

LEGISLATIVE PACKET



EXECUTIVE COMMITTEE MEETING

**Sacramento, CA
June 18, 2009**

**Medical Board of California
Tracker - Legislative Bill File
6/11/2009**

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 120	Hayashi	Peer Review: 809 sections	Senate	Watch	6/1/2009
AB 175	Galgiani	Telemedicine: Optometrists	Sen. Health & Sen. B&P (6/17)	Support	4/21/2009
AB 245	Ma	Disclosure Verification	Senate	Oppose	6/1/2009
AB 252	Carter	Cosmetic surgery: employment of physicians	Sen. B&P (6/8)	Support	
AB 356	Fletcher	Radiological Technology: physician assistants	Senate	Support	4/23/2009
AB 501	Emmerson	Licensing: Limited, Use of M.D., Fee/Fund	Senate	Sponsor/Support	5/26/2009
AB 526	Fuentes	Public Protection and Physician Health Program Act of 2009	Senate	Neutral	6/1/2009
AB 583	Hayashi	Disclosure of Education and Office Hours	Sen. B&P	Support if amended	
AB 602	Price	Dispensing Opticians	Sen. B&P	Watch	3/25/2009
AB 646	Swanson	Physician employment: district hospital pilot project	Senate	Support in Concept	5/5/2009
AB 648	Chesbro	Rural Hospitals: physician employment	Senate	Support in Concept	5/28/2009
AB 718	Emmerson	Electronic Prescribing Pilot Program	Sen. Health & Sen. B&P	Support	5/27/2009
AB 832	Jones	Clinic Licensing: Workgroup	Asm. Approps.	Support if amended	5/5/2009
AB 933	Fong	Workers' Compensation: utilization review	Sen. Lab. & Ind .Rel.	Support	
AB 977	Skinner	Pharmacists: Protocols with Physicians	Asm. Health	Watch	4/23/2009
AB 1070	Hill	Enforcement Enhancements: reporting, public reprimand	Senate	Sponsor/Support	4/22/2009
AB 1116	Carter	Cosmetic Surgery: physical examination prior to surgery	Sen. B&P	Support	
AB 1310	Hernandez	Healing Arts: database	Senate	Support if amended	6/2/2009
AB 1458	Davis	Drugs: adverse events: reporting	Asm. Approps.	Support	5/5/2009

* Board Sponsored Bills

* Two-Year Bills

* Bills for Discussion

**Medical Board of California
Tracker - Legislative Bill File
6/11/2009**

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
SB 58	Aanestad	Physicians and Surgeons: peer review	Sen. Approps.	Watch	5/19/2009
SB 132	Denham	Polysomnographic Technologists (urgent)	Assembly	Support	5/14/2009
SB 389	Negrete McLeod	Fingerprinting	Assembly	Support	6/1/2009
SB 470	Corbett	Prescriptions: labeling	Asm. Health & Asm. B&P	Support	4/30/2009
SB 638	Negrete McLeod	Regulatory Boards: joint committee on operations	Senate	Support	
SB 674	Negrete McLeod	Outpatient settings/Advertising	Assembly	Support	6/1/2009
SB 700	Negrete McLeod	Healing Arts: peer review	Senate	Support	5/20/2009
SB 726	Ashburn	Hospitals: employment of physician; pilot project revision	Assembly	Support in concept	5/6/2009
SB 819	B&P Comm.	Omnibus: provisions from 2008	Assembly	Support MBC provisions	6/1/2009
SB 821	B&P Comm.	Omnibus: MBC provisions	Assembly	Support MBC provisions	5/20/2009

* [Board Sponsored Bills](#)

* [Two-Year Bills](#)

* [Bills for Discussion](#)

AB 245

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 245
Author: Ma
Bill Date: June 1, 2009, amended
Subject: Disclosure Verification
Sponsor: Union of American Physicians and Dentists

STATUS OF BILL:

This bill is currently in the Senate.

DESCRIPTION OF CURRENT LEGISLATION:

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

This bill was amended to remove all requirements for verification of information by the Board. This bill was amended to change the number of days the Board has to remove any expunged convictions from the Web site from 30 days to 90 days.

ANALYSIS:

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

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

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

Amendments to the bill taken June 1, 2009 remove all requirements to the Board and increase the number of days that the Board has to remove expunged convictions from the Board's Web site from 30 days to 90 days.

FISCAL: None to MBC

POSITION: Due to the amendments, the Board's opposition may be removed.
Staff Recommendation: Neutral

June 10, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY APRIL 27, 2009
AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 245

Introduced by Assembly Member Ma

February 10, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would require the board to ~~verify the information posted pursuant to those provisions, as specified, and would require the board to immediately remove information discovered to be false and to remove expunged misdemeanor or felony convictions within a specified period of time, posted pursuant to those provisions, within 90 days of receiving notice of the expungement. The bill would also require the board to ensure that the biographical information posted on its Internet Web site regarding licensees is accurate. The bill would also require the board~~

~~to establish a process for addressing complaints from licensees regarding the posting of inappropriate information.~~

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

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

SECTION 1. Section 2027 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 board 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.

(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.

1 (9) Any information required to be disclosed pursuant to Section
2 803.1.

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

14 (2) The information described in paragraphs (3) and (6) of
15 subdivision (a) shall not be removed from being posted on the
16 board's Internet Web site. Notwithstanding the provisions of this
17 paragraph, if a licensee's hospital staff privileges are restored and
18 the licensee notifies the board of the restoration, the information
19 pertaining to the termination or revocation of those privileges, as
20 described in paragraph (6) of subdivision (a), shall remain posted
21 for a period of 10 years from the restoration date of the privileges,
22 and at the end of that period shall be removed from being posted
23 on the board's Internet Web site.

24 (c) Notwithstanding subdivision (b), the board shall remove an
25 expunged misdemeanor or felony conviction posted pursuant to
26 this section within ~~30~~ 90 days of receiving notice of the
27 expungement.

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

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

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

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

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

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

10 ~~(g)~~

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

AB 501

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 501
Author: Emmerson
Bill Date: May 26, 2009, amended
Subject: Licensing: Limited, Use of M.D., Fee/Fund
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is currently in the Senate.

DESCRIPTION OF CURRENT LEGISLATION:

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

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

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

Amendments to this bill further clarify the use of the initials M.D. In addition to graduates of an approved medical school while enrolled in post graduate training in California, a graduate of an approved medical school who has not had their license revoked or suspended may use the initials M.D. as long as they do not represent themselves as a physician who is entitled to practice medicine, do not engage in any of the acts prohibited by Section 2060. All medical schools are in support of this provision.

ANALYSIS:

Amends Business and Professions Code section 2054:

This bill would allow a graduate of an approved medical school, who is enrolled in post graduate training in California, to use the initials M.D. only while that post graduate

trainee is under the supervision of a licensed physician from that program. The post graduate trainee would be permitted to use the initials only while he or she is under the supervision of a licensed physician from that program.

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

This section was amended to include graduates of approved medical schools who, if issued a license, have not had that license revoked or suspended and persons authorized to practice medicine under Sections 2111 and 2113.

Amends Business and Professions Code section 2088:

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

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

Amends Business and Professions Code section 2435:

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

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

This bill would require an audit of the Board's financial status to be commenced no later than January 1, 2012 by the Bureau of State Audits. The audit would include the

impact of the 2008 loan to the general fund as well as projections related to expenses, revenues, and reserves. The audit will be funded within existing resources of the 2011-2012 fiscal year and would be required to be completed by June 1, 2012. The audit conducted in 2007 cost \$75,000.

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

POSITION: Sponsor/ Support

June 10, 2009

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 501

Introduced by Assembly Member Emmerson

February 24, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Emmerson. Physicians and surgeons.

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

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

This bill would authorize certain persons who are not licensed as physicians and surgeons under the act to use the words "doctor" or

“physician,” the letters or prefix “Dr.,” or the initials “M.D.,” as specified.

Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes a licensee who demonstrates that he or she *is* unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician.

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

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

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

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

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

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

State-mandated local program: yes.

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

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

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

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

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

26 ~~(d) Except as provided in subdivision (c), a graduate of an~~
27 ~~approved medical school who does not have a valid, unrevoked,~~
28 ~~and unsuspended certificate as a physician and surgeon issued~~
29 ~~under this chapter and who is not otherwise authorized to practice~~
30 ~~medicine under this chapter may use the initials "M.D." without~~

1 ~~violating subdivision (a), provided he or she does not do either of~~
2 ~~the following:~~

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

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

9 *(c) Notwithstanding subdivision (a), any of the following persons*
10 *may use the words "doctor" or "physician," the letters or prefix*
11 *"Dr.," or the initials "M.D.":*

12 *(1) A graduate of a medical school approved or recognized by*
13 *the board while enrolled in a postgraduate training program*
14 *approved by the board.*

15 *(2) A graduate of a medical school who does not have a*
16 *certificate as a physician and surgeon under this chapter if he or*
17 *she meets all of the following requirements:*

18 *(A) If issued a license to practice medicine in another*
19 *jurisdiction, has not had that license revoked or suspended by any*
20 *jurisdiction.*

21 *(B) Does not otherwise hold himself or herself out as a physician*
22 *and surgeon entitled to practice medicine in this state except to*
23 *the extent authorized by this chapter.*

24 *(C) Does not engage in any of the acts prohibited by Section*
25 *2060.*

26 *(3) A person authorized to practice medicine under Section*
27 *2111 or 2113 subject to the limitations set forth in those sections.*

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

30 2088. (a) An applicant for a physician's and surgeon's license
31 who is otherwise eligible for that license but is unable to practice
32 some aspects of medicine safely due to a disability may receive a
33 limited license if he or she does both of the following:

34 (1) Pays the initial license fee.

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

39 (b) The board may require the applicant described in subdivision
40 (a) to obtain an independent clinical evaluation of his or her ability

1 to practice medicine safely as a condition of receiving a limited
2 license under this section.

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

5 2435. The following fees apply to the licensure of physicians
6 and surgeons:

7 (a) Each applicant for a certificate based upon a national board
8 diplomate certificate, each applicant for a certificate based on
9 reciprocity, and each applicant for a certificate based upon written
10 examination, shall pay a nonrefundable application and processing
11 fee, as set forth in subdivision (b), at the time the application is
12 filed.

13 (b) The application and processing fee shall be fixed by the
14 board by May 1 of each year, to become effective on July 1 of that
15 year. The fee shall be fixed at an amount necessary to recover the
16 actual costs of the licensing program as projected for the fiscal
17 year commencing on the date the fees become effective.

18 (c) Each applicant who qualifies for a certificate, as a condition
19 precedent to its issuance, in addition to other fees required herein,
20 shall pay an initial license fee, if any, in an amount fixed by the
21 board consistent with this section. The initial license fee shall not
22 exceed seven hundred ninety dollars (\$790). An applicant enrolled
23 in an approved postgraduate training program shall be required to
24 pay only 50 percent of the initial license fee.

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

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

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

37 (2) Any increase in the amount of investigation and enforcement
38 costs incurred by the board after January 1, 2006, that exceeds the
39 average costs expended for investigation and enforcement costs
40 during the three fiscal years immediately preceding July 1, 2006.

1 When calculating the amount of costs for services for which the
2 board paid an hourly rate, the board shall use the average number
3 of hours for which the board paid for those costs over these prior
4 three fiscal years, multiplied by the hourly rate paid by the board
5 for those costs as of July 1, 2005. Beginning January 1, 2009, the
6 board shall instead use the average number of hours for which it
7 paid for those costs over the three-year period of fiscal years
8 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate
9 paid by the board for those costs as of July 1, 2005. In calculating
10 the increase in the amount of investigation and enforcement costs,
11 the board shall include only those costs for which it was eligible
12 to obtain reimbursement under Section 125.3 and shall not include
13 probation monitoring costs and disciplinary costs, including those
14 associated with the citation and fine process and those required to
15 implement subdivision (b) of Section 12529 of the Government
16 Code.

17 (f) Notwithstanding Section 163.5, the delinquency fee shall be
18 10 percent of the biennial renewal fee.

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

22 (h) It is the intent of the Legislature that, in setting fees pursuant
23 to this section, the board shall seek to maintain a reserve in the
24 Contingent Fund of the Medical Board of California in an amount
25 not less than two nor more than four months' operating
26 expenditures.

27 (i) Not later than January 1, 2012, the Bureau of State Audits
28 (BSA) shall commence a review of the board's financial status,
29 including, but not limited to, its projections related to expenses,
30 revenues, and reserves, and the impact of the loan from the
31 Contingent Fund of the Medical Board of California to the General
32 Fund made pursuant to the Budget Act of 2008. The BSA shall,
33 on the basis of the review, report its findings and recommendations
34 to the Joint Legislative Audit Committee by June 1, 2012. This
35 review shall be funded from the existing resources of the board
36 during the 2011–12 fiscal year.

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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AB 526

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 526
Author: Fuentes
Bill Date: June 1, 2009, amended
Subject: Public Protection and Physician Health Program Act of 2009
Sponsor: California Medical Association

STATUS OF BILL:

This bill is currently in the Senate.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the Public Protection and Physician Health Committee (Committee) within the State and Consumer Services Agency (SCSA) with the intent of creating a program in California that will permit physicians to obtain treatment and monitoring of alcohol or substance abuse/dependency, or of mental disorder recovery so that physicians do not treat patients while impaired.

This bill was amended to require the Board to increase licensing fees by \$22 for the purposes of funding the physician health program.

ANALYSIS:

This bill would establish the Public Protection and Physician Health Committee. The Committee would be comprised of 14 members and would be under the SCSA. This bill would require that the committee must be appointed and hold its first meeting no later than March 1, 2010. The Committee would be required to prepare regulations that provide clear guidance and measurable outcomes to ensure patient safety and the health and wellness of physicians by June 30, 2010. These rules and regulations shall include:

- Minimum standards, criteria, and guidelines for the acceptance, denial, referral to treatment, and monitoring of physicians and surgeons in the physician health program;
- Standards for requiring that a physician and surgeon agree to cease practice to obtain appropriate treatment services;
- Criteria that must be met prior to a physician and surgeon returning to practice;

- Standards, requirements, and procedures for random testing for the use of banned substances and protocols to follow if that use has occurred;
- Worksite monitoring requirements and standards;
- The manner, protocols, and timeliness of reports required;
- Appropriate requirements for clinical diagnostic evaluations of program participants;
- Requirements for a physician and surgeon's termination from, and reinstatement to, the program;
- Requirements that govern the ability of the program to communicate with a participant's employer or organized medical staff about the participant's status and condition;
- Group meeting and other self-help requirements, standards, protocols, and qualifications;

The Committee would be required to recommend one or more non-profit physician health programs to the SCSA. The physician health programs would be required to report annually to the committee on the number of participants served, the number of compliant participants, the number of participants who have successfully completed their agreement period, and the number of participants reported to the board for suspected noncompliance. The physician health programs would also have to agree to submit to periodic audits and inspections of all operations, records, and management related to the physician health program to ensure compliance.

This bill would require the SCSA, in conjunction with the committee, to monitor compliance of the physician health programs, including making periodic inspections and onsite visits.

This bill would permit a physician to enter into a voluntary agreement with a physician health program that must include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the treatment program. The physicians' voluntary participation in a physician health program would be confidential unless waived by the physician.

This bill would prohibit any voluntary agreement from being considered a disciplinary action or order by the Board and would prohibit the agreement from being disclosed to the Board nor to the public. Each participant, prior to entering into a voluntary agreement, would be required to disclose to the Committee whether he or she is under investigation by the Board. If a participant fails to disclose such an investigation, upon enrollment or at any time while a participant, the participant shall be terminated from the program.

Physician health programs would be permitted to report to the committee the name of and results of any contact or information received regarding a physician who is suspected of being, or is, impaired and, as a result, whose competence or professional conduct is reasonably likely to be detrimental to patient safety or to the delivery of patient care. The programs would be required to report to the committee if the physician and fails to cooperate with any of the requirements of the physician health program, fails to cease practice when required, fails to submit to evaluation, treatment, or biological fluid testing when required, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the physician health program, is unable to practice medicine with reasonable skill and safety, or who withdraws or is terminated from the physician health program prior to completion.

The participating physician in a voluntary agreement would be responsible for all expenses relating to chemical or biological fluid testing, treatment, and recovery as provided in the written agreement between the physician and the physician health program.

This bill would permit, not require, the Board to increase licensing fees to no less than \$22 and not to exceed 2.5% of the license fee. This fee would be expended solely for the purposes of the physician health programs. If the board included this surcharge, it would be collected and transferred to a trust established by this bill. The Board would be required to separately identify, on the licensing fee statement, the amount being collected for the program. If the Board were to opt to increase the licensing fees to fund this program, the bill states that the Board would be allowed to include a statement indicating to licensees that the Public Protection and Physician Health Program is not a program of the Board and that, by collecting this fee, the Board does not necessarily support, endorse, or have any control of or affiliation with the program. The SCSA would be required to contract for a biennial audit to assess the effectiveness, efficiency, and overall performance of the program and make recommendations.

Amendments to this bill taken June 1, 2009 require the Board to increase licensing fees by not less than \$22 or 2.5% of the license fee, whichever is greater, to be used solely for the purposes of the physician health programs.

FISCAL: Unknown

POSITION: Staff Recommendation: Oppose

June 10, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY APRIL 16, 2009
AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 526

Introduced by Assembly Member Fuentes

February 25, 2009

An act to add and repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 526, as amended, Fuentes. Public Protection and Physician Health Program Act of 2009.

Existing law establishes in the Department of Consumer Affairs the Substance Abuse Coordination Committee, comprised of the executive officers of the department's healing arts boards, as specified, and a designee of the State Department of Alcohol and Drug Programs. Existing law requires the committee to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board shall use in dealing with substance-abusing licensees. The Medical Practice Act establishes in the Department of Consumer Affairs the Medical Board of California, which provides for the licensure and regulation of physicians and surgeons.

This bill would enact the Public Protection and Physician Health Program Act of 2009, which would, until January 1, 2021, establish within the State and Consumer Services Agency the Public Protection and Physician Health Committee, consisting of 14 members appointed

by specified entities, ~~and~~ would require the committee to be appointed and to hold its first meeting by March 1, 2010, and would require agency adoption of related rules and regulations by June 30, 2010. The bill would require the committee to recommend to the agency one or more physician health programs, and would authorize the agency to contract, including on an interim basis, as specified, with any qualified physician health program for purposes of care and rehabilitation of physicians and surgeons with alcohol or drug abuse or dependency problems or mental disorders as specified. The bill would impose requirements on the physician health program relating to, among other things, monitoring the status and compliance of physicians and surgeons who enter treatment for a qualifying illness, as defined, pursuant to written, voluntary agreements, and would require the agency and committee to monitor compliance with these requirements. The bill would provide that a voluntary agreement to receive treatment would not be subject to public disclosure or disclosure to the Medical Board of California, except as specified. The bill would ~~authorize~~ *require* the board to increase physician and surgeon licensure and renewal fees for purposes of the act, and would establish the Public Protection and Physician Health Program Trust Fund for deposit of those funds, which would be subject to appropriation by the Legislature. The bill would also require specified performance audits.

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

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

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

1 10 percent of the population struggles with alcohol or substance
2 abuse or dependence during their lifetime, which may, at some
3 point, impact approximately 12,500 of the state's 125,000 licensed
4 physicians and surgeons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) Worksite monitoring requirements and standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) (A) Each participant, prior to entering into the voluntary
35 agreement described in paragraph (1), shall disclose to the
36 committee whether he or she is under investigation by the board.
37 If a participant fails to disclose such an investigation, upon
38 enrollment or at any time while a participant, the participant shall
39 be terminated from the program. For those purposes, the committee
40 shall regularly monitor recent accusations filed against physicians

1 and surgeons and shall compare the names of physicians and
2 surgeons subject to accusation with the names of program
3 participants.

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

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

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

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

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

36 (d) Except as provided in subdivisions (b), (c), and (e), and this
37 subdivision, any oral or written information reported to the board
38 pursuant to this section, including, but not limited to, any physician
39 and surgeon's participation in the physician health program and
40 any voluntary agreement entered into pursuant to this article, shall

1 remain confidential as provided in subdivision (c) of Section 800,
2 and shall not constitute a waiver of any existing evidentiary
3 privileges under any other provision or rule of law. However, this
4 subdivision shall not apply if the board has referred a complaint
5 against the physician and surgeon to a district office of the board
6 for investigation for conduct involving or alleging an impairment
7 adversely affecting the care and treatment of patients.

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

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

15 2346. The committee shall report to the agency statistics
16 received from the physician health program pursuant to Section
17 2343, and the agency shall, thereafter, report to the Legislature the
18 number of individuals served, the number of compliant individuals,
19 the number of individuals who have successfully completed their
20 agreement period, and the number of individuals reported to the
21 board for suspected noncompliance; provided, however, that in
22 making that report the agency shall not disclose any personally
23 identifiable information relating to any physician and surgeon
24 participating in a voluntary agreement as provided herein.

25 2347. (a) A physician and surgeon participating in a voluntary
26 agreement shall be responsible for all expenses relating to chemical
27 or biological fluid testing, treatment, and recovery as provided in
28 the written agreement between the physician and surgeon and the
29 physician health program.

30 (b) In addition to the fees charged for the initial issuance or
31 biennial renewal of a physician and surgeon's certificate pursuant
32 to Section 2435, and at the time those fees are charged, the board
33 ~~may shall~~ include a surcharge of not less than twenty-two dollars
34 (\$22) ~~and not to exceed, or~~ an amount equal to 2.5 percent of the
35 fee set pursuant to Section 2435, *whichever is greater, and which*
36 *shall be expended solely for the purposes of this article.* ~~If the~~
37 ~~board includes a surcharge, the~~ *The board shall collect this*
38 *surcharge and cause it to be transferred monthly to the trust fund*
39 *established pursuant to subdivision (c). This amount shall may be*
40 *separately identified on the fee statement provided to physicians*

1 and surgeons as being imposed pursuant to this article. The board
2 may include a conspicuous statement indicating that the Public
3 Protection and Physician Health Program is not a program of the
4 board and the collection of this fee does not, nor shall it be
5 construed to, constitute the board's endorsement of, support for,
6 control of, or affiliation with, the program.

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

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

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

21 2348. (a) The agency shall biennially contract to perform a
22 thorough audit of the effectiveness, efficiency, and overall
23 performance of the program and its vendors. The agency may
24 contract with a third party to conduct the performance audit, except
25 the third party may not be a person or entity that regularly testifies
26 before the board. This section is not intended to reduce the number
27 of audits the agency or board may otherwise conduct.

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

38 (c) If, during the course of an audit, the auditor discovers that
39 a participant has harmed a patient, or a patient has died while being
40 treated by a participant, the auditor shall include that information

1 in his or her audit, and shall investigate and report on how that
2 participant was dealt with by the program.

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

10 2349. This article shall remain in effect only until January 1,
11 2021, and as of that date is repealed, unless a later enacted statute,
12 that is enacted before January 1, 2021, deletes or extends that date.

AB 1070

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

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

STATUS OF BILL:

This bill is currently in the Senate.

DESCRIPTION OF CURRENT LEGISLATION:

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

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

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

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

ANALYSIS:

Amends Business and Professions Code section 801.01:

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

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

Adds Business and Professions Code section 804.5:

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

Amends Business and Professions Code section 2008:

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

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

Amends Business and Professions Code section 2225.5:

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

Amends Business and Professions Code section 2227:

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

Amends Business and Professions Code section 2425.3:

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

FISCAL: None to the Board

POSITION: Sponsor/ Support

June 10, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009
AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1070

Introduced by Assembly Member Hill

February 27, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1070, as amended, Hill. Healing arts.

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

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

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

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

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

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

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

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

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

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

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

(2)

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

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

(3)

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

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

(4)

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

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

(5)

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

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

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

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

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

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

~~(6)~~

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

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

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

State-mandated local program: yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ~~(f)~~

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

13 ~~(g)~~

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

17 ~~(h)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (i)

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

12 (j)

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

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

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

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

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

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

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

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

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

7 ~~SEC. 2.~~

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

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

19 ~~SEC. 3.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 4.~~

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

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

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

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

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

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

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

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

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

24 ~~SEC. 5.~~

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

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

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

37 (1) Full-time practice in California.

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

39 (3) Part-time practice in California.

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

3 (5) Retired.

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

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

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

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

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

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

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

27 ~~(e)~~

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

30 ~~SEC. 6.~~

31 ~~SEC. 7.~~ No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

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

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TRACKER II

Medical Board of California
2008 Tracker II - Legislative Bills
6/11/2009

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 52	Portantino	Unbilical Cord Blood Collection Program	Senate	06/02/09
AB 82	Evans	Dependent Children: psychotropic medications	Senate	06/01/09
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Asm. Approps.	03/25/09
AB 259	Skinner	Health Care Coverage: certified nurse-midwives: direct access	Asm. Health	
AB 361	Lowenthal	Workers' Compensation: treatment authorization	Sen. L & IR (6/24)	05/14/09
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Senate	05/19/09
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Asm. Health	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Asm. Hum. S.	
AB 456	Emmerson	State Agencies: period review	Senate	05/28/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Sen. T&H	05/14/09
AB 520	Carter	Public Records: limiting requests	Asm. Jud.	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Senate	05/05/09
AB 657	Hernandez	Health Professions Workforce: task force	Senate	06/02/09
AB 681	Hernandez	Confidentiality of Medical Information: psychotherapy	Sen. Jud.	
AB 721	Nava	Physical Therapists: scope of practice	Asm. B&P	04/13/09
AB 830	Cook	Drugs and Devices	Senate	04/23/09
AB 834	Solorio	Health Care Practitioners: peer review	Asm. B&P	04/14/09
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Senate	04/14/09
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Asm. Approps.	04/14/09
AB 931	Fletcher	Emergency Supplies: increase amount	Sen. Health	03/26/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Senate	06/02/09
AB 1005	Block	CA Board of Accountancy: live broadcast of board meetings	Senate	04/30/09
AB 1083	Perez	Health Facilities: security plans	Senate	05/26/09

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BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 1094	Conway	Disposal of Personal Information	Senate	05/26/09
AB 1113	Lowenthal	Prisoners: professional mental health providers: MFTs	Sen. B&P	05/14/09
AB 1140	Niello	Healing Arts (spot)	Senate	04/14/09
AB 1152	Anderson	Professional Corporations: licensed physical therapists	Senate	05/18/09
AB 1162	Carter	Health Facilities: licensure	Assembly	
AB 1168	Carter	Professions and Vocations (spot)	Assembly	
AB 1194	Strickland	State Agency Internet Web Sites: information	Asm. B&P	
AB 1317	Block	Assisted Oocute Production: advertisment	Sen. Health	05/06/09
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Asm. B&P	
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Asm. B&P	05/11/09
AB 1540	Health Comm.	Health	Senate	05/05/09
AB 1542	Health Comm.	Medical Records: centralized location	Senate	05/06/09
AB 1544	Health Comm.	Health Facilities: licensure	Senate	
SB 26	Simitian	Home-generated Pharmaceutical Waste	Sen. Approps.	04/15/09
SB 33	Correa	Marriage and Family Therapy: licensure and registration	Asm. B&P (6/16)	06/08/09
SB 39	Benoit	Torts: personal liability immunity	Asm. Jud. (6/23)	05/13/09
SB 43	Alquist	Health Prof.: cultural and linguistic competency infofamation	Assembly	05/19/09
SB 92	Aanestad	Health care reform	Sen. Health	03/11/09
SB 112	Oropeza	Hemodialysis Technicians	Asm. B&P	06/03/09
SB 171	Pavley	Certified Employees: physician assistants: medical certificates	Asm. B&P	05/18/09
SB 186	DeSaulnier	Workers' Compensation: treatment: predesignationof physician	Asm. Ins.	

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SB 238	Calderon	Medical Information: prescription refill requirements	Sen. Health	04/23/09
SB 294	Negrete McLeod	Nurse Practitioners	Asm. B&P	06/08/09
SB 303	Alquist	Nursing Facility Residents: informed consent	Assembly	04/27/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Sen. Approps.	05/14/09
SB 368	Maldonado	Confidential Medical Information: unlawful disclosure	Sen. Health	04/01/09
SB 374	Calderon	Health Care Providers: resonable disclosure: reproductive choices	Asm. B&P	04/02/09
SB 395	Wyland	Medical Practice	Senate	
SB 442	Ducheny	Clinic Corporation: licensing	Sen. Approps.	05/06/09
SB 482	Padilla	Healing Arts: Medical Practice	Sen. Jud.	04/14/09
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Assembly	05/12/09
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Sen. G.O.	
SB 599	Negrete McLeod	Licensing Boards: disciplinary actions: posting	Assembly	05/13/09
SB 606	Ducheny	Physicians and Surgeons: loan repayment	Asm. B&P	03/31/09
SB 620	Wiggins	Healing Arts: osteopaths	Asm. B&P	
SB 630	Steinberg	Health care Coverage: reconstructive surgery: dental	Assembly	06/01/09
SB 719	Huff	State Agency Internet Web Sites: information searchability	Sen. Approps.	
SB 744	Strickland	Clinical Laboratories: public health labs	Assembly	05/21/09
SB 761	Aanestad	Health Manpower Pilot Projects	Asm. Health	05/06/09
SB 762	Aanestad	Professions and Vocations: healing arts	Asm. B&P	05/05/09
SB 788	Wyland	Licensed Professional Clinical Counselors	Assembly	04/29/09
SB 810	Leno	Single-Payer Health Care Coverage	Sen. Approps.	04/23/09
SB 820	B&P Comm.	Consumer Affiars: professions and vocations	Asm. B&P	04/21/09