine in that state or province.

Existing law requires a licensed midwife who assists in childbirths that occur in out-of-hospital settings to annually report specified information to the Office of Statewide Health Planning and Development in March and requires the office to report to the Medical Board of California licensee

compliance with that requirement every April and the aggregate information collected every July.

This bill would require those annual reports to be made by March 30, April 30, and July 30, respectively, and would make additional changes to the information required to be reported by a midwife with regard to cases in California.

(2) Existing law provides for the licensure and regulation of speech-language pathologists, audiologists, and hearing aid dispensers by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. Existing law requires a licensed audiologist who wishes to sell hearing aids to meet specified licensure and examination requirements, and to apply for a dispensing audiologist certificate, pay applicable fees, and pass a board-approved hearing aid examination, except as specified. Existing law authorizes a licensed audiologist with an expired hearing aid dispenser's license to continue to sell hearing aids pursuant to his or her audiology license.

This bill would require the board to issue a dispensing audiology license to a licensed audiologist who meets those requirements or whose license to sell hearing aids has expired. The bill would also waive the licensure, examination, and application requirements described above as applied to a licensed hearing aid dispenser who meets the qualifications for licensure as an audiologist.

Existing law requires hearing aid dispensers and audiologists to inform a customer, in writing, that he or she should consult with a physician based upon an observation, or being informed by the customer, that certain problems of the ear exist.

This bill would additionally require that written notification upon observing or being informed by the customer of pain or discomfort in the ear or of specified accumulation or a foreign body in the ear canal.

(3) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry. Existing law authorizes the renewal of an expired license within 3 years after its expiration if the licensee files an application for renewal and pays all accrued and unpaid renewal fees and the delinquency fee prescribed by the board.

This bill would also require the licensee to submit proof of completion of the required hours of continuing education for the last 2 years.

Existing law authorizes the restoration of a license that is not renewed within 3 years after its expiration if the holder of the expired license, among other requirements, passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and pays a restoration fee equal to the renewal fee in effect on the last regular renewal date for licenses.

This bill would instead require the holder of the expired license to take the National Board of Examiners in Optometry's Clinical Skills examination or other clinical examination approved by the board, and to also pay any delinquency fees prescribed by the board.

Existing law alternatively authorizes the restoration of a license that is not renewed within 3 years after its expiration if the person provides proof that he or she holds an active license from another state, files an application for renewal, and pays the accrued and unpaid renewal fees and any delinquency fee prescribed by the board.

This bill would also require the person to submit proof of completion of the required hours of continuing education for the last 2 years and take and satisfactorily pass the board's jurisprudence examination. The bill would also require that the person not have committed specified crimes or acts constituting grounds for licensure denial.

(4) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and requires an applicant for a license to pass a national licensure examination and the board's jurisprudence examination. Existing law prohibits boards in the Department of Consumer Affairs from restricting an applicant who failed a licensure examination from taking the examination again, except as specified.

This bill would authorize an applicant for a pharmacist license to take the licensure examination and the jurisprudence examination 4 times each. The bill would also authorize the applicant to take those examinations 4 additional times each if additional pharmacy coursework is completed, as specified.

Existing law requires a facility licensed by the board to join the board's e-mail notification list within 60 days of obtaining a license or at the time of license renewal.

This bill would allow an owner of 2 or more facilities to comply with the e-mail notification requirement through the use of one e-mail address under specified circumstances.

Existing law requires the California State Board of Pharmacy to promulgate regulations that require, on or before January 1, 2011, a standardized, patient-centered, prescription drug label on all prescription medicine dispensed to patients in California.

This bill would exempt from those standardized, prescription drug label requirements prescriptions dispensed to a patient in a health facility and administered by a licensed health care professional, as specified.

(5) Existing law provides for the licensure and regulation of marriage and family therapists, licensed clinical social workers, educational psychologists, and professional clinical counselors by the Board of Behavioral Sciences. Existing law authorizes a licensed marriage and family therapist, licensed clinical social worker, or licensed educational psychologist whose license has been revoked, suspended, or placed on probation to petition the board for reinstatement or modification of the penalty, as specified. Existing law also authorizes the board to deny an application or suspend or revoke those licenses due to the revocation, suspension, or restriction by the board of a license to practice as a clinical social worker, marriage and family therapist, or educational psychologist.

This bill would make those provisions apply with respect to licensed professional clinical counseling, as specified.

Existing law requires an applicant applying for a marriage and family therapist license to complete a minimum of 3,000 hours of experience during a period of at least 104 weeks. Existing law requires that this experience consist of at least 500 hours of experience in diagnosing and treating couples, families, and children, and requires that an applicant be credited with 2 hours of experience for each hour of therapy provided for the first 150 hours of treating couples and families in conjoint therapy.

This bill would instead require that an applicant receive that 2-hour credit for up to 150 hours of treating couples and families in conjoint therapy, and would only allow an applicant to comply with the experience requirements with hours of experience gained on and after January 1, 2010.

Existing law requires an applicant for a professional clinical counselor license to complete a minimum of 3,000 hours of clinical mental health experience under the supervision of an approved supervisor and prohibits a supervisor from supervising more than 2 interns.

This bill would prohibit the board from crediting an applicant for experience obtained under the supervision of a spouse or relative by blood or marriage, or a person with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision. The bill would also delete the provision prohibiting a supervisor from supervising more than 2 interns.

Existing law requires an associate clinical worker or an intern to receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting and authorizes an associate clinical worker or an intern working in a governmental entity, a school, college, or university, or a nonprofit and charitable institution to obtain up to 30 hours of the required weekly direct supervisor contract via two-way, real time videoconferencing.

This bill would delete that 30-hour limit and would require an associate clinical worker or an intern to receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of face-to-face psychotherapy, as defined, is performed in each setting in which experience is obtained.

Existing law imposes specified requirements with respect to persons who apply for a professional clinical counselor license between January 1, 2011, and June 30, 2011, inclusive. Existing law imposes specified unit requirements on applicants who hold degrees issued prior to 1996.

This bill would include within those requirements specified units of supervised practicum or field study experience.

Existing law imposes specified requirements with respect to persons who apply for a professional clinical counselor license between January 1, 2011, and December 31, 2013, inclusive. With respect to those applicants, existing law authorizes the board to accept experience gained outside of California if it is substantially equivalent to that required by the Licensed Professional Clinical Counselor Act and if the applicant has gained a minimum of 250

hours of supervised clinical experience in direct counseling in California while registered as an intern with the board.

This bill would eliminate that 250-hour requirement with respect to persons with a counseling license in another jurisdiction, as specified, who have held that license for at least 2 years immediately prior to applying with the board.

Existing law authorizes the board to refuse to issue or suspend or revoke a professional clinical counselor license or intern registration if the licensee or registrant has been guilty of unprofessional conduct, as specified.

This bill would specify that unprofessional conduct includes (1) engaging in conduct that subverts a licensing examination, (2) revocation, suspension, or restriction by the board of a license to practice as a clinical social worker, educational psychologist, or marriage and family therapist, (3) conduct in the supervision of an associate clinical social worker that violates the profession's governing professional clinical counseling or regulations of the board, and (4) failing to comply with required procedures when delivering health care via telemedicine.

The bill would make other technical, nonsubstantive changes in various provisions governing the healing arts and would delete certain obsolete and duplicative language.

(6) This bill would incorporate additional changes in Section 2177 of the Business and Professions Code proposed by SB 1410, to be operative if SB 1410 and this bill become effective on or before January 1, 2011, and this bill is enacted last.

(7) This bill would incorporate additional changes in Section 2570.19 of the Business and Professions Code proposed by SB 294 and SB 999, to be operative if SB 294 and SB 999, or either of them, and this bill become effective on or before January 1, 2011, and this bill is enacted last.

(8) This bill would incorporate additional changes in Section 4980.43 of the Business and Professions Code proposed by AB 2435, to be operative if AB 2435 and this bill become effective on or before January 1, 2011, and this bill is enacted last.

(9) This bill would incorporate additional changes in Section 4996.17 of the Business and Professions Code proposed by AB 2167, to be operative if AB 2167 and this bill become effective on or before January 1, 2011, and this bill is enacted last.

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

SECTION 1. Section 2026 of the Business and Professions Code is repealed.

SEC. 2. Section 2065 of the Business and Professions Code is amended to read:

2065. Unless otherwise provided by law, no postgraduate trainee, intern, resident, postdoctoral fellow, or instructor may engage in the practice of medicine, or receive compensation therefor, or offer to engage in the practice

of medicine unless he or she holds a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the board. However, a graduate of an approved medical school, who is registered with the board and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of medicine whenever and wherever required as a part of the program under the following conditions:

(a) A graduate enrolled in an approved first-year postgraduate training program may so engage in the practice of medicine for a period not to exceed one year whenever and wherever required as a part of the training program, and may receive compensation for that practice.

(b) A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of that residency or fellowship, and may receive compensation for that practice. The resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure, or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If the resident or fellow fails to receive a license to practice medicine under this chapter within one year from the commencement of the residency or fellowship or if the board denies his or her application for licensure, all privileges and exemptions under this section shall automatically cease.

SEC. 3. Section 2096 of the Business and Professions Code is amended to read:

2096. (a) In addition to other requirements of this chapter, before a physician's and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), except as provided in subdivision (b), shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least one year of postgraduate training.

(b) An applicant applying pursuant to Section 2102 shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least two years of postgraduate training.

(c) The postgraduate training required by this section shall include at least four months of general medicine and shall be obtained in a postgraduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC).

(d) The amendments made to this section at the 1987 portion of the 1987–88 session of the Legislature shall not apply to applicants who completed their one year of postgraduate training on or before July 1, 1990.

SEC. 4. Section 2102 of the Business and Professions Code is amended to read:

2102. An applicant whose professional instruction was acquired in a country other than the United States or Canada shall provide evidence satisfactory to the board of compliance with the following requirements to be issued a physician's and surgeon's certificate:

(a) Completion in a medical school or schools of a resident course of professional instruction equivalent to that required by Section 2089 and issuance to the applicant of a document acceptable to the board that shows final and successful completion of the course. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the board. This subdivision shall apply to all applicants who are subject to this section and who have not taken and passed the written examination specified in subdivision (d) prior to June 1, 1986.

(c) Satisfactory completion of the postgraduate training required under subdivision (b) of Section 2096. An applicant shall be required to have substantially completed the professional instruction required in subdivision (a) and shall be required to make application to the board and have passed steps 1 and 2 of the written examination relating to biomedical and clinical sciences prior to commencing any postgraduate training in this state. In its discretion, the board may authorize an applicant who is deficient in any education or clinical instruction required by Sections 2089 and 2089.5 to make up any deficiencies as a part of his or her postgraduate training program, but that remedial training shall be in addition to the postgraduate training required for licensure.

(d) Passage of the written examination as provided under Article 9 (commencing with Section 2170). An applicant shall be required to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

(e) Nothing in this section prohibits the board from disapproving a foreign medical school or from denying an application if, in the opinion of the board, the professional instruction provided by the medical school or the instruction received by the applicant is not equivalent to that required in Article 4 (commencing with Section 2080).

SEC. 5. Section 2103 of the Business and Professions Code is amended to read:

2103. An applicant who is a citizen of the United States shall be eligible for a physician's and surgeon's certificate if he or she has completed the following requirements:

(a) Submitted official evidence satisfactory to the board of completion of a resident course or professional instruction equivalent to that required in Section 2089 in a medical school located outside the United States or Canada. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to Article 4 (commencing with Section 2080).

(b) Submitted official evidence satisfactory to the board of completion of all formal requirements of the medical school for graduation, except the applicant shall not be required to have completed an internship or social

service or be admitted or licensed to practice medicine in the country in which the professional instruction was completed.

(c) Attained a score satisfactory to an approved medical school on a qualifying examination acceptable to the board.

(d) Successfully completed one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104. The board shall also recognize as compliance with this subdivision the successful completion of a one-year supervised clinical medical internship operated by a medical school pursuant to Chapter 85 of the Statutes of 1972 and as amended by Chapter 888 of the Statutes of 1973 as the equivalent of the year of supervised clinical training required by this section.

(1) Training received in the academic year of supervised clinical training approved pursuant to Section 2104 shall be considered as part of the total academic curriculum for purposes of meeting the requirements of Sections 2089 and 2089.5.

(2) An applicant who has passed the basic science and English language examinations required for certification by the Educational Commission for Foreign Medical Graduates may present evidence of those passing scores along with a certificate of completion of one academic year of supervised clinical training in a program approved by the board pursuant to Section 2104 in satisfaction of the formal certification requirements of subdivision (b) of Section 2102.

(e) Satisfactorily completed the postgraduate training required under Section 2096.

(f) Passed the written examination required for certification as a physician and surgeon under this chapter.

SEC. 6. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the board.

(b) Applicants may elect to take the written examinations conducted or accepted by the board in separate parts.

(c) (1) An applicant shall have obtained a passing score on Step 3 of the United States Medical Licensing Examination within not more than four attempts in order to be eligible for a physician's and surgeon's certificate.

(2) Notwithstanding paragraph (1), an applicant who obtains a passing score on Step 3 of the United States Medical Licensing Examination in more than four attempts and who meets the requirements of Section 2135.5 shall be eligible to be considered for issuance of a physician's and surgeon's certificate.

SEC. 6.5. Section 2177 of the Business and Professions Code is amended to read:

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the board.

(b) Applicants may elect to take the written examinations conducted or accepted by the board in separate parts.

(c) An applicant shall have obtained a passing score on Step III of the United States Medical Licensing Examination in order to be eligible for a physician's and surgeon's certificate.

SEC. 7. Section 2184 of the Business and Professions Code is amended to read:

2184. (a) Each applicant shall obtain on the written examination a passing score, established by the board pursuant to Section 2177.

(b) (1) Passing scores on each step of the United States Medical Licensing Examination shall be valid for a period of 10 years from the month of the examination for purposes of qualification for licensure in California.

(2) The period of validity provided for in paragraph (1) may be extended by the board for any of the following:

(A) For good cause.

(B) For time spent in a postgraduate training program, including, but not limited to, residency training, fellowship training, remedial or refresher training, or other training that is intended to maintain or improve medical skills.

(C) For an applicant who is a physician and surgeon in another state or a Canadian province who is currently and actively practicing medicine in that state or province.

(3) Upon expiration of the 10-year period plus any extension granted by the board under paragraph (2), the applicant shall pass the Special Purpose Examination of the Federation of State Medical Boards or a clinical competency written examination determined by the board to be equivalent.

SEC. 8. Section 2516 of the Business and Professions Code is amended to read:

2516. (a) Each licensed midwife who assists, or supervises a student midwife in assisting, in childbirth that occurs in an out-of-hospital setting shall annually report to the Office of Statewide Health Planning and Development. The report shall be submitted no later than March 30, with the first report due in March 2008, for the prior calendar year, in a form specified by the board and shall contain all of the following:

(1) The midwife's name and license number.

(2) The calendar year being reported.

(3) The following information with regard to cases in California in which the midwife, or the student midwife supervised by the midwife, assisted during the previous year when the intended place of birth at the onset of care was an out-of-hospital setting:

(A) The total number of clients served as primary caregiver at the onset of care.

(B) The total number of clients served with collaborative care available through, or given by, a licensed physician and surgeon.

(C) The total number of clients served under the supervision of a licensed physician and surgeon.

(D) The number by county of live births attended as primary caregiver.

(E) The number, by county, of cases of fetal demise, infant deaths, and maternal deaths attended as primary caregiver at the discovery of the demise or death.

(F) The number of women whose primary care was transferred to another health care practitioner during the antepartum period, and the reason for each transfer.

(G) The number, reason, and outcome for each elective hospital transfer during the intrapartum or postpartum period.

(H) The number, reason, and outcome for each urgent or emergency transport of an expectant mother in the antepartum period.

(I) The number, reason, and outcome for each urgent or emergency transport of an infant or mother during the intrapartum or immediate postpartum period.

(J) The number of planned out-of-hospital births at the onset of labor and the number of births completed in an out-of-hospital setting.

(K) The number of planned out-of-hospital births completed in an out-of-hospital setting that were any of the following:

(i) Twin births.

(ii) Multiple births other than twin births.

(iii) Breech births.

(iv) Vaginal births after the performance of a cesarean section.

(L) A brief description of any complications resulting in the morbidity or mortality of a mother or an infant.

(M) Any other information prescribed by the board in regulations.

(b) The Office of Statewide Health Planning and Development shall maintain the confidentiality of the information submitted pursuant to this section, and shall not permit any law enforcement or regulatory agency to inspect or have copies made of the contents of any reports submitted pursuant to subdivision (a) for any purpose, including, but not limited to, investigations for licensing, certification, or regulatory purposes.

(c) The office shall report to the board, by April 30, those licensees who have met the requirements of subdivision (a) for that year.

(d) The board shall send a written notice of noncompliance to each licensee who fails to meet the reporting requirement of subdivision (a). Failure to comply with subdivision (a) will result in the midwife being unable to renew his or her license without first submitting the requisite data to the Office of Statewide Health Planning and Development for the year for which that data was missing or incomplete. The board shall not take any other action against the licensee for failure to comply with subdivision (a).

(e) The board, in consultation with the office and the Midwifery Advisory Council, shall devise a coding system related to data elements that require coding in order to assist in both effective reporting and the aggregation of data pursuant to subdivision (f). The office shall utilize this coding system in its processing of information collected for purposes of subdivision (f).

(f) The office shall report the aggregate information collected pursuant to this section to the board by July 30 of each year. The board shall include this information in its annual report to the Legislature.

(g) Notwithstanding any other provision of law, a violation of this section shall not be a crime.

SEC. 9. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. As used in this chapter or any other provision of law, "Speech-Language Pathology and Audiology Board" shall be deemed to refer to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) The practice of speech-language pathology means all of the following:

(1) The application of principles, methods, instrumental procedures, and noninstrumental procedures for measurement, testing, screening, evaluation, identification, prediction, and counseling related to the development and disorders of speech, voice, language, or swallowing.

(2) The application of principles and methods for preventing, planning, directing, conducting, and supervising programs for habilitating, rehabilitating, ameliorating, managing, or modifying disorders of speech, voice, language, or swallowing in individuals or groups of individuals.

(3) Conducting hearing screenings.

(4) Performing suctioning in connection with the scope of practice described in paragraphs (1) and (2), after compliance with a medical facility's training protocols on suctioning procedures.

(e) (1) Instrumental procedures referred to in subdivision (d) are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy.

(2) Nothing in this subdivision shall be construed as a diagnosis. Any observation of an abnormality shall be referred to a physician and surgeon.

(f) A licensed speech-language pathologist shall not perform a flexible fiberoptic nasendoscopic procedure unless he or she has received written verification from an otolaryngologist certified by the American Board of Otolaryngology that the speech-language pathologist has performed a minimum of 25 flexible fiberoptic nasendoscopic procedures and is competent to perform these procedures. The speech-language pathologist shall have this written verification on file and readily available for inspection upon request by the board. A speech-language pathologist shall pass a flexible fiberoptic nasendoscopic instrument only under the direct authorization of an otolaryngologist certified by the American Board of Otolaryngology and the supervision of a physician and surgeon.

TRACKER II

Medical Board of California
Tracker II - Legislative Bills
10/12/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Umbillical Cord Blood Collection Program	Chapter #529	08/30/10
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Dead	03/25/09
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Dead	03/15/10
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Dead	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Dead	
AB 456	Emmerson	Dentristry Diversion Program	Dead	05/28/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Dead	05/14/09
AB 520	Carter	Public Records: limiting requests	Dead	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Vetoed	08/17/10
AB 718	Emmerson	Health Care Coverage	Dead	05/20/10
AB 721	Nava	Physical Therapists: scope of practice	Dead	04/13/09
AB 832	Jones	Ambulatory surgical clinics: workgroup	Dead	05/05/09
AB 834	Solorio	Health Care Practitioners: peer review	Dead	04/14/09
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Chapter #416	08/20/10
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Dead	04/14/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Dead	07/15/10
AB 1162	Carter	Health Facilities: licensure	Dead	
AB 1168	Carter	Professions and Vocations (spot)	Dead	
AB 1194	Strickland	State Agency Internet Web Sites: information	Dead	
AB 1235	Hayashi	Healing Arts: peer review	Vetoed	02/16/10
AB 1458	Davis	Drugs: adverse effects: reporting	Dead	05/05/09

Medical Board of California
Tracker II - Legislative Bills
10/12/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Dead	
AB 1487	Hill	Tissue Donation	Chapter #444	08/10/10
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Dead	04/08/10
AB 1542	Jones	Medical Homes	Dead	08/27/10
AB 1659	Huber	State Government: agency repeals	Chapter #666	07/15/10
AB 1916	Davis	Pharmacies: prescriptions: reports	Dead	04/08/10
AB 1937	Fletcher	Pupil Health: Immunizations	Chapter #203	06/23/10
AB 1938	Fletcher	Dentistry	Dead	
AB 1940	Fletcher	Physician Assistants	Dead	04/05/10
AB 1994	Skinner	Hospital employees: presumption	Dead	03/23/10
AB 2028	Hernandez	Confidentially of Medical Information: disclosure	Chapter #540	08/09/10
AB 2093	V. Manual Perez	Immunizations for Children: reimbursement of physicians	Vetoed	08/20/10
AB 2104	Hayashi	California State Board of Pharmacy	Chapter #374	06/24/10
AB 2130	Huber	Professions and Vocations: sunset review	Chapter #670	08/18/10
AB 2254	Ammiano	Marijuana Control, Regulation, and Education Act	Dead	
AB 2268	Chesbro	Alcohol and Drug Abuse	Chapter #93	04/20/10
AB 2292	Lownethal	Pharmacy: clinics	Dead	
AB 2382	Blumenfield	California State University: Doctor of Physical Therapy	Chapter #425	07/15/10
AB 2500	Hagman	Professions & Vocations: licenses: military service	Chapter #389	06/22/10
AB 2548	Block	CURES: Prescription Drug Monitoring Program	Dead	
AB 2551	Hernandez	Pharmacy Technicians: scholarship and loan repayment	Dead	08/02/10
AB 2707	Berryhill	Department of Consumer Affairs: regulatory boards	Dead	

Medical Board of California
Tracker II - Legislative Bills
10/12/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 58	Aanestad	Physicians and Surgeons: peer review	Dead	05/19/09
SB 92	Aanestad	Health care reform	Dead	03/11/09
SB 238	Calderon	Prescription drugs	Dead	04/23/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Dead	05/14/09
SB 389	Negrete McLeod	Professions and Vocations	Dead	06/01/09
SB 395	Wyland	Medical Practice	Dead	
SB 442	Ducheny	Clinic Corporation: licensing	Chapter #502	08/12/10
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Dead	05/12/09
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Dead	
SB 638	Negrete McLeod	Regulatory boards: operations	Dead	
SB 719	Huff	State Agency Internet Web Sites: information searchability	Dead	
SB 761	Aanestad	Health Manpower Pilot Projects	Dead	05/06/09
SB 810	Leno	Single-Payer Health Care Coverage	Dead	01/13/10
SB 953	Walters	Podiatrists: liability for emergency services	Chapter #105	05/19/10
SB 1050	Yee	Osteopathic Medical Board of California: Naturopathic Medicine	Chapter #143	04/22/10
SB 1051	Huff	Emergency Medical Assistance: administration of disasters	Dead	05/12/10
SB 1083	Correa	Health Facilities: licensure	Dead	04/28/10
SB 1094	Aanestad	Healing Arts: peer review	Dead	
SB 1106	Yee	Prescribers: dispensing of samples	Dead?	04/05/10
SB 1132	Negrete McLeod	Healing Arts	Dead	
SB 1171	Negrete McLeod	Regulatory boards: operations	Dead	04/05/10

Medical Board of California
Tracker II - Legislative Bills
10/12/2010

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 1246	Negrete McLeod	Naturopathic Medicine	Chapter #523	08/02/10
SB 1281	Padilla	Emergency Medical Services: defibrillators	Dead	
SB 1390	Corbett	Prescription drug labels	Dead	06/15/10
SB 1490	B&P Comm.	Professions and Vocations	Chapter #298	04/12/10
SB 1491	B&P Comm.	Professions and Vocations	Chapter #415	08/20/10
SBX8 53	Calderon	Medical Marijuana Act	Dead	
SJR 14	Leno	Medical Marijuana	Dead	
SJR 15	Leno	Public Health Laboratories	Chapter #46	08/17/09

B. 2011 PROPOSALS

The following are legislative proposals staff would like to develop for 2011 Legislation.

Medical Board Staff Proposals

1. Authorize staff to seek legislation to require physicians to cooperate/attend physician conferences with the Board and to consider non-compliance unprofessional conduct.

   Reason: Similar and consistent with the State Bar of California requirements for attorneys, this proposal would require physicians to cooperate with the Medical Board, which will expedite the closure of cases.

   Pro:

   - Will help to expedite the closure of cases and no longer require the Medical Board to subpoena physicians who do not cooperate, which adds time to the cases.

   Con:

   - Will impose a new legal requirement on physicians.

2. Authorize staff to seek legislation to automatically temporarily suspend a physician and surgeon's certificate when a physician is incarcerated after a misdemeanor conviction during the period of incarceration.

   Reason: Incarcerated physicians should not be treating or prescribing to patients, including other inmates.

   Pro:

   - This proposal would prohibit incarcerated physicians from treating and prescribing to patients, including other inmates. There is a similar provision for felony incarceration (B&P Code Section 2236.1).

   Con:

   - Incarcerated physicians would not be allowed to prescribe to patients, even those that were patients before the time of incarceration.

3. Omnibus - Authorize staff to develop proposed technical "fixes" to the Licensing laws (including midwifery) and place as many as possible in an omnibus bill. This will include some midwifery clean up language on reporting requirements and adding clinical training to be listed as one of the ways the period of validity for passing scores may be extended.

Board Evaluation Report Recommendations

1. Per the Board Evaluation (Ben Frank) Report, authorize staff to seek legislation to amend the statutes governing Vertical Enforcement (VE) to clarify the Medical Board's sole authority to determine whether to continue an investigation.

Pro:

- Per the report, will promote efficiency in the Enforcement Program by clarifying the Medical Board and Attorney General (AG) Office's roles, per the report.

Con:

- Legislative clarification will most likely not make a practical difference; instead revising the VE manual will allow the Medical Board and the AG to work together to implement VE.

2. Per the Board Evaluation Report, authorize staff to seek legislation to amend current law to no longer require Medical Board Investigators and HQES Attorneys to be permanently co-located.

   Pro:

   - Co-location has been found to be impractical, repealing existing law would legislatively mirror current practice.

   Con:

   - Co-location is not in existence in current practice, as such, legislation is not needed. An option would be to include this language in an omnibus bill if it is non-controversial.

3. Per the Board Evaluation Report, authorize staff to seek legislation to amend current law to no longer require the Medical Board to invest in the Complaint Tracking System (CAS) to make it more compatible with HQES' ProLaw System.

   Pro:

   - Repealing this requirement would no longer require the Medical Board to invest funds into CAS.

   Con:

   - With the approval of DCA's BreEZe computer system, this legislative change is no longer needed. BreEZe will completely replace CAS and the Boards Application Tracking System.

C. 2011 OTHER

AGENDA ITEM 26 C.

2011 Legislation – Other

This will be a verbal report