

# **LEGISLATIVE PACKET**



## **MEDICAL BOARD MEETING**

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

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

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

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

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

**AB 120**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

**FISCAL:** None to the Board

**POSITION:** **Staff Recommendation:** Watch

March 18, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 120**

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**Introduced by Assembly Member Hayashi**

January 15, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 1. Section 809 of the Business and Professions Code  
2 is amended to read:

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

5       (1) In 1986, Congress enacted the Health Care Quality  
6 Improvement Act of 1986 (Chapter 117 (commencing with Section  
7 11101) Title 42, United States Code), to encourage physicians to  
8 engage in effective professional peer review, but giving each state  
9 the opportunity to “opt-out” of some of the provisions of the federal  
10 act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       (3) To promote impartial peer review.  
2       (4) Upon the reasonable request of the licentiate.  
3       (c) Under no circumstances may any organization external to  
4       the peer review body that provides quality improvement activities  
5       perform any activities at the health care facility without the  
6       concurrence of and input from the peer review body.  
7       (d) For purposes of this section, the following definitions apply:  
8           (1) "Peer review body" has the meaning provided in paragraph  
9       (1) of subdivision (a) of Section 805.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**AB175**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

**FISCAL:** None to the Board

**POSITION:** **Staff Recommendation:** Support

April 25, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 175**

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**Introduced by Assembly Member Galgiani**

*(Principal coauthor: Senator Florez)*

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

*Berryhill, Block, Fuller, and Monning*)

*(Coauthor: Senator Maldonado)*

January 29, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

1 SECTION 1. Section 14132.725 of the Welfare and Institutions  
2 Code is amended to read:

3 14132.725. (a) Commencing July 1, 2006, to the extent that  
4 federal financial participation is available, face-to-face contact  
5 between a health care provider and a patient shall not be required  
6 under the Medi-Cal program for teleophthalmology and  
7 teledermatology by store and forward. Services appropriately  
8 provided through the store and forward process are subject to  
9 billing and reimbursement policies developed by the department.

10 (b) For purposes of this section, “teleophthalmology and  
11 teledermatology by store and forward” means an asynchronous  
12 transmission of medical information to be reviewed at a later time  
13 by a physician at a distant site who is trained in ophthalmology or  
14 dermatology ~~or or, for teleophthalmology, by an optometrist trained~~  
15 ~~to diagnose and treat eye diseases who is licensed pursuant to~~  
16 *Chapter 7 (commencing with Section 3000) of Division 2 of the*  
17 *Business and Professions Code*, where the physician or optometrist  
18 at the distant site reviews the medical information without the  
19 patient being present in real time. A patient receiving  
20 teleophthalmology or teledermatology by store and forward shall  
21 be notified of the right to receive interactive communication with  
22 the distant specialist physician or optometrist, and shall receive  
23 an interactive communication with the distant specialist physician  
24 or optometrist, upon request. If requested, communication with  
25 the distant specialist physician or optometrist may occur either at  
26 the time of the consultation, or within 30 days of the patient’s  
27 notification of the results of the consultation. *If the reviewing*  
28 *optometrist identifies a disease or condition requiring consultation*  
29 *or referral pursuant to Section 3041 of the Business and*  
30 *Professions Code, that consultation or referral shall be with an*  
31 *appropriate physician and surgeon or ophthalmologist, as*  
32 *required.*

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

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

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

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

AJB 245

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

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

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

April 25, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 245**

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**Introduced by Assembly Member Ma**

February 10, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

1 SECTION 1. Section 2027 of the Business and Professions  
2 Code is amended to read:  
3 2027. (a) The board shall post on the Internet the following  
4 information in its possession, custody, or control regarding licensed  
5 physicians and surgeons:  
6 (1) With regard to the status of the license, whether or not the  
7 licensee is in good standing, subject to a temporary restraining  
8 order (TRO), subject to an interim suspension order (ISO), or  
9 subject to any of the enforcement actions set forth in Section 803.1.  
10 (2) With regard to prior discipline, whether or not the licensee  
11 has been subject to discipline by the board or by the board of  
12 another state or jurisdiction, as described in Section 803.1.  
13 (3) Any felony convictions reported to the board after January  
14 3, 1991.  
15 (4) All current accusations filed by the Attorney General,  
16 including those accusations that are on appeal. For purposes of  
17 this paragraph, "current accusation" shall mean an accusation that  
18 has not been dismissed, withdrawn, or settled, and has not been  
19 finally decided upon by an administrative law judge and the board  
20 unless an appeal of that decision is pending.  
21 (5) Any malpractice judgment or arbitration award reported to  
22 the board after January 1, 1993.  
23 (6) Any hospital disciplinary actions that resulted in the  
24 termination or revocation of a licensee's hospital staff privileges  
25 for a medical disciplinary cause or reason.  
26 (7) Any misdemeanor conviction that results in a disciplinary  
27 action or an accusation that is not subsequently withdrawn or  
28 dismissed.  
29 (8) Appropriate disclaimers and explanatory statements to  
30 accompany the above information, including an explanation of  
31 what types of information are not disclosed. These disclaimers and  
32 statements shall be developed by the board and shall be adopted  
33 by regulation.

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 days of receiving notice of the expungement.

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

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

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

- 1 the board subsequently discovers to be false shall be immediately  
2 removed.
- 3 (e) The board shall ensure that the biographical information  
4 posted on its Internet Web site with respect to licensed physicians  
5 and surgeons is accurate.
- 6 (f) The board shall establish a process to completely address  
7 complaints from licensed physicians and surgeons regarding  
8 inappropriate information posted by the board pursuant to this  
9 section.
- 10 (g) The board shall be liable for damages incurred by a licensed  
11 physician and surgeon as a result of the board's failure to meet the  
12 requirements of subdivision (e), (d), or (e).
- 13 (h)
- 14 (g) The board shall provide links to other Web sites on the  
15 Internet that provide information on board certifications that meet  
16 the requirements of subdivision (b) of Section 651. The board may  
17 provide links to other Web sites on the Internet that provide  
18 information on health care service plans, health insurers, hospitals,  
19 or other facilities. The board may also provide links to any other  
20 sites that would provide information on the affiliations of licensed  
21 physicians and surgeons.

O

AJB 252

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

This bill is currently on the Assembly Floor.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill:

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

**ANALYSIS:**

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

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

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

**FISCAL:** Unknown, but some increase in enforcement costs

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

**ASSEMBLY BILL**

**No. 252**

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

February 11, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 252, as introduced, Carter. Practice of medicine: cosmetic surgery: employment of physicians and surgeons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A B 3556

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

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

**FISCAL:** None to the Board

**POSITION:** **Staff Recommendation:** Support

April 23, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 356**

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**Introduced by Assembly Member Fletcher**

February 19, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AJB 501

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

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

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

**ANALYSIS:**

**Amends Business and Professions Code section 2054:**

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

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

**Amends Business and Professions Code section 2088:**

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

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

**Amends Business and Professions Code section 2435:**

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

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

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

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

**POSITION:** Sponsor/ Support

April 25, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 501**

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**Introduced by Assembly Member Emmerson**

February 24, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7       **SECTION 1.**

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

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

14       (1) Pays the initial license fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24       SEC. 2.

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

**AB 526**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

- Minimum standards, criteria, and guidelines for the acceptance, denial, referral to treatment, and monitoring of physicians and surgeons in the physician health program;
- Standards for requiring that a physician and surgeon agree to cease practice to obtain appropriate treatment services;
- Criteria that must be met prior to a physician and surgeon returning to practice;
- Standards, requirements, and procedures for random testing for the use of banned substances and protocols to follow if that use has occurred;

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

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

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

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

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

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

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

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

**FISCAL:** Unknown, some cost should the fee be implemented

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

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 526**

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**Introduced by Assembly Member Fuentes**

February 25, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would enact the Public Protection and Physician Health Program Act of 2009, which would, until January 1, 2021, establish within the State and Consumer Services Agency the Public Protection and Physician Health Committee, consisting of 14 members appointed by specified entities, and would require *the committee to be appointed*

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

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

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

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

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

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

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

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

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

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

35       Article 14. Public Protection and Physician Health Program

36       2340. This article shall be known and may be cited as the Public  
37 Protection and Physician Health Program Act of 2009.

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

3        (a) "Agency" means the State and Consumer Services Agency.  
4        (b) "Board" means the Medical Board of California.  
5        (c) "Committee" means the Public Protection and Physician  
6 Health Committee established pursuant to Section 2342.  
7        (d) "Impaired" or "impairment" means the inability to practice  
8 medicine with reasonable skill and safety to patients by reason of  
9 alcohol abuse, substance abuse, alcohol dependency, any other  
10 substance dependency, or a mental disorder.

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

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

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

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

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

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

30        2342. (a) (1) There is hereby established within the State and  
31 Consumer Services Agency the Public Protection and Physician  
32 Health Committee. *The committee shall be appointed and hold its*  
33 *first meeting no later than March 1, 2010.* The committee shall be  
34 comprised of 14 members who shall be appointed as follows:  
35        (A) Eight members appointed by the secretary, including the  
36 following:  
37        (i) Two members who are licensed mental health professionals  
38 with knowledge and expertise in the identification and treatment  
39 of substance abuse and mental disorders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) Worksite monitoring requirements and standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**AJB 583**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

This bill will also require a physician, when supervising more than one location, to post the hours the physician is present. In addition, the public may not know that when they seek care at a physician's office, the physician may not be

present. By requiring physicians to post when they are present in the office it will help the patient better understand the physician's availability.

**FISCAL:** Minor and absorbable enforcement costs

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

April 26, 2009

**ASSEMBLY BILL**

**No. 583**

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**Introduced by Assembly Member Hayashi**

February 25, 2009

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An act to amend Section 680 of the Business and Professions Code, relating to health care practitioners.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as introduced, Hayashi. Health care practitioners: disclosure of education and office hours.

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

This bill would require those health care practitioners to also display the type of license and, except for nurses, the highest level of academic degree he or she holds either on a name tag in at least 18-point type, in his or her office, or in writing given to patients. The bill would require a physician and surgeon, osteopathic physician and surgeon, and doctor of podiatric medicine who is certified in a medical specialty, as specified, to disclose the name of the certifying board or association either on a name tag in at least 18-point type, in writing given to the patient on the patient's first office visit, or in his or her office. The bill would require a physician and surgeon who supervises an office in addition to his or her primary practice location to conspicuously post in each office a schedule of the regular hours when he or she will be present in that office and the office hours during which he or she will not be present.

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

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

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

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

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

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

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

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

15       (1) *On a name tag in at least 18-point type.*  
16       (2) *In writing to a patient at the patient’s initial office visit.*  
17       (3) *In a prominent display in his or her office.*  
18       (e) *A physician and surgeon who supervises an office in addition*  
19 *to his or her primary practice location shall conspicuously post*  
20 *in each of those offices a current schedule of the regular hours*  
21 *when he or she is present in the respective office, and the hours*  
22 *during which each office is open and he or she is not present.*

**AB 602**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

This bill is currently on the Assembly Floor.

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

**FISCAL:** None

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

April 25, 2009

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 602**

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**Introduced by Assembly Member Price**

February 25, 2009

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

**LEGISLATIVE COUNSEL'S DIGEST**

AB 602, as amended, Price. Dispensing opticians.

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

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

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

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

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

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

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

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

AJB 646

# **AB 646**

**Physician Employment: District Hospital Pilot Project**

Amended in committee on April 28, 2009.

To be presented at the Board Meeting

**AIB 648**

# **AB 648**

**Rural Hospitals: Physician Employment**

To be presented at the Board Meeting

**AB 718**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

This bill is on the Assembly Floor.

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

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

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

**FISCAL:** None to the Board

**POSITION:** **Executive Committee Recommendation:** Support (when this

was a statewide mandatory program)

**Staff Recommendation:** Support

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 718**

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**Introduced by Assembly Member Emmerson**

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

11       (c) Include all of the following components:

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

14           (2) Current payer formulary information.

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

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

19           (5) Electronic transmission of prescriptions.

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

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

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

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AJB 8332

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

**FISCAL:** None to MBC.

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

April 24, 2009

**Amendments to AB 832 (Jones)**

**As amended April 22, 2009**

**(As proposed to be amended)**

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

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

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 832**

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**Introduced by Assembly Member Jones**

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 832, as amended, Jones. Clinic licensing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18     1204.6. (a) “Ambulatory surgical care” for purposes of  
19 licensure as a surgical clinic, means the incision, partial or complete  
20 excision, destruction, resection, or other structural alteration of  
21 human tissue by any means except any of the following:

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

24       (A) Repair of minor lacerations.  
25       (B) Excision of moles, warts, or other minor skin lesions.  
26       (C) Incision and drainage of superficial abscesses.

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

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

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

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

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

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

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

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

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

30 SEC. 5.

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

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

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

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

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

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

15 (b) Any clinic directly conducted, maintained, or operated by  
16 the United States or by any of its departments, officers, or agencies,  
17 and any primary care clinic specified in subdivision (a) of Section  
18 1204 that is directly conducted, maintained, or operated by this  
19 state or by any of its political subdivisions or districts, or by any  
20 city. Nothing in this subdivision precludes the state department  
21 from adopting regulations that utilize clinic licensing standards as  
22 eligibility criteria for participation in programs funded wholly or  
23 partially under Title XVIII or XIX of the federal Social Security  
24 Act.

25 (c) Any clinic conducted, maintained, or operated by a federally  
26 recognized Indian tribe or tribal organization, as defined in Section  
27 450 or 1601 of Title 25 of the United States Code, that is located  
28 on land recognized as tribal land by the federal government.

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

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

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

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

1 pursuant to this subdivision shall not apply to any surgical clinic  
2 as described in paragraph (1) of subdivision (b) of Section 1204.  
3 (h) A clinic that is operated by a primary care community or  
4 free clinic and that is operated on separate premises from the  
5 licensed clinic and is only open for limited services of no more  
6 than 20 hours a week. An intermittent clinic as described in this  
7 subdivision shall, however, meet all other requirements of law,  
8 including administrative regulations and requirements, pertaining  
9 to fire and life safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **SEC. 6.**

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

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

15 ~~(b)~~

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

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

23 ~~(2)~~

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

29 ~~(3)~~

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

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

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

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

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

38 ~~(E) Are not inherently life threatening.~~

39 ~~(F) Are not emergency surgeries.~~

40 ~~(G) Are not experimental surgeries.~~

1       (4)

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

12     (5)

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

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

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

20       (ii) Anesthesia services.

21       (iii) Nursing services.

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

24       (v) Infection control.

25       (vi) Pharmaceutical services.

26       (vii) Laboratory and radiology services.

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

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

32       (x) Personnel policies and procedures.

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

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

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

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

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

10      **SEC. 7.**

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

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

17      **SEC. 8.**

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

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

29      **SEC. 9.**

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

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

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

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

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

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

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

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

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

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

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

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

31 **SEC. 10.**

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

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

O

AJB 8334

# **AB 834**

**Health Care Practitioners: Peer Review**

To be presented at the Board Meeting

AB 933

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

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

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

**FISCAL:** None to the Board

**POSITION:** **Staff Recommendation:** Support

April 24, 2009

**ASSEMBLY BILL**

**No. 933**

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**Introduced by Assembly Member Fong**

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

3 3209.3. (a) "Physician"—~~includes~~ means physicians and  
4 surgeons holding an M.D. or D.O. degree, psychologists,  
5 acupuncturists, optometrists, dentists, podiatrists, and chiropractic  
6 practitioners licensed by California state law and within the scope  
7 of their practice as defined by California state law.

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

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

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

23 (e) Nothing in this section shall be construed to authorize  
24 acupuncturists to determine disability for the purposes of Article  
25 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under  
26 Section 2708 of the Unemployment Insurance Code.

27 SEC. 2. Section 4610 of the Labor Code is amended to read:  
28 4610. (a) For purposes of this section, "utilization review"  
29 means utilization review or utilization management functions that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AB 977

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

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

FISCAL: None to the Board

POSITION: **Staff Recommendation:** Watch

April 26, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 977**

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**Introduced by Assembly Member Skinner**

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

~~Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists by the Board of Pharmacy in the Department of Consumer Affairs. A violation of the Pharmacy Law is a crime. Existing law, among other things, authorizes a pharmacist to administer immunizations pursuant to a protocol with a prescriber.~~

~~This bill would additionally authorize a pharmacist to initiate and administer influenza and pneumococcal immunizations to any person 7 years of age or older. The bill would require a pharmacist, prior to initiating and administering those immunizations, to complete a specified pharmacy-based immunization delivery training program. The bill~~

would also require a pharmacist initiating and administering immunizations to complete 3 hours of immunization-related continuing education coursework annually and to be certified in basic life support. The bill would require a pharmacist, at the time of administration of an immunization, to provide the patient with a Vaccine Information Statement and to provide the patient's physician with documentation of administration of the immunization. The bill would also require a pharmacist administering an immunization to maintain a specified immunization administration record, provide documentation of administration to the California Immunization Registry, report any adverse event and assure proper storage and handling of vaccines. The bill would authorize a pharmacist initiating and administering vaccines to initiate and administer epinephrine for severe allergic reactions. The bill would also require a pharmacist to obtain the consent of a parent or guardian before administering any immunization to a patient under 18 years of age.

Because this bill would create new requirements under the Pharmacy Law, the violation of which would be a crime, it would impose a state-mandated local program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) Ten years from the date of administration;

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

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

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

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

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

**AB 1070**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

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

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

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

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

**ANALYSIS:**

**Amends Business and Professions Code section 801.01:**

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

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

**Adds Business and Professions Code section 804.5:**

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

**Amends Business and Professions Code section 2008:**

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

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

**Amends Business and Professions Code section 2225.5:**

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

**Amends Business and Professions Code section 2227:**

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

**Amends Business and Professions Code section 2425.3:**

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

**FISCAL:** None to the Board

**POSITION:** Sponsor/ Support

April 24, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1070**

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**Introduced by Assembly Member Hill**

February 27, 2009

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

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

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

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

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

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

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

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

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

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

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

(2)

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

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

(3)

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

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

(4)

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

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

(5)

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

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

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

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

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

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

(6)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (f)

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

13 (g)

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

17 (h)

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

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

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

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

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

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

38 (E) A description or summary of the facts of each claim, charge,  
39 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       <sup>(f)</sup>

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       <sup>(f)</sup>

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.

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

9       (c) Multiple acts by a licensee in violation of subdivision (b)  
10 shall be punishable by a fine not to exceed five thousand dollars  
11 (\$5,000) or by imprisonment in a county jail not exceeding six  
12 months, or by both that fine and imprisonment. Multiple acts by  
13 a health care facility in violation of subdivision (b) shall be  
14 punishable by a fine not to exceed five thousand dollars (\$5,000)  
15 and shall be reported to the State Department of ~~Health Services~~  
16 *Public Health* and shall be considered as grounds for disciplinary  
17 action with respect to licensure, including suspension or revocation  
18 of the license or certificate.

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

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

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

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

36       **SEC. 4.**  
37       ~~SEC. 5.~~ Section 2227 of the Business and Professions Code is  
38 amended to read:

39       2227. (a) A licensee whose matter has been heard by an  
40 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.

O

**AB 1116**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

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

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

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

**ANALYSIS:**

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

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

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

**FISCAL:** Minor and absorbable.

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

April 24, 2009

**ASSEMBLY BILL**

**No. 1116**

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**Introduced by Assembly Member Carter**

February 27, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1116, as introduced, Carter. Cosmetic surgery.

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

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

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

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

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

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

1 SECTION 1. This act shall be known and may be cited as the  
2 Donda West Law.

3 SEC. 2. Section 1638.2 is added to the Business and Professions  
4 Code, to read:

5 1638.2. (a) Notwithstanding any other provision of law, a  
6 person licensed pursuant to Section 1634 who holds a permit to  
7 perform elective facial cosmetic surgery issued pursuant to this  
8 article may not perform elective facial cosmetic surgery on a  
9 patient, unless the patient has received a physical examination by,  
10 and written clearance for the procedure from, either of the  
11 following:

12 (1) A licensed physician and surgeon.

13 (2) The person licensed pursuant to Section 1634 who holds a  
14 permit to perform elective facial cosmetic surgery issued pursuant  
15 to this article and who will be performing the surgery.

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

18 (c) A violation of this section shall not constitute a crime.

19 SEC. 3. Section 2259.8 is added to the Business and Professions  
20 Code, to read:

21 2259.8. (a) Notwithstanding any other provision of law, a  
22 cosmetic surgery procedure may not be performed on a patient  
23 unless, prior to surgery, the patient has received a physical  
24 examination by, and written clearance for the procedure from, any  
25 of the following:

26 (1) The physician and surgeon who will be performing the  
27 surgery.

28 (2) Another licensed physician and surgeon.

29 (3) A certified nurse practitioner, in accordance with a certified  
30 nurse practitioner's scope of practice, unless limited by protocols  
31 or a delegation agreement.

- 1       (4) A licensed physician assistant, in accordance with a licensed  
2 physician assistant's scope of practice, unless limited by protocols  
3 or a delegation agreement.
- 4       (b) The physical examination described in subdivision (a) shall  
5 include the taking of a complete medical history.
- 6       (c) "Cosmetic surgery" means an elective surgery that is  
7 performed to alter or reshape normal structures of the body in order  
8 to improve the patient's appearance, including, but not limited to,  
9 liposuction and elective facial cosmetic surgery.
- 10      (d) Section 2314 shall not apply to this section.

O

**AB 1310**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

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

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

Under current law, a healthcare workforce clearinghouse, created by SB 139 (Scott), is charged with collecting data from the various health boards. The intent is to establish an ongoing data stream of changes in California's health workforce and provide the necessary information needed to make complex policy changes to meet California's health workforce needs. Currently, healing arts boards are not mandated to provide any information to the clearinghouse which makes it difficult for the Office of Statewide Health Planning and Development (OSHPD) to produce the necessary results.

This bill would require all of the health licensing boards to collect and submit specific data on age, race, gender, practice location, type of practice to the clearinghouse, etc. This will enhance the state's ability to address health workforce shortages and also identify communities that have the highest need for health professionals.

The Medical Board (Board) already requests much of the data collection required in this bill. According to the author, it was this good work being done by the Board that prompted the drafting of this bill to require the same efforts from all other healing arts boards.

New requirements that are not maintained on our computer system include location of high school, description of primary practice setting, and additional practice locations.

**FISCAL:** Unknown.

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

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1310**

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**Introduced by Assembly Member Hernandez**

February 27, 2009

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An act to add Section 857 to the Business and Professions Code, relating to healing arts.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1310, as amended, Hernandez. Healing arts: database.

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require the department to specify healing arts boards to add and label as "mandatory" specified fields on an application for initial licensure or a renewal form for applicants applying to specified healing arts boards. The bill would require the department, in consultation with the division and the clearinghouse, to select a database and to add some of the data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse.

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

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

State-mandated local program: no.

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

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

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

7       (1) First name, middle name, and last name.

8       (2) Last four digits of social security number.

9       (3) Complete mailing address.

10     (4) Educational background and training, including, but not  
11 limited to, degree, related school name and location, and year of  
12 graduation, and, as applicable, the highest professional degree  
13 obtained, related professional school name and location, and year  
14 of graduation.

15     (5) Birth date and place of birth.

16     (6) Sex.

17     (7) Race and ethnicity.

18     (8) Location of high school.

19     (9) Mailing address of primary practice, if applicable.

20     (10) Number of hours per week spent at primary practice  
21 location, if applicable.

22     (11) Description of primary practice setting, if applicable.

23     (12) Primary practice information, including, but not limited  
24 to, primary specialty practice, practice location ZIP Code, and  
25 county.

26     (13) Information regarding any additional practice, including,  
27 but not limited to, a description of practice setting, practice location  
28 ZIP Code, and county.

29     (b) The department, in consultation with the Healthcare  
30 Workforce Development Division and the Health Care Workforce  
31 Clearinghouse, shall select a database and shall add the data

1 specified in paragraphs (5) to (13) of subdivision (a), inclusive,  
2 *inclusive, of subdivision (a)* to that database.  
3 (c) The following boards are subject to subdivision (a):  
4 (1) The Acupuncture Board.  
5 (2) The Dental Hygiene Committee of California.  
6 (3) The Dental Board of California.  
7 (4) The Medical Board of California.  
8 (5) The Bureau of Naturopathic Medicine.  
9 (6) The California Board of Occupational Therapy.  
10 (7) The State Board of Optometry.  
11 (8) The Osteopathic Medical Board of California.  
12 (9) The California State Board of Pharmacy.  
13 (10) The Physical Therapy Board of California.  
14 (11) The Physician Assistant Committee, Medical Board of  
15 California.  
16 (12) The California Board of Podiatric Medicine.  
17 (13) The Board of Psychology.  
18 (14) The Board of Registered Nursing.  
19 (15) The Respiratory Care Board of California.  
20 (16) The Speech-Language Pathology and Audiology Board.  
21 (17) The Board of Vocational Nursing and Psychiatric  
22 Technicians of the State of California.  
23 (d) (1) The department shall collect the specified data in the  
24 database pursuant to subdivision (b) and shall submit that data to  
25 Health Care Workforce Clearinghouse annually on or before  
26 January 1.  
27 (2) The Health Care Workforce Clearinghouse shall prepare a  
28 written report containing the findings of this data and shall submit  
29 the written report annually to the Legislature no later than March  
30 1, commencing March 1, 2012.

**AB 1458**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 1458  
**Author:** Davis  
**Bill Date:** April 15, 2009, amended  
**Subject:** Drugs: adverse events: reporting  
**Sponsor:** Author

**STATUS OF BILL:**

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

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would require licensed health professionals to report serious adverse drug events to the Federal Food and Drug Administration and would exempt violations from related criminal provisions

**ANALYSIS:**

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the California Department of Public Health, including, but not limited to, a program for the licensing and regulation of health facilities to report adverse events relating to patient care. The Department is required to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act.

The Federal Food and Drug Administration (FDA) operates a voluntary reporting system for adverse drug reactions known as the MedWatch system. The FDA estimates that only 10 percent of the adverse drug reactions or events that occur each year are reported to the FDA.

Given the prevalence of pharmaceuticals and their use for treatment of hundreds of chronic diseases and conditions, and given recent highly publicized instances of commonly used prescription drugs being taken off the market because of safety concerns that were discovered after the drugs were approved for use, the author believes the systematic underreporting of adverse drug events represents a serious public health problem.

Requiring licensed health professionals to report adverse drug events to the MedWatch system would increase the amount of data available to the FDA. This would then enable the FDA to safeguard the public health in a more effectual manner.

This does increase the responsibility of the health care provider in reporting these occurrences but there are no penalties under the Health and Safety Code.

**FISCAL:** None.

**POSITION:** **Staff Recommendation:** Support

April 23, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1458**

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**Introduced by Assembly Member Davis**

February 27, 2009

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An act to add Article 7 (commencing with Section 111657.10) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1458, as amended, Davis. Drugs: adverse effects: reporting.

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the State Department of Public Health, including, but not limited to, a program *Health*. Existing law also contains provisions for the licensing and regulation of health facilities and clinics professionals. Existing law requires certain health facilities to report adverse events, as defined, relating to patient care. Existing law requires the department to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime.

This bill would require clinics, health facilities, and health professionals to report serious adverse drug events to the federal Food and Drug Administration and would exempt violations from related criminal provisions.

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

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

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

3        (a) The federal Food and Drug Administration (FDA) operates  
4 a voluntary reporting system for adverse drug reactions known as  
5 the MedWatch system.

6        (b) The FDA currently estimates that only 10 percent of the  
7 adverse drug reactions or events that occur each year are reported  
8 to the FDA.

9        (c) Given the prevalence of pharmaceuticals and their use for  
10 treatment of hundreds of chronic diseases and conditions, and  
11 given recent highly publicized instances of commonly used  
12 prescription drugs being taken off the market due to safety concerns  
13 that were discovered after the drugs were approved for use, the  
14 systematic underreporting of adverse drug events represents a  
15 serious public health problem.

16        (d) Requiring licensed health professionals and health facilities  
17 to report adverse drug events to the FDA would increase the  
18 amount of data available to the FDA about adverse drug reactions,  
19 thereby enabling the FDA to discern problems with drugs that arise  
20 after they are approved and to take action to protect the public  
21 health in a more timely manner.

22        SEC. 2. Article 7 (commencing with Section 111657.10) is  
23 added to Chapter 6 of Part 5 of Division 104 of the Health and  
24 Safety Code, to read:

25  
26                      Article 7. Adverse Event Reporting  
27

28        111657.10. (a) A licensed health professional, including, but  
29 not limited to, a physician and surgeon, dentist, or pharmacist, ~~a~~  
~~health facility as defined in Section 1250, or a clinic as defined~~  
~~under Chapter 1 (commencing with Section 1200)~~, shall report all  
32 suspected serious adverse drug events that are spontaneously  
33 discovered or observed in medical practice to MedWatch, the drug  
34 safety information and adverse event reporting program operated  
35 by the federal Food and Drug Administration (FDA).

1       (b) For purposes of this section, serious adverse drug events  
2 shall include adverse health outcomes involving patients that result  
3 in death, life-threatening conditions, hospitalization, disability,  
4 congenital anomaly, or that require intervention to prevent  
5 permanent impairment or damage.

6       (c) Any ~~health professional, health facility, or clinic professional~~  
7 that is required to report an adverse drug event pursuant to this  
8 section shall use the FDA 3500 Voluntary form developed by the  
9 FDA for MedWatch.

10      111657.15. A licensed ~~health professional, health facility, or~~  
11 ~~clinic professional~~ that violates any provision of this article shall  
12 not be subject to the penalties and remedies outlined in Chapter 8  
13 (commencing with Section 111825). Nothing in this section affects  
14 otherwise existing duties, rights, or remedies under the law.

58  
B  
S

# **SB 58**

**Physicians and Surgeons: Peer Review**

To be presented at the Board Meeting

SB 92

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 92  
**Author:** Aanestad  
**Bill Date:** March 11, 2009, amended  
**Subject:** Health Care Reform  
**Sponsor:** Author

**STATUS OF BILL:**

This bill has been referred to the Senate Health Committee and is set for hearing April 29, 2009.

**DESCRIPTION OF CURRENT LEGISLATION:**

This is a major Health Care Reform bill. There are several sections that pertain to the Medical Board (Board).

**ANALYSIS:**

The provisions of this bill that would affect the Board are:

1. This bill would specify that only a California licensed health care professional, while performing medical reviews to authorize health care services, may deny, delay, or modify requests for approved care.
2. This bill would require the licensee who is performing medical reviews to have at least the same scope of practice as the provider who is submitting the request for authorization.
3. This bill would make a medical professional reviewer's failure to conduct a good faith prior examination of the insured patient under review unprofessional conduct and grounds for disciplinary action. This bill specifies that the primary obligation of the reviewer is the enrolled or insured patient.
4. Allows medical assistants to administer medication in any setting under the specific authorization and supervision of a physician, nurse practitioner, nurse-midwife, or physician assistant.

**FISCAL:** Unknown at this time.

**POSITION:** **Staff Recommendation:** Watch. Due to the extensive reforms contained in this bill it may not be appropriate to take a position at this time.

AMENDED IN SENATE MARCH 11, 2009

AMENDED IN SENATE FEBRUARY 25, 2009

**SENATE BILL**

**No. 92**

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**Introduced by Senator Aanestad**

January 21, 2009

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An act to amend Section 2069 of, *and to add Section 734 to*, the Business and Professions Code, to add Section 1815.5 to the Financial Code, to add Sections 22830.5, 22830.6, 22869.5, and 22917 to the Government Code, to amend Sections 1345, 1357, 1357.03, 1357.06, 1357.14, 1367.01, 1367.63, 1367.635, 1374.32, 1374.33, ~~and 1374.58~~ 1374.58, ~~and 1395 of~~, to add Sections 1346.2, 1349.3, and 1367.38 to, and to add Article 12 (commencing with Section 1399.830) to Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 10121.7, 10123.135, 10169.2, 10169.3, 10700, 10705, 10706, and 10708 of, to add Sections 699.6, 10123.56, 10123.86, 10123.88, 10123.136, and 12938.1 to, ~~to add Chapter 9.7 (commenceneing with Seetion 10920)~~ ~~to Part 2 of Division 2 of~~, and to, to add Article 7 (commencing with Section 11885) to Chapter 4 of Part 3 of Division 2 of, *and to add Chapter 9.7 (commencening with Section 10920) to Part 2 of Division 2 of*, the Insurance Code, to amend Sections 511 and 515 of, and to add Section 96.8 to, the Labor Code, to amend Sections 17072, 17215, and 19184 of, to add Sections 17053.91, 17053.102, 17053.103, 17138.5, 17138.6, and 17216 to, and to add and repeal Sections 17053.58, 17053.77, 17204, 23658, and 23677 of, the Revenue and Taxation Code, and to amend Sections 14043.26 and 14133 of, to add Sections 14026.7, 14029.7, 14079.7, 14132.104, 14132.105, and 14164.5 to, to add Article 2.94 (commencing with Section 14091.50) to Chapter 7 of Part 3 of Division 9 of, and to add Division 23 (commencing with Section 23000) to, the Welfare and Institutions Code, relating to health care, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

SB 92, as amended, Aanestad. Health care reform.

(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (the Knox-Keene Act), provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the Knox-Keene Act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

The Knox-Keene Act requires, subject to specified exceptions, that a health care service plan be licensed by the department and provide basic health care services, as defined, among other benefits, unless exempted from that requirement by the director of the department. Existing law also requires, subject to specified exceptions, that an insurer obtain a certificate of authority from the Insurance Commissioner in order to transact business in this state and that the insurer operate in accordance with specified requirements.

This bill would allow a carrier domiciled in another state to offer, sell, or renew a health care service plan contract or a health insurance policy in this state without holding a license issued by the department or a certificate of authority issued by the commissioner. The bill would exempt the carrier's plan contract or policy from requirements otherwise applicable to plans and insurers providing health care coverage in this state if the plan contract or policy complies with the domiciliary state's requirements, and the carrier is lawfully authorized to issue the plan contract or policy in that state and to transact business there.

The bill would also authorize health care service plans and health insurers to offer, market, and sell individual health care service plan contracts and individual health insurance policies that do not include all of the benefits mandated under state law to individuals with income below 350% of the federal poverty level if the individual waives those benefits, as specified, and the plan contract or insurance policy is approved by the Director of the Department of Managed Health Care or the Insurance Commissioner.

(2) Under existing law, health care service plans and health insurers are required to include certain benefits in their contracts and policies. Existing federal law authorizes an individual who has a high deductible health plan to make tax deductible contributions to a Health Savings Account that may be used to pay medical expenses.

This bill would require the Director of the Department of Managed Health Care and the Insurance Commissioner to encourage the design of health care service plan contracts and health insurance policies that conform to current federal requirements for high deductible health plans used in conjunction with Health Savings Accounts and to standardize the process used to review and approve new health care service plan contracts and health insurance policies. The bill would require the director and the commissioner to report specified information to the Legislature regarding those requirements.

The bill would also authorize group health care service plan contracts and group health insurance policies to offer to include a Healthy Action Incentives and Rewards Program, as specified.

(3) Existing law imposes certain requirements on health care service plans and health insurers to enable small employers to access health care coverage. Existing law requires health care service plans and health insurers to sell to any small employer any of the benefit plan designs it offers to small employers and prohibits plans and insurers, among others, from encouraging or directing small employers to refrain from filing an application for coverage with the plan or insurer, and from encouraging or directing small employers to seek coverage from another carrier, because of the health status, claims experience, industry, occupation, or geographic location within the carrier's approved service area of the small employer or the small employer's employees.

This bill would also prohibit a plan or insurer from taking either of those actions because of the employer's implementation of, or intent to implement, any form of claim support for covered employees, as specified.

Existing law defines "small employer" for these purposes to include a guaranteed association that purchases health care coverage for its members. Existing law defines "guaranteed association" to mean a nonprofit organization of individuals or employers that meets certain requirements, including having been in active existence and having included health coverage as a membership benefit for at least 5 years prior to January 1, 1992, and covering at least 1,000 persons in that regard.

This bill would delete the requirements for a guaranteed association to have been in active existence and to have included health care coverage as a membership benefit for at least 5 years prior to January 1, 1992. The bill would reduce the required number of persons covered by health coverage provided through the guaranteed association from

1,000 to 100. The bill would also define "small employer" to include an eligible association that purchases health care coverage for its members and would define an eligible association as a community or civic group or a charitable or religious organization.

Because a willful violation of these requirements with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(4) Existing law requires health care service plans and specified disability insurers to have written policies and procedures establishing the process by which the plans or insurers prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity, requests by providers of health care services for enrollees or insureds. Existing law imposes specified requirements on that process and specifies that only a licensed physician or licensed health care professional with specified competency may deny or modify requests for authorization of health care services.

This bill would ~~authorize a~~ specify that only a California licensed health care professional, other than a person licensed to practice medicine, to ~~may~~, deny, delay, or modify requests only with respect to for authorization of health care services. The bill would limit that licensee's review to services that fall within his or her scope of practice and would make that review subject to standardized protocol limitations or supervision requirements applicable under his or her license. The bill would also require the licensee to have at least the same scope of practice as the provider submitting the request for authorization. The bill would also prohibit a physician or other health care professional licensee from denying, delaying, or modifying a request without first conducting a good faith examination of the enrollee or insured, except as specified, and would make a violation of that requirement unprofessional conduct and grounds for disciplinary action. The bill would specify that the primary obligation of that licensee is to the enrollee or insured. The bill would also provide that a service is medically necessary or a medical necessity when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain.

Existing law establishes an independent medical review system in which an independent medical review organization reviews grievances involving a disputed health care service under a health care service plan contract or disability insurance policy. Existing law requires that the medical professionals selected by that organization to conduct reviews

to be either physicians holding a specified certification or other appropriate providers holding a nonrestricted license in any state.

This bill would require those physicians and other providers to be licensed in California and would limit the reviews conducted by those ~~other providers persons~~, as specified.

Existing law requires the medical reviewers selected to conduct a review to review specified information, including, but not limited to, provider reports and all pertinent medical records of the enrollee or insured.

This bill would also require that at least one of those medical professional reviewers conduct a good faith examination of the enrollee, except as specified, *and would make a failure to conduct that examination unprofessional conduct and grounds for disciplinary action. The bill would specify that the primary obligation of these reviewers is to the enrollee or insured.*

Because a willful violation of these requirements with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.

(5) Existing law provides for insurers to be admitted to transact business in specified types of insurance, including workers' compensation insurance.

This bill would allow any insurer admitted to transact health insurance or workers' compensation insurance, or a health care service plan licensed pursuant to the Knox-Keene Act, to make written application to the commissioner for a license to offer a single policy that provides health care coverage and workers' compensation benefits.

(6) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive various health care services and benefits. Existing law prescribes various requirements governing reimbursement rates for these services.

This bill would require, on January 1, 2010, the reimbursement levels for fee-for-service physician services under Medi-Cal to be increased to 80% of the amount that the federal Medicare Program reimburses for these same services in Area 9 (Santa Clara County), and would thereafter require the rates to be increased annually in accordance with the California Consumer Price Index.

The bill would require the department, before making any adjustment to Medi-Cal reimbursement rates, to consider the ability of Medi-Cal beneficiaries to access physician services by geography and specialty

and to request data from the Office of Statewide Health Planning and Development to allow the department to determine the extent of Medi-Cal physician shortages, if any, by geography and specialty.

The bill would require the department to ensure the existence and operation of a single searchable Internet Web site, accessible by the public at no cost, that specifies Medi-Cal expenditures, including a line item breakdown of administrative overhead and provider and health care expenses.

The bill would require the department to prepare and submit a proposal for a demonstration project by July 31, 2010, for participation in the federal Medicaid Demonstration Project for Health Opportunity Accounts and would specify the details of that demonstration project.

The bill would also require the department, on or before January 1, 2011, to provide or arrange for the provision of an electronic personal health record and an electronic personal benefits record for beneficiaries of the Medi-Cal program. The bill would additionally authorize the department to establish a Healthy Action Incentives and Rewards Program as a covered benefit under the Medi-Cal program, subject to federal financial participation and approval.

The bill would state the intent of the Legislature to enact legislation that would realign Medi-Cal benefits to more closely resemble benefits offered through private health care coverage.

The bill would also state the intent of the Legislature to enact legislation that would establish a pilot project that utilizes a self-directed “cash and counseling” model for providing Medi-Cal services to disabled Medi-Cal enrollees. Under a “cash and counseling” model, disabled Medi-Cal enrollees, with assistance from family members and Medi-Cal case managers, would be given an individual budget to manage and direct payment for their personal care services and enable them to determine which supportive services they want and from whom they wish to have these services delivered.

Under existing law, the Director of Health Care Services may contract with any qualified individual, organization, or entity to provide services to, arrange for, or case manage the care of Medi-Cal beneficiaries subject to specified requirements.

This bill would state the intent of the Legislature to enact legislation that would establish a pilot project in which Medi-Cal managed care is used as a platform to transition from a defined-benefit system, where the state pays for services used based on a defined set of benefits, to a

defined-contribution system, where Medi-Cal enrollees would be assigned a risk-adjusted amount to purchase private health care coverage.

Existing law requires an applicant that is not currently enrolled as a provider in the Medi-Cal program, a provider required to apply for continued enrollment, or a provider not currently enrolled at a location where the provider intends to provide Medi-Cal goods or services to submit a complete application package for enrollment, continuing enrollment, or enrollment at a new location, except as specified. Existing law requires the department to provide, within 30 days of receipt, written notice that the application package has been received, except as specified. Applicants or providers that meet certain criteria may be granted preferred provisional provider status for up to 18 months.

This bill would, notwithstanding any other provision of law, additionally provide that, on and after January 1, 2010, certain licensed health care providers submitting an application to the department pursuant to the above provisions shall be granted preferred provisional provider status, effective from the date the department received their application, if the applicant is in good standing as a provider under the federal Medicare Program and with his or her state licensing board.

This bill would require the department to provide written notice to the applicant that the application package has been received within 15 days after receiving the application. The bill would require the department to provide successful applicants with written notice of their preferred provisional provider status within 30 days after receiving the application.

Existing law establishes, within the office of the Attorney General, the Bureau of Medi-Cal Fraud for the investigation and prosecution of violations of applicable laws pertaining to the Medi-Cal program, and to review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the Medi-Cal program.

This bill would require the State Department of Health Care Services to establish a computer modeling program to be used to prevent and identify Medi-Cal fraud. The bill would require the computer modeling program to alert the department when providers engage in specified billing behavior. The bill would require the department, upon receiving the alert, to conduct a Medi-Cal fraud investigation if the department determines an investigation is appropriate under the circumstances.

Existing law, administered by the State Department of Public Health, provides for the licensure and regulation of various clinics, including primary care clinics, as defined.

Existing law establishes the Medi-Cal Hospital/Uninsured Care Demonstration Project Act that revises hospital reimbursement methodologies in order to maximize the use of federal funds consistent with federal Medicaid law and stabilize the distribution of funding for hospitals.

This bill would require the Director of Health Care Services to provide to the Legislature, no later than July 1, 2010, a plan to permit these funds to be used for the purpose of creating new, and expanding existing, primary care clinics.

Under existing law, one of the utilization controls to which services are subject under the Medi-Cal program is the treatment authorization request process, which is approval by a department consultant of a specified service in advance of the rendering of that service based upon a determination of medical necessity. Other utilization controls include postservice prepayment audits and postservice postpayment audits, that involve reviews for medical necessity and program coverage.

This bill would, instead, provide that treatment authorization requests shall be approved based upon a determination that the service is covered under Medi-Cal. The bill would also provide that postservice prepayment audits and postservice postpayment audits shall only involve reviews for program coverage.

(7) Existing law allows the Controller, in his or her discretion, to offset any amount due to a state agency by a person or entity against any amount owed to that person or entity by a state agency.

Existing law requires the Controller, to the extent feasible, to offset any amount overdue and unpaid for a fine, penalty, assessment, bail, vehicle parking penalty, or court-ordered reimbursement for court-related services, from a person or entity, against any amount owed to the person or entity by a state agency on a claim for a refund from the Franchise Tax Board under the Personal Income Tax Law or the Bank and Corporation Tax Law or from winnings in the California State Lottery.

This bill would permit a hospital or health care provider, as defined, that provides health care services to an uninsured individual who does not qualify for government health care benefits to file a claim with the State Department of Health Care Services to be reimbursed for those services if the recipient of the services does not pay for those services. The bill would require the Director of Health Care Services to certify the debt owed to the hospital or health care provider to the Franchise Tax Board and the California Lottery Commission in order to have

the debt satisfied with any tax refund or lottery winnings owed to the debtor, as specified.

(8) Under the Public Employees' Medical and Hospital Care Act, the Board of Administration of the Public Employees' Retirement System contracts for and administers health care benefit plans for public employees and annuitants. Existing state and federal income tax laws allow a deduction for contributions to a qualifying medical savings account by a taxpayer who is covered under a high deductible health plan, as defined. Money within this type of account may be used to pay for qualified medical expenses, as defined.

This bill would require the board to offer a high deductible health plan, as defined in the federal tax law, and a Health Savings Account option to public employees and annuitants, as specified. The bill would establish the Public Employees' Health Savings Fund, a continuously appropriated trust fund within the State Treasury, for payment of qualified medical expenses of eligible employees and annuitants who elect to enroll in the high deductible health plan and participate in the Health Savings Account option, and would require those employees and annuitants, and their employers, to make specified contributions to that fund, thereby making an appropriation.

The bill would also require the board, on or before January 1, 2011, to provide or arrange for the provision of an electronic personal health record and an electronic personal benefits record for enrollees receiving health care benefits. The bill would additionally authorize the board to provide a Healthy Action Incentives and Rewards Program to its enrollees, as specified.

(9) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2010, and before January 1, 2015, in an amount equal to the amount paid or incurred during the taxable year for qualified health expenses, as defined, that do not exceed specified amounts.

This bill would authorize a credit against personal income taxes for each taxable year beginning on or after January 1, 2009, in an amount equal to 25% of the tax imposed on a medical care professional who provides medical services in a rural area. The bill would also authorize a credit against personal income taxes, as specified, for a primary care provider, as defined, and for uncompensated medical care provided by a physician.

This bill would authorize a credit under the Personal Income Tax Law and the Corporation Tax Law for each taxable year beginning on or after January 1, 2009, and before January 1, 2015, in an amount equal to 15% of the amount paid or incurred by a qualified taxpayer, as defined, during the taxable year for qualified health insurance, as defined, for employees of the taxpayer. This bill would require the Legislative Analyst to report to the Legislature on or before March 1, 2014, on the effectiveness of the credit, as specified.

The Personal Income Tax Law authorizes various deductions in computing income subject to taxation.

This bill would allow a deduction in computing adjusted gross income for the costs of health insurance, as provided. This bill would also allow a deduction in connection with Health Savings Accounts in conformity with federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by, or on behalf of, an eligible individual, as defined, to a Health Savings Account of that individual, as provided. This bill would also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer Medical Savings Accounts to a Health Savings Account, and penalties in connection therewith.

(10) Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by  $\frac{2}{3}$  of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would authorize an individual employee employed by an employer with 50 or fewer employees that offers health care coverage benefits to its employees to request a work schedule of up to 10 hours per day within a 40-hour workweek, and would authorize an employer to implement this schedule without any obligation to pay overtime compensation for hours worked as part of the schedule. The bill would enact related provisions and would make other conforming and technical changes.

The bill would also authorize an employer to provide health coverage that includes a Healthy Action Incentives and Rewards Program to his or her employees. In addition, the bill would state the intent of the Legislature to enact legislation providing incentives to employers who

offer health insurance, flex-time work schedules, and other benefits agreed upon by employers and employees.

(11) Existing law defines the term "medical assistant" and sets forth the scope of services a medical assistant is authorized to perform. Existing law provides that a medical assistant may administer medication upon the specific authorization and supervision of a licensed physician and surgeon or licensed podiatrist or, in specified clinic settings, upon the specific authorization and supervision of a nurse practitioner, nurse-midwife, or physician assistant.

This bill would remove the requirement that a medical assistant's administration of medication upon the specific authorization and supervision of a nurse practitioner, nurse-midwife, or physician assistant occur in specified clinic settings, and would make related changes.

(12) Existing law provides for the licensure and regulation by the Commissioner of Financial Institutions of money transmitters, who receive money in this state for transmission to foreign countries, and makes a violation of these provisions a crime.

This bill would require a licensee, or its agent, to collect a 3% fee on any money transmission received from a client who is unable to provide documentation of lawful presence in the United States. The bill would require the deposit of the fee in an unspecified fund to be used to pay for emergency medical care provided in this state to persons without documentation of legal residence in the United States.

Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program.

In addition, the bill would memorialize the Congress and President of the United States to enact legislation that would provide full reimbursement for the costs of providing federally mandated health care services to anyone, regardless of immigration status.

(13) Existing law regulates the establishment and operation of hospitals, including emergency rooms.

This bill would state the intent of the Legislature to enact legislation that would allow hospitals to offer preventative medical services delivered through the hospital's primary care or community-based clinic.

(14) The bill would enact other related provisions and make various technical, nonsubstantive changes.

(15) This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

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

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

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

1     SECTION 1. Section 734 is added to the Business and  
2 Professions Code, to read:

3     734. The failure of a person licensed under this division or  
4 under an initiative act referred to in this division to conduct a  
5 good faith examination as required under any of the following  
6 provisions constitutes unprofessional conduct and grounds for  
7 disciplinary action by the person's licensing board:

8         (a) Paragraph (3) of subdivision (e) of Section 1367.01 of the  
9 Health and Safety Code or paragraph (3) of subdivision (e) of  
10 Section 10123.135 of the Insurance Code.

11         (b) Subdivision (b) of Section 1367.63 of the Health and Safety  
12 Code or subdivision (b) of Section 10123.88 of the Insurance Code.

13         (c) Subdivision (c) of Section 1367.635 of the Health and Safety  
14 Code or subdivision (c) of Section 10123.86 of the Insurance Code.

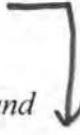
15         (d) Subdivision (a) of Section 1374.33 of the Health and Safety  
16 Code or subdivision (a) of Section 10169.3 of the Insurance Code.

17     SECTION 1.

18     SEC. 2. Section 2069 of the Business and Professions Code is  
19 amended to read:

20     2069. (a) (1) Notwithstanding any other provision of law, a  
21 medical assistant may administer medication only by intradermal,  
22 subcutaneous, or intramuscular injections and perform skin tests  
23 and additional technical supportive services upon the specific  
24 authorization and supervision of a licensed physician and surgeon,  
25 nurse practitioner, nurse-midwife, physician assistant, or licensed  
26 podiatrist.

27         (2) The licensed physician and surgeon may, at his or her  
28 discretion, in consultation with the nurse practitioner,



1 nurse-midwife, or physician assistant, provide written instructions  
2 to be followed by a medical assistant in the performance of tasks  
3 or supportive services. These written instructions may provide that  
4 the supervisory function for the medical assistant for these tasks  
5 or supportive services may be delegated to the nurse practitioner,  
6 nurse-midwife, or physician assistant within the standardized  
7 procedures or protocol, and that tasks may be performed when the  
8 licensed physician and surgeon is not onsite, so long as the  
9 following apply:

10 (A) The nurse practitioner or nurse-midwife is functioning  
11 pursuant to standardized procedures, as defined by Section 2725,  
12 or protocol. The standardized procedures or protocol shall be  
13 developed and approved by the supervising physician and surgeon,  
14 the nurse practitioner or nurse-midwife, and the facility  
15 administrator or his or her designee.

16 (B) The physician assistant is functioning pursuant to regulated  
17 services defined in Section 3502 and is approved to do so by the  
18 supervising physician or surgeon.

19 (b) As used in this section and Sections 2070 and 2071, the  
20 following definitions shall apply:

21 (1) "Medical assistant" means a person who may be unlicensed,  
22 who performs basic administrative, clerical, and technical  
23 supportive services in compliance with this section and Section  
24 2070 for a licensed physician and surgeon or a licensed podiatrist,  
25 or group thereof, for a medical, nursing, or podiatry corporation,  
26 for a physician assistant, a nurse practitioner, or a nurse-midwife  
27 as provided in subdivision (a), or for a health care service plan,  
28 who is at least 18 years of age, and who has had at least the  
29 minimum amount of hours of appropriate training pursuant to  
30 standards established by the Division of Licensing. The medical  
31 assistant shall be issued a certificate by the training institution or  
32 instructor indicating satisfactory completion of the required  
33 training. A copy of the certificate shall be retained as a record by  
34 each employer of the medical assistant.

35 (2) "Specific authorization" means a specific written order  
36 prepared by the licensed physician and surgeon, licensed podiatrist,  
37 physician assistant, nurse practitioner, or nurse-midwife authorizing  
38 the procedures to be performed on a patient, which shall be placed  
39 in the patient's medical record, or a standing order prepared by  
40 the licensed physician and surgeon, licensed podiatrist, physician

1 assistant, nurse practitioner, or nurse-midwife, authorizing the  
2 procedures to be performed, the duration of which shall be  
3 consistent with accepted medical practice. A notation of the  
4 standing order shall be placed on the patient's medical record.

5 (3) "Supervision" means the supervision of procedures  
6 authorized by this section by the following practitioners, within  
7 the scope of their respective practices, who shall be physically  
8 present in the treatment facility during the performance of those  
9 procedures:

10 (A) A licensed physician and surgeon.

11 (B) A licensed podiatrist.

12 (C) A physician assistant, nurse practitioner, or nurse-midwife.

13 (4) "Technical supportive services" means simple routine  
14 medical tasks and procedures that may be safely performed by a  
15 medical assistant who has limited training and who functions under  
16 the supervision of a licensed physician and surgeon, a licensed  
17 podiatrist, a physician assistant, a nurse practitioner, or a  
18 nurse-midwife.

19 (c) Nothing in this section shall be construed as authorizing the  
20 licensure of medical assistants. Nothing in this section shall be  
21 construed as authorizing the administration of local anesthetic  
22 agents by a medical assistant. Nothing in this section shall be  
23 construed as authorizing the division to adopt any regulations that  
24 violate the prohibitions on diagnosis or treatment in Section 2052.

25 (d) Notwithstanding any other provision of law, a medical  
26 assistant may not be employed for inpatient care in a licensed  
27 general acute care hospital as defined in subdivision (a) of Section  
28 1250 of the Health and Safety Code.

29 (e) Nothing in this section shall be construed as authorizing a  
30 medical assistant to perform any clinical laboratory test or  
31 examination for which he or she is not authorized by Chapter 3  
32 (commencing with Section 1200). Nothing in this section shall be  
33 construed as authorizing a nurse practitioner, nurse-midwife, or  
34 physician assistant to be a laboratory director of a clinical  
35 laboratory, as those terms are defined in paragraph (7) of  
36 subdivision (a) of Section 1206 and subdivision (a) of Section  
37 1209.

38 SEC. 2.

39 SEC. 3. Section 1815.5 is added to the Financial Code, to read:

**SB 1332**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

Bill Number: SB 132  
Author: Denham  
Bill Date: April 27, 2009, amended  
Subject: Polysomnographic Technologists (urgent)  
Sponsor: California Sleep Society

**STATUS OF BILL:**

This bill is currently on the Senate Floor.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would require registration for individuals assisting physicians in the practice of sleep medicine. This bill further requires such individuals to meet certain qualifications including educational requirements, background checks, and other consumer protections.

**ANALYSIS:**

Sleep medicine has been recognized as a specialty by the American Medical Association since 1996. Physician sleep specialists are board certified, and the American Board of Sleep Medicine is one of the specialty boards officially recognized and approved by the Medical Board.

Recently, the California Respiratory Care Board has threatened to issue significant fines against those involved in assisting with the practice of sleep medicine. This has threatened the availability of these important medical services.

On August 24, 2007 the California Respiratory Care Board passed a motion to move forward with issuing citations against the unlicensed individuals engaged in the practice of sleep medicine. This has caused a great deal of concern and uncertainty amongst medical professionals who treat patients with sleep disorders.

This bill would provide consumer protections to patients seeking sleep disorder treatment, and helps clarify existing law as it relates to polysomnography. Specifically this bill:

- a) establishes the criteria necessary for becoming a certified polysomnographic technologist;

- b) requires that the polysomnographic technologists work under the supervision and direction of a licensed physician;
- c) requires background checks for polysomnographic technologists;
- d) defines the term "polysomnography" and permits polysomnographic technologists to engage in the practice of polysomnography as long as they satisfy the criteria in the bill (this bill places no limitations on other health care practitioners acting within their own scope of practice); and
- e) Defines the terms "polysomnographic technician" and "polysomnographic trainee" and permits those individuals to act under the supervision of a certified polysomnographic technologist or licensed physician.

This bill requires the Board to develop regulations relative to the qualifications for registration of these three classifications. This must be done within a year of the effective date of the legislation. According to staff, the Board should be able to meet this requirement for adoption since most of the preliminary work on qualifications was done in the previous year.

In addition, within one year, the Board must adopt regulations regarding the employment of technicians and trainees by the physician. This may include the scope of services and level of supervision. This will require some work with the sponsor and interested parties but should be able to be accomplished in the time frame specified.

Amendments to this bill change the \$100 registration fee to a \$50 application fee and a \$50 registration fee. This amendment is to make this registration program similar to other licensure and registration programs that are operated on a neutral cost basis. This process will allow the Board to cover the cost of application review and then registration. Fees are split as some applications may be denied registration as a result of the fingerprint or background check thereby allowing the Board to be compensated for its work but not over collecting for work that may not be necessary.

**FISCAL:** None to the Board

**POSITION:** **Executive Committee Recommendation:** Support

**Staff Recommendation:** Support

AMENDED IN SENATE APRIL 27, 2009

**SENATE BILL**

**No. 132**

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**Introduced by Senator Denham**

February 9, 2009

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An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 132, as amended, Denham. Polysomnographic technologists: sleep and wake disorders.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law prescribes the medical services that may be performed by a physician assistant under the supervision of a licensed physician and surgeon.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy and prohibits its practice without a license issued by the board, subject to certain exceptions.

This bill would require the Medical Board of California to adopt regulations within ~~a~~ one year after the effective date of this act, relative to the qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, with a specified

exception for that examination requirement for a 3-year period. The bill would prohibit a person from using the title "certified polysomnographic technologist" or engaging in the practice of polysomnography unless he or she undergoes a Department of Justice background check, as specified, is registered as a certified polysomnographic technologist, is supervised and directed by a licensed physician and surgeon, and meets certain other requirements. The bill would define polysomnography to mean the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board, within ~~a one~~ year after the effective date of this act, to adopt regulations related to the employment of polysomnographic technicians and trainees.

This bill would require polysomnographic technologists to *apply to and register with the Medical Board of California for fees* to be fixed by the board at no more than \$100 ~~\$50 each~~, and to renew their registration biennially for a fee of no more than \$50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, thereby making an appropriation. The bill would further set forth specified disciplinary standards and procedures.

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

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1        SECTION 1. Chapter 7.8 (commencing with Section 3575) is  
2 added to Division 2 of the Business and Professions Code, to read:  
3

4            CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS  
5

6        3575. (a) For the purposes of this chapter, the following  
7 definitions shall apply:

8            (1) "Board" means the Medical Board of California.

9            (2) "Polysomnography" means the treatment, management,  
10 diagnostic testing, control, education, and care of patients with  
11 sleep and wake disorders. Polysomnography shall include, but not  
12 be limited to, the process of analysis, monitoring, and recording

1 of physiologic data during sleep and wakefulness to assist in the  
2 treatment of disorders, syndromes, and dysfunctions that are  
3 sleep-related, manifest during sleep, or disrupt normal sleep  
4 activities. Polysomnography shall also include, but not be limited  
5 to, the therapeutic and diagnostic use of oxygen, the use of positive  
6 airway pressure including continuous positive airway pressure  
7 (CPAP) and bilevel modalities, adaptive servo-ventilation, and  
8 maintenance of nasal and oral airways that do not extend into the  
9 trachea.

10 (3) "Supervision" means that the supervising physician and  
11 surgeon shall remain available, either in person or through  
12 telephonic or electronic means, at the time that the  
13 polysomnographic services are provided.

14 (b) Within one year after the effective date of this chapter, the  
15 board shall promulgate regulations relative to the qualifications  
16 for the registration of individuals as certified polysomnographic  
17 technologists, polysomnographic technicians, and  
18 polysomnographic trainees. The qualifications for a certified  
19 polysomnographic technologist shall include all of the following:

20 (1) He or she shall have valid, current credentials as a  
21 polysomnographic technologist issued by a national accrediting  
22 agency approved by the board.

23 (2) He or she shall have graduated from a polysomnographic  
24 educational program that has been approved by the board.

25 (3) He or she shall have passed a national certifying examination  
26 that has been approved by the board, or in the alternative, may  
27 submit proof to the board that he or she has been practicing  
28 polysomnography for at least five years in a manner that is  
29 acceptable to the board. However, beginning three years after the  
30 effective date of this chapter, all individuals seeking to obtain  
31 certification as a polysomnographic technologist shall have passed  
32 a national certifying examination that has been approved by the  
33 board.

34 (c) In accordance with Section 144, any person seeking  
35 registration from the board as a certified polysomnographic  
36 technologist, a polysomnographic technician, or a  
37 polysomnographic trainee shall be subject to a state and federal  
38 level criminal offender record information search conducted  
39 through the Department of Justice as specified in paragraphs (1)  
40 to (5), inclusive, of this subdivision.

1       (1) The board shall submit to the Department of Justice  
2 fingerprint images and related information required by the  
3 Department of Justice of all polysomnographic technologist,  
4 technician, or trainee certification candidates for the purposes of  
5 obtaining information as to the existence and content of a record  
6 of state or federal convictions and state or federal arrests and also  
7 information as to the existence and content of a record of state or  
8 federal arrests for which the Department of Justice establishes that  
9 the person is free on bail or on his or her recognizance pending  
10 trial or appeal.

11     (2) When received, the Department of Justice shall forward to  
12 the Federal Bureau of Investigation requests for federal summary  
13 criminal history information received pursuant to this subdivision.  
14 The Department of Justice shall review the information returned  
15 from the Federal Bureau of Investigation and compile and  
16 disseminate a response to the board.

17     (3) The Department of Justice shall provide a response to the  
18 board pursuant to paragraph (1) of subdivision (p) of Section 11105  
19 of the Penal Code.

20     (4) The board shall request from the Department of Justice  
21 subsequent arrest notification service, pursuant to Section 11105.2  
22 of the Penal Code, for persons described in this subdivision.

23     (5) The Department of Justice shall charge a fee sufficient to  
24 cover the cost of processing the request described in this  
25 subdivision. The individual seeking registration shall be responsible  
26 for this cost.

27     (d) Notwithstanding any other provision of law, an individual  
28 may use the title "certified polysomnographic technologist" and  
29 may engage in the practice of polysomnography only under the  
30 following circumstances:

31       (1) He or she is registered with the board.

32       (2) He or she works under the supervision and direction of a  
33 licensed physician and surgeon.

34       (3) He or she meets the requirements of this chapter.

35     (e) Within one year after the effective date of this chapter, the  
36 board shall adopt regulations that establish the means and  
37 circumstances in which a licensed physician and surgeon may  
38 employ polysomnographic technicians and polysomnographic  
39 trainees. The board may also adopt regulations specifying the scope  
40 of services that may be provided by a polysomnographic technician

1 or polysomnographic trainee. Any regulation adopted pursuant to  
2 this section may specify the level of supervision that  
3 polysomnographic technicians and trainees are required to have  
4 when working under the supervision of a certified  
5 polysomnographic technologist or licensed health care professional.

6 (f) This section shall not apply to California licensed allied  
7 health professionals, including, but not limited to, respiratory care  
8 practitioners, working within the scope of practice of their license.

9 (g) Nothing in this chapter shall be interpreted to authorize a  
10 polysomnographic technologist, technician, or trainee to treat,  
11 manage, control, educate, or care for patients other than those with  
12 sleep disorders or to provide diagnostic testing for patients other  
13 than those with suspected sleep disorders.

14 3576. (a) A registration under this chapter may be denied,  
15 suspended, revoked, or otherwise subjected to discipline for any  
16 of the following by the holder:

17 (1) Incompetence, gross negligence, or repeated similar  
18 negligent acts performed by the registrant.

19 (2) An act of dishonesty or fraud.

20 (3) Committing any act or being convicted of a crime  
21 constituting grounds for denial of licensure or registration under  
22 Section 480.

23 (4) Violating or attempting to violate any provision of this  
24 chapter or any regulation adopted under this chapter.

25 (b) Proceedings under this section shall be conducted in  
26 accordance with Chapter 5 (commencing with Section 11500) of  
27 Part 1 of Division 3 of Title 2 of the Government Code, and the  
28 board shall have all powers granted therein.

29 3577. (a) Each person ~~to whom registration is granted under~~  
30 ~~this chapter who applies for registration under this chapter~~ shall  
31 pay into the Contingent Fund of the Medical Board of California  
32 a fee to be fixed by the board at a sum not in excess of ~~one hundred~~  
33 ~~dollars (\$100)~~~~. fifty dollars (\$50)~~.

34 (b) *Each person to whom registration is granted under this*  
35 *chapter shall pay into the Contingent Fund of the Medical Board*  
36 *of California a fee to be fixed by the board at a sum not in excess*  
37 *of fifty dollars (\$50).*

38 (b)

39 (c) The registration shall expire after two years. The registration  
40 may be renewed biennially at a fee which shall be paid into the

1 Contingent Fund of the Medical Board of California to be fixed  
2 by the board at a sum not in excess of fifty dollars (\$50).

3 (e)

4 (d) The money in the Contingent Fund of the Medical Board of  
5 California that is collected pursuant to this section shall be used  
6 for the administration of this chapter.

7 3578. Notwithstanding any other provision of law, nothing in  
8 this chapter shall prohibit a clinic or health facility licensed  
9 pursuant to Division 2 (commencing with Section 1200) of the  
10 Health and Safety Code from employing a certified  
11 polysomnographic technologist.

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

16 In order to protect the health and safety of the general public by  
17 providing needed qualifications for, and oversight of, the practice  
18 of polysomnography at the earliest possible time, it is necessary  
19 that this act take effect immediately.

SB 389

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

Bill Number: SB 389  
Author: Negrete McLeod  
Bill Date: February 26, 2009, introduced  
Subject: Fingerprinting  
Sponsor: Author

**STATUS OF BILL:**

This bill is in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill will require a licensee who has not been previously fingerprinted or for whom a record does not exist, to successfully complete a fingerprint record search at time of renewal. It will require notification by the licensee at time of renewal if he or she has been convicted of a felony or misdemeanor since the last renewal.

**ANALYSIS:**

The Medical Board has been fingerprinting its licensees for many years. Staff is in the process of verifying how far back this requirement has been in place, as it was a requirement prior to being placed in law. For purposes of this bill, staff will need to determine what records no longer exist at the Department of Justice (DOJ).

Staff has reported to the board that the number of physicians not fingerprinted may be up to 45,000, although through licensing record searches, this number may be lower than 11,000. The issue will be whether the DOJ still has a flag on the file of those licensed prior to 1986.

The Medical Board passed a motion in November of 2008 to have fingerprint records for all physicians who are licensed in this state.

**FISCAL:** One time cost of a technician over a two year period to assist in the processing of these reports. Additional cost to a licensee renewing his/her license is \$51 for the fingerprinting.

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

April 26, 2009

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**Introduced by Senator Negrete McLeod**

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February 26, 2009

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An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 389, as introduced, Negrete McLeod. Professions and vocations. Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on various grounds, including, but not limited to, conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciary Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require applicants for a license and, commencing January 1, 2011, licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete a state and federal level criminal offender record information search, as specified. The bill would require licensees to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill

would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she has been convicted, as defined, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

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

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

1     SECTION 1. Section 144 of the Business and Professions Code  
2     is amended to read:  
3       144. (a) Notwithstanding any other provision of law, an agency  
4     designated in subdivision (b) shall require an applicant *for a license*  
5     to furnish to the agency a full set of fingerprints for purposes of  
6     conducting criminal history record checks *and shall require the*  
7     *applicant to successfully complete a state and federal level criminal*  
8     *offender record information search conducted through the*  
9     *Department of Justice as provided in subdivision (c) or as*  
10    *otherwise provided in this code.* ~~Any agency designated in~~  
11    subdivision (b) may obtain and receive, at its discretion, criminal  
12    history information from the Department of Justice and the United  
13    States Federal Bureau of Investigation.  
14       (b) Subdivision (a) applies to the following:  
15           (1) California Board of Accountancy.  
16           (2) State Athletic Commission.  
17           (3) Board of Behavioral Sciences.  
18           (4) Court Reporters Board of California.  
19           (5) State Board of Guide Dogs for the Blind.  
20           (6) California State Board of Pharmacy.  
21           (7) Board of Registered Nursing.  
22           (8) Veterinary Medical Board.  
23           (9) Registered Veterinary Technician Committee.  
24           (10) Board of Vocational Nursing and Psychiatric Technicians.  
25           (11) Respiratory Care Board of California.  
26           (12) Hearing Aid Dispensers ~~Advisory Commission Bureau~~.  
27           (13) Physical Therapy Board of California.  
28           (14) Physician Assistant Committee of the Medical Board of  
29    California.  
30           (15) Speech-Language Pathology and Audiology Board.

- 1       (16) Medical Board of California.
- 2       (17) State Board of Optometry.
- 3       (18) Acupuncture Board.
- 4       (19) Cemetery and Funeral Bureau.
- 5       (20) Bureau of Security and Investigative Services.
- 6       (21) Division of Investigation.
- 7       (22) Board of Psychology.
- 8       (23) The California Board of Occupational Therapy.
- 9       (24) Structural Pest Control Board.
- 10      (25) Contractors' State License Board.
- 11      (26) Bureau of Naturopathic Medicine.
- 12      (27) *Dental Board of California*.
- 13      (28) *Dental Hygiene Committee of California*.
- 14      (27) *Professional Fiduciaries Bureau*.
- 15      (28) *California Board of Podiatric Medicine*.
- 16      (29) *Osteopathic Medical Board of California*.
- 17      (30) *State Board of Chiropractic Examiners*.

18      (e) The provisions of paragraph (24) of subdivision (b) shall  
19      become operative on July 1, 2004. The provisions of paragraph  
20      (25) of subdivision (b) shall become operative on the date on which  
21      sufficient funds are available for the Contractors' State License  
22      Board and the Department of Justice to conduct a criminal history  
23      record check pursuant to this section or on July 1, 2005, whichever  
24      occurs first.

25      (c) Except as otherwise provided in this code, each agency listed  
26      in subdivision (b) shall direct applicants for a license to submit to  
27      the Department of Justice fingerprint images and related  
28      information required by the Department of Justice for the purpose  
29      of obtaining information as to the existence and content of a state  
30      or federal criminal record. The Department of Justice shall forward  
31      the fingerprint images and related information received to the  
32      Federal Bureau of Investigation and request federal criminal  
33      history information. The Department of Justice shall compile and  
34      disseminate state and federal responses to the agency pursuant to  
35      subdivision (p) of Section 11105 of the Penal Code. The agency  
36      shall request from the Department of Justice subsequent arrest  
37      notification service, pursuant to Section 11105.2 of the Penal Code,  
38      for each person who submitted information pursuant to this  
39      subdivision. The Department of Justice shall charge a fee sufficient  
40      to cover the cost of processing the request described in this section.

1 SEC. 2. Section 144.5 is added to the Business and Professions  
2 Code, to read:

3 144.5. (a) Notwithstanding any other provision of law, an  
4 agency designated in subdivision (b) of Section 144 shall require  
5 a licensee who has not previously submitted fingerprints or for  
6 whom a record of the submission of fingerprints no longer exists  
7 to, as a condition of license renewal, successfully complete a state  
8 and federal level criminal offender record information search  
9 conducted through the Department of Justice as provided in  
10 subdivision (d).

11 (b) (1) A licensee described in subdivision (a) shall, as a  
12 condition of license renewal, certify on the renewal application  
13 that he or she has successfully completed a state and federal level  
14 criminal offender record information search pursuant to subdivision  
15 (d).

16 (2) The licensee shall retain for at least three years, as evidence  
17 of the certification made pursuant to paragraph (1), either a receipt  
18 showing that he or she has electronically transmitted his or her  
19 fingerprint images to the Department of Justice or, for those  
20 licensees who did not use an electronic fingerprinting system, a  
21 receipt evidencing that the licensee's fingerprints were taken.

22 (c) Failure to provide the certification required by subdivision  
23 (b) renders an application for renewal incomplete. An agency shall  
24 not renew the license until a complete application is submitted.

25 (d) Each agency listed in subdivision (b) of Section 144 shall  
26 direct licensees described in subdivision (a) to submit to the  
27 Department of Justice fingerprint images and related information  
28 required by the Department of Justice for the purpose of obtaining  
29 information as to the existence and content of a state or federal  
30 criminal record. The Department of Justice shall forward the  
31 fingerprint images and related information received to the Federal  
32 Bureau of Investigation and request federal criminal history  
33 information. The Department of Justice shall compile and  
34 disseminate state and federal responses to the agency pursuant to  
35 subdivision (p) of Section 11105 of the Penal Code. The agency  
36 shall request from the Department of Justice subsequent arrest  
37 notification service, pursuant to Section 11105.2 of the Penal Code,  
38 for each person who submitted information pursuant to this  
39 subdivision. The Department of Justice shall charge a fee sufficient  
40 to cover the cost of processing the request described in this section.

1       (e) An agency may waive the requirements of this section if the  
2 license is inactive or retired, or if the licensee is actively serving  
3 in the military. The agency may not activate an inactive license or  
4 return a retired license to full licensure status for a licensee  
5 described in subdivision (a) until the licensee has successfully  
6 completed a state and federal level criminal offender record  
7 information search pursuant to subdivision (d).

8       (f) With respect to licensees that are business entities, each  
9 agency listed in subdivision (b) of Section 144 shall, by regulation,  
10 determine which owners, officers, directors, shareholders,  
11 members, agents, employees, or other natural persons who are  
12 representatives of the business entity are required to submit  
13 fingerprint images to the Department of Justice and disclose the  
14 information on its renewal forms, as required by this section.

15      (g) A licensee who falsely certifies completion of a state and  
16 federal level criminal record information search under subdivision  
17 (b) may be subject to disciplinary action by his or her licensing  
18 agency.

19      (h) This section shall become operative on January 1, 2011.

20      SEC. 3. Section 144.6 is added to the Business and Professions  
21 Code, to read:

22      144.6. (a) An agency described in subdivision (b) of Section  
23 144 shall require a licensee, as a condition of license renewal, to  
24 notify the board on the license renewal form if he or she has been  
25 convicted, as defined in Section 490, of a felony or misdemeanor  
26 since his or her last renewal, or if this is the licensee's first renewal,  
27 since the initial license was issued.

28      (b) The reporting requirement imposed under this section shall  
29 apply in addition to any other reporting requirement imposed under  
30 this code.

**SB 470**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

Bill Number: SB 470  
Author: Corbett  
Bill Date: April 27, 2009, amended  
Subject: Prescriptions: labeling  
Sponsor: Author

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would require every prescription to include on the label, the purpose for which the drug is prescribed, if requested by the patient.

**ANALYSIS:**

Under current law, Section 4076 of the Business and Professions Code, a prescription drug container label is required to contain certain information in addition to the drug name including: the names of the patient, prescriber and pharmacy; the date of issue; directions for use; strength and quantity of the drug dispensed; and expiration date. The condition for which the drug was prescribed may be indicated on the label, but only if the patient asks for the prescriber to include it on the prescription. This bill would change the word "condition" to "purpose."

Many patients are unaware of their right to ask the prescriber to have the intended purpose included on the label. Individuals, including seniors, who have multiple prescriptions, have difficulty remembering the purpose of each medication and would greatly benefit from having it listed on the label.

According to the Medical Errors Panel report, "Prescription for Improving Patient Safety: Addressing Medication Errors," an estimated 150,000 Californians are sickened, injured or killed each year by medication errors, with an annual cost of \$17.7 billion. One of the recommendations by the panel is to require the intended purpose of medication to be indicated on all prescriptions and included on the container label.

Adding the purpose of the drug to the label, for those who wish it, will help the patient, the care-giver and any other person who helps administer medications prevent illness or death due to medication errors.

If the condition or purpose of the drug is not included on the prescription, the patient may request of the pharmacist that it be included. Pharmacists may include the information once they have consulted with the physician or prescriber. The consultation may be conducted verbally or electronically.

This concept has been introduced in previous legislative sessions. The Board has supported the concept in the past because it did not require the purpose to be listed, but allowed for a physician to ask as long as there was no penalty if the provider forgets to ask the patient. In this bill, it still allows the patient to ask but the physician will put the purpose of the drug on the label instead of the condition for which it is prescribed and continues to have no penalty for the provider.

**FISCAL:** None to the Board

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

April 26, 2009

AMENDED IN SENATE APRIL 27, 2009

**SENATE BILL**

**No. 470**

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**Introduced by Senator Corbett**

February 26, 2009

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An act to amend Sections 4040 and 4076 of the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 470, as amended, Corbett. Prescriptions.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and *provides that* a knowing violation of the law is a crime. Existing law ~~authorizes~~ requires a prescription, as defined, to include *a legible, clear notice of* the condition for which the drug is prescribed, if requested by the patient. Existing law prohibits a pharmacist from dispensing any prescription unless it is in a specified container ~~and the prescription label includes~~ *that is correctly labeled to include*, among other information, the condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

This bill would ~~revise that requirement to instead require the label to include the that every prescription include a legible, clear notice of the condition or purpose for which the drug was is prescribed if requested by the patient or if the purpose is indicated on the prescription. The bill would also make a conforming change, and would delete the requirement that a patient request the inclusion of that information. The bill would also require that every prescription container be correctly labeled to include that information if so included on the prescription, and would provide a process for inclusion of that information on the~~

*label if it is not included on the prescription and is requested by the patient.*

By revising ~~this requirement these requirements~~, the knowing violation of which would be a crime, the bill would impose a state-mandated local program.

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

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

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

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

- 1     SECTION 1. Section 4040 of the Business and Professions
- 2     Code is amended to read:
- 3         4040. (a) "Prescription" means an oral, written, or electronic
- 4         transmission order that is both of the following:
- 5             (1) Given individually for the person or persons for whom
- 6             ordered that includes all of the following:
- 7                 (A) The name or names and address of the patient or patients.
- 8                 (B) The name and quantity of the drug or device prescribed and
- 9                 the directions for use.
- 10                 (C) The date of issue.
- 11                 (D) Either rubber stamped, typed, or printed by hand or typeset,
- 12             the name, address, and telephone number of the prescriber, his or
- 13             her license classification, and his or her federal registry number,
- 14             if a controlled substance is prescribed.
- 15                 (E) A legible, clear notice of the *condition or purpose* for which
- 16             the drug is being prescribed, ~~if requested by the patient or patients.~~
- 17                 (F) If in writing, signed by the prescriber issuing the order, or
- 18             the certified nurse-midwife, nurse practitioner, physician assistant,
- 19             or naturopathic doctor who issues a drug order pursuant to Section
- 20             2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist
- 21             who issues a drug order pursuant to either subparagraph (D) of
- 22             paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph
- 23             (5) of, subdivision (a) of Section 4052.
- 24                 (2) Issued by a physician, dentist, optometrist, podiatrist,
- 25             veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,

1 if a drug order is issued pursuant to Section 2746.51, 2836.1,  
2 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,  
3 physician assistant, or naturopathic doctor licensed in this state,  
4 or pursuant to either subparagraph (D) of paragraph (4) of, or  
5 clause (iv) of subparagraph (A) of paragraph (5) of, subdivision  
6 (a) of Section 4052 by a pharmacist licensed in this state.

7 (b) Notwithstanding subdivision (a), a written order of the  
8 prescriber for a dangerous drug, except for any Schedule II  
9 controlled substance, that contains at least the name and signature  
10 of the prescriber, the name and address of the patient in a manner  
11 consistent with paragraph (3) of subdivision (b) of Section 11164  
12 of the Health and Safety Code, the name and quantity of the drug  
13 prescribed, directions for use, and the date of issue may be treated  
14 as a prescription by the dispensing pharmacist as long as any  
15 additional information required by subdivision (a) is readily  
16 retrievable in the pharmacy. In the event of a conflict between this  
17 subdivision and Section 11164 of the Health and Safety Code,  
18 Section 11164 of the Health and Safety Code shall prevail.

19 (c) "Electronic transmission prescription" includes both image  
20 and data prescriptions. "Electronic image transmission  
21 prescription" means any prescription order for which a facsimile  
22 of the order is received by a pharmacy from a licensed prescriber.  
23 "Electronic data transmission prescription" means any prescription  
24 order, other than an electronic image transmission prescription,  
25 that is electronically transmitted from a licensed prescriber to a  
26 pharmacy.

27 (d) The use of commonly used abbreviations shall not invalidate  
28 an otherwise valid prescription.

29 (e) Nothing in the amendments made to this section (formerly  
30 Section 4036) at the 1969 Regular Session of the Legislature shall  
31 be construed as expanding or limiting the right that a chiropractor,  
32 while acting within the scope of his or her license, may have to  
33 prescribe a device.

34 SEC. 2. Section 4076 of the Business and Professions Code is  
35 amended to read:

36 4076. (a) A pharmacist shall not dispense any prescription  
37 except in a container that meets the requirements of state and  
38 federal law and is correctly labeled with all of the following:

39 (I) Except where the prescriber or the certified nurse-midwife  
40 who functions pursuant to a standardized procedure or protocol

1 described in Section 2746.51, the nurse practitioner who functions  
2 pursuant to a standardized procedure described in Section 2836.1,  
3 or protocol, the physician assistant who functions pursuant to  
4 Section 3502.1, the naturopathic doctor who functions pursuant  
5 to a standardized procedure or protocol described in Section  
6 3640.5, or the pharmacist who functions pursuant to a policy,  
7 procedure, or protocol pursuant to either subparagraph (D) of  
8 paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph  
9 (5) of, subdivision (a) of Section 4052 orders otherwise, either the  
10 manufacturer's trade name of the drug or the generic name and  
11 the name of the manufacturer. Commonly used abbreviations may  
12 be used. Preparations containing two or more active ingredients  
13 may be identified by the manufacturer's trade name or the  
14 commonly used name or the principal active ingredients.

15 (2) The directions for the use of the drug.

16 (3) The name of the patient or patients.

17 (4) The name of the prescriber or, if applicable, the name of the  
18 certified nurse-midwife who functions pursuant to a standardized  
19 procedure or protocol described in Section 2746.51, the nurse  
20 practitioner who functions pursuant to a standardized procedure  
21 described in Section 2836.1, or protocol, the physician assistant  
22 who functions pursuant to Section 3502.1, the naturopathic doctor  
23 who functions pursuant to a standardized procedure or protocol  
24 described in Section 3640.5, or the pharmacist who functions  
25 pursuant to a policy, procedure, or protocol pursuant to either  
26 subparagraph (D) of paragraph (4) of, or clause (iv) of  
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section  
28 4052.

29 (5) The date of issue.

30 (6) The name and address of the pharmacy, and prescription  
31 number or other means of identifying the prescription.

32 (7) The strength of the drug or drugs dispensed.

33 (8) The quantity of the drug or drugs dispensed.

34 (9) The expiration date of the effectiveness of the drug  
35 dispensed.

36 (10) The *condition or purpose* for which the drug was prescribed  
37 ~~if requested by the patient or the purpose is indicated on the~~  
38 ~~prescription; if the condition or purpose is indicated on the~~  
39 ~~prescription. If the patient requests the condition or purpose on~~  
40 ~~the container label but it is not included on the prescription, the~~

1 *pharmacist may include this information only after consulting with*  
2 *the prescriber. The consultation may be conducted orally or*  
3 *electronically.*

4 (11) (A) Commencing January 1, 2006, the physical description  
5 of the dispensed medication, including its color, shape, and any  
6 identification code that appears on the tablets or capsules, except  
7 as follows:

8 (i) Prescriptions dispensed by a veterinarian.

9 (ii) An exemption from the requirements of this paragraph shall  
10 be granted to a new drug for the first 120 days that the drug is on  
11 the market and for the 90 days during which the national reference  
12 file has no description on file.

13 (iii) Dispensed medications for which no physical description  
14 exists in any commercially available database.

15 (B) This paragraph applies to outpatient pharmacies only.

16 (C) The information required by this paragraph may be printed  
17 on an auxiliary label that is affixed to the prescription container.

18 (D) This paragraph shall not become operative if the board,  
19 prior to January 1, 2006, adopts regulations that mandate the same  
20 labeling requirements set forth in this paragraph.

21 (b) If a pharmacist dispenses a prescribed drug by means of a  
22 unit dose medication system, as defined by administrative  
23 regulation, for a patient in a skilled nursing, intermediate care, or  
24 other health care facility, the requirements of this section will be  
25 satisfied if the unit dose medication system contains the  
26 aforementioned information or the information is otherwise readily  
27 available at the time of drug administration.

28 (c) If a pharmacist dispenses a dangerous drug or device in a  
29 facility licensed pursuant to Section 1250 of the Health and Safety  
30 Code, it is not necessary to include on individual unit dose  
31 containers for a specific patient, the name of the certified  
32 nurse-midwife who functions pursuant to a standardized procedure  
33 or protocol described in Section 2746.51, the nurse practitioner  
34 who functions pursuant to a standardized procedure described in  
35 Section 2836.1, or protocol, the physician assistant who functions  
36 pursuant to Section 3502.1, the naturopathic doctor who functions  
37 pursuant to a standardized procedure or protocol described in  
38 Section 3640.5, or the pharmacist who functions pursuant to a  
39 policy, procedure, or protocol pursuant to either subparagraph (D)

1 of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph  
2 (5) of, subdivision (a) of Section 4052.  
3 (d) If a pharmacist dispenses a prescription drug for use in a  
4 facility licensed pursuant to Section 1250 of the Health and Safety  
5 Code, it is not necessary to include the information required in  
6 paragraph (11) of subdivision (a) when the prescription drug is  
7 administered to a patient by a person licensed under the Medical  
8 Practice Act (Chapter 5 (commencing with Section 2000)), the  
9 Nursing Practice Act (Chapter 6 (commencing with Section 2700)),  
10 or the Vocational Nursing Practice Act (Chapter 6.5 (commencing  
11 with Section 2840)), who is acting within his or her scope of  
12 practice.

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

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

Bill Number: SB 638  
Author: Negrete McLeod  
Bill Date: February 27, 2009, amended  
Subject: Regulatory Boards: joint committee on operations  
Sponsor: Author

**STATUS OF BILL:**

This bill is currently in the Senate Rules Committee, after passing out of the Senate Business and Professions Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill will change the sunset date for the Board.

This bill would delete the requirement that a board become a bureau under the Department of Consumer Affairs (DCA) if it sunsets. This bill would require, instead, that the board's members be removed and a successor board would be appointed.

This bill revises how the sunset process will take place in the legislature.

**ANALYSIS:**

This bill does not yet set a sunset review date for the Board.

This bill revises the sunset review law to provide that when a board becomes inoperative the board's members are removed then a successor board is appointed with the same rights, duties, and membership parameters as the board it is succeeding.

This bill deletes the requirement that a board be designated as a bureau under DCA if it sunsets. This bill terminates the terms of office of each board member and bureau chief within DCA upon an unspecified date and authorizes successor board members and bureau chiefs to be appointed.

This bill would require all boards and bureaus, with the assistance of DCA, to prepare an analysis and submit a report to the appropriate policy committees of the

Legislature no later than 22 months before the board's membership or the bureau chief shall be terminated (sunset date).

**FISCAL:** Unknown

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

April 26, 2009

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**Introduced by Senator Negrete McLeod****February 27, 2009**

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An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 638, as introduced, Negrete McLeod. Regulatory boards: operations.**

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief

within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and the Tax Education Council to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if their annual report contains certain information, to post it on its Internet Web site. The bill would make other conforming changes.

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

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

1 SECTION 1. Section 22 of the Business and Professions Code  
2 is amended to read:

3     22. (a) "Board," as used in any provision of this code, refers  
4 to the board in which the administration of the provision is vested,  
5 and unless otherwise expressly provided, shall include "bureau,"  
6 "commission," "committee," "department," "division," "examining  
7 committee," "program," and "agency."

8     (b) Whenever the regulatory program of a board that is subject  
9 to review by the Joint Committee on Boards, Commissions, and  
10 Consumer Protection, as provided for in Division 1.2 (commencing  
11 with Section 473), is taken over by the department, that program  
12 shall be designated as a "bureau."

13 SEC. 2. Section 101.1 of the Business and Professions Code  
14 is repealed.

15     101.1. (a) It is the intent of the Legislature that all existing  
16 and proposed consumer-related boards or categories of licensed  
17 professionals be subject to a review every four years to evaluate  
18 and determine whether each board has demonstrated a public need  
19 for the continued existence of that board in accordance with  
20 enumerated factors and standards as set forth in Division 1.2  
21 (commencing with Section 473).

1       (b) (1) In the event that any board, as defined in Section 477,  
2 becomes inoperative or is repealed in accordance with the act that  
3 added this section, or by subsequent acts, the Department of  
4 Consumer Affairs shall succeed to and is vested with all the duties,  
5 powers, purposes, responsibilities and jurisdiction not otherwise  
6 repealed or made inoperative of that board and its executive officer.

7       (2) Any provision of existing law that provides for the  
8 appointment of board members and specifies the qualifications  
9 and tenure of board members shall not be implemented and shall  
10 have no force or effect while that board is inoperative or repealed.  
11 Every reference to the inoperative or repealed board, as defined  
12 in Section 477, shall be deemed to be a reference to the department.

13       (3) Notwithstanding Section 107, any provision of law  
14 authorizing the appointment of an executive officer by a board  
15 subject to the review described in Division 1.2 (commencing with  
16 Section 473), or prescribing his or her duties, shall not be  
17 implemented and shall have no force or effect while the applicable  
18 board is inoperative or repealed. Any reference to the executive  
19 officer of an inoperative or repealed board shall be deemed to be  
20 a reference to the director or his or her designee.

21       (e) It is the intent of the Legislature that subsequent legislation  
22 to extend or repeal the inoperative date for any board shall be a  
23 separate bill for that purpose.

24       SEC. 3. Section 101.1 is added to the Business and Professions  
25 Code, to read:

26       101.1. (a) Notwithstanding any other provision of law, if the  
27 terms of office of the members of a board are terminated in  
28 accordance with the act that added this section or by subsequent  
29 acts, successor members shall be appointed that shall succeed to,  
30 and be vested with, all the duties, powers, purposes,  
31 responsibilities, and jurisdiction not otherwise repealed or made  
32 inoperative of the members that they are succeeding. The successor  
33 members shall be appointed by the same appointing authorities,  
34 for the remainder of the previous members' terms, and shall be  
35 subject to the same membership requirements as the members they  
36 are succeeding.

37       (b) Notwithstanding any other provision of law, if the term of  
38 office for a bureau chief is terminated in accordance with the act  
39 that added this section or by subsequent acts, a successor bureau  
40 chief shall be appointed who shall succeed to, and be vested with,

1 all the duties, powers, purposes, responsibilities, and jurisdiction  
2 not otherwise repealed or made inoperative of the bureau chief  
3 that he or she is succeeding. The successor bureau chief shall be  
4 appointed by the same appointing authorities, for the remainder  
5 of the previous bureau chief's term, and shall be subject to the  
6 same requirements as the bureau chief he or she is succeeding.

7 SEC. 4. Section 473 of the Business and Professions Code is  
8 repealed.

9 ~~473. (a) There is hereby established the Joint Committee on~~  
10 ~~Boards, Commissions, and Consumer Protection.~~

11 ~~(b) The Joint Committee on Boards, Commissions, and~~  
12 ~~Consumer Protection shall consist of three members appointed by~~  
13 ~~the Senate Committee on Rules and three members appointed by~~  
14 ~~the Speaker of the Assembly. No more than two of the three~~  
15 ~~members appointed from either the Senate or the Assembly shall~~  
16 ~~be from the same party. The Joint Rules Committee shall appoint~~  
17 ~~the chairperson of the committee.~~

18 ~~(c) The Joint Committee on Boards, Commissions, and~~  
19 ~~Consumer Protection shall have and exercise all of the rights,~~  
20 ~~duties, and powers conferred upon investigating committees and~~  
21 ~~their members by the Joint Rules of the Senate and Assembly as~~  
22 ~~they are adopted and amended from time to time, which provisions~~  
23 ~~are incorporated herein and made applicable to this committee and~~  
24 ~~its members.~~

25 ~~(d) The Speaker of the Assembly and the Senate Committee on~~  
26 ~~Rules may designate staff for the Joint Committee on Boards,~~  
27 ~~Commissions, and Consumer Protection.~~

28 ~~(e) The Joint Committee on Boards, Commissions, and~~  
29 ~~Consumer Protection is authorized to act until January 1, 2012, at~~  
30 ~~which time the committee's existence shall terminate.~~

31 SEC. 5. Section 473 is added to the Business and Professions  
32 Code, to read:

33 473. Whenever the provisions of this code refer to the Joint  
34 Committee on Boards, Commissions and Consumer Protection,  
35 the reference shall be construed to be a reference to the appropriate  
36 policy committees of the Legislature.

37 SEC. 6. Section 473.1 of the Business and Professions Code  
38 is amended to read:

39 473.1. This chapter shall apply to all of the following:

1       (a) Every board, as defined in Section 22, that is scheduled to  
2 ~~become inoperative and to be repealed have its membership~~  
3 ~~reconstituted on a specified date as provided by the specific act~~  
4 ~~relating to the board subdivision (a) of Section 473.12.~~

5       (b) The Bureau for Postsecondary and Vocational Education.  
6 ~~For purposes of this chapter, "board" includes the bureau~~  
7 ~~Every bureau that is named in subdivision (b) of Section 473.12.~~

8       (c) The Cemetery and Funeral Bureau.  
9 ~~Every entity that is named in subdivision (c) of Section 473.12.~~

10      SEC. 7. Section 473.12 is added to the Business and Professions  
11 Code, to read:

12      473.12. (a) Notwithstanding any other provision of law, the  
13 term of office of each member of the following boards in the  
14 department shall terminate on the date listed, unless a later enacted  
15 statute, that is enacted before the date listed for that board, deletes  
16 or extends that date:

- 17       (1) The Dental Board of California: January 1, \_\_\_\_.
- 18       (2) The Medical Board of California: January 1, \_\_\_\_.
- 19       (3) The State Board of Optometry: January 1, \_\_\_\_.
- 20       (4) The California State Board of Pharmacy: January 1, \_\_\_\_.
- 21       (5) The Veterinary Medical Board: January 1, \_\_\_\_.
- 22       (6) The California Board of Accountancy: January 1, \_\_\_\_.
- 23       (7) The California Architects Board: January 1, \_\_\_\_.
- 24       (8) The State Board of Barbering and Cosmetology: January 1,  
25 \_\_\_\_.

26       (9) The Board for Professional Engineers and Land Surveyors:  
27 January 1, \_\_\_\_.

- 28       (10) The Contractors' State License Board: January 1, \_\_\_\_.
- 29       (11) The Structural Pest Control Board: January 1, \_\_\_\_.
- 30       (12) The Board of Registered Nursing: January 1, \_\_\_\_.
- 31       (13) The Board of Behavioral Sciences: January 1, \_\_\_\_.
- 32       (14) The State Athletic Commission: January 1, \_\_\_\_.
- 33       (15) The State Board of Guide Dogs for the Blind: January 1,  
34 \_\_\_\_.
- 35       (16) The Court Reporters Board of California: January 1, \_\_\_\_.
- 36       (17) The Board of Vocational Nursing and Psychiatric  
37 Technicians: January 1, \_\_\_\_.
- 38       (18) The Landscape Architects Technical Committee: January  
39 1, \_\_\_\_.

- 1       (19) The Board for Geologists and Geophysicists: January 1,  
2       \_\_\_\_.  
3       (20) The Respiratory Care Board of California: January 1, \_\_\_\_.  
4       (21) The Acupuncture Board: January 1, \_\_\_\_.  
5       (22) The Board of Psychology: January 1, \_\_\_\_.  
6       (23) The California Board of Podiatric Medicine: January 1,  
7       \_\_\_\_.  
8       (24) The Physical Therapy Board of California: January 1, \_\_\_\_.  
9       (25) The Physician Assistant Committee, Medical Board of  
10      California: January 1, \_\_\_\_.  
11      (26) The Speech-Language Pathology and Audiology Board:  
12      January 1, \_\_\_\_.  
13      (27) The California Board of Occupational Therapy: January  
14      1, \_\_\_\_.  
15      (28) The Dental Hygiene Committee of California: January 1,  
16      \_\_\_\_.  
17      (b) Notwithstanding any other provision of law, the term of  
18      office for the bureau chief of each of the following bureaus shall  
19      terminate on the date listed, unless a later enacted statute, that is  
20      enacted before the date listed for that bureau, deletes or extends  
21      that date:  
22      (1) Arbitration Review Program: January 1, \_\_\_\_.  
23      (2) Bureau for Private Postsecondary Education: January 1,  
24      \_\_\_\_.  
25      (3) Bureau of Automotive Repair: January 1, \_\_\_\_.  
26      (4) Bureau of Electronic and Appliance Repair: January 1, \_\_\_\_.  
27      (5) Bureau of Home Furnishings and Thermal Insulation:  
28      January 1, \_\_\_\_.  
29      (6) Bureau of Naturopathic Medicine: January 1, \_\_\_\_.  
30      (7) Bureau of Security and Investigative Services: January 1,  
31      \_\_\_\_.  
32      (8) Cemetery and Funeral Bureau: January 1, \_\_\_\_.  
33      (9) Hearing Aid Dispensers Bureau: January 1, \_\_\_\_.  
34      (10) Professional Fiduciaries Bureau: January 1, \_\_\_\_.  
35      (11) Telephone Medical Advice Services Bureau: January 1,  
36      \_\_\_\_.  
37      (12) Division of Investigation: January 1, \_\_\_\_.  
38      (c) Notwithstanding any other provision of law, the following  
39      shall be subject to review under this chapter on the following dates:  
40      (1) Interior design certification organizations: January 1, \_\_\_\_.

1       (2) State Board of Chiropractic Examiners pursuant to Section  
2       473.15: January 1, \_\_\_\_.

3       (3) Osteopathic Medical Board of California pursuant to Section  
4       473.15: January 1, \_\_\_\_.

5       (4) California Tax Education Council: January 1, \_\_\_\_.

6       (d) Nothing in this section or in Section 101.1 shall be construed  
7       to preclude, prohibit, or in any manner alter the requirement of  
8       Senate confirmation of a board member, chief officer, or other  
9       appointee that is subject to confirmation by the Senate as otherwise  
10      required by law.

11      (e) It is not the intent of the Legislature in enacting this section  
12     to amend the initiative measure that established the State Board  
13     of Chiropractic Examiners or the Osteopathic Medical Board of  
14     California.

15     SEC. 8. Section 473.15 of the Business and Professions Code  
16     is amended to read:

17     473.15. (a) ~~The Joint Committee on Boards, Commissions,~~  
18     ~~and Consumer Protection established pursuant to Section 473~~  
19     appropriate policy committees of the Legislature shall review the  
20     following boards established by initiative measures, as provided  
21     in this section:

22       (1) The State Board of Chiropractic Examiners established by  
23       an initiative measure approved by electors November 7, 1922.

24       (2) The Osteopathic Medical Board of California established  
25       by an initiative measure approved June 2, 1913, and acts  
26       amendatory thereto approved by electors November 7, 1922.

27       (b) The Osteopathic Medical Board of California shall prepare  
28       an analysis and submit a report as described in subdivisions (a) to  
29       (e), inclusive, of Section 473.2, to the ~~Joint Committee on Boards,~~  
30       ~~Commissions, and Consumer Protection appropriate policy~~  
31       committees of the Legislature on or before September 1, 2010.

32       (c) The State Board of Chiropractic Examiners shall prepare an  
33       analysis and submit a report as described in subdivisions (a) to (e),  
34       inclusive, of Section 473.2, to the ~~Joint Committee on Boards,~~  
35       ~~Commissions, and Consumer Protection appropriate policy~~  
36       committees of the Legislature on or before September 1, 2011.

37       (d) The ~~Joint Committee on Boards, Commissions, and~~  
38       Consumer Protection appropriate policy committees of the  
39       Legislature shall, during the interim recess of 2004 2011 for the  
40       Osteopathic Medical Board of California, and during the interim

1 recess of 2011 for the State Board of Chiropractic Examiners, hold  
2 public hearings to receive testimony from the Director of Consumer  
3 Affairs, the board involved, the public, and the regulated industry.  
4 In that hearing, each board shall be prepared to demonstrate a  
5 compelling public need for the continued existence of the board  
6 or regulatory program, and that its licensing function is the least  
7 restrictive regulation consistent with the public health, safety, and  
8 welfare.

9 (e) ~~The Joint Committee on Boards, Commissions, and~~  
10 ~~Consumer Protection appropriate policy committees of the~~  
11 ~~Legislature~~ shall evaluate and make determinations pursuant to  
12 Section 473.4 and shall report its findings and recommendations  
13 to the department as provided in Section 473.5.

14 (f) In the exercise of its inherent power to make investigations  
15 and ascertain facts to formulate public policy and determine the  
16 necessity and expediency of contemplated legislation for the  
17 protection of the public health, safety, and welfare, it is the intent  
18 of the Legislature that the State Board of Chiropractic Examiners  
19 and the Osteopathic Medical Board of California be reviewed  
20 pursuant to this section.

21 (g) It is not the intent of the Legislature in requiring a review  
22 under enacting this section to amend the initiative measures that  
23 established the State Board of Chiropractic Examiners or the  
24 Osteopathic Medical Board of California.

25 SEC. 9. Section 473.16 of the Business and Professions Code  
26 is repealed.

27 ~~473.16. The Joint Committee on Boards, Commissions, and~~  
28 ~~Consumer Protection shall examine the composition of the Medical~~  
29 ~~Board of California and its initial and biennial fees and report to~~  
30 ~~the Governor and the Legislature its findings no later than July 1,~~  
31 ~~2008.~~

32 SEC. 10. Section 473.2 of the Business and Professions Code  
33 is amended to read:

34 473.2. (a) All boards to which this chapter applies or bureaus  
35 listed in Section 473.12 shall, with the assistance of the Department  
36 of Consumer Affairs, prepare an analysis and submit a report to  
37 the ~~Joint Committee on Boards, Commissions, and Consumer~~  
38 ~~Protection appropriate policy committees of the Legislature~~ no  
39 later than 22 months before that board's membership or the  
40 bureau chief's term shall become inoperative be terminated

1 pursuant to Section 473.12. The analysis and report shall include,  
2 at a minimum, all of the following:

3 (a) A comprehensive statement of the board's mission, goals,  
4 objectives and legal jurisdiction in protecting the health, safety,  
5 and welfare of the public.

6 (b) The board's enforcement priorities, complaint and  
7 enforcement data, budget expenditures with average and  
8 median costs per case, and case aging data specific to post and  
9 preaccusation cases at the Attorney General's office.

10 (c) The board's

11 (1) The number of complaints it received per year, the number  
12 of complaints per year that proceeded to investigation, the number  
13 of accusations filed per year, and the number and kind of  
14 disciplinary actions taken, including, but not limited to, interim  
15 suspension orders, revocations, probations, and suspensions.

16 (2) The average amount of time per year that elapsed between  
17 receipt of a complaint and the complaint being closed or referred  
18 to investigation; the average amount of time per year elapsed  
19 between the commencement of an investigation and the complaint  
20 either being closed or an accusation being filed; the average  
21 amount of time elapsed per year between the filing of an accusation  
22 and a final decision, including appeals; and the average and  
23 median costs per case.

24 (3) The average amount of time per year between final  
25 disposition of a complaint and notice to the complainant.

26 (4) A copy of the enforcement priorities including criteria for  
27 seeking an interim suspension order.

28 (5) A brief description of the board's or bureau's fund  
29 conditions, sources of revenues, and expenditure categories for  
30 the last four fiscal years by program component.

31 (d) The board's description of its licensing process including  
32 the time and costs

33 (6) A brief description of the cost per year required to implement  
34 and administer its licensing examination, ownership of the license  
35 examination, the last assessment of the relevancy and validity of  
36 the licensing examination, and the passage rate for each of the last  
37 four years, and areas of examination.

38 (e) The board's initiation of legislative efforts, budget change  
39 proposals, and other initiatives it has taken to improve its legislative  
40 mandate.

1     (7) A copy of sponsored legislation and a description of its  
2 budget change proposals.

3     (8) A brief assessment of its licensing fees as to whether they  
4 are sufficient, too high, or too low.

5     (9) A brief statement detailing how the board or bureau over  
6 the prior four years has improved its enforcement, public  
7 disclosure, accessibility to the public, including, but not limited  
8 to, Web casts of its proceedings, and fiscal condition.

9     (b) If an annual report contains information that is required by  
10 this section, a board or bureau may submit the annual report to  
11 the committees and it shall post it on the board's or bureau's  
12 Internet Web site.

13     SEC. 11. Section 473.3 of the Business and Professions Code  
14 is amended to read:

15     473.3. (a) Prior to the termination, continuation, or  
16 reestablishment of the terms of office of the membership of any  
17 board or any of the board's functions, the Joint Committee on  
18 Boards, Commissions, and Consumer Protection shall the chief of  
19 any bureau described in Section 473.12, the appropriate policy  
20 committees of the Legislature, during the interim recess preceding  
21 the date upon which a board becomes inoperative board member's  
22 or bureau chief's term of office is to be terminated, may hold public  
23 hearings to receive and consider testimony from the Director of  
24 Consumer Affairs, the board or bureau involved, and the Attorney  
25 General, members of the public, and representatives of the  
26 regulated industry. In that hearing, each board shall have the burden  
27 of demonstrating a compelling public need for the continued  
28 existence of the board or regulatory program, and that its licensing  
29 function is the least restrictive regulation consistent with the public  
30 health, safety, and welfare regarding whether the board's or  
31 bureau's policies and practices, including enforcement, disclosure,  
32 licensing exam, and fee structure, are sufficient to protect  
33 consumers and are fair to licensees and prospective licensees,  
34 whether licensure of the profession is required to protect the public,  
35 and whether an enforcement monitor may be necessary to obtain  
36 further information on operations.

37     (b) In addition to subdivision (a), in 2002 and every four years  
38 thereafter, the committee, in cooperation with the California  
39 Postsecondary Education Commission, shall hold a public hearing  
40 to receive testimony from the Director of Consumer Affairs, the

1 Bureau for Private Postsecondary and Vocational Education,  
2 private postsecondary educational institutions regulated by the  
3 bureau, and students of those institutions. In those hearings, the  
4 bureau shall have the burden of demonstrating a compelling public  
5 need for the continued existence of the bureau and its regulatory  
6 program, and that its function is the least restrictive regulation  
7 consistent with the public health, safety, and welfare.

8 (e) The committee, in cooperation with the California  
9 Postsecondary Education Commission, shall evaluate and review  
10 the effectiveness and efficiency of the Bureau for Private  
11 Postsecondary and Vocational Education, based on factors and  
12 minimum standards of performance that are specified in Section  
13 473.4. The committee shall report its findings and  
14 recommendations as specified in Section 473.5. The bureau shall  
15 prepare an analysis and submit a report to the committee as  
16 specified in Section 473.2.

17 (d) In addition to subdivision (a), in 2003 and every four years  
18 thereafter, the committee shall hold a public hearing to receive  
19 testimony from the Director of Consumer Affairs and the Bureau  
20 of Automotive Repair. In those hearings, the bureau shall have the  
21 burden of demonstrating a compelling public need for the continued  
22 existence of the bureau and its regulatory program, and that its  
23 function is the least restrictive regulation consistent with the public  
24 health, safety, and welfare.

25 (e) The committee shall evaluate and review the effectiveness  
26 and efficiency of the Bureau of Automotive Repair based on factors  
27 and minimum standards of performance that are specified in  
28 Section 473.4. The committee shall report its findings and  
29 recommendations as specified in Section 473.5. The bureau shall  
30 prepare an analysis and submit a report to the committee as  
31 specified in Section 473.2.

32 SEC. 12. Section 473.4 of the Business and Professions Code  
33 is amended to read:

34 473.4. (a) The Joint Committee on Boards, Commissions, and  
35 Consumer Protection shall appropriate policy committees of the  
36 Legislature may evaluate and determine whether a board or  
37 regulatory program has demonstrated a public need for the  
38 continued existence of the board or regulatory program and for  
39 the degree of regulation the board or regulatory program

- 1 implements based on the following factors and minimum standards  
2 of performance:
- 3     (1) Whether regulation by the board is necessary to protect the  
4       public health, safety, and welfare.
- 5     (2) Whether the basis or facts that necessitated the initial  
6       licensing or regulation of a practice or profession have changed.
- 7     (3) Whether other conditions have arisen that would warrant  
8       increased, decreased, or the same degree of regulation.
- 9     (4) If regulation of the profession or practice is necessary,  
10      whether existing statutes and regulations establish the least  
11      restrictive form of regulation consistent with the public interest,  
12      considering other available regulatory mechanisms, and whether  
13      the board rules enhance the public interest and are within the scope  
14      of legislative intent.
- 15     (5) Whether the board operates and enforces its regulatory  
16      responsibilities in the public interest and whether its regulatory  
17      mission is impeded or enhanced by existing statutes, regulations,  
18      policies, practices, or any other circumstances, including budgetary,  
19      resource, and personnel matters.
- 20     (6) Whether an analysis of board operations indicates that the  
21      board performs its statutory duties efficiently and effectively.
- 22     (7) Whether the composition of the board adequately represents  
23      the public interest and whether the board encourages public  
24      participation in its decisions rather than participation only by the  
25      industry and individuals it regulates.
- 26     (8) Whether the board and its laws or regulations stimulate or  
27      restrict competition, and the extent of the economic impact the  
28      board's regulatory practices have on the state's business and  
29      technological growth.
- 30     (9) Whether complaint, investigation, powers to intervene, and  
31      disciplinary procedures adequately protect the public and whether  
32      final dispositions of complaints, investigations, restraining orders,  
33      and disciplinary actions are in the public interest; or if it is, instead,  
34      self-serving to the profession, industry or individuals being  
35      regulated by the board.
- 36     (10) Whether the scope of practice of the regulated profession  
37      or occupation contributes to the highest utilization of personnel  
38      and whether entry requirements encourage affirmative action.
- 39     (11) Whether administrative and statutory changes are necessary  
40      to improve board operations to enhance the public interest.

1       (b) The Joint Committee on Boards, Commissions, and  
2 Consumer Protection shall consider alternatives to placing  
3 responsibilities and jurisdiction of the board under the Department  
4 of Consumer Affairs.

5       (e)

6       (b) Nothing in this section precludes any board from submitting  
7 other appropriate information to the Joint Committee on Boards,  
8 Commissions, and Consumer Protection: *appropriate policy*  
9 *committees of the Legislature.*

10      SEC. 13. Section 473.5 of the Business and Professions Code  
11 is repealed.

12      473.5. The Joint Committee on Boards, Commissions, and  
13 Consumer Protection shall report its findings and preliminary  
14 recommendations to the department for its review, and, within 90  
15 days of receiving the report, the department shall report its findings  
16 and recommendations to the Joint Committee on Boards,  
17 Commissions, and Consumer Protection during the next year of  
18 the regular session that follows the hearings described in Section  
19 473.3. The committee shall then meet to vote on final  
20 recommendations. A final report shall be completed by the  
21 committee and made available to the public and the Legislature.  
22 The report shall include final recommendations of the department  
23 and the committee and whether each board or function scheduled  
24 for repeal shall be terminated, continued, or reestablished, and  
25 whether its functions should be revised. If the committee or the  
26 department deems it advisable, the report may include proposed  
27 bills to carry out its recommendations.

28      SEC. 14. Section 473.6 of the Business and Professions Code  
29 is amended to read:

30      473.6. The chairpersons of the appropriate policy committees  
31 of the Legislature may refer to the Joint Committee on Boards,  
32 Commissions, and Consumer Protection for *interim study* review  
33 of any legislative issues or proposals to create new licensure or  
34 regulatory categories, change licensing requirements, modify scope  
35 of practice, or create a new licensing board under the provisions  
36 of this code or pursuant to Chapter 1.5 (commencing with Section  
37 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

38      SEC. 15. Section 473.7 is added to the Business and Professions  
39 Code, to read:

1        473.7. The appropriate policy committees of the Legislature  
2 may, through their oversight function, investigate the operations  
3 of any entity to which this chapter applies and hold public hearings  
4 on any matter subject to public hearing under Section 473.3.

5        SEC. 16. Section 9882 of the Business and Professions Code  
6 is amended to read:

7        9882. (a) There is in the Department of Consumer Affairs a  
8 Bureau of Automotive Repair under the supervision and control  
9 of the director. The duty of enforcing and administering this chapter  
10 is vested in the chief who is responsible to the director. The director  
11 may adopt and enforce those rules and regulations that he or she  
12 determines are reasonably necessary to carry out the purposes of  
13 this chapter and declaring the policy of the bureau, including a  
14 system for the issuance of citations for violations of this chapter  
15 as specified in Section 125.9. These rules and regulations shall be  
16 adopted pursuant to Chapter 3.5 (commencing with Section 11340)  
17 of Part 1 of Division 3 of Title 2 of the Government Code.

18        (b) In 2003 and every four years thereafter, the ~~Joint Committee~~  
19 ~~on Boards, Commissions, and Consumer Protection~~ *appropriate*  
20 *policy committees of the Legislature* shall hold a public hearing to  
21 receive *and consider* testimony from the Director of Consumer  
22 Affairs and the bureau. ~~In those hearings, the bureau shall have~~  
23 ~~the burden of demonstrating a compelling public need for the~~  
24 ~~continued existence of the bureau and its regulatory program, and~~  
25 ~~that its function is the least restrictive regulation consistent with~~  
26 ~~the public health, safety, and welfare, the Attorney General,~~  
27 ~~members of the public, and representatives of this industry~~  
28 ~~regarding the bureau's policies and practices as specified in~~  
29 ~~Section 473.3. The committee shall appropriate policy committees~~  
30 ~~of the Legislature may evaluate and review the effectiveness and~~  
31 ~~efficiency of the bureau based on factors and minimum standards~~  
32 ~~of performance that are specified in Section 473.4. The committee~~  
33 ~~shall report its findings and recommendations as specified in~~  
34 ~~Section 473.5. The bureau shall prepare an analysis and submit a~~  
35 ~~report to the committee appropriate policy committees of the~~  
36 ~~Legislature as specified in Section 473.2.~~

**SB 674**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 674  
**Author:** Negrete McLeod  
**Bill Date:** April 28, 2009, amended  
**Subject:** Outpatient settings/Advertising  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill covers a variety of subjects, including advertising, outpatient setting accreditation requirements, supervision of laser and IPL device procedures, the wearing of name tags for healthcare professionals, and public information.

**ANALYSIS:**

This bill makes some significant changes to sections of the Business and Professions (B&P) Code and the Health and Safety (H&S) Code that may benefit the public.

Amends B&P Code section 651, which would require, effective January 1, 2011, advertising to include the license designation following the licensee's name:

- Chiropractors - "DC"
- Dentists - "DDS" or "DMD"
- Physicians - "MD" or "DO", as appropriate;
- Podiatrists – "DPM"
- Registered Nurses – "RN"
- Vocational Nurses – "LVN"
- Psychologists – "Ph.D."
- Optometrists – "OD"
- Physician Assistants – "PA"
- Naturopathic doctor – "ND"

This bill also defines advertising as virtually any promotional communications, including direct mail, television, radio, motion picture, newspaper, book, Internet, or any other form of communication. It does not include insurance provider directories, billing statements, or appointment reminders.

Amends B&P Code section 2023.5:

This amendment would require that the Nursing and Medical Boards adopt regulations by July 1, 2010 relating to the “appropriate level of physician availability” needed for use of prescriptive lasers or intense pulse light devices.

These two Boards held three public forums to study this subject as mandated by B&P Code section 2023.5 (added to statutes by SB 1423; Figueroa, Chap 873, Statutes of 2006). As a result of that study, it was determined that current law and regulations were sufficient related to supervision --- it was lack of enforcement that was contributing to the problems occurring in the use of lasers and IPL devices, among other cosmetic procedures. These forums did not address physician availability.

Adds B&P Code section 2027.5:

This new section requires the Board to post on its Web site a comprehensive fact sheet on cosmetic surgery. This will enhance consumer awareness and protection.

Amends H&S Code section 1248:

This section clarifies that any references to Division of Licensing are deemed to refer to the Medical Board. More importantly adds in vitro fertilization facilities or other assisted reproduction technology services to the definition of “Outpatient setting.”

Amends H&S Code section 1248.15:

This section makes technical changes and adds the requirement for accreditation agencies that they not only require of the settings emergency plans for outpatient settings, but also require the inclusion of standardized procedures and protocols to be followed in the event of emergencies or complications that place patients at risk of injury or harm. This is added to address concerns that detailed procedures were not in place at these settings. This section, as amended, allows the Board to adopt standards for outpatient settings that offer in vitro fertilization or assisted reproduction technology. Facilities providing these services would be required to meet accreditation standards that the board deems necessary, different than existing standards for current outpatient settings.

Amends H&S Code section 1248.2:

This section replaces “Division” or “Division of Licensing” with “Board” to reflect the current organization of the Medical Board. This section requires the Medical Board to disclose to the public if an outpatient setting has been suspended, placed on probation, or received a reprimand by the approved accreditation agency. This will allow the public access to the status of all outpatient settings.

Amends H&S Code sections 1248.25 and 1248.35, and 1248.5:

These sections make do the following:

- Requires the Board or the Board’s approved accreditation agencies to periodically inspect accredited outpatient settings. Inspections must be performed no less than once every three years. This will help the settings remain in compliance with the law, thus providing enhanced consumer protection. It is not clear who will pay for these inspections.

- Current law requires accreditation agencies to provide outpatient settings a notice of deficiencies and a reasonable time to remedy them before revoking accreditation. This legislation would require the outpatient setting to prominently post the notice of deficiencies. This will allow the public access to issues that the settings may have or had to remedy.
- Requires that reports on the results of outpatient setting inspections be kept on file by the Board or accrediting agency, along with proposed corrective action and recommendations for reinspection. These reports will be public information - disclosable to the public.
- Requires the approved accrediting agencies to immediately inform the Board when they issue a reprimand, suspend or revoke accreditation, or place an outpatient setting on probation. This will alert the Board of an issue that may need action.
- Requires the Board to:
  1. Evaluate the accreditation agencies every three years;
  2. Evaluate in response to complaints against an agency;
  3. Evaluate complaints against the accreditation of outpatient settings.

This bill was amended to require the Department of Public Health, while conducting regular period state inspections of acute care hospitals, to inspect the peer review process in that hospital as well.

**FISCAL:** Unknown, but could be substantial if the Board does the inspections.

**POSITION:** **Executive Committee Recommendation:** Support if amended  
**Staff Recommendation:** Support

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 674**

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**Introduced by Senator Negrete McLeod**

February 27, 2009

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An act to amend Sections 651, 680, and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, and 1279 of the Health and Safety Code, relating to healing arts.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 674, as amended, Negrete McLeod. Healing arts.

(1) Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status on a specified name tag. However, existing law exempts from this requirement a health care practitioner, in a practice or office, whose license is prominently displayed.

This bill would delete that exemption and would instead authorize a health care practitioner, in a practice or office, to disclose his or her name and his or her type of license verbally.

(3)

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by July 1, 2010, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(4)

(3) Existing law requires the board to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(5)

(4) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations.

This bill would include, among those specified aspects, the submission for approval by an accrediting agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined, and assisted reproduction technology treatments.

(6)

(5) Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a

setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

(7)

(6) Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

(8)

(7) Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements, and the bill would require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

(9)

(8) Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(10)

(9) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would require the department, when conducting an inspection of an acute care hospital, to inspect the peer review process utilized by the hospital.

(11)

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

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

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

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

1 SECTION 1. Section 651 of the Business and Professions Code  
2 is amended to read:

3       651. (a) It is unlawful for any person licensed under this  
4 division or under any initiative act referred to in this division to  
5 disseminate or cause to be disseminated any form of public  
6 communication containing a false, fraudulent, misleading, or  
7 deceptive statement, claim, or image for the purpose of or likely  
8 to induce, directly or indirectly, the rendering of professional  
9 services or furnishing of products in connection with the  
10 professional practice or business for which he or she is licensed.  
11 A “public communication” as used in this section includes, but is  
12 not limited to, communication by means of mail, television, radio,  
13 motion picture, newspaper, book, list or directory of healing arts  
14 practitioners, Internet, or other electronic communication.

15       (b) A false, fraudulent, misleading, or deceptive statement,  
16 claim, or image includes a statement or claim that does any of the  
17 following:

18           (1) Contains a misrepresentation of fact.  
19           (2) Is likely to mislead or deceive because of a failure to disclose  
20 material facts.

21           (3) (A) Is intended or is likely to create false or unjustified  
22 expectations of favorable results, including the use of any  
23 photograph or other image that does not accurately depict the  
24 results of the procedure being advertised or that has been altered  
25 in any manner from the image of the actual subject depicted in the  
26 photograph or image.

1     (B) Use of any photograph or other image of a model without  
2 clearly stating in a prominent location in easily readable type the  
3 fact that the photograph or image is of a model is a violation of  
4 subdivision (a). For purposes of this paragraph, a model is anyone  
5 other than an actual patient, who has undergone the procedure  
6 being advertised, of the licensee who is advertising for his or her  
7 services.

8     (C) Use of any photograph or other image of an actual patient  
9 that depicts or purports to depict the results of any procedure, or  
10 presents “before” and “after” views of a patient, without specifying  
11 in a prominent location in easily readable type size what procedures  
12 were performed on that patient is a violation of subdivision (a).  
13 Any “before” and “after” views (i) shall be comparable in  
14 presentation so that the results are not distorted by favorable poses,  
15 lighting, or other features of presentation, and (ii) shall contain a  
16 statement that the same “before” and “after” results may not occur  
17 for all patients.

18     (4) Relates to fees, other than a standard consultation fee or a  
19 range of fees for specific types of services, without fully and  
20 specifically disclosing all variables and other material factors.

21     (5) Contains other representations or implications that in  
22 reasonable probability will cause an ordinarily prudent person to  
23 misunderstand or be deceived.

24     (6) Makes a claim either of professional superiority or of  
25 performing services in a superior manner, unless that claim is  
26 relevant to the service being performed and can be substantiated  
27 with objective scientific evidence.

28     (7) Makes a scientific claim that cannot be substantiated by  
29 reliable, peer reviewed, published scientific studies.

30     (8) Includes any statement, endorsement, or testimonial that is  
31 likely to mislead or deceive because of a failure to disclose material  
32 facts.

33     (c) Any price advertisement shall be exact, without the use of  
34 phrases, including, but not limited to, “as low as,” “and up,”  
35 “lowest prices,” or words or phrases of similar import. Any  
36 advertisement that refers to services, or costs for services, and that  
37 uses words of comparison shall be based on verifiable data  
38 substantiating the comparison. Any person so advertising shall be  
39 prepared to provide information sufficient to establish the accuracy  
40 of that comparison. Price advertising shall not be fraudulent,

1 deceitful, or misleading, including statements or advertisements  
2 of bait, discount, premiums, gifts, or any statements of a similar  
3 nature. In connection with price advertising, the price for each  
4 product or service shall be clearly identifiable. The price advertised  
5 for products shall include charges for any related professional  
6 services, including dispensing and fitting services, unless the  
7 advertisement specifically and clearly indicates otherwise.

8 (d) Any person so licensed shall not compensate or give anything  
9 of value to a representative of the press, radio, television, or other  
10 communication medium in anticipation of, or in return for,  
11 professional publicity unless the fact of compensation is made  
12 known in that publicity.

13 (e) Any person so licensed may not use any professional card,  
14 professional announcement card, office sign, letterhead, telephone  
15 directory listing, medical list, medical directory listing, or a similar  
16 professional notice or device if it includes a statement or claim  
17 that is false, fraudulent, misleading, or deceptive within the  
18 meaning of subdivision (b).

19 (f) Any person so licensed who violates this section is guilty of  
20 a misdemeanor. A bona fide mistake of fact shall be a defense to  
21 this subdivision, but only to this subdivision.

22 (g) Any violation of this section by a person so licensed shall  
23 constitute good cause for revocation or suspension of his or her  
24 license or other disciplinary action.

25 (h) Advertising by any person so licensed may include the  
26 following:

27 (1) A statement of the name of the practitioner.  
28 (2) A statement of addresses and telephone numbers of the  
29 offices maintained by the practitioner.

30 (3) A statement of office hours regularly maintained by the  
31 practitioner.

32 (4) A statement of languages, other than English, fluently spoken  
33 by the practitioner or a person in the practitioner's office.

34 (5) (A) A statement that the practitioner is certified by a private  
35 or public board or agency or a statement that the practitioner limits  
36 his or her practice to specific fields.

37 (i) For the purposes of this section, a dentist licensed under  
38 Chapter 4 (commencing with Section 1600) may not hold himself  
39 or herself out as a specialist, or advertise membership in or  
40 specialty recognition by an accrediting organization, unless the

1 practitioner has completed a specialty education program approved  
2 by the American Dental Association and the Commission on Dental  
3 Accreditation, is eligible for examination by a national specialty  
4 board recognized by the American Dental Association, or is a  
5 diplomate of a national specialty board recognized by the American  
6 Dental Association.

7       (ii) A dentist licensed under Chapter 4 (commencing with  
8 Section 1600) shall not represent to the public or advertise  
9 accreditation either in a specialty area of practice or by a board  
10 not meeting the requirements of clause (i) unless the dentist has  
11 attained membership in or otherwise been credentialed by an  
12 accrediting organization that is recognized by the board as a bona  
13 fide organization for that area of dental practice. In order to be  
14 recognized by the board as a bona fide accrediting organization  
15 for a specific area of dental practice other than a specialty area of  
16 dentistry authorized under clause (i), the organization shall  
17 condition membership or credentialing of its members upon all of  
18 the following:

19       (I) Successful completion of a formal, full-time advanced  
20 education program that is affiliated with or sponsored by a  
21 university based dental school and is beyond the dental degree at  
22 a graduate or postgraduate level.

23       (II) Prior didactic training and clinical experience in the specific  
24 area of dentistry that is greater than that of other dentists.

25       (III) Successful completion of oral and written examinations  
26 based on psychometric principles.

27       (iii) Notwithstanding the requirements of clauses (i) and (ii), a  
28 dentist who lacks membership in or certification, diplomate status,  
29 other similar credentials, or completed advanced training approved  
30 as bona fide either by an American Dental Association recognized  
31 accrediting organization or by the board, may announce a practice  
32 emphasis in any other area of dental practice only if the dentist  
33 incorporates in capital letters or some other manner clearly  
34 distinguishable from the rest of the announcement, solicitation, or  
35 advertisement that he or she is a general dentist.

36       (iv) A statement of certification by a practitioner licensed under  
37 Chapter 7 (commencing with Section 3000) shall only include a  
38 statement that he or she is certified or eligible for certification by  
39 a private or public board or parent association recognized by that  
40 practitioner's licensing board.

1       (B) A physician and surgeon licensed under Chapter 5  
2 (commencing with Section 2000) by the Medical Board of  
3 California may include a statement that he or she limits his or her  
4 practice to specific fields, but shall not include a statement that he  
5 or she is certified or eligible for certification by a private or public  
6 board or parent association, including, but not limited to, a  
7 multidisciplinary board or association, unless that board or  
8 association is (i) an American Board of Medical Specialties  
9 member board, (ii) a board or association with equivalent  
10 requirements approved by that physician and surgeon's licensing  
11 board, or (iii) a board or association with an Accreditation Council  
12 for Graduate Medical Education approved postgraduate training  
13 program that provides complete training in that specialty or  
14 subspecialty. A physician and surgeon licensed under Chapter 5  
15 (commencing with Section 2000) by the Medical Board of  
16 California who is certified by an organization other than a board  
17 or association referred to in clause (i), (ii), or (iii) shall not use the  
18 term "board certified" in reference to that certification, unless the  
19 physician and surgeon is also licensed under Chapter 4  
20 (commencing with Section 1600) and the use of the term "board  
21 certified" in reference to that certification is in accordance with  
22 subparagraph (A). A physician and surgeon licensed under Chapter  
23 5 (commencing with Section 2000) by the Medical Board of  
24 California who is certified by a board or association referred to in  
25 clause (i), (ii), or (iii) shall not use the term "board certified" unless  
26 the full name of the certifying board is also used and given  
27 comparable prominence with the term "board certified" in the  
28 statement.

29     For purposes of this subparagraph, a "multidisciplinary board  
30 or association" means an educational certifying body that has a  
31 psychometrically valid testing process, as determined by the  
32 Medical Board of California, for certifying medical doctors and  
33 other health care professionals that is based on the applicant's  
34 education, training, and experience.

35     For purposes of the term "board certified," as used in this  
36 subparagraph, the terms "board" and "association" mean an  
37 organization that is an American Board of Medical Specialties  
38 member board, an organization with equivalent requirements  
39 approved by a physician and surgeon's licensing board, or an  
40 organization with an Accreditation Council for Graduate Medical

1 Education approved postgraduate training program that provides  
2 complete training in a specialty or subspecialty.

3 The Medical Board of California shall adopt regulations to  
4 establish and collect a reasonable fee from each board or  
5 association applying for recognition pursuant to this subparagraph.  
6 The fee shall not exceed the cost of administering this  
7 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
8 Statutes of 1990, this subparagraph shall become operative July  
9 1, 1993. However, an administrative agency or accrediting  
10 organization may take any action contemplated by this  
11 subparagraph relating to the establishment or approval of specialist  
12 requirements on and after January 1, 1991.

13 (C) A doctor of podiatric medicine licensed under Chapter 5  
14 (commencing with Section 2000) by the Medical Board of  
15 California may include a statement that he or she is certified or  
16 eligible or qualified for certification by a private or public board  
17 or parent association, including, but not limited to, a  
18 multidisciplinary board or association, if that board or association  
19 meets one of the following requirements: (i) is approved by the  
20 Council on Podiatric Medical Education, (ii) is a board or  
21 association with equivalent requirements approved by the  
22 California Board of Podiatric Medicine, or (iii) is a board or  
23 association with the Council on Podiatric Medical Education  
24 approved postgraduate training programs that provide training in  
25 podiatric medicine and podiatric surgery. A doctor of podiatric  
26 medicine licensed under Chapter 5 (commencing with Section  
27 2000) by the Medical Board of California who is certified by a  
28 board or association referred to in clause (i), (ii), or (iii) shall not  
29 use the term "board certified" unless the full name of the certifying  
30 board is also used and given comparable prominence with the term  
31 "board certified" in the statement. A doctor of podiatric medicine  
32 licensed under Chapter 5 (commencing with Section 2000) by the  
33 Medical Board of California who is certified by an organization  
34 other than a board or association referred to in clause (i), (ii), or  
35 (iii) shall not use the term "board certified" in reference to that  
36 certification.

37 For purposes of this subparagraph, a "multidisciplinary board  
38 or association" means an educational certifying body that has a  
39 psychometrically valid testing process, as determined by the  
40 California Board of Podiatric Medicine, for certifying doctors of

1 podiatric medicine that is based on the applicant's education,  
2 training, and experience. For purposes of the term "board certified,"  
3 as used in this subparagraph, the terms "board" and "association"  
4 mean an organization that is a Council on Podiatric Medical  
5 Education approved board, an organization with equivalent  
6 requirements approved by the California Board of Podiatric  
7 Medicine, or an organization with a Council on Podiatric Medical  
8 Education approved postgraduate training program that provides  
9 training in podiatric medicine and podiatric surgery.

10 The California Board of Podiatric Medicine shall adopt  
11 regulations to establish and collect a reasonable fee from each  
12 board or association applying for recognition pursuant to this  
13 subparagraph, to be deposited in the State Treasury in the Podiatry  
14 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
15 of administering this subparagraph.

16 (6) A statement that the practitioner provides services under a  
17 specified private or public insurance plan or health care plan.

18 (7) A statement of names of schools and postgraduate clinical  
19 training programs from which the practitioner has graduated,  
20 together with the degrees received.

21 (8) A statement of publications authored by the practitioner.

22 (9) A statement of teaching positions currently or formerly held  
23 by the practitioner, together with pertinent dates.

24 (10) A statement of his or her affiliations with hospitals or  
25 clinics.

26 (11) A statement of the charges or fees for services or  
27 commodities offered by the practitioner.

28 (12) A statement that the practitioner regularly accepts  
29 installment payments of fees.

30 (13) Otherwise lawful images of a practitioner, his or her  
31 physical facilities, or of a commodity to be advertised.

32 (14) A statement of the manufacturer, designer, style, make,  
33 trade name, brand name, color, size, or type of commodities  
34 advertised.

35 (15) An advertisement of a registered dispensing optician may  
36 include statements in addition to those specified in paragraphs (1)  
37 to (14), inclusive, provided that any statement shall not violate  
38 subdivision (a), (b), (c), or (e) or any other section of this code.

39 (16) A statement, or statements, providing public health  
40 information encouraging preventative or corrective care.

- 1       (17) Any other item of factual information that is not false,  
2 fraudulent, misleading, or likely to deceive.  
3       (i) (1) Advertising by the following licensees shall include the  
4 designations as follows:  
5       (A) Advertising by a chiropractor licensed under Chapter 2  
6 (commencing with Section 1000) shall include the designation  
7 "DC" immediately following the chiropractor's name.  
8       (B) Advertising by a dentist licensed under Chapter 4  
9 (commencing with Section 1600) shall include the designation  
10 "DDS" or "DMD" immediately following the dentist's name.  
11      (C) Advertising by a physician and surgeon licensed under  
12 Chapter 5 (commencing with Section 2000) shall include the  
13 designation "MD" immediately following the physician and  
14 surgeon's name.  
15      (D) Advertising by an osteopathic physician and surgeon  
16 certified under Article 21 (commencing with Section 2450) shall  
17 include the designation "DO" immediately following the  
18 osteopathic physician and surgeon's name.  
19      (E) Advertising by a podiatrist certified under Article 22  
20 (commencing with Section 2460) of Chapter 5 shall include the  
21 designation "DPM" immediately following the podiatrist's name.  
22      (F) Advertising by a registered nurse licensed under Chapter 6  
23 (commencing with Section 2700) shall include the designation  
24 "RN" immediately following the registered nurse's name.  
25      (G) Advertising by a licensed vocational nurse under Chapter  
26 6.5 (commencing with Section 2840) shall include the designation  
27 "LVN" immediately following the licensed vocational nurse's  
28 name.  
29      (H) Advertising by a psychologist licensed under Chapter 6.6  
30 (commencing with Section 2900) shall include the designation  
31 "Ph.D." immediately following the psychologist's name.  
32      (I) Advertising by an optometrist licensed under Chapter 7  
33 (commencing with Section 3000) shall include the designation  
34 "OD" immediately following the optometrist's name.  
35      (J) Advertising by a physician assistant licensed under Chapter  
36 7.7 (commencing with Section 3500) shall include the designation  
37 "PA" immediately following the physician assistant's name.  
38      (K) Advertising by a naturopathic doctor licensed under Chapter  
39 8.2 (commencing with Section 3610) shall include the designation  
40 "ND" immediately following the naturopathic doctor's name.

1       (2) For purposes of this subdivision, "advertisement" includes  
2 communication by means of mail, television, radio, motion picture,  
3 newspaper, book, directory, Internet, or other electronic  
4 communication.

5       (3) Advertisements do not include any of the following:

6           (A) A medical directory released by a health care service plan  
7 or a health insurer.

8           (B) A billing statement from a health care practitioner to a  
9 patient.

10          (C) An appointment reminder from a health care practitioner to  
11 a patient.

12          (4) This subdivision shall not apply until January 1, 2011, to  
13 any advertisement that is published annually and prior to July 1,  
14 2010.

15          (5) This subdivision shall not apply to any advertisement or  
16 business card disseminated by a health care service plan that is  
17 subject to the requirements of Section 1367.26 of the Health and  
18 Safety Code.

19           (j) Each of the healing arts boards and examining committees  
20 within Division 2 shall adopt appropriate regulations to enforce  
21 this section in accordance with Chapter 3.5 (commencing with  
22 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
23 Code.

24          Each of the healing arts boards and committees and examining  
25 committees within Division 2 shall, by regulation, define those  
26 efficacious services to be advertised by businesses or professions  
27 under their jurisdiction for the purpose of determining whether  
28 advertisements are false or misleading. Until a definition for that  
29 service has been issued, no advertisement for that service shall be  
30 disseminated. However, if a definition of a service has not been  
31 issued by a board or committee within 120 days of receipt of a  
32 request from a licensee, all those holding the license may advertise  
33 the service. Those boards and committees shall adopt or modify  
34 regulations defining what services may be advertised, the manner  
35 in which defined services may be advertised, and restricting  
36 advertising that would promote the inappropriate or excessive use  
37 of health services or commodities. A board or committee shall not,  
38 by regulation, unreasonably prevent truthful, nondeceptive price  
39 or otherwise lawful forms of advertising of services or  
40 commodities, by either outright prohibition or imposition of

1 onerous disclosure requirements. However, any member of a board  
2 or committee acting in good faith in the adoption or enforcement  
3 of any regulation shall be deemed to be acting as an agent of the  
4 state.

5 (k) The Attorney General shall commence legal proceedings in  
6 the appropriate forum to enjoin advertisements disseminated or  
7 about to be disseminated in violation of this section and seek other  
8 appropriate relief to enforce this section. Notwithstanding any  
9 other provision of law, the costs of enforcing this section to the  
10 respective licensing boards or committees may be awarded against  
11 any licensee found to be in violation of any provision of this  
12 section. This shall not diminish the power of district attorneys,  
13 county counsels, or city attorneys pursuant to existing law to seek  
14 appropriate relief.

15 (l) A physician and surgeon or doctor of podiatric medicine  
16 licensed pursuant to Chapter 5 (commencing with Section 2000)  
17 by the Medical Board of California who knowingly and  
18 intentionally violates this section may be cited and assessed an  
19 administrative fine not to exceed ten thousand dollars (\$10,000)  
20 per event. Section 125.9 shall govern the issuance of this citation  
21 and fine except that the fine limitations prescribed in paragraph  
22 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
23 under this subdivision.

24 SEC. 2. Section 680 of the Business and Professions Code is  
25 amended to read:

26 680. (a) Except as otherwise provided in this section, a health  
27 care practitioner shall disclose, while working, his or her name  
28 and the practitioner's type of license, as granted by this state, on  
29 a name tag in at least 18-point type. A health care practitioner in  
30 a practice or office may opt to disclose this information verbally.  
31 If a health care practitioner or a licensed clinical social worker is  
32 working in a psychiatric setting or in a setting that is not licensed  
33 by the state, the employing entity or agency shall have the  
34 discretion to make an exception from the name tag requirement  
35 for individual safety or therapeutic concerns. In the interest of  
36 public safety and consumer awareness, it shall be unlawful for any  
37 person to use the title "nurse" in reference to himself or herself  
38 and in any capacity, except for an individual who is a registered  
39 nurse or a licensed vocational nurse, or as otherwise provided in

1 Section 2800. Nothing in this section shall prohibit a certified nurse  
2 assistant from using his or her title.

3 (b) Facilities licensed by the State Department of Social  
4 Services, the State Department of Mental Health, or the State  
5 Department of Public Health shall develop and implement policies  
6 to ensure that health care practitioners providing care in those  
7 facilities are in compliance with subdivision (a). The State  
8 Department of Social Services, the State Department of Mental  
9 Health, and the State Department of Public Health shall verify  
10 through periodic inspections that the policies required pursuant to  
11 subdivision (a) have been developed and implemented by the  
12 respective licensed facilities.

13 (c) For purposes of this article, "health care practitioner" means  
14 any person who engages in acts that are the subject of licensure  
15 or regulation under this division or under any initiative act referred  
16 to in this division.

17 SEC. 3.

18 SEC. 2. Section 2023.5 of the Business and Professions Code  
19 is amended to read:

20 2023.5. (a) The board, in conjunction with the Board of  
21 Registered Nursing, and in consultation with the Physician  
22 Assistant Committee and professionals in the field, shall review  
23 issues and problems surrounding the use of laser or intense light  
24 pulse devices for elective cosmetic procedures by physicians and  
25 surgeons, nurses, and physician assistants. The review shall include,  
26 but need not be limited to, all of the following:

27 (1) The appropriate level of physician supervision needed.  
28 (2) The appropriate level of training to ensure competency.  
29 (3) Guidelines for standardized procedures and protocols that  
30 address, at a minimum, all of the following:

31 (A) Patient selection.  
32 (B) Patient education, instruction, and informed consent.  
33 (C) Use of topical agents.  
34 (D) Procedures to be followed in the event of complications or  
35 side effects from the treatment.  
36 (E) Procedures governing emergency and urgent care situations.

37 (b) On or before January 1, 2009, the board and the Board of  
38 Registered Nursing shall promulgate regulations to implement  
39 changes determined to be necessary with regard to the use of laser

1 or intense pulse light devices for elective cosmetic procedures by  
2 physicians and surgeons, nurses, and physician assistants.

3 (c) On or before July 1, 2010, the board shall adopt regulations  
4 regarding the appropriate level of physician availability needed  
5 within clinics or other settings using laser or intense pulse light  
6 devices for elective cosmetic procedures. However, these  
7 regulations shall not apply to laser or intense pulse light devices  
8 approved by the federal Food and Drug Administration for  
9 over-the-counter use by a health care practitioner or by an  
10 unlicensed person on himself or herself.

11 SEC. 4.

12 SEC. 3. Section 2027.5 is added to the Business and Professions  
13 Code, to read:

14 2027.5. The board shall post on its Internet Web site an  
15 easy-to-understand factsheet to educate the public about cosmetic  
16 surgery and procedures, including their risks. Included with the  
17 factsheet shall be a comprehensive list of questions for patients to  
18 ask their physician and surgeon regarding cosmetic surgery.

19 SEC. 5.

20 SEC. 4. Section 1248 of the Health and Safety Code is amended  
21 to read:

22 1248. For purposes of this chapter, the following definitions  
23 shall apply:

24 (a) "Division" means the Medical Board of California. All  
25 references in this chapter to the division, the Division of Licensing  
26 of the Medical Board of California, or the Division of Medical  
27 Quality shall be deemed to refer to the Medical Board of California  
28 pursuant to Section 2002 of the Business and Professions Code.

29 (b) (1) "Outpatient setting" means any facility, clinic,  
30 unlicensed clinic, center, office, or other setting that is not part of  
31 a general acute care facility, as defined in Section 1250, and where  
32 anesthesia, except local anesthesia or peripheral nerve blocks, or  
33 both, is used in compliance with the community standard of  
34 practice, in doses that, when administered have the probability of  
35 placing a patient at risk for loss of the patient's life-preserving  
36 protective reflexes. "Outpatient"

37 (2) "Outpatient setting" also means facilities that offer in vitro  
38 fertilization, as defined in subdivision (b) of Section 1374.55, or  
39 facilities that offer assisted reproduction technology treatments.

40 "Outpatient"

1       (3) “*Outpatient setting*” does not include, among other settings,  
2 any setting where anxiolytics and analgesics are administered,  
3 when done so in compliance with the community standard of  
4 practice, in doses that do not have the probability of placing the  
5 patient at risk for loss of the patient’s life-preserving protective  
6 reflexes.

7       (c) “*Accreditation agency*” means a public or private  
8 organization that is approved to issue certificates of accreditation  
9 to outpatient settings by the board pursuant to Sections 1248.15  
10 and 1248.4.

11      SEC. 6.

12      SEC. 5. Section 1248.15 of the Health and Safety Code is  
13 amended to read:

14      1248.15. (a) The board shall adopt standards for accreditation  
15 and, in approving accreditation agencies to perform accreditation  
16 of outpatient settings, shall ensure that the certification program  
17 shall, at a minimum, include standards for the following aspects  
18 of the settings’ operations:

19       (1) Outpatient setting allied health staff shall be licensed or  
20 certified to the extent required by state or federal law.

21       (2) (A) Outpatient settings shall have a system for facility safety  
22 and emergency training requirements.

23       (B) There shall be onsite equipment, medication, and trained  
24 personnel to facilitate handling of services sought or provided and  
25 to facilitate handling of any medical emergency that may arise in  
26 connection with services sought or provided.

27       (C) In order for procedures to be performed in an outpatient  
28 setting as defined in Section 1248, the outpatient setting shall do  
29 one of the following:

30       (i) Have a written transfer agreement with a local accredited or  
31 licensed acute care hospital, approved by the facility’s medical  
32 staff.

33       (ii) Permit surgery only by a licensee who has admitting  
34 privileges at a local accredited or licensed acute care hospital, with  
35 the exception that licensees who may be precluded from having  
36 admitting privileges by their professional classification or other  
37 administrative limitations, shall have a written transfer agreement  
38 with licensees who have admitting privileges at local accredited  
39 or licensed acute care hospitals.

1     (D) Submission for approval by an accrediting agency of a  
2 detailed procedural plan for handling medical emergencies that  
3 shall be reviewed at the time of accreditation. No reasonable plan  
4 shall be disapproved by the accrediting agency.

5     (E) Submission for approval by an accrediting agency at the  
6 time of accreditation of a detailed plan, standardized procedures,  
7 and protocols to be followed in the event of serious complications  
8 or side effects from surgery that would place a patient at high risk  
9 for injury or harm and to govern emergency and urgent care  
10 situations.

11    (F) All physicians and surgeons transferring patients from an  
12 outpatient setting shall agree to cooperate with the medical staff  
13 peer review process on the transferred case, the results of which  
14 shall be referred back to the outpatient setting, if deemed  
15 appropriate by the medical staff peer review committee. If the  
16 medical staff of the acute care facility determines that inappropriate  
17 care was delivered at the outpatient setting, the acute care facility's  
18 peer review outcome shall be reported, as appropriate, to the  
19 accrediting body, the Health Care Financing Administration, the  
20 State Department of Public Health, and the appropriate licensing  
21 authority.

22    (3) The outpatient setting shall permit surgery by a dentist acting  
23 within his or her scope of practice under Chapter 4 (commencing  
24 with Section 1600) of Division 2 of the Business and Professions  
25 Code or physician and surgeon, osteopathic physician and surgeon,  
26 or podiatrist acting within his or her scope of practice under  
27 Chapter 5 (commencing with Section 2000) of Division 2 of the  
28 Business and Professions Code or the Osteopathic Initiative Act.  
29 The outpatient setting may, in its discretion, permit anesthesia  
30 service by a certified registered nurse anesthetist acting within his  
31 or her scope of practice under Article 7 (commencing with Section  
32 2825) of Chapter 6 of Division 2 of the Business and Professions  
33 Code.

34    (4) Outpatient settings shall have a system for maintaining  
35 clinical records.

36    (5) Outpatient settings shall have a system for patient care and  
37 monitoring procedures.

38    (6) (A) Outpatient settings shall have a system for quality  
39 assessment and improvement.

1       (B) Members of the medical staff and other practitioners who  
2 are granted clinical privileges shall be professionally qualified and  
3 appropriately credentialed for the performance of privileges  
4 granted. The outpatient setting shall grant privileges in accordance  
5 with recommendations from qualified health professionals, and  
6 credentialing standards established by the outpatient setting.

7       (C) Clinical privileges shall be periodically reappraised by the  
8 outpatient setting. The scope of procedures performed in the  
9 outpatient setting shall be periodically reviewed and amended as  
10 appropriate.

11     (7) Outpatient settings regulated by this chapter that have  
12 multiple service locations governed by the same standards may  
13 elect to have all service sites surveyed on any accreditation survey.  
14 Organizations that do not elect to have all sites surveyed shall have  
15 a sample, not to exceed 20 percent of all service sites, surveyed.  
16 The actual sample size shall be determined by the board. The  
17 accreditation agency shall determine the location of the sites to be  
18 surveyed. Outpatient settings that have five or fewer sites shall  
19 have at least one site surveyed. When an organization that elects  
20 to have a sample of sites surveyed is approved for accreditation,  
21 all of the organizations' sites shall be automatically accredited.

22     (8) Outpatient settings shall post the certificate of accreditation  
23 in a location readily visible to patients and staff.

24     (9) Outpatient settings shall post the name and telephone number  
25 of the accrediting agency with instructions on the submission of  
26 complaints in a location readily visible to patients and staff.

27     (10) Outpatient settings shall have a written discharge criteria.  
28       (b) Outpatient settings shall have a minimum of two staff  
29 persons on the premises, one of whom shall either be a licensed  
30 physician and surgeon or a licensed health care professional with  
31 current certification in advanced cardiac life support (ACLS), as  
32 long as a patient is present who has not been discharged from  
33 supervised care. Transfer to an unlicensed setting of a patient who  
34 does not meet the discharge criteria adopted pursuant to paragraph  
35 (10) of subdivision (a) shall constitute unprofessional conduct.

36       (c) An accreditation agency may include additional standards  
37 in its determination to accredit outpatient settings if these are  
38 approved by the board to protect the public health and safety.

39       (d) No accreditation standard adopted or approved by the board,  
40 and no standard included in any certification program of any

1 accreditation agency approved by the board, shall serve to limit  
2 the ability of any allied health care practitioner to provide services  
3 within his or her full scope of practice. Notwithstanding this or  
4 any other provision of law, each outpatient setting may limit the  
5 privileges, or determine the privileges, within the appropriate scope  
6 of practice, that will be afforded to physicians and allied health  
7 care practitioners who practice at the facility, in accordance with  
8 credentialing standards established by the outpatient setting in  
9 compliance with this chapter. Privileges may not be arbitrarily  
10 restricted based on category of licensure.

11       (e) *The board may adopt standards for outpatient settings that  
12 offer in vitro fertilization or assisted reproduction technology that  
13 it deems necessary.*

14       SEC. 7.

15       SEC. 6. Section 1248.2 of the Health and Safety Code is  
16 amended to read:

17       1248.2. (a) Any outpatient setting may apply to an  
18 accreditation agency for a certificate of accreditation. Accreditation  
19 shall be issued by the accreditation agency solely on the basis of  
20 compliance with its standards as approved by the board under this  
21 chapter.

22       (b) The board shall obtain and maintain a list of all accredited,  
23 certified, and licensed outpatient settings from the information  
24 provided by the accreditation, certification, and licensing agencies  
25 approved by the board, and shall notify the public whether a setting  
26 is accredited, certified, or licensed, or the setting's accreditation,  
27 certification, or license has been revoked, suspended, or placed on  
28 probation, or the setting has received a reprimand by the  
29 accreditation agency.

30       SEC. 8.

31       SEC. 7. Section 1248.25 of the Health and Safety Code is  
32 amended to read:

33       1248.25. If an outpatient setting does not meet the standards  
34 approved by the board, accreditation shall be denied by the  
35 accreditation agency, which shall provide the outpatient setting  
36 notification of the reasons for the denial. An outpatient setting may  
37 reapply for accreditation at any time after receiving notification  
38 of the denial. The accrediting agency shall immediately report to  
39 the board if the outpatient setting's certificate for accreditation has  
40 been denied.

## 1       SEC. 9.

2       SEC. 8. Section 1248.35 of the Health and Safety Code is  
3       amended to read:

4       1248.35. (a) Every outpatient setting which is accredited shall  
5       be periodically inspected by the Medical Board of California or  
6       the accreditation agency. The frequency of inspection shall depend  
7       upon the type and complexity of the outpatient setting to be  
8       inspected. Inspections shall be conducted no less often than once  
9       every three years and as often as necessary to ensure the quality  
10      of care provided. The Medical Board of California or the  
11      accreditation agency may enter and inspect any outpatient setting  
12      that is accredited by an accreditation agency at any reasonable  
13      time to ensure compliance with, or investigate an alleged violation  
14      of, any standard of the accreditation agency or any provision of  
15      this chapter.

16      (b) If an accreditation agency determines, as a result of its  
17      inspection, that an outpatient setting is not in compliance with the  
18      standards under which it was approved, the accreditation agency  
19      may do any of the following:

20       (1) Issue a reprimand.

21       (2) Place the outpatient setting on probation, during which time  
22      the setting shall successfully institute and complete a plan of  
23      correction, approved by the board or the accreditation agency, to  
24      correct the deficiencies.

25       (3) Suspend or revoke the outpatient setting's certification of  
26      accreditation.

27       (c) Except as is otherwise provided in this subdivision, before  
28      suspending or revoking a certificate of accreditation under this  
29      chapter, the accreditation agency shall provide the outpatient setting  
30      with notice of any deficiencies and the outpatient setting shall  
31      agree with the accreditation agency on a plan of correction that  
32      shall give the outpatient setting reasonable time to supply  
33      information demonstrating compliance with the standards of the  
34      accreditation agency in compliance with this chapter, as well as  
35      the opportunity for a hearing on the matter upon the request of the  
36      outpatient center. During that allotted time, a list of deficiencies  
37      and the plan of correction shall be conspicuously posted in a clinic  
38      location accessible to public view. The accreditation agency may  
39      immediately suspend the certificate of accreditation before  
40      providing notice and an opportunity to be heard, but only when

1 failure to take the action may result in imminent danger to the  
2 health of an individual. In such cases, the accreditation agency  
3 shall provide subsequent notice and an opportunity to be heard.

4 (d) If the board determines that deficiencies found during an  
5 inspection suggests that the accreditation agency does not comply  
6 with the standards approved by the board, the board may conduct  
7 inspections, as described in this section, of other settings accredited  
8 by the accreditation agency to determine if the agency is accrediting  
9 settings in accordance with Section 1248.15.

10 (e) Reports on the results of each inspection shall be kept on  
11 file with the board or the accrediting agency along with the plan  
12 of correction and the outpatient setting comments. The inspection  
13 report may include a recommendation for reinspection. All  
14 inspection reports, lists of deficiencies, and plans of correction  
15 shall be public records open to public inspection.

16 (f) The accrediting agency shall immediately report to the board  
17 if the outpatient setting has been issued a reprimand or if the  
18 outpatient setting's certification of accreditation has been  
19 suspended or revoked or if the outpatient setting has been placed  
20 on probation.

21 SEC. 10.

22 SEC. 9. Section 1248.5 of the Health and Safety Code is  
23 amended to read:

24 1248.5. The board shall evaluate the performance of an  
25 approved accreditation agency no less than every three years, or  
26 in response to complaints against an agency, or complaints against  
27 one or more outpatient settings accreditation by an agency that  
28 indicates noncompliance by the agency with the standards approved  
29 by the board.

30 SEC. 11.

31 SEC. 10. Section 1279 of the Health and Safety Code is  
32 amended to read:

33 1279. (a) Every health facility for which a license or special  
34 permit has been issued shall be periodically inspected by the  
35 department, or by another governmental entity under contract with  
36 the department. The frequency of inspections shall vary, depending  
37 upon the type and complexity of the health facility or special  
38 service to be inspected, unless otherwise specified by state or  
39 federal law or regulation. The inspection shall include participation  
40 by the California Medical Association consistent with the manner

1 in which it participated in inspections, as provided in Section 1282  
2 prior to September 15, 1992.

3 (b) Except as provided in subdivision (c), inspections shall be  
4 conducted no less than once every two years and as often as  
5 necessary to ensure the quality of care being provided.

6 (c) For a health facility specified in subdivision (a), (b), or (f)  
7 of Section 1250, inspections shall be conducted no less than once  
8 every three years, and as often as necessary to ensure the quality  
9 of care being provided.

10 (d) During the inspection, the representative or representatives  
11 shall offer such advice and assistance to the health facility as they  
12 deem appropriate.

13 (e) For acute care hospitals of 100 beds or more, the inspection  
14 team shall include at least a physician, registered nurse, and persons  
15 experienced in hospital administration and sanitary inspections.  
16 During the inspection, the team shall offer advice and assistance  
17 to the hospital as it deems appropriate.

18 (f) The department shall ensure that a periodic inspection  
19 conducted pursuant to this section is not announced in advance of  
20 the date of inspection. An inspection may be conducted jointly  
21 with inspections by entities specified in Section 1282. However,  
22 if the department conducts an inspection jointly with an entity  
23 specified in Section 1282 that provides notice in advance of the  
24 periodic inspection, the department shall conduct an additional  
25 periodic inspection that is not announced or noticed to the health  
26 facility.

27 (g) Notwithstanding any other provision of law, the department  
28 shall inspect for compliance with provisions of state law and  
29 regulations during a state periodic inspection or at the same time  
30 as a federal periodic inspection, including, but not limited to, an  
31 inspection required under this section. If the department inspects  
32 for compliance with state law and regulations at the same time as  
33 a federal periodic inspection, the inspection shall be done consistent  
34 with the guidance of the federal Centers for Medicare and Medicaid  
35 Services for the federal portion of the inspection.

36 (h) During a state periodic inspection of an acute care hospital,  
37 including, but not limited to, an inspection required under this  
38 section, the department shall inspect the peer review process  
39 utilized by the hospital.

1       (i) The department shall emphasize consistency across the state  
2 and *in* its district offices when conducting licensing and  
3 certification surveys and complaint investigations, including the  
4 selection of state or federal enforcement remedies in accordance  
5 with Section 1423. The department may issue federal deficiencies  
6 and recommend federal enforcement actions in those circumstances  
7 where they provide more rigorous enforcement action.

8       ~~SEC. 12.~~

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

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**SB 700**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

Bill Number: SB 700  
Author: Negrete McLeod  
Bill Date: April 22, 2009, amended  
Subject: Peer Review  
Sponsor: Author

**STATUS OF BILL:**

This bill is in the Senate Appropriations Committee and is set for hearing on May 5, 2009.

**DESCRIPTION OF CURRENT LEGISLATION:**

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

**ANALYSIS:**

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

Specifically, this bill does the following:

- Adds a definition of what peer review is by specifying that it is the process in which the basic qualifications, staff privileges, employment, outcomes and conduct of licentiates are reviewed to determine if licensees may continue to practice in the facility and if so, under any parameters. This bill clarifies that the definition of a peer review body includes any clinic specified in the Health and Safety Code. This clarification is needed in order to make clear all the entities and individuals who are required to conduct peer review.
- Rewrites for clarity the section that require an 805 report to be filed within 15 days from the date when;
  1. A peer review body denies or rejects a licensee's application for staff privileges or membership for a medical disciplinary cause or reason;
  2. A licensee's staff privileges, membership, or employment are

- revoked for a medical disciplinary cause or reason;
3. Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a total of 30 days or more within any 12 month period for medical disciplinary reasons;
  4. A licensee resigns or takes a leave of absence from staff privileges, membership or employment;
  5. A licensee withdraws or abandons his or her application for staff privileges, membership, or employment;
  6. A licensee withdraws or abandons his or her request for renewal of staff privileges, membership, or employment after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason after receiving notice that his or her application for staff privileges, membership, or employment is denied or will be denied for a medical disciplinary cause or reason.
  7. A summary suspension of staff privileges, membership, or employment is imposed for a period in excess of 14 days.

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

- Requires an 805 report to be maintained electronically for dissemination for a period of three years after receipt.
- Adds that minutes or reports of a peer review are included in the documents that the Board may inspect. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.
- Prohibits the Board from disclosing to the public any peer review summaries completed by a hospital if a court finds that the peer review was not conducted in good faith. This makes reporting fair for licensees who have a bogus report filed against them.
- Entitles the Board to inspect and copy specified unredacted documents relating to any disciplinary proceeding resulting in an action that is required to be reported pursuant to Section 805 without subpoena. This will give the Board faster access to information so the Board can address issues of quality of care in an expeditious manner.
- Requires the Board to remove from the Internet Website any information concerning a hospital disciplinary action that is posted if a court finds that the peer review was not done in good faith. The licensee must notify the Board of that finding. This makes reporting fair for licensees who have a bogus report filed against them.

- Requires the Board to post a factsheet on the internet that explains and provides information on 805 reporting. The will help consumers understand the process and what this reporting means.

**FISCAL:** Minor and absorbable

**POSITION:** **Executive Committee Recommendation:** Support and direct staff to continue to work with the author to enhance consumer protections in the bill.  
**Staff Recommendation:** Support

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 700**

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**Introduced by Senator Negrete McLeod**

February 27, 2009

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

**LEGISLATIVE COUNSEL'S DIGEST**

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

Existing law provides for the professional review of specified healing arts licentiates through a peer review process. Existing law defines the term "peer review body" as including a medical or professional staff of any health care facility or clinic licensed by the State Department of Public Health.

This bill would define the term "peer review" and would revise the definition of the term "peer review body" to include a medical or professional staff of other specified health care facilities or clinics.

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board within 15 days after a specified action is taken against a person licensed by that board. Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licentiate to request a hearing concerning that action.

This bill would require the filing of the 805 report with the licensing board within 15 days of the imposition of a specified action on a licentiate regardless of whether a hearing has occurred.

This bill would also require specified persons to file a report with a licensing board if ~~a formal investigation of a person licensed by that board results in a specified finding of fact peer review body concludes, after formal investigation, that a person licensed by that board departed from the standard of care, as specified, suffered from mental illness or substance abuse, or engaged in sexual misconduct.~~ The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

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

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

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

This bill would specify that the boards have the authority to inspect those documents in unredacted form and without a subpoena and would authorize those boards to also inspect any peer review minutes or reports in the record of the disciplinary proceeding.

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

Under this bill, if a court finds that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

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

This bill would prohibit those disclosures, and would require the Medical Board of California to remove certain information posted on the Internet, if a court finds that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require

the Medical Board of California to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

The bill would make related nonsubstantive changes.

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

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

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

3 800. (a) The Medical Board of California, the Board of  
4 Psychology, the Dental Board of California, the Osteopathic  
5 Medical Board of California, the State Board of Chiropractic  
6 Examiners, the Board of Registered Nursing, the Board of  
7 Vocational Nursing and Psychiatric Technicians, the State Board  
8 of Optometry, the Veterinary Medical Board, the Board of  
9 Behavioral Sciences, the Physical Therapy Board of California,  
10 the California State Board of Pharmacy, and the Speech-Language  
11 Pathology and Audiology Board shall each separately create and  
12 maintain a central file of the names of all persons who hold a  
13 license, certificate, or similar authority from that board. Each  
14 central file shall be created and maintained to provide an individual  
15 historical record for each licensee with respect to the following  
16 information:

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

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

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

28 (4) Disciplinary information reported pursuant to Section 805.  
29 If a court finds that the peer review resulting in the 805 report was  
30 conducted in bad faith and the licensee who is the subject of the  
31 report notifies the board of that finding, the board shall include

1 that finding in the central file. For purposes of this paragraph, "peer  
2 review" has the same meaning as defined in Section 805.

3 (5) Information reported pursuant to Section 805.01.

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

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

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

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

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

39 Each board may permit any law enforcement or regulatory  
40 agency when required for an investigation of unlawful activity or

1 for licensing, certification, or regulatory purposes to inspect and  
2 have copies made of that licensee's file, unless the disclosure is  
3 otherwise prohibited by law.

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

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

8 803.1. (a) Notwithstanding any other provision of law, the  
9 Medical Board of California, the Osteopathic Medical Board of  
10 California, and the California Board of Podiatric Medicine shall  
11 disclose to an inquiring member of the public information regarding  
12 any enforcement actions taken against a licensee by either board  
13 or by another state or jurisdiction, including all of the following:

14 (1) Temporary restraining orders issued.

15 (2) Interim suspension orders issued.

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

19 (4) Public letters of reprimand issued.

20 (5) Infractions, citations, or fines imposed.

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

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

32 (2) (A) All settlements in the possession, custody, or control  
33 of the board shall be disclosed for a licensee in the low-risk  
34 category if there are three or more settlements for that licensee  
35 within the last 10 years, except for settlements by a licensee  
36 regardless of the amount paid where (i) the settlement is made as  
37 a part of the settlement of a class claim, (ii) the licensee paid in  
38 settlement of the class claim the same amount as the other licensees  
39 in the same class or similarly situated licensees in the same class,  
40 and (iii) the settlement was paid in the context of a case where the

1 complaint that alleged class liability on behalf of the licensee also  
2 alleged a products liability class action cause of action. All  
3 settlements in the possession, custody, or control of the board shall  
4 be disclosed for a licensee in the high-risk category if there are  
5 four or more settlements for that licensee within the last 10 years  
6 except for settlements by a licensee regardless of the amount paid  
7 where (i) the settlement is made as a part of the settlement of a  
8 class claim, (ii) the licensee paid in settlement of the class claim  
9 the same amount as the other licensees in the same class or  
10 similarly situated licensees in the same class, and (iii) the  
11 settlement was paid in the context of a case where the complaint  
12 that alleged class liability on behalf of the licensee also alleged a  
13 products liability class action cause of action. Classification of a  
14 licensee in either a “high-risk category” or a “low-risk category”  
15 depends upon the specialty or subspecialty practiced by the licensee  
16 and the designation assigned to that specialty or subspecialty by  
17 the Medical Board of California, as described in subdivision (f).  
18 For the purposes of this paragraph, “settlement” means a settlement  
19 of an action described in paragraph (1) entered into by the licensee  
20 on or after January 1, 2003, in an amount of thirty thousand dollars  
21 (\$30,000) or more.

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

25 (i) Comparing the settlement amount to the experience of other  
26 licensees within the same specialty or subspecialty, indicating if  
27 it is below average, average, or above average for the most recent  
28 10-year period.

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

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

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

39 (4) Approved postgraduate training.

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

7       (6) Any summaries of hospital disciplinary actions that result  
8 in the termination or revocation of a licensee's staff privileges for  
9 medical disciplinary cause or reason, unless a court finds that the  
10 peer review resulting in the disciplinary action was conducted in  
11 bad faith and the licensee notifies the board of that finding. For  
12 purposes of this paragraph, "peer review" has the same meaning  
13 as defined in Section 805.

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

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

31  
32     “Some studies have shown that there is no significant correlation  
33 between malpractice history and a doctor's competence. At the  
34 same time, the State of California believes that consumers should  
35 have access to malpractice information. In these profiles, the State  
36 of California has given you information about both the malpractice  
37 settlement history for the doctor's specialty and the doctor's history  
38 of settlement payments only if in the last 10 years, the doctor, if  
39 in a low-risk specialty, has three or more settlements or the doctor,  
40 if in a high-risk specialty, has four or more settlements. The State

1 of California has excluded some class action lawsuits because  
2 those cases are commonly related to systems issues such as product  
3 liability, rather than questions of individual professional  
4 competence and because they are brought on a class basis where  
5 the economic incentive for settlement is great. The State of  
6 California has placed payment amounts into three statistical  
7 categories: below average, average, and above average compared  
8 to others in the doctor's specialty. To make the best health care  
9 decisions, you should view this information in perspective. You  
10 could miss an opportunity for high-quality care by selecting a  
11 doctor based solely on malpractice history.

12 When considering malpractice data, please keep in mind:  
13 Malpractice histories tend to vary by specialty. Some specialties  
14 are more likely than others to be the subject of litigation. This  
15 report compares doctors only to the members of their specialty,  
16 not to all doctors, in order to make an individual doctor's history  
17 more meaningful.

18 This report reflects data only for settlements made on or after  
19 January 1, 2003. Moreover, it includes information concerning  
20 those settlements for a 10-year period only. Therefore, you should  
21 know that a doctor may have made settlements in the 10 years  
22 immediately preceding January 1, 2003, that are not included in  
23 this report. After January 1, 2013, for doctors practicing less than  
24 10 years, the data covers their total years of practice. You should  
25 take into account the effective date of settlement disclosure as well  
26 as how long the doctor has been in practice when considering  
27 malpractice averages.

28 The incident causing the malpractice claim may have happened  
29 years before a payment is finally made. Sometimes, it takes a long  
30 time for a malpractice lawsuit to settle. Some doctors work  
31 primarily with high-risk patients. These doctors may have  
32 malpractice settlement histories that are higher than average  
33 because they specialize in cases or patients who are at very high  
34 risk for problems.

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

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

3  
4     (e) The Medical Board of California, the Osteopathic Medical  
5 Board of California, and the California Board of Podiatric Medicine  
6 shall, by regulation, develop standard terminology that accurately  
7 describes the different types of disciplinary filings and actions to  
8 take against a licensee as described in paragraphs (1) to (5),  
9 inclusive, of subdivision (a). In providing the public with  
10 information about a licensee via the Internet pursuant to Section  
11 2027, the Medical Board of California, the Osteopathic Medical  
12 Board of California, and the California Board of Podiatric Medicine  
13 shall not use the terms “enforcement,” “discipline,” or similar  
14 language implying a sanction unless the physician and surgeon  
15 has been the subject of one of the actions described in paragraphs  
16 (1) to (5), inclusive, of subdivision (a).

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

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

38     (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision  
39 (b), the specialty or subspecialty information required by this  
40 section shall group physicians by specialty board recognized

1 pursuant to paragraph (5) of subdivision (h) of Section 651 unless  
2 a different grouping would be more valid and the board, in its  
3 statement of reasons for its regulations, explains why the validity  
4 of the grouping would be more valid.

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

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

9 (1) (A) "Peer review" means a process in which a peer review  
10 body reviews the basic qualifications, staff privileges, employment,  
11 medical outcomes, and professional conduct of licentiatees to  
12 determine whether the licentiate may practice or continue to  
13 practice in a health care facility, clinic, or other setting providing  
14 medical services and, if so, to determine the parameters of that  
15 practice.

16 (B) "Peer review body" includes:

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

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

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

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

37 (2) "Licentiate" means a physician and surgeon, doctor of  
38 podiatric medicine, clinical psychologist, marriage and family  
39 therapist, clinical social worker, or dentist. "Licentiate" also

1 includes a person authorized to practice medicine pursuant to  
2 Section 2113.

3 (3) “Agency” means the relevant state licensing agency having  
4 regulatory jurisdiction over the licentiate listed in paragraph (2).

5 (4) “Staff privileges” means any arrangement under which a  
6 licentiate is allowed to practice in or provide care for patients in  
7 a health facility. Those arrangements shall include, but are not  
8 limited to, full staff privileges, active staff privileges, limited staff  
9 privileges, auxiliary staff privileges, provisional staff privileges,  
10 temporary staff privileges, courtesy staff privileges, locum tenens  
11 arrangements, and contractual arrangements to provide professional  
12 services, including, but not limited to, arrangements to provide  
13 outpatient services.

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

18 (6) “Medical disciplinary cause or reason” means that aspect  
19 of a licentiate’s competence or professional conduct that is  
20 reasonably likely to be detrimental to patient safety or to the  
21 delivery of patient care.

22 (7) “805 report” means the written report required under  
23 subdivision (b).

24 (b) The chief of staff of a medical or professional staff or other  
25 chief executive officer, medical director, or administrator of any  
26 peer review body and the chief executive officer or administrator  
27 of any licensed health care facility or clinic shall file an 805 report  
28 with the relevant agency within 15 days after the effective date on  
29 which any of the following are imposed on a licentiate as a result  
30 of an action of a peer review body, regardless of whether a hearing  
31 has occurred pursuant to Section 809.2:

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

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

36 (3) Restrictions are imposed, or voluntarily accepted, on staff  
37 privileges, membership, or employment for a cumulative total of  
38 30 days or more for any 12-month period, for a medical disciplinary  
39 cause or reason.

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

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

17       (2) Withdraws or abandons his or her application for  
18 membership, staff privileges, or employment.

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

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

25       (e) An 805 report shall also be filed within 15 days following  
26 the imposition of summary suspension of staff privileges,  
27 membership, or employment, if the summary suspension remains  
28 in effect for a period in excess of 14 days, regardless of whether  
29 a hearing has occurred pursuant to Section 809.2.

30       (f) A copy of the 805 report, and a notice advising the licentiate  
31 of his or her right to submit additional statements or other  
32 information pursuant to Section 800, shall be sent by the peer  
33 review body to the licentiate named in the report.

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

39       A supplemental report shall also be made within 30 days  
40 following the date the licentiate is deemed to have satisfied any

1 terms, conditions, or sanctions imposed as disciplinary action by  
2 the reporting peer review body. In performing its dissemination  
3 functions required by Section 805.5, the agency shall include a  
4 copy of a supplemental report, if any, whenever it furnishes a copy  
5 of the original 805 report.

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

14 (g) The reporting required by this section shall not act as a  
15 waiver of confidentiality of medical records and committee reports.  
16 The information reported or disclosed shall be kept confidential  
17 except as provided in subdivision (c) of Section 800 and Sections  
18 803.1 and 2027, provided that a copy of the report containing the  
19 information required by this section may be disclosed as required  
20 by Section 805.5 with respect to reports received on or after  
21 January 1, 1976.

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

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

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

29 (k) A willful failure to file an 805 report by any person who is  
30 designated or otherwise required by law to file an 805 report is  
31 punishable by a fine not to exceed one hundred thousand dollars  
32 (\$100,000) per violation. The fine may be imposed in any civil or  
33 administrative action or proceeding brought by or on behalf of any  
34 agency having regulatory jurisdiction over the person regarding  
35 whom the report was or should have been filed. If the person who  
36 is designated or otherwise required to file an 805 report is a  
37 licensed physician and surgeon, the action or proceeding shall be  
38 brought by the Medical Board of California. The fine shall be paid  
39 to that agency but not expended until appropriated by the  
40 Legislature. A violation of this subdivision may constitute

1 unprofessional conduct by the licentiate. A person who is alleged  
2 to have violated this subdivision may assert any defense available  
3 at law. As used in this subdivision, “willful” means a voluntary  
4 and intentional violation of a known legal duty.

5 (l) Except as otherwise provided in subdivision (k), any failure  
6 by the administrator of any peer review body, the chief executive  
7 officer or administrator of any health care facility, or any person  
8 who is designated or otherwise required by law to file an 805  
9 report, shall be punishable by a fine that under no circumstances  
10 shall exceed fifty thousand dollars (\$50,000) per violation. The  
11 fine may be imposed in any civil or administrative action or  
12 proceeding brought by or on behalf of any agency having  
13 regulatory jurisdiction over the person regarding whom the report  
14 was or should have been filed. If the person who is designated or  
15 otherwise required to file an 805 report is a licensed physician and  
16 surgeon, the action or proceeding shall be brought by the Medical  
17 Board of California. The fine shall be paid to that agency but not  
18 expended until appropriated by the Legislature. The amount of the  
19 fine imposed, not exceeding fifty thousand dollars (\$50,000) per  
20 violation, shall be proportional to the severity of the failure to  
21 report and shall differ based upon written findings, including  
22 whether the failure to file caused harm to a patient or created a  
23 risk to patient safety; whether the administrator of any peer review  
24 body, the chief executive officer or administrator of any health  
25 care facility, or any person who is designated or otherwise required  
26 by law to file an 805 report exercised due diligence despite the  
27 failure to file or whether they knew or should have known that an  
28 805 report would not be filed; and whether there has been a prior  
29 failure to file an 805 report. The amount of the fine imposed may  
30 also differ based on whether a health care facility is a small or  
31 rural hospital as defined in Section 124840 of the Health and Safety  
32 Code.

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

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

3 805.01. (a) As used in this section, the following terms have  
4 the following definitions:

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

6 (2) "Formal investigation" means an investigation performed  
7 by a peer review body based on ~~any of the allegations~~ *an allegation*  
8 *that the licentiate committed any of the acts listed in subdivision*  
9 (b).

10 (3) "Licentiate" has the same meaning as defined in Section  
11 805.

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

14 (b) The chief of staff of a medical or professional staff or other  
15 chief executive officer, medical director, or administrator of any  
16 peer review body and the chief executive officer or administrator  
17 of any licensed health care facility or clinic shall file a report with  
18 the relevant agency within 15 days after ~~completion of a formal~~  
19 ~~investigation of a licentiate if the investigation resulted in any of~~  
20 ~~the following findings of fact: a peer review body concludes,~~  
21 ~~following completion of a formal investigation of a licentiate, that~~  
22 ~~any of the following occurred:~~

23 (1) The licentiate departed from the standard of care *and there*  
24 *was patient harm, including, but not limited to, any of the adverse*  
25 *events described in paragraph (1) of subdivision (b) of Section*  
26 *1279.1 of the Health and Safety Code.*

27 (2) The licentiate suffered from mental illness or substance  
28 abuse.

29 (3) The licentiate engaged in sexual misconduct.

30 (c) The relevant agency shall, without subpoena, be entitled to  
31 inspect and copy the following unredacted documents in the record  
32 of any formal investigation required to be reported pursuant to  
33 subdivision (b):

34 (1) Any statement of charges.

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

36 (3) Any opinions, findings, or conclusions.

37 (4) Any peer review minutes or reports.

38 (d) The information disclosed pursuant to subdivision (c) shall  
39 be kept confidential and shall not be subject to discovery, except  
40 that the information may be reviewed as provided in subdivision

1 (c) of Section 800 and may be disclosed in any subsequent  
2 disciplinary hearing conducted pursuant to the Administrative  
3 Procedure Act (Chapter 5 (commencing with Section 11500) of  
4 Part 1 of Division 3 of Title 2 of the Government Code).

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

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

9 805.1. (a) The Medical Board of California, the Osteopathic  
10 Medical Board of California, and the Dental Board of California  
11 shall, without subpoena, be entitled to inspect and copy the  
12 following unredacted documents in the record of any disciplinary  
13 proceeding resulting in action that is required to be reported  
14 pursuant to Section 805:

- 15 (1) Any statement of charges.
- 16 (2) Any document, medical chart, or exhibits in evidence.
- 17 (3) Any opinion, findings, or conclusions.
- 18 (4) Any peer review minutes or reports.

19 (b) The information so disclosed shall be kept confidential and  
20 not subject to discovery, in accordance with Section 800, except  
21 that it may be reviewed, as provided in subdivision (c) of Section  
22 800, and may be disclosed in any subsequent disciplinary hearing  
23 conducted pursuant to the Administrative Procedure Act (Chapter  
24 5 (commencing with Section 11500) of Part 1 of Division 3 of  
25 Title 2 of the Government Code).

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

28 805.5. (a) Prior to granting or renewing staff privileges for  
29 any physician and surgeon, psychologist, podiatrist, or dentist, any  
30 health facility licensed pursuant to Division 2 (commencing with  
31 Section 1200) of the Health and Safety Code, or any health care  
32 service plan or medical care foundation, or the medical staff of the  
33 institution shall request a report from the Medical Board of  
34 California, the Board of Psychology, the Osteopathic Medical  
35 Board of California, or the Dental Board of California to determine  
36 if any report has been made pursuant to Section 805 indicating  
37 that the applying physician and surgeon, psychologist, podiatrist,  
38 or dentist has been denied staff privileges, been removed from a  
39 medical staff, or had his or her staff privileges restricted as  
40 provided in Section 805. The request shall include the name and

1 California license number of the physician and surgeon,  
2 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805  
3 report shall not cause the 805 report to be a public record.

4 (b) Upon a request made by, or on behalf of, an institution  
5 described in subdivision (a) or its medical staff, which is received  
6 on or after January 1, 1980, the board shall furnish a copy of any  
7 report made pursuant to Section 805. However, the board shall not  
8 send a copy of a report (1) if the denial, removal, or restriction  
9 was imposed solely because of the failure to complete medical  
10 records, (2) if the board has found the information reported is  
11 without merit, (3) if a court finds that the peer review, as defined  
12 in Section 805, resulting in the report was conducted in bad faith  
13 and the licensee who is the subject of the report notifies the board  
14 of that finding, or (4) if a period of three years has elapsed since  
15 the report was submitted. This three-year period shall be tolled  
16 during any period the licentiate has obtained a judicial order  
17 precluding disclosure of the report, unless the board is finally and  
18 permanently precluded by judicial order from disclosing the report.  
19 If a request is received by the board while the board is subject to  
20 a judicial order limiting or precluding disclosure, the board shall  
21 provide a disclosure to any qualified requesting party as soon as  
22 practicable after the judicial order is no longer in force.

23 If the board fails to advise the institution within 30 working days  
24 following its request for a report required by this section, the  
25 institution may grant or renew staff privileges for the physician  
26 and surgeon, psychologist, podiatrist, or dentist.

27 (c) Any institution described in subdivision (a) or its medical  
28 staff that violates subdivision (a) is guilty of a misdemeanor and  
29 shall be punished by a fine of not less than two hundred dollars  
30 (\$200) nor more than one thousand two hundred dollars (\$1,200).

31 SEC. 7. Section 2027 of the Business and Professions Code is  
32 amended to read:

33 2027. (a) The board shall post on the Internet the following  
34 information in its possession, custody, or control regarding licensed  
35 physicians and surgeons:

36 (1) With regard to the status of the license, whether or not the  
37 licensee is in good standing, subject to a temporary restraining  
38 order (TRO), subject to an interim suspension order (ISO), or  
39 subject to any of the enforcement actions set forth in Section 803.1.

- 1       (2) With regard to prior discipline, whether or not the licensee  
2 has been subject to discipline by the board or by the board of  
3 another state or jurisdiction, as described in Section 803.1.  
4       (3) Any felony convictions reported to the board after January  
5 3, 1991.  
6       (4) All current accusations filed by the Attorney General,  
7 including those accusations that are on appeal. For purposes of  
8 this paragraph, "current accusation" shall mean an accusation that  
9 has not been dismissed, withdrawn, or settled, and has not been  
10 finally decided upon by an administrative law judge and the  
11 Medical Board of California unless an appeal of that decision is  
12 pending.  
13      (5) Any malpractice judgment or arbitration award reported to  
14 the board after January 1, 1993.  
15      (6) Any hospital disciplinary actions that resulted in the  
16 termination or revocation of a licensee's hospital staff privileges  
17 for a medical disciplinary cause or reason.  
18      (7) Any misdemeanor conviction that results in a disciplinary  
19 action or an accusation that is not subsequently withdrawn or  
20 dismissed.  
21      (8) Appropriate disclaimers and explanatory statements to  
22 accompany the above information, including an explanation of  
23 what types of information are not disclosed. These disclaimers and  
24 statements shall be developed by the board and shall be adopted  
25 by regulation.  
26      (9) Any information required to be disclosed pursuant to Section  
27 803.1.  
28      (b) (1) From January 1, 2003, the information described in  
29 paragraphs (1) (other than whether or not the licensee is in good  
30 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain  
31 posted for a period of 10 years from the date the board obtains  
32 possession, custody, or control of the information, and after the  
33 end of that period shall be removed from being posted on the  
34 board's Internet Web site. Information in the possession, custody,  
35 or control of the board prior to January 1, 2003, shall be posted  
36 for a period of 10 years from January 1, 2003. Settlement  
37 information shall be posted as described in paragraph (2) of  
38 subdivision (b) of Section 803.1.

1       (2) The information described in paragraphs (3) and (6) of  
2 subdivision (a) shall not be removed from being posted on the  
3 board's Internet Web site.

4       (3) Notwithstanding paragraph (2) and except as provided in  
5 paragraph (4), if a licensee's hospital staff privileges are restored  
6 and the licensee notifies the board of the restoration, the  
7 information pertaining to the termination or revocation of those  
8 privileges, as described in paragraph (6) of subdivision (a), shall  
9 remain posted for a period of 10 years from the restoration date  
10 of the privileges, and at the end of that period shall be removed  
11 from being posted on the board's Internet Web site.

12     (4) Notwithstanding paragraph (2), if a court finds that peer  
13 review resulting in a hospital disciplinary action was conducted  
14 in bad faith and the licensee notifies the board of that finding, the  
15 information concerning that hospital disciplinary action posted  
16 pursuant to paragraph (6) of subdivision (a) shall be immediately  
17 removed from the board's Internet Web site. For purposes of this  
18 paragraph, "peer review" has the same meaning as defined in  
19 Section 805.

20     (c) The board shall also post on the Internet a factsheet that  
21 explains and provides information on the reporting requirements  
22 under Section 805.

23     (d) The board shall provide links to other Web sites on the  
24 Internet that provide information on board certifications that meet  
25 the requirements of subdivision (b) of Section 651. The board may  
26 provide links to other Web sites on the Internet that provide  
27 information on health care service plans, health insurers, hospitals,  
28 or other facilities. The board may also provide links to any other  
29 sites that would provide information on the affiliations of licensed  
30 physicians and surgeons.

**SB 726**

# **SB 726**

**Hospitals: Physician Employment: Pilot Project**

To be presented at the Board Meeting

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 819  
**Author:** Committee on Business, Professions, and Economic Development  
**Bill Date:** April 20, 2009, amended  
**Subject:** Omnibus  
**Sponsor:** Committee

**STATUS OF BILL:**

This bill is in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act. The provisions in this bill were those previously carried in SB 1779 (2008) which was vetoed.

**ANALYSIS:**

This bill proposes non-substantive and non-controversial changes to law. The provisions relating to the Medical Board are in the Business and Professions Code and are as follows (only these sections of the bill are attached):

- 801.01 – Clarifying whether or not malpractice actions have to be in California to be reported. (This section will be deleted if AB 1070 passes out of the Assembly)
- 2089.5 – Specifying the type of residency programs; and technical changes.
- 2096 – Specifying the type of residency programs; and technical changes.
- 2102 – Since the Federation of State Medical Boards (FSMB) will not test anyone without a state license, this eliminates this option and makes technical changes.
- 2107 – Technical changes.
- 2135 – Technical changes as follows:
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency among all licensing pathways.

- 2168.4 & 2169 – Making the renewal requirements for the special faculty permit the same as those for the physician's certificate renewal.
- 2172 – Repeal; board no longer administers examinations.
- 2173 – Repeal; board no longer administers examinations.
- 2174 – Repeal; board no longer administers examinations.
- 2175 – Requiring the Board to maintain examination records until June 1, 2070.
- 2221 – Making the process by which an applicant's probationary certificate can be modified or terminated consistent with the process that a licensee on probation must follow to modify or terminate probation.
- 2307 – Specify that recommendations can come from physicians licensed in any state; and technical changes.
- 2335 – Re-amending section from AB 253 (2007), the Board's restructuring bill, due to subsequent section amendments in a bill that was signed afterward. This section was included in a bill that was signed after ours, which did not include the amendments we were requesting. Our amendments add 10 days to the 90-day period by which provisions and proposed decisions must be issued by the Board. This provision will make the requirements consistent with the Administrative Procedures Act.

**FISCAL:** None to the Board

**POSITION:** **Executive Committee Recommendation:** Support MBC provisions.  
**Staff Recommendation:** Support MBC provisions.

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 819**

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**Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)**

March 10, 2009

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An act to amend Sections 27, 101, 128.5, 144, 146, 149, 683, 733, 800, 801, 801.01, 803, 2089.5, 2096, 2102, 2107, 2135, 2168.4, 2175, 2221, 2307, 2335, 2486, 2488, 2570.5, 2570.6, 2570.7, 2570.185, 2760.1, 3503, 3517, 3518, 3625, 3633.1, 3635, 3636, 3685, 3753.5, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4161, 4174, 4231, 4301, 4305, 4329, 4330, 4857, 4980.30, 4980.43, 4996.2, 4996.17, 4996.18, 5801, 6534, 6536, 6561, 7616, 7629, 8740, and 8746 of, to add Sections 2169, 2570.36, 4036.5, 4980.04, 4990.09, 5515.5, and 9855.15 to, and to repeal Sections 2172, 2173, 2174, 4981, 4994.1, 4996.20, 4996.21, and 6761 of, the Business and Professions Code, to amend Section 8659 of the Government Code, to amend Sections 8778.5, 11150, and 11165 of the Health and Safety Code, and to amend Section 14132.100 of the Welfare and Institutions Code, relating to professions and vocations, *and* making an appropriation therefor, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 819, as amended, Committee on Business, Professions and Economic Development. Professions and vocations.

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs.

Existing law requires certain boards and bureaus to disclose on the Internet information on licensees.

This bill would require the Cemetery and Funeral Bureau to disclose on the Internet information on specified licensees.

(2) Under existing law, if, upon investigation, a specified state regulatory agency has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with that agency, the agency is authorized to issue a specified citation.

This bill would add the Physical Therapy Board of California to those authorized agencies.

Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

Existing law requires specified healing arts licensees, insurers providing professional liability insurance to those licensees, and governmental agencies that self-insure those licensees to report settlements over \$30,000 to the licensee's board if the settlement is for damages for death or personal injury caused by or is based on the licensee's alleged negligence, error, or omission in practice, or his or her rendering unauthorized professional services.

This bill would instead require that report if the settlement is based on the licensee's alleged negligence, error, or omission in practice in California or rendering unauthorized professional services in California.

(3) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. The act requires each applicant for a physician and surgeon's license to meet specified training and examinations requirements, authorizes the appointment of examination commissioners, requires that examinations be conducted in English, except as specified, allows the examinations to be conducted in specified locations, requires notice

of examinations to contain certain information, and requires examination records to be kept on file for a period of 2 years or more. The act authorizes a person whose certificate has been surrendered, revoked, suspended, or placed on probation, as specified, to petition for reinstatement of the certificate or modification of the penalty if specified requirements are met. Under existing law, any person who meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit that authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions.

This bill would revise the training requirements for a physician and surgeon's license, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2070. The bill would revise the requirements for a petition for reinstatement or modification, as specified. The bill would require the holder of a special faculty permit to meet the same continuing medical education requirements as the holder of a physician's and surgeon's certificate and would also require a special faculty permitholder to show that he or she meets these requirements at the time of permit renewal.

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(4) Existing law, the Occupational Therapy Practice Act, provides for the licensure of occupational therapists and the certification of occupational therapy assistants by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record. Existing law authorizes a limited permit to practice occupational therapy to be granted if specified education and examination requirements are met, but provides that if the person fails to qualify for or pass the first announced licensure examination, all limited permit privileges automatically cease upon due notice. Existing law requires an applicant applying for a license or certification to file with the board a written application provided by and satisfactory to the board, showing that he or she meets certain requirements, including, but not limited to, successful completion of an educational program's academic requirements approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) and successful completion of a period of supervised fieldwork experience. Existing law also specifies the curriculum requirements for an education program for occupational therapists and occupational therapy assistants.

This bill would require an occupational therapy assistant to document in the patient record the services provided to the patient, and would require an occupational therapist or assistant to document and sign the patient record legibly. The bill would revise the provisions related to limited permit privileges to instead provide that a person's failure to pass the licensure examination during the initial eligibility period would cause the privileges to automatically cease upon due notice. The bill would require that the applicant successfully complete the educational program's academic requirements approved by the board and accredited by ACOTE, or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program. The bill would also revise those curriculum requirements for an educational program. The bill would authorize an applicant who is a graduate of an educational program and is unable to provide evidence of having met the curriculum requirements to demonstrate passage of a specified examination as evidence of having successfully satisfied the curriculum requirements. The bill would require an applicant who completed AOTA's Career Mobility Program to demonstrate participation in the program and passage of a specified examination as evidence of having successfully satisfied the educational

program and curriculum requirements. The bill would revise the supervised fieldwork experience requirement. The bill would require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(5) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurses by the Board of Registered Nursing. Existing law authorizes a registered nurse whose license is revoked or suspended, or who is placed on probation, to petition for reinstatement of his or her license or modification of the penalty after a specified time period.

This bill would require a petition by a registered nurse whose initial license application is subject to a disciplinary decision to be filed after a specified time period from the date upon which his or her initial license was issued.

(6) Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician's assistants by the Physician Assistant Committee of the Medical Board of California. Existing law authorizes the committee to grant interim approval to an applicant for licensure as a physician assistant.

This bill would delete that authority to grant interim approval and would make conforming changes.

(7) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Bureau of Naturopathic Medicine. Existing law authorizes the bureau to grant a license to a person meeting certain requirements who has graduated from training prior to 1986 if the application is received prior to 2008, and requires licensees to obtain continuing education through specified continuing education courses. Existing law requires a licensee on inactive status to meet certain requirements in order to restore his or her license to active status, including paying a reactivation fee.

This bill would require an application for licensure by a person who graduated from training prior to 1986 to be received by the bureau prior to 2011, and would revise the standards for continuing education courses. The bill would delete the requirement that a licensee on inactive status pay a reactivation fee in order to restore his or her license to active status, and would instead require him or her to be current with all licensing fees.

Existing law authorizes the Director of Consumer Affairs to establish an advisory council related to naturopathic doctors composed of

members who receive no compensation, travel allowances, or reimbursement of expenses.

This bill would delete the requirement that the members of the advisory council receive no compensation, travel allowances, or reimbursement of expenses.

(8) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Existing law authorizes the board to direct a practitioner or applicant who is found to have violated the law to pay the costs of investigation and prosecution.

This bill would also authorize the board to direct a practitioner or applicant who is found to have violated a term or condition of board probation to pay the costs for investigation and prosecution.

Existing law exempts certain healing arts practitioners from liability for specified services rendered during a state of war, state of emergency, or local emergency.

This bill would also exempt respiratory care practitioners from liability for the provision of specified services rendered during a state of war, state of emergency, or local emergency.

(9) Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy.

Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines.

This bill would provide that any violation of this provision by any person or entity would subject the person to the fine.

Existing law prohibits a person from acting as a wholesaler of any dangerous drug or device without a license from the board. Existing law requires a nonresident wholesaler, as defined, to be licensed prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.

This bill would modify that definition and would also require a nonresident wholesaler to be licensed prior to selling, brokering, or distributing dangerous drugs or devices within this state. By subjecting these nonresident wholesalers to these licensure requirements which include, among other things, payment of specified fees, the bill would increase that part of the revenue in the Pharmacy Board Contingent Fund that is continuously appropriated and would thereby make an appropriation.

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

Because this bill would impose new requirements and prohibitions under the Pharmacy Law, the knowing violation of which would be a crime, it would impose a state-mandated local program.

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(10) Existing law, the Veterinary Medicine Practice Act, provides for the licensure and regulation of veterinarians by the Veterinary Medical Board. Existing law prohibits the disclosure of information

about an animal receiving veterinary services, the client responsible for that animal, or the veterinary care provided to an animal, except under specified circumstances, including, but not limited to, as may be required to ensure compliance with any federal, state, county, or city law or regulation.

This bill would specify that such disclosure is prohibited except as may be required to ensure compliance with the California Public Records Act.

(11) Existing law provides for the licensure and regulation of educational psychologists, clinical social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of \$1,500 or less for more than 5 years from the date of issuance of the citation.

(12) Existing law, the Professional Fiduciaries Act, provides for the licensure and regulation of professional fiduciaries by the Professional Fiduciaries Bureau until July 1, 2011. Existing law also requires applicants to provide certain boards and bureaus with a full set of fingerprints for the purpose of conducting criminal history record checks. Existing law requires licensees to file and the bureau to maintain certain information in each licensee's file, including whether the licensee has ever been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or demonstrated a pattern of negligent conduct, as specified.

This bill would require the bureau to disclose on the Internet information on its licensees and would require applicants to the bureau to comply with that fingerprint requirement. The bill would require licensees to file and the bureau to maintain information regarding whether the licensee has ever been removed for cause or resigned as a conservator, guardian, trustee, or personal representative, as well as various other details relating to that removal or resignation. The bill would also make a conforming change.

(13) Existing law, the Architects Practice Act, provides for the licensure and regulation of architects by the California Architects Board. Under existing law, the board is composed of 5 architect members and 5 public members. Existing law requires that each appointment to the

board expire on June 30 of the 4th year following the year in which the previous term expired.

This bill would modify the term length for certain members of the board.

(14) Existing law provides a comprehensive scheme for the certification and regulation of interior designers. Under existing law, a stamp from an interior design organization certifies that an interior designer has passed a specified examination and that he or she has met certain other education or experience requirements, such as a combination of interior design education and diversified interior design experience that together total at least 8 years.

This bill would revise that provision by specifying that an interior designer may meet these requirements by having at least 8 years of interior design education, or at least 8 years of diversified interior design experience, or a combination of interior design education and diversified interior design experience that together total at least 8 years.

(15) Existing law provides for the registration of professional engineers and the licensure of land surveyors by the Board for Professional Engineers and Land Surveyors. Under existing law, in determining the qualifications of an applicant for registration or licensure, a majority vote of the board is required.

This bill would delete that majority vote requirement.

(16) Existing law, the Funeral Directors and Embalmers Law, provides for the licensure and regulation of funeral establishments and directors by the Cemetery and Funeral Bureau. Under existing law, every funeral establishment holding a funeral director's license on December 31, 1996, shall, upon application and payment of fees for renewal, be issued a funeral establishment license.

This bill would delete that provision.

(17) The Electronic and Appliance Repair Dealer Registration Law provides for registration and regulation of service contractors by the Bureau of Electronic and Appliance Repair. Existing law makes it unlawful to act as a service contractor unless that person maintains a valid registration.

This bill would make it an infraction to violate that provision. The bill would also make conforming changes. By creating a new crime, the bill would impose a state-mandated local program.

(18) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, pursuant to which medical benefits are provided to public assistance recipients

and certain other low-income persons. Existing law provides that federally qualified health center services and rural health clinic services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. For those purposes, a “visit” is defined as a face-to-face encounter between a patient of a federally qualified health center or a rural health clinic and a “physician,” which is defined to include a medical doctor, osteopath, podiatrist, dentist, optometrist, and chiropractor.

This bill would instead provide that the term “physician” includes a physician and surgeon, podiatrist, dentist, optometrist, and chiropractor.

(19) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 27 of the Business and Professions Code  
2 is amended to read:  
3     27. (a) Every entity specified in subdivision (b) shall provide  
4 on the Internet information regarding the status of every license  
5 issued by that entity in accordance with the California Public  
6 Records Act (Chapter 3.5 (commencing with Section 6250) of  
7 Division 7 of Title 1 of the Government Code) and the Information  
8 Practices Act of 1977 (Chapter 1 (commencing with Section 1798)  
9 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public  
10 information to be provided on the Internet shall include information  
11 on suspensions and revocations of licenses issued by the entity  
12 and other related enforcement action taken by the entity relative  
13 to persons, businesses, or facilities subject to licensure or regulation  
14 by the entity. In providing information on the Internet, each entity  
15 shall comply with the Department of Consumer Affairs Guidelines  
16 for Access to Public Records. The information may not include  
17 personal information, including home telephone number, date of

1 birth, or social security number. Each entity shall disclose a  
2 licensee's address of record. However, each entity shall allow a  
3 licensee to provide a post office box number or other alternate  
4 address, instead of his or her home address, as the address of  
5 record. This section shall not preclude an entity from also requiring  
6 a licensee, who has provided a post office box number or other  
7 alternative mailing address as his or her address of record, to  
8 provide a physical business address or residence address only for  
9 the entity's internal administrative use and not for disclosure as  
10 the licensee's address of record or disclosure on the Internet.

11 (b) Each of the following entities within the Department of  
12 Consumer Affairs shall comply with the requirements of this  
13 section:

14 (1) The Acupuncture Board shall disclose information on its  
15 licensees.

16 (2) The Board of Behavioral Sciences shall disclose information  
17 on its licensees, including marriage and family therapists, licensed  
18 clinical social workers, and licensed educational psychologists.

19 (3) The Dental Board of California shall disclose information  
20 on its licensees.

21 (4) The State Board of Optometry shall disclose information  
22 regarding certificates of registration to practice optometry,  
23 statements of licensure, optometric corporation registrations, branch  
24 office licenses, and fictitious name permits of its licensees.

25 (5) The Board for Professional Engineers and Land Surveyors  
26 shall disclose information on its registrants and licensees.

27 (6) The Structural Pest Control Board shall disclose information  
28 on its licensees, including applicators, field representatives, and  
29 operators in the areas of fumigation, general pest and wood  
30 destroying pests and organisms, and wood roof cleaning and  
31 treatment.

32 (7) The Bureau of Automotive Repair shall disclose information  
33 on its licensees, including auto repair dealers, smog stations, lamp  
34 and brake stations, smog check technicians, and smog inspection  
35 certification stations.

36 (8) The Bureau of Electronic and Appliance Repair shall disclose  
37 information on its licensees, including major appliance repair  
38 dealers, combination dealers (electronic and appliance), electronic  
39 repair dealers, service contract sellers, and service contract  
40 administrators.

1       (9) The Cemetery and Funeral Bureau shall disclose information  
2 on its licensees, including cemetery brokers, cemetery salespersons,  
3 cemetery managers, crematory managers, cemetery authorities,  
4 crematories, cremated remains disposers, embalmers, funeral  
5 establishments, and funeral directors.

6       (10) The Professional Fiduciaries Bureau shall disclose  
7 information on its licensees.

8       (11) The Contractors' State License Board shall disclose  
9 information on its licensees in accordance with Chapter 9  
10 (commencing with Section 7000) of Division 3. In addition to  
11 information related to licenses as specified in subdivision (a), the  
12 board shall also disclose information provided to the board by the  
13 Labor Commissioner pursuant to Section 98.9 of the Labor Code.

14       (12) The Board of Psychology shall disclose information on its  
15 licensees, including psychologists, psychological assistants, and  
16 registered psychologists.

17       (c) "Internet" for the purposes of this section has the meaning  
18 set forth in paragraph (6) of subdivision (e) of Section 17538.

19       SEC. 2. Section 101 of the Business and Professions Code, as  
20 amended by Section 1 of Chapter 31 of the Statutes of 2008, is  
21 amended to read:

22       101. The department is comprised of:

- 23       (a) The Dental Board of California.
- 24       (b) The Medical Board of California.
- 25       (c) The State Board of Optometry.
- 26       (d) The California State Board of Pharmacy.
- 27       (e) The Veterinary Medical Board.
- 28       (f) The California Board of Accountancy.
- 29       (g) The California Architects Board.
- 30       (h) The Bureau of Barbering and Cosmetology.
- 31       (i) The Board for Professional Engineers and Land Surveyors.
- 32       (j) The Contractors' State License Board.
- 33       (k) The Bureau for Private Postsecondary and Vocational  
34 Education.
- 35       (l) The Structural Pest Control Board.
- 36       (m) The Bureau of Home Furnishings and Thermal Insulation.
- 37       (n) The Board of Registered Nursing.
- 38       (o) The Board of Behavioral Sciences.
- 39       (p) The State Athletic Commission.
- 40       (q) The Cemetery and Funeral Bureau.

- 1     (r) The State Board of Guide Dogs for the Blind.
- 2     (s) The Bureau of Security and Investigative Services.
- 3     (t) The Court Reporters Board of California.
- 4     (u) The Board of Vocational Nursing and Psychiatric
- 5     Technicians.
- 6     (v) The Landscape Architects Technical Committee.
- 7     (w) The Bureau of Electronic and Appliance Repair.
- 8     (x) The Division of Investigation.
- 9     (y) The Bureau of Automotive Repair.
- 10    (z) The State Board of Registration for Geologists and
- 11    Geophysicists.
- 12    (aa) The Respiratory Care Board of California.
- 13    (ab) The Acupuncture Board.
- 14    (ac) The Board of Psychology.
- 15    (ad) The California Board of Podiatric Medicine.
- 16    (ae) The Physical Therapy Board of California.
- 17    (af) The Arbitration Review Program.
- 18    (ag) The Hearing Aid Dispensers Bureau.
- 19    (ah) The Physician Assistant Committee.
- 20    (ai) The Speech-Language Pathology and Audiology Board.
- 21    (aj) The California Board of Occupational Therapy.
- 22    (ak) The Osteopathic Medical Board of California.
- 23    (al) The Bureau of Naturopathic Medicine.
- 24    (am) The Dental Hygiene Committee of California.
- 25    (an) The Professional Fiduciaries Bureau.
- 26    (ao) Any other boards, offices, or officers subject to its
- 27    jurisdiction by law.

28    SEC. 3. Section 128.5 of the Business and Professions Code  
29    is amended to read:

30    128.5. (a) Notwithstanding any other provision of law, if at  
31    the end of any fiscal year, an agency within the Department of  
32    Consumer Affairs, except the agencies referred to in subdivision  
33    (b), has unencumbered funds in an amount that equals or is more  
34    than the agency's operating budget for the next two fiscal years,  
35    the agency shall reduce license or other fees, whether the license  
36    or other fees be fixed by statute or may be determined by the  
37    agency within limits fixed by statute, during the following fiscal  
38    year in an amount that will reduce any surplus funds of the agency  
39    to an amount less than the agency's operating budget for the next  
40    two fiscal years.

1       (b) Notwithstanding any other provision of law, if at the end of  
2 any fiscal year, the California Architects Board, the Board of  
3 Behavioral Sciences, the Veterinary Medical Board, the Court  
4 Reporters Board of California, the Medical Board of California,  
5 the Board of Vocational Nursing and Psychiatric Technicians, or  
6 the Bureau of Security and Investigative Services has  
7 unencumbered funds in an amount that equals or is more than the  
8 agency's operating budget for the next two fiscal years, the agency  
9 shall reduce license or other fees, whether the license or other fees  
10 be fixed by statute or may be determined by the agency within  
11 limits fixed by statute, during the following fiscal year in an amount  
12 that will reduce any surplus funds of the agency to an amount less  
13 than the agency's operating budget for the next two fiscal years.

14      SEC. 4. Section 144 of the Business and Professions Code is  
15 amended to read:

16      144. (a) Notwithstanding any other provision of law, an agency  
17 designated in subdivision (b) shall require an applicant to furnish  
18 to the agency a full set of fingerprints for purposes of conducting  
19 criminal history record checks. Any agency designated in  
20 subdivision (b) may obtain and receive, at its discretion, criminal  
21 history information from the Department of Justice and the United  
22 States Federal Bureau of Investigation.

23      (b) Subdivision (a) applies to the following:  
24       (1) California Board of Accountancy.  
25       (2) State Athletic Commission.  
26       (3) Board of Behavioral Sciences.  
27       (4) Court Reporters Board of California.  
28       (5) State Board of Guide Dogs for the Blind.  
29       (6) California State Board of Pharmacy.  
30       (7) Board of Registered Nursing.  
31       (8) Veterinary Medical Board.  
32       (9) Registered Veterinary Technician Committee.  
33       (10) Board of Vocational Nursing and Psychiatric Technicians.  
34       (11) Respiratory Care Board of California.  
35       (12) Hearing Aid Dispensers Advisory Commission.  
36       (13) Physical Therapy Board of California.  
37       (14) Physician Assistant Committee of the Medical Board of  
38 California.  
39       (15) Speech-Language Pathology and Audiology Board.  
40       (16) Medical Board of California.

- 1     (17) State Board of Optometry.
- 2     (18) Acupuncture Board.
- 3     (19) Cemetery and Funeral Bureau.
- 4     (20) Bureau of Security and Investigative Services.
- 5     (21) Division of Investigation.
- 6     (22) Board of Psychology.
- 7     (23) The California Board of Occupational Therapy.
- 8     (24) Structural Pest Control Board.
- 9     (25) Contractors' State License Board.
- 10    (26) Bureau of Naturopathic Medicine.
- 11    (27) The Professional Fiduciaries Bureau.

12    (c) The provisions of paragraph (24) of subdivision (b) shall  
13 become operative on July 1, 2004. The provisions of paragraph  
14 (25) of subdivision (b) shall become operative on the date on which  
15 sufficient funds are available for the Contractors' State License  
16 Board and the Department of Justice to conduct a criminal history  
17 record check pursuant to this section or on July 1, 2005, whichever  
18 occurs first.

19    SEC. 5. Section 146 of the Business and Professions Code is  
20 amended to read:

21    146. (a) Notwithstanding any other provision of law, a  
22 violation of any code section listed in subdivision (c) or (d) is an  
23 infraction subject to the procedures described in Sections 19.6 and  
24 19.7 of the Penal Code when either of the following applies:

25    (1) A complaint or a written notice to appear in court pursuant  
26 to Chapter 5C (commencing with Section 853.5) of Title 3 of Part  
27 2 of the Penal Code is filed in court charging the offense as an  
28 infraction unless the defendant, at the time he or she is arraigned,  
29 after being advised of his or her rights, elects to have the case  
30 proceed as a misdemeanor.

31    (2) The court, with the consent of the defendant and the  
32 prosecution, determines that the offense is an infraction in which  
33 event the case shall proceed as if the defendant has been arraigned  
34 on an infraction complaint.

35    (b) Subdivision (a) does not apply to a violation of the code  
36 sections listed in subdivisions (c) and (d) if the defendant has had  
37 his or her license, registration, or certificate previously revoked  
38 or suspended.

1       (c) The following sections require registration, licensure,  
2 certification, or other authorization in order to engage in certain  
3 businesses or professions regulated by this code:  
4       (1) Sections 2052 and 2054.  
5       (2) Section 2630.  
6       (3) Section 2903.  
7       (4) Section 3660.  
8       (5) Sections 3760 and 3761.  
9       (6) Section 4080.  
10      (7) Section 4825.  
11      (8) Section 4935.  
12      (9) Section 4980.  
13      (10) Section 4996.  
14      (11) Section 5536.  
15      (12) Section 6704.  
16      (13) Section 6980.10.  
17      (14) Section 7317.  
18      (15) Section 7502 or 7592.  
19      (16) Section 7520.  
20      (17) Section 7617 or 7641.  
21      (18) Subdivision (a) of Section 7872.  
22      (19) Section 8016.  
23      (20) Section 8505.  
24      (21) Section 8725.  
25      (22) Section 9681.  
26      (23) Section 9840.  
27      (24) Subdivision (c) of Section 9891.24.  
28      (25) Section 19049.

29       (d) Institutions that are required to register with the Bureau for  
30 Private Postsecondary and Vocational Education pursuant to  
31 Section 94931 of the Education Code.

32       (e) Notwithstanding any other provision of law, a violation of  
33 any of the sections listed in subdivision (c) or (d), which is an  
34 infraction, is punishable by a fine of not less than two hundred  
35 fifty dollars (\$250) and not more than one thousand dollars  
36 (\$1,000). No portion of the minimum fine may be suspended by  
37 the court unless as a condition of that suspension the defendant is  
38 required to submit proof of a current valid license, registration, or  
39 certificate for the profession or vocation the absence of which was  
40 the basis for his or her conviction.

1 SEC. 6. Section 149 of the Business and Professions Code is  
2 amended to read:

3     149. (a) If, upon investigation, an agency designated in  
4 subdivision (e) has probable cause to believe that a person is  
5 advertising in a telephone directory with respect to the offering or  
6 performance of services, without being properly licensed by or  
7 registered with the agency to offer or perform those services, the  
8 agency may issue a citation under Section 148 containing an order  
9 of correction that requires the violator to do both of the following:

10       (1) Cease the unlawful advertising.

11       (2) Notify the telephone company furnishing services to the  
12 violator to disconnect the telephone service furnished to any  
13 telephone number contained in the unlawful advertising.

14       (b) This action is stayed if the person to whom a citation is  
15 issued under subdivision (a) notifies the agency in writing that he  
16 or she intends to contest the citation. The agency shall afford an  
17 opportunity for a hearing, as specified in Section 125.9.

18       (c) If the person to whom a citation and order of correction is  
19 issued under subdivision (a) fails to comply with the order of  
20 correction after that order is final, the agency shall inform the  
21 Public Utilities Commission of the violation and the Public Utilities  
22 Commission shall require the telephone corporation furnishing  
23 services to that person to disconnect the telephone service furnished  
24 to any telephone number contained in the unlawful advertising.

25       (d) The good faith compliance by a telephone corporation with  
26 an order of the Public Utilities Commission to terminate service  
27 issued pursuant to this section shall constitute a complete defense  
28 to any civil or criminal action brought against the telephone  
29 corporation arising from the termination of service.

30       (e) Subdivision (a) shall apply to the following boards, bureaus,  
31 committees, commissions, or programs:

- 32           (1) The Bureau of Barbering and Cosmetology.
- 33           (2) The Funeral Directors and Embalmers Program.
- 34           (3) The Veterinary Medical Board.
- 35           (4) The Hearing Aid Dispensers Advisory Commission.
- 36           (5) The Landscape Architects Technical Committee.
- 37           (6) The California Board of Podiatric Medicine.
- 38           (7) The Respiratory Care Board of California.
- 39           (8) The Bureau of Home Furnishings and Thermal Insulation.
- 40           (9) The Bureau of Security and Investigative Services.

- 1       (10) The Bureau of Electronic and Appliance Repair.
- 2       (11) The Bureau of Automotive Repair.
- 3       (12) The Tax Preparers Program.
- 4       (13) The California Architects Board.
- 5       (14) The Speech-Language Pathology and Audiology Board.
- 6       (15) The Board for Professional Engineers and Land Surveyors.
- 7       (16) The Board of Behavioral Sciences.
- 8       (17) The State Board for Geologists and Geophysicists.
- 9       (18) The Structural Pest Control Board.
- 10      (19) The Acupuncture Board.
- 11      (20) The Board of Psychology.
- 12      (21) The California Board of Accountancy.
- 13      (22) The Bureau of Naturopathic Medicine.
- 14      (23) The Physical Therapy Board of California.

15      SEC. 7. Section 683 of the Business and Professions Code is  
16      amended to read:

17      683. (a) A board shall report, within 10 working days, to the  
18      State Department of Health Care Services the name and license  
19      number of a person whose license has been revoked, suspended,  
20      surrendered, made inactive by the licensee, or placed in another  
21      category that prohibits the licensee from practicing his or her  
22      profession. The purpose of the reporting requirement is to prevent  
23      reimbursement by the state for Medi-Cal and Denti-Cal services  
24      provided after the cancellation of a provider's professional license.

25      (b) "Board," as used in this section, means the Dental Board of  
26      California, the Medical Board of California, the Board of  
27      Psychology, the State Board of Optometry, the California State  
28      Board of Pharmacy, the Osteopathic Medical Board of California,  
29      the State Board of Chiropractic Examiners, and the California  
30      Board of Occupational Therapy.

31      SEC. 8. Section 733 of the Business and Professions Code is  
32      amended to read:

33      733. (a) No licentiate shall obstruct a patient in obtaining a  
34      prescription drug or device that has been legally prescribed or  
35      ordered for that patient. A violation of this section constitutes  
36      unprofessional conduct by the licentiate and shall subject the  
37      licentiate to disciplinary or administrative action by his or her  
38      licensing agency.

39      (b) Notwithstanding any other provision of law, a licentiate  
40      shall dispense drugs and devices, as described in subdivision (a)

1 of Section 4024, pursuant to a lawful order or prescription unless  
2 one of the following circumstances exists:

3     (1) Based solely on the licentiate's professional training and  
4 judgment, dispensing pursuant to the order or the prescription is  
5 contrary to law, or the licentiate determines that the prescribed  
6 drug or device would cause a harmful drug interaction or would  
7 otherwise adversely affect the patient's medical condition.

8     (2) The prescription drug or device is not in stock. If an order,  
9 other than an order described in Section 4019, or prescription  
10 cannot be dispensed because the drug or device is not in stock, the  
11 licentiate shall take one of the following actions:

12       (A) Immediately notify the patient and arrange for the drug or  
13 device to be delivered to the site or directly to the patient in a  
14 timely manner.

15       (B) Promptly transfer the prescription to another pharmacy  
16 known to stock the prescription drug or device that is near enough  
17 to the site from which the prescription or order is transferred, to  
18 ensure the patient has timely access to the drug or device.

19       (C) Return the prescription to the patient and refer the patient.  
20 The licentiate shall make a reasonable effort to refer the patient to  
21 a pharmacy that stocks the prescription drug or device that is near  
22 enough to the referring site to ensure that the patient has timely  
23 access to the drug or device.

24     (3) The licentiate refuses on ethical, moral, or religious grounds  
25 to dispense a drug or device pursuant to an order or prescription.  
26 A licentiate may decline to dispense a prescription drug or device  
27 on this basis only if the licentiate has previously notified his or  
28 her employer, in writing, of the drug or class of drugs to which he  
29 or she objects, and the licentiate's employer can, without creating  
30 undue hardship, provide a reasonable accommodation of the  
31 licentiate's objection. The licentiate's employer shall establish  
32 protocols that ensure that the patient has timely access to the  
33 prescribed drug or device despite the licentiate's refusal to dispense  
34 the prescription or order. For purposes of this section, "reasonable  
35 accommodation" and "undue hardship" shall have the same  
36 meaning as applied to those terms pursuant to subdivision (l) of  
37 Section 12940 of the Government Code.

38       (c) For the purposes of this section, "prescription drug or device"  
39 has the same meaning as the definition in Section 4022.

1       (d) The provisions of this section shall apply to the drug therapy  
2 described in Section 4052.3.

3       (e) This section imposes no duty on a licentiate to dispense a  
4 drug or device pursuant to a prescription or order without payment  
5 for the drug or device, including payment directly by the patient  
6 or through a third-party payer accepted by the licentiate or payment  
7 of any required copayment by the patient.

8       (f) The notice to consumers required by Section 4122 shall  
9 include a statement that describes patients' rights relative to the  
10 requirements of this section.

11      SEC. 9. Section 800 of the Business and Professions Code is  
12 amended to read:

13      800. (a) The Medical Board of California, the Board of  
14 Psychology, the Dental Board of California, the Osteopathic  
15 Medical Board of California, the State Board of Chiropractic  
16 Examiners, the Board of Registered Nursing, the Board of  
17 Vocational Nursing and Psychiatric Technicians, the State Board  
18 of Optometry, the Veterinary Medical Board, the Board of  
19 Behavioral Sciences, the Physical Therapy Board of California,  
20 the California State Board of Pharmacy, the Speech-Language  
21 Pathology and Audiology Board, the California Board of  
22 Occupational Therapy, and the Acupuncture Board shall each  
23 separately create and maintain a central file of the names of all  
24 persons who hold a license, certificate, or similar authority from  
25 that board. Each central file shall be created and maintained to  
26 provide an individual historical record for each licensee with  
27 respect to the following information:

28       (1) Any conviction of a crime in this or any other state that  
29 constitutes unprofessional conduct pursuant to the reporting  
30 requirements of Section 803.

31       (2) Any judgment or settlement requiring the licensee or his or  
32 her insurer to pay any amount of damages in excess of three  
33 thousand dollars (\$3,000) for any claim that injury or death was  
34 proximately caused by the licensee's negligence, error or omission  
35 in practice, or by rendering unauthorized professional services,  
36 pursuant to the reporting requirements of Section 801 or 802.

37       (3) Any public complaints for which provision is made pursuant  
38 to subdivision (b).

39       (4) Disciplinary information reported pursuant to Section 805.

1       (b) Each board shall prescribe and promulgate forms on which  
2 members of the public and other licensees or certificate holders  
3 may file written complaints to the board alleging any act of  
4 misconduct in, or connected with, the performance of professional  
5 services by the licensee.

6       If a board, or division thereof, a committee, or a panel has failed  
7 to act upon a complaint or report within five years, or has found  
8 that the complaint or report is without merit, the central file shall  
9 be purged of information relating to the complaint or report.

10      Notwithstanding this subdivision, the Board of Psychology, the  
11 Board of Behavioral Sciences, and the Respiratory Care Board of  
12 California shall maintain complaints or reports as long as each  
13 board deems necessary.

14      (c) The contents of any central file that are not public records  
15 under any other provision of law shall be confidential except that  
16 the licensee involved, or his or her counsel or representative, shall  
17 have the right to inspect and have copies made of his or her  
18 complete file except for the provision that may disclose the identity  
19 of an information source. For the purposes of this section, a board  
20 may protect an information source by providing a copy of the  
21 material with only those deletions necessary to protect the identity  
22 of the source or by providing a comprehensive summary of the  
23 substance of the material. Whichever method is used, the board  
24 shall ensure that full disclosure is made to the subject of any  
25 personal information that could reasonably in any way reflect or  
26 convey anything detrimental, disparaging, or threatening to a  
27 licensee's reputation, rights, benefits, privileges, or qualifications,  
28 or be used by a board to make a determination that would affect  
29 a licensee's rights, benefits, privileges, or qualifications. The  
30 information required to be disclosed pursuant to Section 803.1  
31 shall not be considered among the contents of a central file for the  
32 purposes of this subdivision.

33      The licensee may, but is not required to, submit any additional  
34 exculpatory or explanatory statement or other information that the  
35 board shall include in the central file.

36      Each board may permit any law enforcement or regulatory  
37 agency when required for an investigation of unlawful activity or  
38 for licensing, certification, or regulatory purposes to inspect and  
39 have copies made of that licensee's file, unless the disclosure is  
40 otherwise prohibited by law.

1     These disclosures shall effect no change in the confidential status  
2 of these records.

3     SEC. 10. Section 801 of the Business and Professions Code is  
4 amended to read:

5       801. (a) Except as provided in Section 801.01 and subdivisions  
6 (b), (c), and (d) of this section, every insurer providing professional  
7 liability insurance to a person who holds a license, certificate, or  
8 similar authority from or under any agency mentioned in  
9 subdivision (a) of Section 800 shall send a complete report to that  
10 agency as to any settlement or arbitration award over three  
11 thousand dollars (\$3,000) of a claim or action for damages for  
12 death or personal injury caused by that person's negligence, error,  
13 or omission in practice, or by his or her rendering of unauthorized  
14 professional services. The report shall be sent within 30 days after  
15 the written settlement agreement has been reduced to writing and  
16 signed by all parties thereto or within 30 days after service of the  
17 arbitration award on the parties.

18       (b) Every insurer providing professional liability insurance to  
19 a person licensed pursuant to Chapter 13 (commencing with  
20 Section 4980) or Chapter 14 (commencing with Section 4990)  
21 shall send a complete report to the Board of Behavioral Sciences  
22 as to any settlement or arbitration award over ten thousand dollars  
23 (\$10,000) of a claim or action for damages for death or personal  
24 injury caused by that person's negligence, error, or omission in  
25 practice, or by his or her rendering of unauthorized professional  
26 services. The report shall be sent within 30 days after the written  
27 settlement agreement has been reduced to writing and signed by  
28 all parties thereto or within 30 days after service of the arbitration  
29 award on the parties.

30       (c) Every insurer providing professional liability insurance to  
31 a dentist licensed pursuant to Chapter 4 (commencing with Section  
32 1600) shall send a complete report to the Dental Board of  
33 California as to any settlement or arbitration award over ten  
34 thousand dollars (\$10,000) of a claim or action for damages for  
35 death or personal injury caused by that person's negligence, error,  
36 or omission in practice, or rendering of unauthorized professional  
37 services. The report shall be sent within 30 days after the written  
38 settlement agreement has been reduced to writing and signed by  
39 all parties thereto or within 30 days after service of the arbitration  
40 award on the parties.

1       (d) Every insurer providing liability insurance to a veterinarian  
2 licensed pursuant to Chapter 11 (commencing with Section 4800)  
3 shall send a complete report to the Veterinary Medical Board of  
4 any settlement or arbitration award over ten thousand dollars  
5 (\$10,000) of a claim or action for damages for death or injury  
6 caused by that person's negligence, error, or omission in practice,  
7 or rendering of unauthorized professional service. The report shall  
8 be sent within 30 days after the written settlement agreement has  
9 been reduced to writing and signed by all parties thereto or within  
10 30 days after service of the arbitration award on the parties.

11     (e) The insurer shall notify the claimant, or if the claimant is  
12 represented by counsel, the insurer shall notify the claimant's  
13 attorney, that the report required by subdivision (a), (b), or (c) has  
14 been sent to the agency. If the attorney has not received this notice  
15 within 45 days after the settlement was reduced to writing and  
16 signed by all of the parties, the arbitration award was served on  
17 the parties, or the date of entry of the civil judgment, the attorney  
18 shall make the report to the agency.

19     (f) Notwithstanding any other provision of law, no insurer shall  
20 enter into a settlement without the written consent of the insured,  
21 except that this prohibition shall not void any settlement entered  
22 into without that written consent. The requirement of written  
23 consent shall only be waived by both the insured and the insurer.  
24 This section shall only apply to a settlement on a policy of  
25 insurance executed or renewed on or after January 1, 1971.

26     SEC. 11. Section 801.01 of the Business and Professions Code  
27 is amended to read:

28     801.01. (a) A complete report shall be sent to the Medical  
29 Board of California, the Osteopathic Medical Board, or the  
30 California Board of Podiatric Medicine, with respect to a licensee  
31 of the board as to the following:

32     (1) A settlement over thirty thousand dollars (\$30,000) or  
33 arbitration award of any amount or a civil judgment of any amount,  
34 whether or not vacated by a settlement after entry of the judgment,  
35 that was not reversed on appeal, of a claim or action for damages  
36 for death or personal injury caused by the licensee's alleged  
37 negligence, error, or omission in practice in California, or by his  
38 or her rendering of unauthorized professional services in California.

39     (2) A settlement over thirty thousand dollars (\$30,000) if it is  
40 based on the licensee's alleged negligence, error, or omission in

1 practice in California, or by the licensee's rendering of  
2 unauthorized professional services in California, and a party to the  
3 settlement is a corporation, medical group, partnership, or other  
4 corporate entity in which the licensee has an ownership interest  
5 or that employs or contracts with the licensee.

6 (b) The report shall be sent by the following:

7 (1) The insurer providing professional liability insurance to the  
8 licensee.

9 (2) The licensee, or his or her counsel, if the licensee does not  
10 possess professional liability insurance.

11 (3) A state or local governmental agency that self-insures the  
12 licensee.

13 (c) The entity, person, or licensee obligated to report pursuant  
14 to subdivision (b) shall send the complete report if the judgment,  
15 settlement agreement, or arbitration award is entered against or  
16 paid by the employer of the licensee and not entered against or  
17 paid by the licensee. "Employer," as used in this paragraph, means  
18 a professional corporation, a group practice, a health care facility  
19 or clinic licensed or exempt from licensure under the Health and  
20 Safety Code, a licensed health care service plan, a medical care  
21 foundation, an educational institution, a professional institution,  
22 a professional school or college, a general law corporation, a public  
23 entity, or a nonprofit organization that employs, retains, or contracts  
24 with a licensee referred to in this section. Nothing in this paragraph  
25 shall be construed to authorize the employment of, or contracting  
26 with, any licensee in violation of Section 2400.

27 (d) The report shall be sent to the Medical Board of California,  
28 the Osteopathic Medical Board of California, or the California  
29 Board of Podiatric Medicine, as appropriate, within 30 days after  
30 the written settlement agreement has been reduced to writing and  
31 signed by all parties thereto, within 30 days after service of the  
32 arbitration award on the parties, or within 30 days after the date  
33 of entry of the civil judgment.

34 (e) If an insurer is required under subdivision (b) to send the  
35 report, the insurer shall notify the claimant, or if the claimant is  
36 represented by counsel, the claimant's counsel, that the insurer  
37 has sent the report to the Medical Board of California, the  
38 Osteopathic Medical Board of California, or the California Board  
39 of Podiatric Medicine. If the claimant, or his or her counsel, has  
40 not received this notice within 45 days after the settlement was

1 reduced to writing and signed by all of the parties or the arbitration  
2 award was served on the parties or the date of entry of the civil  
3 judgment, the claimant or the claimant's counsel shall make the  
4 report to the appropriate board.

5 (f) If the licensee or his or her counsel is required under  
6 subdivision (b) to send the report, the licensee or his or her counsel  
7 shall send a copy of the report to the claimant or to his or her  
8 counsel if he or she is represented by counsel. If the claimant or  
9 his or her counsel has not received a copy of the report within 45  
10 days after the settlement was reduced to writing and signed by all  
11 of the parties or the arbitration award was served on the parties or  
12 the date of entry of the civil judgment, the claimant or the  
13 claimant's counsel shall make the report to the appropriate board.

14 (g) Failure of the licensee or claimant, or counsel representing  
15 the licensee or claimant, to comply with subdivision (f) is a public  
16 offense punishable by a fine of not less than fifty dollars (\$50) and  
17 not more than five hundred dollars (\$500). A knowing and  
18 intentional failure to comply with subdivision (f) or a conspiracy  
19 or collusion not to comply with subdivision (f), or to hinder or  
20 impede any other person in the compliance, is a public offense  
21 punishable by a fine of not less than five thousand dollars (\$5,000)  
22 and not more than fifty thousand dollars (\$50,000).

23 (h) (1) The Medical Board of California, the Osteopathic  
24 Medical Board of California, and the California Board of Podiatric  
25 Medicine may develop a prescribed form for the report.

26 (2) The report shall be deemed complete only if it includes the  
27 following information:

28 (A) The name and last known business and residential addresses  
29 of every plaintiff or claimant involved in the matter, whether or  
30 not the person received an award under the settlement, arbitration,  
31 or judgment.

32 (B) The name and last known business and residential address  
33 of every physician and surgeon or doctor of podiatric medicine  
34 who was alleged to have acted improperly, whether or not that  
35 person was a named defendant in the action and whether or not  
36 that person was required to pay any damages pursuant to the  
37 settlement, arbitration award, or judgment.

38 (C) The name, address, and principal place of business of every  
39 insurer providing professional liability insurance to any person  
40 described in subparagraph (B), and the insured's policy number.

1       (D) The name of the court in which the action or any part of the  
2 action was filed, and the date of filing and case number of each  
3 action.

4       (E) A brief description or summary of the facts of each claim,  
5 charge, or allegation, including the date of occurrence.

6       (F) The name and last known business address of each attorney  
7 who represented a party in the settlement, arbitration, or civil  
8 action, including the name of the client he or she represented.

9       (G) The amount of the judgment and the date of its entry; the  
10 amount of the arbitration award, the date of its service on the  
11 parties, and a copy of the award document; or the amount of the  
12 settlement and the date it was reduced to writing and signed by all  
13 parties. If an otherwise reportable settlement is entered into after  
14 a reportable judgment or arbitration award is issued, the report  
15 shall include both the settlement and the judgment or award.

16      (H) The specialty or subspecialty of the physician and surgeon  
17 or the doctor of podiatric medicine who was the subject of the  
18 claim or action.

19      (I) Any other information the Medical Board of California, the  
20 Osteopathic Medical Board of California, or the California Board  
21 of Podiatric Medicine may, by regulation, require.

22      (3) Every professional liability insurer, self-insured  
23 governmental agency, or licensee or his or her counsel that makes  
24 a report under this section and has received a copy of any written  
25 or electronic patient medical or hospital records prepared by the  
26 treating physician and surgeon or podiatrist, or the staff of the  
27 treating physician and surgeon, podiatrist, or hospital, describing  
28 the medical condition, history, care, or treatment of the person  
29 whose death or injury is the subject of the report, or a copy of any  
30 deposition in the matter that discusses the care, treatment, or  
31 medical condition of the person, shall include with the report,  
32 copies of the records and depositions, subject to reasonable costs  
33 to be paid by the Medical Board of California, the Osteopathic  
34 Medical Board of California, or the California Board of Podiatric  
35 Medicine. If confidentiality is required by court order and, as a  
36 result, the reporter is unable to provide the records and depositions,  
37 documentation to that effect shall accompany the original report.  
38 The applicable board may, upon prior notification of the parties  
39 to the action, petition the appropriate court for modification of any  
40 protective order to permit disclosure to the board. A professional

1 liability insurer, self-insured governmental agency, or licensee or  
2 his or her counsel shall maintain the records and depositions  
3 referred to in this paragraph for at least one year from the date of  
4 filing of the report required by this section.

5       (i) If the board, within 60 days of its receipt of a report filed  
6 under this section, notifies a person named in the report, that person  
7 shall maintain for the period of three years from the date of filing  
8 of the report any records he or she has as to the matter in question  
9 and shall make those records available upon request to the board  
10 to which the report was sent.

11     (j) Notwithstanding any other provision of law, no insurer shall  
12 enter into a settlement without the written consent of the insured,  
13 except that this prohibition shall not void any settlement entered  
14 into without that written consent. The requirement of written  
15 consent shall only be waived by both the insured and the insurer.

16     SEC. 12. Section 803 of the Business and Professions Code is  
17 amended to read:

18     803. (a) Except as provided in subdivision (b), within 10 days  
19 after a judgment by a court of this state that a person who holds a  
20 license, certificate, or other similar authority from the Board of  
21 Behavioral Sciences or from an agency mentioned in subdivision  
22 (a) of Section 800 (except a person licensed pursuant to Chapter  
23 3 (commencing with Section 1200)) has committed a crime, or is  
24 liable for any death or personal injury resulting in a judgment for  
25 an amount in excess of thirty thousand dollars (\$30,000) caused  
26 by his or her negligence, error or omission in practice, or his or  
27 her rendering unauthorized professional services, the clerk of the  
28 court that rendered the judgment shall report that fact to the agency  
29 that issued the license, certificate, or other similar authority.

30     (b) For purposes of a physician and surgeon, osteopathic  
31 physician and surgeon, or doctor of podiatric medicine, who is  
32 liable for any death or personal injury resulting in a judgment of  
33 any amount caused by his or her negligence, error or omission in  
34 practice, or his or her rendering unauthorized professional services,  
35 the clerk of the court that rendered the judgment shall report that  
36 fact to the agency that issued the license.

37     SEC. 13. Section 2089.5 of the Business and Professions Code  
38 is amended to read:

39     2089.5. (a) Clinical instruction in the subjects listed in  
40 subdivision (b) of Section 2089 shall meet the requirements of this

1 section and shall be considered adequate if the requirements of  
2 subdivision (a) of Section 2089 and the requirements of this section  
3 are satisfied.

4       (b) Instruction in the clinical courses shall total a minimum of  
5 72 weeks in length.

6       (c) Instruction in the core clinical courses of surgery, medicine,  
7 family medicine, pediatrics, obstetrics and gynecology, and  
8 psychiatry shall total a minimum of 40 weeks in length with a  
9 minimum of eight weeks instruction in surgery, eight weeks in  
10 medicine, six weeks in pediatrics, six weeks in obstetrics and  
11 gynecology, a minimum of four weeks in family medicine, and  
12 four weeks in psychiatry.

13     (d) Of the instruction required by subdivision (b), including all  
14 of the instruction required by subdivision (c), 54 weeks shall be  
15 performed in a hospital that sponsors the instruction and shall meet  
16 one of the following:

17       (1) Is a formal part of the medical school or school of  
18 osteopathic medicine.

19       (2) Has a residency program, approved by the Accreditation  
20 Council for Graduate Medical Education (ACGME) or the Royal  
21 College of Physicians and Surgeons of Canada (RCPSC), in family  
22 practice or in the clinical area of the instruction for which credit  
23 is being sought.

24       (3) Is formally affiliated with an approved medical school or  
25 school of osteopathic medicine located in the United States or  
26 Canada. If the affiliation is limited in nature, credit shall be given  
27 only in the subject areas covered by the affiliation agreement.

28       (4) Is formally affiliated with a medical school or a school of  
29 osteopathic medicine located outside the United States or Canada.

30       (e) If the institution, specified in subdivision (d), is formally  
31 affiliated with a medical school or a school of osteopathic medicine  
32 located outside the United States or Canada, it shall meet the  
33 following:

34       (1) The formal affiliation shall be documented by a written  
35 contract detailing the relationship between the medical school, or  
36 a school of osteopathic medicine, and hospital and the  
37 responsibilities of each.

38       (2) The school and hospital shall provide to the board a  
39 description of the clinical program. The description shall be in  
40 sufficient detail to enable the board to determine whether or not

1 the program provides students an adequate medical education. The  
2 board shall approve the program if it determines that the program  
3 provides an adequate medical education. If the board does not  
4 approve the program, it shall provide its reasons for disapproval  
5 to the school and hospital in writing specifying its findings about  
6 each aspect of the program that it considers to be deficient and the  
7 changes required to obtain approval.

8 (3) The hospital, if located in the United States, shall be  
9 accredited by the Joint Commission on Accreditation of Hospitals,  
10 and if located in another country, shall be accredited in accordance  
11 with the law of that country.

12 (4) The clinical instruction shall be supervised by a full-time  
13 director of medical education, and the head of the department for  
14 each core clinical course shall hold a full-time faculty appointment  
15 of the medical school or school of osteopathic medicine and shall  
16 be board certified or eligible, or have an equivalent credential in  
17 that specialty area appropriate to the country in which the hospital  
18 is located.

19 (5) The clinical instruction shall be conducted pursuant to a  
20 written program of instruction provided by the school.

21 (6) The school shall supervise the implementation of the  
22 program on a regular basis, documenting the level and extent of  
23 its supervision.

24 (7) The hospital-based faculty shall evaluate each student on a  
25 regular basis and shall document the completion of each aspect of  
26 the program for each student.

27 (8) The hospital shall ensure a minimum daily census adequate  
28 to meet the instructional needs of the number of students enrolled  
29 in each course area of clinical instruction, but not less than 15  
30 patients in each course area of clinical instruction.

31 (9) The board, in reviewing the application of a foreign medical  
32 graduate, may require the applicant to submit a description of the  
33 clinical program, if the board has not previously approved the  
34 program, and may require the applicant to submit documentation  
35 to demonstrate that the applicant's clinical training met the  
36 requirements of this subdivision.

37 (10) The medical school or school of osteopathic medicine shall  
38 bear the reasonable cost of any site inspection by the board or its  
39 agents necessary to determine whether the clinical program offered  
40 is in compliance with this subdivision.

1        SEC. 14. Section 2096 of the Business and Professions Code  
2 is amended to read:  
3        2096. In addition to other requirements of this chapter, before  
4 a physician's and surgeon's license may be issued, each applicant,  
5 including an applicant applying pursuant to Article 5 (commencing  
6 with Section 2100), shall show by evidence satisfactory to the  
7 board that he or she has satisfactorily completed at least one year  
8 of postgraduate training, which includes at least four months of  
9 general medicine, in a postgraduate training program approved by  
10 the Accreditation Council for Graduate Medical Education  
11 (ACGME) or the Royal College of Physicians and Surgeons of  
12 Canada (RCPSC).

13      The amendments made to this section at the 1987 portion of the  
14 1987–88 session of the Legislature shall not apply to applicants  
15 who completed their one year of postgraduate training on or before  
16 July 1, 1990.

17      SEC. 15. Section 2102 of the Business and Professions Code  
18 is amended to read:

19      2102. Any applicant whose professional instruction was  
20 acquired in a country other than the United States or Canada shall  
21 provide evidence satisfactory to the board of compliance with the  
22 following requirements to be issued a physician's and surgeon's  
23 certificate:

24      (a) Completion in a medical school or schools of a resident  
25 course of professional instruction equivalent to that required by  
26 Section 2089 and issuance to the applicant of a document  
27 acceptable to the board that shows final and successful completion  
28 of the course. However, nothing in this section shall be construed  
29 to require the board to evaluate for equivalency any coursework  
30 obtained at a medical school disapproved by the board pursuant  
31 to this section.

32      (b) Certification by the Educational Commission for Foreign  
33 Medical Graduates, or its equivalent, as determined by the board.  
34 This subdivision shall apply to all applicants who are subject to  
35 this section and who have not taken and passed the written  
36 examination specified in subdivision (d) prior to June 1, 1986.

37      (c) Satisfactory completion of the postgraduate training required  
38 under Section 2096. An applicant shall be required to have  
39 substantially completed the professional instruction required in  
40 subdivision (a) and shall be required to make application to the

1 board and have passed steps 1 and 2 of the written examination  
2 relating to biomedical and clinical sciences prior to commencing  
3 any postgraduate training in this state. In its discretion, the board  
4 may authorize an applicant who is deficient in any education or  
5 clinical instruction required by Sections 2089 and 2089.5 to make  
6 up any deficiencies as a part of his or her postgraduate training  
7 program, but that remedial training shall be in addition to the  
8 postgraduate training required for licensure.

9 (d) Pass the written examination as provided under Article 9  
10 (commencing with Section 2170). An applicant shall be required  
11 to meet the requirements specified in subdivision (b) prior to being  
12 admitted to the written examination required by this subdivision.

13 Nothing in this section prohibits the board from disapproving  
14 any foreign medical school or from denying an application if, in  
15 the opinion of the board, the professional instruction provided by  
16 the medical school or the instruction received by the applicant is  
17 not equivalent to that required in Article 4 (commencing with  
18 Section 2080).

19 SEC. 16. Section 2107 of the Business and Professions Code  
20 is amended to read:

21 2107. (a) The Legislature intends that the board shall have the  
22 authority to substitute postgraduate education and training to  
23 remedy deficiencies in an applicant's medical school education  
24 and training. The Legislature further intends that applicants who  
25 substantially completed their clinical training shall be granted that  
26 substitute credit if their postgraduate education took place in an  
27 accredited program.

28 (b) To meet the requirements for licensure set forth in Sections  
29 2089 and 2089.5, the board may require an applicant under this  
30 article to successfully complete additional education and training.  
31 In determining the content and duration of the required additional  
32 education and training, the board shall consider the applicant's  
33 medical education and performance on standardized national  
34 examinations, and may substitute approved postgraduate training  
35 in lieu of specified undergraduate requirements. Postgraduate  
36 training substituted for undergraduate training shall be in addition  
37 to the postgraduate training required by Sections 2102 and 2103.

38 SEC. 17. Section 2135 of the Business and Professions Code  
39 is amended to read:

1       2135. The board shall issue a physician and surgeon's  
2 certificate to an applicant who meets all of the following  
3 requirements:

4       (a) The applicant holds an unlimited license as a physician and  
5 surgeon in another state or states, or in a Canadian province or  
6 Canadian provinces, which was issued upon:

7       (1) Successful completion of a resident course of professional  
8 instruction leading to a degree of medical doctor equivalent to that  
9 specified in Section 2089. However, nothing in this section shall  
10 be construed to require the board to evaluate for equivalency any  
11 coursework obtained at a medical school disapproved by the board  
12 pursuant to Article 4 (commencing with Section 2080).

13     (2) Taking and passing a written examination that is recognized  
14 by the board to be equivalent in content to that administered in  
15 California.

16     (b) The applicant has held an unrestricted license to practice  
17 medicine, in a state or states, in a Canadian province or Canadian  
18 provinces, or as a member of the active military, United States  
19 Public Health Services, or other federal program, for a period of  
20 at least four years. Any time spent by the applicant in an approved  
21 postgraduate training program or clinical fellowship acceptable to  
22 the board shall not be included in the calculation of this four-year  
23 period.

24     (c) The board determines that no disciplinary action has been  
25 taken against the applicant by any medical licensing authority and  
26 that the applicant has not been the subject of adverse judgments  
27 or settlements resulting from the practice of medicine that the  
28 board determines constitutes evidence of a pattern of negligence  
29 or incompetence.

30     (d) The applicant (1) has satisfactorily completed at least one  
31 year of approved postgraduate training and is certified by a  
32 specialty board approved by the American Board of Medical  
33 Specialties or approved by the board pursuant to subdivision (h)  
34 of Section 651; (2) has satisfactorily completed at least two years  
35 of approved postgraduate training; or (3) has satisfactorily  
36 completed at least one year of approved postgraduate training and  
37 takes and passes the clinical competency written examination.

38     (e) The applicant has not committed any acts or crimes  
39 constituting grounds for denial of a certificate under Division 1.5

1 (commencing with Section 475) or Article 12 (commencing with  
2 Section 2220).

3 (f) Any application received from an applicant who has held an  
4 unrestricted license to practice medicine, in a state or states, or  
5 Canadian province or Canadian provinces, or as a member of the  
6 active military, United States Public Health Services, or other  
7 federal program for four or more years shall be reviewed and  
8 processed pursuant to this section. Any time spent by the applicant  
9 in an approved postgraduate training program or clinical fellowship  
10 acceptable to the board shall not be included in the calculation of  
11 this four-year period. This subdivision does not apply to  
12 applications that may be reviewed and processed pursuant to  
13 Section 2151.

14 SEC. 18. Section 2168.4 of the Business and Professions Code  
15 is amended to read:

16 2168.4. (a) A special faculty permit expires and becomes  
17 invalid at midnight on the last day of the permitholder's birth  
18 month during the second year of a two-year term, if not renewed.

19 (b) A person who holds a special faculty permit shall show at  
20 the time of license renewal that he or she continues to meet the  
21 eligibility criteria set forth in Section 2168.1. After the first renewal  
22 of a special faculty permit, the permitholder shall not be required  
23 to hold a full-time faculty position, and may instead be employed  
24 part-time in a position that otherwise meets the requirements set  
25 forth in paragraph (1) of subdivision (a) of Section 2168.1.

26 (c) A person who holds a special faculty permit shall show at  
27 the time of license renewal that he or she meets the continuing  
28 medical education requirements of Article 10 (commencing with  
29 Section 2190).

30 (d) In addition to the requirements set forth above, a special  
31 faculty permit shall be renewed in accordance with Article 19  
32 (commencing with Section 2420) in the same manner as a  
33 physician's and surgeon's certificate.

34 (e) Those fees applicable to a physician's and surgeon's  
35 certificate shall also apply to a special faculty permit and shall be  
36 paid into the State Treasury and credited to the Contingent Fund  
37 of the Medical Board of California.

38 SEC. 19. Section 2169 is added to the Business and Professions  
39 Code, to read:

1        2169. A person who holds a special faculty permit shall meet  
2 the continuing medical education requirements set forth in Article  
3 10 (commencing with Section 2190).

4        SEC. 20. Section 2172 of the Business and Professions Code  
5 is repealed.

6        SEC. 21. Section 2173 of the Business and Professions Code  
7 is repealed.

8        SEC. 22. Section 2174 of the Business and Professions Code  
9 is repealed.

10      SEC. 23. Section 2175 of the Business and Professions Code  
11 is amended to read:

12      2175. State examination records shall be kept on file by the  
13 board until June 1, 2070. Examinees shall be known and designated  
14 by number only, and the name attached to the number shall be kept  
15 secret until the examinee is sent notification of the results of the  
16 examinations.

17      SEC. 24. Section 2221 of the Business and Professions Code  
18 is amended to read:

19      2221. (a) The board may deny a physician's and surgeon's  
20 certificate to an applicant guilty of unprofessional conduct or of  
21 any cause that would subject a licensee to revocation or suspension  
22 of his or her license; or, the board in its sole discretion, may issue  
23 a probationary physician's and surgeon's certificate to an applicant  
24 subject to terms and conditions, including, but not limited to, any  
25 of the following conditions of probation:

26      (1) Practice limited to a supervised, structured environment  
27 where the licensee's activities shall be supervised by another  
28 physician and surgeon.

29      (2) Total or partial restrictions on drug prescribing privileges  
30 for controlled substances.

31      (3) Continuing medical or psychiatric treatment.

32      (4) Ongoing participation in a specified rehabilitation program.

33      (5) Enrollment and successful completion of a clinical training  
34 program.

35      (6) Abstention from the use of alcohol or drugs.

36      (7) Restrictions against engaging in certain types of medical  
37 practice.

38      (8) Compliance with all provisions of this chapter.

39      (9) Payment of the cost of probation monitoring.

1       (b) The board may modify or terminate the terms and conditions  
2 imposed on the probationary certificate upon receipt of a petition  
3 from the licensee. The board may assign the petition to an  
4 administrative law judge designated in Section 11371 of the  
5 Government Code. After a hearing on the petition, the  
6 administrative law judge shall provide a proposed decision to the  
7 board.

8       (c) The board shall deny a physician's and surgeon's certificate  
9 to an applicant who is required to register pursuant to Section 290  
10 of the Penal Code. This subdivision does not apply to an applicant  
11 who is required to register as a sex offender pursuant to Section  
12 290 of the Penal Code solely because of a misdemeanor conviction  
13 under Section 314 of the Penal Code.

14     (d) An applicant shall not be eligible to reapply for a physician's  
15 and surgeon's certificate for a minimum of three years from the  
16 effective date of the denial of his or her application, except that  
17 the board may, in its discretion and for good cause demonstrated,  
18 permit reapplication after not less than one year has elapsed from  
19 the effective date of the denial.

20     SEC. 25. Section 2307 of the Business and Professions Code  
21 is amended to read:

22     2307. (a) A person whose certificate has been surrendered  
23 while under investigation or while charges are pending or whose  
24 certificate has been revoked or suspended or placed on probation,  
25 may petition the board for reinstatement or modification of penalty,  
26 including modification or termination of probation.

27     (b) The person may file the petition after a period of not less  
28 than the following minimum periods have elapsed from the  
29 effective date of the surrender of the certificate or the decision  
30 ordering that disciplinary action:

31       (1) At least three years for reinstatement of a license surrendered  
32 or revoked for unprofessional conduct, except that the board may,  
33 for good cause shown, specify in a revocation order that a petition  
34 for reinstatement may be filed after two years.

35       (2) At least two years for early termination of probation of three  
36 years or more.

37       (3) At least one year for modification of a condition, or  
38 reinstatement of a license surrendered or revoked for mental or  
39 physical illness, or termination of probation of less than three years.

1       (c) The petition shall state any facts as may be required by the  
2 board. The petition shall be accompanied by at least two verified  
3 recommendations from physicians and surgeons licensed in any  
4 state who have personal knowledge of the activities of the petitioner  
5 since the disciplinary penalty was imposed.

6       (d) The petition may be heard by a panel of the board. The board  
7 may assign the petition to an administrative law judge designated  
8 in Section 11371 of the Government Code. After a hearing on the  
9 petition, the administrative law judge shall provide a proposed  
10 decision to the board or the California Board of Podiatric Medicine,  
11 as applicable, which shall be acted upon in accordance with Section  
12 2335.

13      (e) The panel of the board or the administrative law judge  
14 hearing the petition may consider all activities of the petitioner  
15 since the disciplinary action was taken, the offense for which the  
16 petitioner was disciplined, the petitioner's activities during the  
17 time the certificate was in good standing, and the petitioner's  
18 rehabilitative efforts, general reputation for truth, and professional  
19 ability. The hearing may be continued from time to time as the  
20 administrative law judge designated in Section 11371 of the  
21 Government Code finds necessary.

22      (f) The administrative law judge designated in Section 11371  
23 of the Government Code reinstating a certificate or modifying a  
24 penalty may recommend the imposition of any terms and conditions  
25 deemed necessary.

26      (g) No petition shall be considered while the petitioner is under  
27 sentence for any criminal offense, including any period during  
28 which the petitioner is on court-imposed probation or parole. No  
29 petition shall be considered while there is an accusation or petition  
30 to revoke probation pending against the person. The board may  
31 deny without a hearing or argument any petition filed pursuant to  
32 this section within a period of two years from the effective date  
33 of the prior decision following a hearing under this section.

34      (h) This section is applicable to and may be carried out with  
35 regard to licensees of the California Board of Podiatric Medicine.  
36 In lieu of two verified recommendations from physicians and  
37 surgeons, the petition shall be accompanied by at least two verified  
38 recommendations from doctors of podiatric medicine licensed in  
39 any state who have personal knowledge of the activities of the  
40 petitioner since the date the disciplinary penalty was imposed.

1       (i) Nothing in this section shall be deemed to alter Sections 822  
2 and 823.

3       SEC. 26. Section 2335 of the Business and Professions Code  
4 is amended to read:

5       2335. (a) All proposed decisions and interim orders of the  
6 Medical Quality Hearing Panel designated in Section 11371 of the  
7 Government Code shall be transmitted to the executive director  
8 of the board, or the executive director of the California Board of  
9 Podiatric Medicine as to the licensees of that board, within 48  
10 hours of filing.

11     (b) All interim orders shall be final when filed.

12     (c) A proposed decision shall be acted upon by the board or by  
13 any panel appointed pursuant to Section 2008 or by the California  
14 Board of Podiatric Medicine, as the case may be, in accordance  
15 with Section 11517 of the Government Code, except that all of the  
16 following shall apply to proceedings against licensees under this  
17 chapter:

18     (1) When considering a proposed decision, the board or panel  
19 and the California Board of Podiatric Medicine shall give great  
20 weight to the findings of fact of the administrative law judge,  
21 except to the extent those findings of fact are controverted by new  
22 evidence.

23     (2) The board's staff or the staff of the California Board of  
24 Podiatric Medicine shall poll the members of the board or panel  
25 or of the California Board of Podiatric Medicine by written mail  
26 ballot concerning the proposed decision. The mail ballot shall be  
27 sent within 10 calendar days of receipt of the proposed decision,  
28 and shall poll each member on whether the member votes to  
29 approve the decision, to approve the decision with an altered  
30 penalty, to refer the case back to the administrative law judge for  
31 the taking of additional evidence, to defer final decision pending  
32 discussion of the case by the panel or board as a whole, or to  
33 nonadopt the decision. No party to the proceeding, including  
34 employees of the agency that filed the accusation, and no person  
35 who has a direct or indirect interest in the outcome of the  
36 proceeding or who presided at a previous stage of the decision,  
37 may communicate directly or indirectly, upon the merits of a  
38 contested matter while the proceeding is pending, with any member  
39 of the panel or board, without notice and opportunity for all parties  
40 to participate in the communication. The votes of a majority of the

1 board or of the panel, and a majority of the California Board of  
2 Podiatric Medicine, are required to approve the decision with an  
3 altered penalty, to refer the case back to the administrative law  
4 judge for the taking of further evidence, or to nonadopt the  
5 decision. The votes of two members of the panel or board are  
6 required to defer final decision pending discussion of the case by  
7 the panel or board as a whole. If there is a vote by the specified  
8 number to defer final decision pending discussion of the case by  
9 the panel or board as a whole, provision shall be made for that  
10 discussion before the 100-day period specified in paragraph (3)  
11 expires, but in no event shall that 100-day period be extended.

12 (3) If a majority of the board or of the panel, or a majority of  
13 the California Board of Podiatric Medicine vote to do so, the board  
14 or the panel or the California Board of Podiatric Medicine shall  
15 issue an order of nonadoption of a proposed decision within 100  
16 calendar days of the date it is received by the board. If the board  
17 or the panel or the California Board of Podiatric Medicine does  
18 not refer the case back to the administrative law judge for the  
19 taking of additional evidence or issue an order of nonadoption  
20 within 100 calendar days, the decision shall be final and subject  
21 to review under Section 2337. Members of the board or of any  
22 panel or of the California Board of Podiatric Medicine who review  
23 a proposed decision or other matter and vote by mail as provided  
24 in paragraph (2) shall return their votes by mail to the board within  
25 30 days from receipt of the proposed decision or other matter.

26 (4) The board or the panel or the California Board of Podiatric  
27 Medicine shall afford the parties the opportunity to present oral  
28 argument before deciding a case after nonadoption of the  
29 administrative law judge's decision.

30 (5) A vote of a majority of the board or of a panel, or a majority  
31 of the California Board of Podiatric Medicine, are required to  
32 increase the penalty from that contained in the proposed  
33 administrative law judge's decision. No member of the board or  
34 panel or of the California Board of Podiatric Medicine may vote  
35 to increase the penalty except after reading the entire record and  
36 personally hearing any additional oral argument and evidence  
37 presented to the panel or board.

38 SEC. 27. Section 2486 of the Business and Professions Code  
39 is amended to read:

**SB 821**

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

Bill Number: SB 821  
Author: Committee on Business, Professions, and Economic Development  
Bill Date: April 16, 2009, amended  
Subject: Omnibus  
Sponsor: Committee

**STATUS OF BILL:**

This bill is in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act.

**ANALYSIS:**

This bill proposes non-substantive and non-controversial changes to law. The provisions relating to the Medical Board are in the Business and Professions Code and are as follows (only these sections of the bill are attached):

- **805(a)(2)** – Add the category of Special Faculty Permit holders to the definition of “Licentiate.”
- **821.5** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.
- **821.6** – Repeal, board no longer needs the reporting coming to the diversion program administrator due to the sunset of the program.

**FISCAL:** None to the Board

**POSITION:** **Executive Committee Recommendation:** Support MBC provisions.  
**Staff Recommendation:** Support MBC provisions.

April 26, 2009

AMENDED IN SENATE APRIL 16, 2009

**SENATE BILL**

**No. 821**

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**Introduced by Committee on Business, Professions and Economic Development (Negrete McLeod (Chair), Aanestad, Corbett, Correa, Florez, Oropeza, Romero, Walters, Wyland, and Yee)**

March 10, 2009

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An act to amend Sections 805, ~~821.5, 821.6,~~ 2530.2, 2532.2, 2532.7, 2570.2, 2570.3, 2570.4, 2570.5, 2570.6, 2570.7, 2570.9, 2570.10, 2570.13, 2570.16, 2570.18, 2570.20, 2570.26, 2570.28, 2571, 2872.2, 3357, 3362, 3366, 3456, 3740, 3750.5, 3773, 4101, 4112, 4113, 4160, 4196, 4510.1, 4933, 4980.45, 4980.48, 4982, 4982.2, 4989.22, 4989.54, 4992.1, 4992.3, 4996.23, 4996.28, 4996.5, and 4999.2 of, and to add Sections 2532.25, 2570.17, 2570.186, 4013, 4146, 4989.49, 4992.2, and 4996.24 to, and to repeal Sections 821.5 and 821.6 of, the Business and Professions Code, and to amend Section 123105 of the Health and Safety Code, and to amend Section 3 of Chapter 294 of the Statutes of 2004, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, Committee on Business, Professions and Economic Development. Healing arts: licensees.

(1) Existing law provides for the professional review of specified healing arts licentiatess through a peer review process, and requires the peer review body to report to the relevant agency upon certain circumstances, *including circumstances related to an obsolete diversion program.*

This bill would include within the definition of "licentiate" a holder of a special faculty permit to practice medicine within a medical school. ~~Within the peer review provisions, the~~ The bill would also delete the

*peer review provisions related to the obsolete diversion program references and would instead require the peer review body to report to the executive director of the Medical Board of California or a designee.*

(2) Existing law provides for the licensure and regulation of speech-language pathologists and audiologists by the Speech-Language Pathology and Audiology Board. Existing law provides that an audiology aide is any person who meets the minimum requirements of the board and who works directly under the supervision of an audiologist.

This bill would prohibit an audiology aide from performing any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist, except if the board exempts certain functions performed by an industrial audiology aide and if the employer establishes a set of procedures or protocols.

*Existing law requires an applicant for licensure as an audiologist to meet specified educational and curriculum standards, including possession of at least a master's degree in audiology.*

*This bill would revise the educational and curriculum standards for licensure as an audiologist, as specified, and instead require possession of a doctorate in audiology. The bill would apply those requirements to applicants who graduate from an approved educational institution on or after January 1, 2008. The bill would make conforming changes to provisions related to the issuance of a required professional experience (RPE) temporary license, as specified.*

(3) The Occupational Therapy Practice Act provides for the licensure and regulation of occupational therapists and occupational therapist assistants. Existing law prohibits an occupational therapy assistant from supervising an aide engaged in client-related tasks. Existing law also defines "hand therapy" under the act to mean the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity. Existing law also provides for minimizing the risk of transmission of blood-borne infectious diseases.

This bill would authorize occupational therapy assistants to supervise aides engaged in client-related tasks, and make conforming changes. The bill would also redefine "hand therapy" by deleting the term "upper extremity" and replacing that term with "hand, wrist, and forearm." The bill would delete obsolete certification terms and replace them with licensure references. The bill would instead provide for minimizing the risk of transmission of infectious diseases.

Under the Occupational Therapy Practice Act, occupational therapists and occupational therapy assistants are subject to licensure and

regulation by the California Board of Occupational Therapy; and specified licensure fees, which are deposited into the Occupational Therapy Fund.

This bill would require the board to issue retired licenses to certain occupational therapists or occupational therapy assistants, as specified, subject to a \$25 fee.

Existing law requires occupational therapists to keep patient records for a minimum of 7 years. Under existing law, the board is authorized to investigate violations of the Occupational Therapy Practice Act.

This bill would authorize the board to inspect the books or records of, or require reports from, specified facilities providing occupational therapy treatment or services and its occupational therapy staff in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action. A licensee who fails to comply with this requirement would be subject to disciplinary action.

Existing law regulates telephone medical advice services, and requires all staff who provide medical advice services to be appropriately licensed, certified, or registered professionals, as specified.

This bill would add occupational therapists to the enumerated professionals authorized to provide telephone medical advice.

Existing law imposes specified recordkeeping and disclosure requirements on health care providers, as defined.

This bill would impose those requirements on occupational therapists.

(4) Existing law provides for the licensure and regulation of vocational nurses and psychiatric technicians by the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Existing law provides, upon application, for the issuance of an interim permit authorizing an applicant to practice vocational nursing or, in the case of a psychiatric technician, all skills in his or her basic course of study, pending the results of a licensing examination.

This bill would require the application for an interim permit to be submitted no later than 4 months after completion of a board-accredited program, and would limit the use of the permit to 9 months, as specified.

(5) Existing law provides for the licensure and regulation of hearing aid dispensers by the Hearing Aid Dispensers Bureau, and a person who violates that law is guilty of a misdemeanor. Existing law provides for the issuance of a temporary license to an applicant who has made application for licensure and who proves that he or she will be supervised and trained by a hearing aid dispenser, pending approval by

the board. A temporary license is effective and valid for 6 months, and may be renewed twice for an additional period of 6 months.

This bill would allow for the issuance of a new temporary license if more than 3 years have lapsed from the expiration or cancellation date of a previous temporary license.

Existing law requires a person engaging in the practice of fitting or selling hearing aids to notify the bureau in writing of his or her business address or addresses or changes in that address or addresses. Existing law requires a licensee to keep and maintain his or her business records for a 7-year period.

This bill would require the written notification to be given to the bureau within a 30-day period. The bill would also require a licensee to allow his or her business records, as specified, to be inspected by the bureau upon reasonable notice. Because a violation of those provisions would be a crime, the bill would impose a state-mandated local program.

Existing law allows the bureau to impose upon licensees specified licensure fees and penalties, including a fee for a continuing education course transcript and for a license confirmation letter.

This bill would delete those transcript and letter fee provisions.

(6) The Respiratory Care Practice Act provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. The act authorizes the board to deny, suspend, or revoke the license of any applicant or licensee who has committed a specified violation, including obtaining or possessing in violation of law or, except as directed by a licensed physician and surgeon, dentist, or podiatrist, furnishing or administering to himself or herself or another a controlled substance, as defined.

This bill would clarify that the licensee is prohibited from obtaining, possessing, using, or administering to himself or herself in violation of law, or furnishing or administering to another, any controlled substance, as defined, except as directed by a licensed physician and surgeon, dentist, podiatrist, or other authorized health care provider. The bill would also subject to disciplinary action a licensee who uses alcoholic beverages to an extent that is injurious to self or others or if it impairs his or her ability to conduct with safety the practice of respiratory care. *For a violation thereof, the bill would specify that the board is authorized to place the license of an applicant or licensee on probation.* The bill would also require a renewing applicant for licensure to provide additional information requested by the board and, if the applicant fails

to provide that information within 30 days of the request, his or her license would be made inactive until the information is received.

(7) The Pharmacy Law provides for the licensure and regulation of pharmacists and pharmacy establishments by the California State Board of Pharmacy, and makes a knowing violation of the law a misdemeanor.

On and after July 1, 2010, this bill would require any facility licensed by the board to join the board's e-mail notification list and make specified e-mail address updates. The bill would also require ~~nonresident~~ *nonresident* pharmacies to obtain licensure from the board, and would make certain changes with regard to pharmacists-in-charge of a pharmacy, representatives-in-charge of the wholesale of any dangerous drug or device, and representatives-in-charge of veterinary food-animal drug retailers, and respective notification requirements. The bill would also allow a pharmacy to accept the return of needles and syringes from the public if contained in a sharps container, as defined. Because a knowing violation of those provisions would be a crime, the bill would impose a state-mandated local program.

(8) Existing law provides for the licensure and regulation of acupuncturists by the Acupuncture Board. Existing law provides that 5 members of the board shall constitute a quorum.

This bill would provide that 4 members, including at least one acupuncturist, shall constitute a quorum.

(9) Existing law provides for the licensure and regulation of marriage and family therapists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor.

This bill would delete references to the employment of unlicensed interns and instead refer to marriage and family therapy interns or associate clinical social workers, and would apply specified disciplinary and probationary provisions to registered marriage and family therapy interns and associate clinical social workers. The bill would require any person that advertises services performed by a trainee, as defined, to include the trainee's name and supervisor information. Because a violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would additionally modify the disciplinary provisions that apply to marriage and family therapists, as specified, and the licensure provisions that apply to an applicant pending investigation of a complaint.

(10) Existing law provides for the regulation of educational psychologists by the Board of Behavioral Sciences, and makes a

violation of the law a misdemeanor. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to drug use, telemedicine consent, subversion of an examination, and fraudulent advertising. The bill would define the term "advertising" for purposes of those provisions.

(11) Existing law provides for the regulation of clinical social workers by the Board of Behavioral Sciences. Existing law sets forth certain prohibited acts that subject a licensee to disciplinary action.

This bill would add to those prohibited acts provisions related to the subversion of an examination and advertising. The bill would define the term "advertising" for purposes of those provisions. The bill would additionally modify the licensure provisions that apply to an applicant pending investigation of a complaint. The bill would modify provisions related to the supervision and employment of clinical social workers or associate clinical social workers.

(12) *Existing law appropriates specified sums from the State Dental Auxiliary Fund to the Committee on Dental Auxiliaries for operating expenses necessary to manage the dental hygiene licensing examination. Existing law requires the Dental Hygiene Committee of California to administer the dental hygiene licensing examination. Existing law also provides that on and after July 1, 2009, specified moneys are to be transferred from the State Dental Auxiliary Fund to the State Dental Hygiene Fund for purposes of carrying out the certain provisions of the Dental Practice Act, including the payment of any encumbrances, related to dental hygienists, dental hygienists in alternative practice, and dental hygienists in extended functions.*

*This bill would specify that the moneys for operating the dental hygiene licensing examination are to be transferred to the Dental Hygiene Committee of California from the State Dental Hygiene Fund.*

(12)

(13) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 805 of the Business and Professions Code  
2 is amended to read:

3       805. (a) As used in this section, the following terms have the  
4 following definitions:

5       (1) "Peer review body" includes:

6           (A) A medical or professional staff of any health care facility  
7 or clinic licensed under Division 2 (commencing with Section  
8 1200) of the Health and Safety Code or of a facility certified to  
9 participate in the federal Medicare Program as an ambulatory  
10 surgical center.

11          (B) A health care service plan registered under Chapter 2.2  
12 (commencing with Section 1340) of Division 2 of the Health and  
13 Safety Code or a disability insurer that contracts with licentiaties  
14 to provide services at alternative rates of payment pursuant to  
15 Section 10133 of the Insurance Code.

16          (C) Any medical, psychological, marriage and family therapy,  
17 social work, dental, or podiatric professional society having as  
18 members at least 25 percent of the eligible licentiaties in the area  
19 in which it functions (which must include at least one county),  
20 which is not organized for profit and which has been determined  
21 to be exempt from taxes pursuant to Section 23701 of the Revenue  
22 and Taxation Code.

23          (D) A committee organized by any entity consisting of or  
24 employing more than 25 licentiaties of the same class that functions  
25 for the purpose of reviewing the quality of professional care  
26 provided by members or employees of that entity.

27       (2) "Licentiate" means a physician and surgeon, doctor of  
28 podiatric medicine, clinical psychologist, marriage and family  
29 therapist, clinical social worker, or dentist. "Licentiate" also  
30 includes a person authorized to practice medicine pursuant to  
31 Section 2113 or 2168.

32       (3) "Agency" means the relevant state licensing agency having  
33 regulatory jurisdiction over the licentiaties listed in paragraph (2).

34       (4) "Staff privileges" means any arrangement under which a  
35 licentiate is allowed to practice in or provide care for patients in  
36 a health facility. Those arrangements shall include, but are not  
37 limited to, full staff privileges, active staff privileges, limited staff  
38 privileges, auxiliary staff privileges, provisional staff privileges,

1 temporary staff privileges, courtesy staff privileges, locum tenens  
2 arrangements, and contractual arrangements to provide professional  
3 services, including, but not limited to, arrangements to provide  
4 outpatient services.

5 (5) "Denial or termination of staff privileges, membership, or  
6 employment" includes failure or refusal to renew a contract or to  
7 renew, extend, or reestablish any staff privileges, if the action is  
8 based on medical disciplinary cause or reason.

9 (6) "Medical disciplinary cause or reason" means that aspect  
10 of a licentiate's competence or professional conduct that is  
11 reasonably likely to be detrimental to patient safety or to the  
12 delivery of patient care.

13 (7) "805 report" means the written report required under  
14 subdivision (b).

15 (b) The chief of staff of a medical or professional staff or other  
16 chief executive officer, medical director, or administrator of any  
17 peer review body and the chief executive officer or administrator  
18 of any licensed health care facility or clinic shall file an 805 report  
19 with the relevant agency within 15 days after the effective date of  
20 any of the following that occur as a result of an action of a peer  
21 review body:

22 (1) A licentiate's application for staff privileges or membership  
23 is denied or rejected for a medical disciplinary cause or reason.

24 (2) A licentiate's membership, staff privileges, or employment  
25 is terminated or revoked for a medical disciplinary cause or reason.

26 (3) Restrictions are imposed, or voluntarily accepted, on staff  
27 privileges, membership, or employment for a cumulative total of  
28 30 days or more for any 12-month period, for a medical disciplinary  
29 cause or reason.

30 (c) The chief of staff of a medical or professional staff or other  
31 chief executive officer, medical director, or administrator of any  
32 peer review body and the chief executive officer or administrator  
33 of any licensed health care facility or clinic shall file an 805 report  
34 with the relevant agency within 15 days after any of the following  
35 occur after notice of either an impending investigation or the denial  
36 or rejection of the application for a medical disciplinary cause or  
37 reason:

38 (1) Resignation or leave of absence from membership, staff, or  
39 employment.

1       (2) The withdrawal or abandonment of a licentiate's application  
2 for staff privileges or membership.

3       (3) The request for renewal of those privileges or membership  
4 is withdrawn or abandoned.

5       (d) For purposes of filing an 805 report, the signature of at least  
6 one of the individuals indicated in subdivision (b) or (c) on the  
7 completed form shall constitute compliance with the requirement  
8 to file the report.

9       (e) An 805 report shall also be filed within 15 days following  
10 the imposition of summary suspension of staff privileges,  
11 membership, or employment, if the summary suspension remains  
12 in effect for a period in excess of 14 days.

13      (f) A copy of the 805 report, and a notice advising the licentiate  
14 of his or her right to submit additional statements or other  
15 information pursuant to Section 800, shall be sent by the peer  
16 review body to the licentiate named in the report.

17      The information to be reported in an 805 report shall include the  
18 name and license number of the licentiate involved, a description  
19 of the facts and circumstances of the medical disciplinary cause  
20 or reason, and any other relevant information deemed appropriate  
21 by the reporter.

22      A supplemental report shall also be made within 30 days  
23 following the date the licentiate is deemed to have satisfied any  
24 terms, conditions, or sanctions imposed as disciplinary action by  
25 the reporting peer review body. In performing its dissemination  
26 functions required by Section 805.5, the agency shall include a  
27 copy of a supplemental report, if any, whenever it furnishes a copy  
28 of the original 805 report.

29      If another peer review body is required to file an 805 report, a  
30 health care service plan is not required to file a separate report  
31 with respect to action attributable to the same medical disciplinary  
32 cause or reason. If the Medical Board of California or a licensing  
33 agency of another state revokes or suspends, without a stay, the  
34 license of a physician and surgeon, a peer review body is not  
35 required to file an 805 report when it takes an action as a result of  
36 the revocation or suspension.

37      (g) The reporting required by this section shall not act as a  
38 waiver of confidentiality of medical records and committee reports.  
39 The information reported or disclosed shall be kept confidential  
40 except as provided in subdivision (c) of Section 800 and Sections

1 803.1 and 2027, provided that a copy of the report containing the  
2 information required by this section may be disclosed as required  
3 by Section 805.5 with respect to reports received on or after  
4 January 1, 1976.

5 (h) The Medical Board of California, the Osteopathic Medical  
6 Board of California, and the Dental Board of California shall  
7 disclose reports as required by Section 805.5.

8 (i) An 805 report shall be maintained by an agency for  
9 dissemination purposes for a period of three years after receipt.

10 (j) No person shall incur any civil or criminal liability as the  
11 result of making any report required by this section.

12 (k) A willful failure to file an 805 report by any person who is  
13 designated or otherwise required by law to file an 805 report is  
14 punishable by a fine not to exceed one hundred thousand dollars  
15 (\$100,000) per violation. The fine may be imposed in any civil or  
16 administrative action or proceeding brought by or on behalf of any  
17 agency having regulatory jurisdiction over the person regarding  
18 whom the report was or should have been filed. If the person who  
19 is designated or otherwise required to file an 805 report is a  
20 licensed physician and surgeon, the action or proceeding shall be  
21 brought by the Medical Board of California. The fine shall be paid  
22 to that agency but not expended until appropriated by the  
23 Legislature. A violation of this subdivision may constitute  
24 unprofessional conduct by the licentiate. A person who is alleged  
25 to have violated this subdivision may assert any defense available  
26 at law. As used in this subdivision, "willful" means a voluntary  
27 and intentional violation of a known legal duty.

28 (l) Except as otherwise provided in subdivision (k), any failure  
29 by the administrator of any peer review body, the chief executive  
30 officer or administrator of any health care facility, or any person  
31 who is designated or otherwise required by law to file an 805  
32 report, shall be punishable by a fine that under no circumstances  
33 shall exceed fifty thousand dollars (\$50,000) per violation. The  
34 fine may be imposed in any civil or administrative action or  
35 proceeding brought by or on behalf of any agency having  
36 regulatory jurisdiction over the person regarding whom the report  
37 was or should have been filed. If the person who is designated or  
38 otherwise required to file an 805 report is a licensed physician and  
39 surgeon, the action or proceeding shall be brought by the Medical  
40 Board of California. The fine shall be paid to that agency but not

1 expended until appropriated by the Legislature. The amount of the  
2 fine imposed, not exceeding fifty thousand dollars (\$50,000) per  
3 violation, shall be proportional to the severity of the failure to  
4 report and shall differ based upon written findings, including  
5 whether the failure to file caused harm to a patient or created a  
6 risk to patient safety; whether the administrator of any peer review  
7 body, the chief executive officer or administrator of any health  
8 care facility, or any person who is designated or otherwise required  
9 by law to file an 805 report exercised due diligence despite the  
10 failure to file or whether they knew or should have known that an  
11 805 report would not be filed; and whether there has been a prior  
12 failure to file an 805 report. The amount of the fine imposed may  
13 also differ based on whether a health care facility is a small or  
14 rural hospital as defined in Section 124840 of the Health and Safety  
15 Code.

16 (m) A health care service plan registered under Chapter 2.2  
17 (commencing with Section 1340) of Division 2 of the Health and  
18 Safety Code or a disability insurer that negotiates and enters into  
19 a contract with licentiates to provide services at alternative rates  
20 of payment pursuant to Section 10133 of the Insurance Code, when  
21 determining participation with the plan or insurer, shall evaluate,  
22 on a case-by-case basis, licentiates who are the subject of an 805  
23 report, and not automatically exclude or deselect these licentiates.

24 SEC. 2. ~~Section 821.5 of the Business and Professions Code~~  
25 is amended to read:

26 821.5. (a) ~~A peer review body, as defined in Section 805, that~~  
27 ~~reviews physicians and surgeons, shall, within 15 days of initiating~~  
28 ~~a formal investigation of a physician and surgeon's ability to~~  
29 ~~practice medicine safely based upon information indicating that~~  
30 ~~the physician and surgeon may be suffering from a disabling mental~~  
31 ~~or physical condition that poses a threat to patient care, report to~~  
32 ~~the Medical Board of California the name of the physician and~~  
33 ~~surgeon under investigation and the general nature of the~~  
34 ~~investigation. A peer review body that has made a report under~~  
35 ~~this section to the board's executive director or designee, who is~~  
36 ~~not in the enforcement program, shall also notify the executive~~  
37 ~~director or designee when it has completed or closed an~~  
38 ~~investigation.~~

39 (b) ~~The executive director or designee, upon receipt of a report~~  
40 ~~pursuant to subdivision (a), shall contact the peer review body that~~

1 made the report within 60 days in order to determine the status of  
2 the peer review body's investigation. The executive director or  
3 designee shall contact the peer review body periodically thereafter  
4 to monitor the progress of the investigation. At any time, if the  
5 executive director or designee determines that the progress of the  
6 investigation is not adequate to protect the public, the executive  
7 director or designee shall notify the chief of enforcement of the  
8 Medical Board of California, who shall promptly conduct an  
9 investigation of the matter. Concurrently with notifying the chief  
10 of enforcement, the executive director or designee shall notify the  
11 reporting peer review body and the chief executive officer or an  
12 equivalent officer of the hospital of its decision to refer the case  
13 for investigation by the chief of enforcement.

14 (e) For purposes of this section "formal investigation" means  
15 an investigation ordered by the peer review body's medical  
16 executive committee or its equivalent, based upon information  
17 indicating that the physician and surgeon may be suffering from  
18 a disabling mental or physical condition that poses a threat to  
19 patient care. "Formal investigation" does not include the usual  
20 activities of the well-being or assistance committee or the usual  
21 quality assessment and improvement activities undertaken by the  
22 medical staff of a health facility in compliance with the licensing  
23 and certification requirements for health facilities set forth in Title  
24 22 of the California Code of Regulations, or preliminary  
25 deliberations or inquiries of the executive committee to determine  
26 whether to order a formal investigation.

27 For purposes of this section, "usual activities" of the well-being  
28 or assistance committee are activities to assist medical staff  
29 members who may be impaired by chemical dependency or mental  
30 illness to obtain necessary evaluation and rehabilitation services  
31 that do not result in referral to the medical executive committee.

32 (d) Information received by the board pursuant to this section  
33 shall be deemed confidential. The records shall not be further  
34 disclosed by the board, except as provided in subdivision (b).

35 (e) Upon receipt of notice from a peer review body that an  
36 investigation has been closed and that the peer review body has  
37 determined that there is no need for further action to protect the  
38 public, the board shall purge and destroy all records in its  
39 possession pertaining to the investigation unless the executive

1 director or designee has referred the matter to the chief of  
2 enforcement pursuant to subdivision (b).

3 (f) A peer review body that has made a report under subdivision  
4 (a) shall not be deemed to have waived the protections of Section  
5 1157 of the Evidence Code. It is not the intent of the Legislature  
6 in enacting this subdivision to affect pending litigation concerning  
7 Section 1157 or to create any new confidentiality protection except  
8 as specified in subdivision (d).

9 (g) The report required by this section shall be submitted on a  
10 short form developed by the board. The board shall develop the  
11 short form, the contents of which shall reflect the requirements of  
12 this section, within 30 days of the effective date of this section.  
13 The board shall not require the filing of any report until the short  
14 form is made available by the board.

15 (h) This section shall become operative on January 1, 2010,  
16 unless the regulations required to be adopted pursuant to Section  
17 821.6 are adopted prior to that date, in which case this section shall  
18 become operative on the effective date of the regulations.

19 SEC. 3. Section 821.6 of the Business and Professions Code  
20 is amended to read:

21 821.6. The board shall adopt regulations to implement the  
22 monitoring responsibility of the executive director or designee  
23 described in subdivision (b) of Section 821.5, and the short form  
24 required to be developed pursuant to subdivision (g), on or before  
25 January 1, 2010.

26 SEC. 2. *Section 821.5 of the Business and Professions Code*  
27 *is repealed.*

28 821.5. (a) A peer review body, as defined in Section 805, that  
29 reviews physicians and surgeons, shall, within 15 days of initiating  
30 a formal investigation of a physician and surgeon's ability to  
31 practice medicine safely based upon information indicating that  
32 the physician and surgeon may be suffering from a disabling mental  
33 or physical condition that poses a threat to patient care, report to  
34 the diversion program of the Medical Board the name of the  
35 physician and surgeon under investigation and the general nature  
36 of the investigation. A peer review body that has made a report to  
37 the diversion program under this section shall also notify the  
38 diversion program when it has completed or closed an  
39 investigation.

1       (b) The diversion program administrator, upon receipt of a report  
2 pursuant to subdivision (a), shall contact the peer review body that  
3 made the report within 60 days in order to determine the status of  
4 the peer review body's investigation. The diversion program  
5 administrator shall contact the peer review body periodically  
6 thereafter to monitor the progress of the investigation. At any time,  
7 if the diversion program administrator determines that the progress  
8 of the investigation is not adequate to protect the public, the  
9 diversion program administrator shall notify the chief of  
10 enforcement of the Division of Medical Quality of the Medical  
11 Board of California, who shall promptly conduct an investigation  
12 of the matter. Concurrently with notifying the chief of enforcement,  
13 the diversion program administrator shall notify the reporting peer  
14 review body and the chief executive officer or an equivalent officer  
15 of the hospital of its decision to refer the case for investigation by  
16 the chief of enforcement.

17       (e) For purposes of this section "formal investigation" means  
18 an investigation ordered by the peer review body's medical  
19 executive committee or its equivalent, based upon information  
20 indicating that the physician and surgeon may be suffering from  
21 a disabling mental or physical condition that poses a threat to  
22 patient care. "Formal investigation" does not include the usual  
23 activities of the well-being or assistance committee or the usual  
24 quality assessment and improvement activities undertaken by the  
25 medical staff of a health facility in compliance with the licensing  
26 and certification requirements for health facilities set forth in Title  
27 22 of the California Code of Regulations, or preliminary  
28 deliberations or inquiries of the executive committee to determine  
29 whether to order a formal investigation.

30       For purposes of this section, "usual activities" of the well-being  
31 or assistance committee are activities to assist medical staff  
32 members who may be impaired by chemical dependency or mental  
33 illness to obtain necessary evaluation and rehabilitation services  
34 that do not result in referral to the medical executive committee.

35       (d) Information received by the diversion program pursuant to  
36 this section shall be governed by, and shall be deemed confidential  
37 to the same extent as program records under, Section 2355. The  
38 records shall not be further disclosed by the diversion program,  
39 except as provided in subdivision (b).

1       (e) Upon receipt of notice from a peer review body that an  
2 investigation has been closed and that the peer review body has  
3 determined that there is no need for further action to protect the  
4 public, the diversion program shall purge and destroy all records  
5 in its possession pertaining to the investigation unless the diversion  
6 program administrator has referred the matter to the chief of  
7 enforcement pursuant to subdivision (b).

8       (f) A peer review body that has made a report under subdivision  
9 (a) shall not be deemed to have waived the protections of Section  
10 1157 of the Evidence Code. It is not the intent of the Legislature  
11 in enacting this subdivision to affect pending litigation concerning  
12 Section 1157 or to create any new confidentiality protection except  
13 as specified in subdivision (d). "Pending litigation" shall include  
14 *Arnett v. Dal Cielo* (No. S048308), pending before the California  
15 Supreme Court.

16       (g) The report required by this section shall be submitted on a  
17 short form developed by the board. The board shall develop the  
18 short form, the contents of which shall reflect the requirements of  
19 this section, within 30 days of the effective date of this section.  
20 The board shall not require the filing of any report until the short  
21 form is made available by the board.

22       (h) This section shall become operative on January 1, 1997,  
23 unless the regulations required to be adopted pursuant to Section  
24 821.6 are adopted prior to that date, in which case this section shall  
25 become operative on the effective date of the regulations.

26       *SEC. 3. Section 821.6 of the Business and Professions Code  
27 is repealed.*

28       821.6. The board shall adopt regulations to implement the  
29 monitoring responsibility of the diversion program administrator  
30 described in subdivision (b) of Section 821.5, and the short form  
31 required to be developed pursuant to subdivision (g), on or before  
32 January 1, 1997.

33       SEC. 4. Section 2530.2 of the Business and Professions Code  
34 is amended to read:

35       2530.2. As used in this chapter, unless the context otherwise  
36 requires:

37       (a) "Board" means the Speech-Language Pathology and  
38 Audiology Board or any successor.

39       (b) "Person" means any individual, partnership, corporation,  
40 limited liability company, or other organization or combination

**Medical Board of California**  
**2008 Tracker II - Legislative Bills**  
**4/30/2009**

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 52	Portantino	Unbilical Cord Blood Collection Program	Asm. Approps.	04/01/09
AB 82	Evans	Dependent Children: psychotropic medications	Asm. Approps.	04/14/09
AB 159	Nava	Perinatal Mood and Anxiety Disorders: task force	Asm. Approps.	03/25/09
AB 259	Skinner	Health Care Coverage: certified nurse-midwives: direct access	Asm. Health	
AB 361	Lowenthal	Workers' Compensation: treatment authorization	Asm. Insur.	04/28/09
AB 417	Beall	Medi-Cal Drug Treatment Program: buprenorphine	Asm. Approps.	04/14/09
AB 445	Salas	Use of X-ray Equipment: prohibition: exemptions	Asm. Health	
AB 452	Yamada	In-home Supportive Services: CA Independence Act of 2009	Asm. Hum. S.	
AB 456	Emmerson	State Agencies: period review	Asm. B&P (4/28)	04/14/09
AB 497	Block	Vehicles: HOV lanes: used by physicians	Asm. Trans. (4/30)	
AB 520	Carter	Public Records: limiting requests	Asm. Jud.	
AB 542	Feuer	Adverse Medical Events: expanding reporting	Asm. Approps.	04/22/09
AB 657	Hernandez	Health Professions Workforce: task force	Asm. Approps.	04/27/09
AB 681	Hernandez	Confidentiality of Medical Information: psychotherapy	Asm. Jud.	
AB 721	Nava	Physical Therapists: scope of practice	Asm. B&P	04/13/09
AB 830	Cook	Drugs and Devices	Asm. Approps.	04/23/09
AB 867	Nava	California State University: Doctor of Nursing Practice Degree	Asm. Approps.	04/14/09
AB 877	Emmerson	Healing Arts: DCA Director to appoint committee	Asm. Approps.	04/14/09
AB 931	Fletcher	Emergency Supplies: increase amount	Asm. Health (5/05)	03/26/09
AB 950	Hernandez	Hospice Providers: licensed hospice facilities	Asm. Approps.	04/22/09
AB 1005	Block	CA Board of Accountancy: live broadcast of board meetings	Asm. Floor	04/20/09
AB 1094	Conway	Disposal of Personal Information	Asm. B&P (4/28)	04/21/09

**Medical Board of California**  
**2008 Tracker II - Legislative Bills**  
**4/30/2009**

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
AB 1113	Lowenthal	Prisoners: professional mental health providers: MFTs	Asm. Approps. (4/29)	
AB 1140	Niello	Healing Arts (spot)	Asm. B&P (5/5)	04/14/09
AB 1152	Anderson	Professional Corporations: licensed physical therapists	Asm. B&P (5/12)	
AB 1162	Carter	Health Facilities: licensure	Introduced	
AB 1168	Carter	Professions and Vocations (spot)	Introduced	
AB 1194	Strickland	State Agency Internet Web Sites: information	Asm. B&P	
AB 1317	Block	Assisted Oocute Production: advertisement	Asm. Health	
AB 1478	Ammiano	Written Acknowledgment: medical nutrition therapy	Asm. B&P	
AB 1518	Anderson	State Government: Boards, Commissions, Committees, repeal	Asm. B&P (5/5)	
AB 1540	Health Comm.	Health	Asm. Approps.	04/16/09
AB 1542	Health Comm.	Medical Records: centralized location	Asm. Health (5/12)	
AB 1544	Health Comm.	Health Facilities: licensure	Asm. Approps.	
SB 26	Simitian	Home-generated Pharmaceutical Waste	Sen. Approps. (5/4)	04/15/09
SB 33	Correa	Marriage and Family Therapy: licensure and registration	Sen. Floor	02/10/09
SB 39	Benoit	Torts: personal liability immunity	Sen. Jud. (5/5)	04/27/09
SB 43	Alquist	Health Prof.: cultural and linguistic competency infofimation	Sen. Approps. (5/4)	04/20/09
SB 112	Oropeza	Hemodialysis Technicians	Sen. Approps.	04/01/09
SB 171	Pavley	Certified Employees: physician assistants: medical certificates	Sen. Floor	
SB 186	DeSaulnier	Workers' Compensation: treatment: predesignationof physician	Sen. Floor	
SB 238	Calderon	Medical Information: prescription refil requirements	Sen. Health	04/23/09

**Medical Board of California**  
**2008 Tracker II - Legislative Bills**  
**4/30/2009**

<b>BILL</b>	<b>AUTHOR</b>	<b>TITLE</b>	<b>STATUS</b>	<b>AMENDED</b>
SB 268	Harman	Alcoholism or Drug Abuse Treatment Facilities: licensing	Sen. Approps.	
SB 294	Negete McLeod	Nurse Practitioners	Sen. Floor	03/31/09
SB 303	Alquist	Nursing Facility Residents: informed consent	Sen. Approps.	04/27/09
SB 341	DeSaulnier	Pharmaceuticals: adverse drug reactions	Sen. Approps.	03/31/09
SB 368	Maldonado	Confidential Medical Information: unlawful disclosure	Sen. Health	04/01/09
SB 374	Calderon	Health Care Providers: resonable disclosure: reproductive choices	Sen. Floor	04/02/09
SB 395	Wyland	Medical Practice	Sen. Rules	
SB 442	Ducheny	Clinic Corporation: licensing	Sen. Approps.	04/28/09
SB 482	Padilla	Healing Arts: Medical Practice	Sen. Rules	04/14/09
SB 484	Wright	Ephedrine and Pseudoephedrine: classification as Schedule V	Sen. Approps.	
SB 502	Walters	State Agency Web Sites: information posting: expenditures	Sen. G.O.	
SB 599	Negrete McLeod	Licensing Boards: disciplinary actions: posting	Sen. B&P	04/20/09
SB 606	Ducheny	Physicians and Surgeons: loan repayment	Sen. Approps.	03/31/09
SB 620	Wiggins	Healing Arts: osteopaths	Sen. Floor	
SB 630	Steinberg	Health care Coverage: reconstructive surgery: dental	Sen. Approps. (5/4)	
SB 719	Huff	State Agency Internet Web Sites: information searchability	Sen. Approps.	
SB 744	Strickland	Clinical Laboratories: public health labs	Sen. Approps.	04/22/09
SB 761	Aanestad	Health Manpower Pilot Projects	Sen. Approps.	04/22/09
SB 762	Aanestad	Professions and Vocations: healing arts	Sen. B&P	
SB 788	Wyland	Licensed Professional Clinical Counselors	Sen. B&P	04/29/09
SB 810	Leno	Single-Payer Health Care Coverage	Sen. Approps. (5/4)	04/23/09
SB 820	B&P Comm.	Consumer Affiars: professions and vocations	Sen. Approps.	04/21/09