Medical Board of California
2007 Tracker II - Legislative Bills
1/23/2008

BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
AB 54	Dymally	Health Care Coverage: acupuncture	Approps.	01/16/08	
AB 64	Berg	Uniform Emergency Volunteer Health Practitioners Act	Sen. Rules	07/11/07	
AB 158	Ma	Medi-Cal: nondisabled persons infected with chronic hep. B	Approps.	01/18/08	
AB 272	Garcia	HIV Tests	Health		
AB 309	Tran	State Boards and Commissions: salaries: suspension	B&P	04/12/07	
AB 325	Nava	Peace Officers: recruitment	App-Susp.	03/19/07	
AB 374	Berg	California Compassionate Choices Act	Floor	05/25/07	
AB 436	Salas	Medical Records	Health	04/09/07	
AB 636	Levine	Acupuncture	B&P	03/27/07	
AB 638	Bass	Physician Assistants: educational loan program	Approps.	01/18/08	
AB 865	Davis	State Agencies: live customer service agents	Approps.	01/22/08	
AB 871	Davis	Hypertension and Diabetes	Introduced		
AB 961	Hernandez	Diabetes	Appr. Susp.	05/01/07	
AB 1009	Benoit	Fetal Pain Prevention	Health		
AB 1039	Parra	Medical Referral Services	Introduced		
AB 1044	Strickland	Optometrists: regulation	B&P	04/09/07	
AB 1057	Beall	Health Care: traumatic brain injury: pilot program	Senate Health	07/03/07	
AB 1102	Nakanishi	Prescription Lenses: fitting of lenses	Introduced		
AB 1137	Eng	Chiropractors	Sen. B&P	06/04/07	
AB 1276	Karnette	Pharmacies: prescription containers: labels	B&P	04/17/07	
AB 1390	Huffman	Health Care Service Plans: unfair payment patterns	Sen. Health		
AB 1399	Richardson	Pharmacies: prescription labels	Health		
AB 1436	Hernandez	Nurse Practitioners	Approps.	01/07/08	
AB 1444	Emmerson	Physical therapists: scope of practice	B&P	04/09/07	
AB 1468	Garrick	Hospitals: patient data	Health	04/10/07	
AB 1486	Calderon	Licensed Professional Counselors	Sen. B&P	06/26/07	

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BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
AB 1555	Lieber	Health Care Services: chronic care model task force	Approps.	04/26/07	
AB 1643	Niello	Nurse Practitioners	B&P		
ABX1 2	Nunez	Health Care Reform	Health	11/08/07	
ABX1 6	Nakanishi	Physician Assistants: educational loan program	Introduced		
ACR 87	Hayashi	Legislative Task Force on Peripheral Neuroopathy	Introduced		
SB 136	Cedillo	Acupuncture: Tui Na	B&P	04/16/07	
SB 356	Negrete McLeod	List of Reportable Diseases and Conditions	Inactive File	08/20/07	
SB 618	Alquist	State Agencies: electronic records	Appr.-Susp		
SB 676	Ridley-Thomas	Health: immunizations	Asm. Approps.	08/20/07	
SB 721	Ashburn	State Agencies: succession plans	Asm. Approps.		
SB 731	Oropeza	Massage Therapy	Asm. Approps.	07/09/07	
SB 743	Kuehl	Hospitals: medical errors	Floor	05/16/07	
SB 809	Ashburn	Nurse Practitioners: scope of practice	Floor	03/26/07	
SB 825	Padilla	Public Health: shaken baby syndrome	Approps.	01/17/08	
SB 840	Kuehl	Single-Payer Health Care Coverage	Asm. Approps.	07/10/07	
SB 843	Calderon	Medical Information	Judiciary	01/07/08	
SB 907	Calderon	Physcians and Surgeons: referrals	Floor		
SB 963	Ridley-Thomas	Regulatory Boards: Operations	Asm. B&P	06/25/07	
SB 971	McClintock	Government Reorganization: realignment of closure	G.O.	01/09/08	
SB 1014	Kuehl	Taxation: single-payer health care coverage tax	Rev.&Tax	04/23/07	
SB 1098	Migden	Medical Marijuana	Introduced		
SBX1 6	Runner	Hospitals: preventative medical services	Rules		
SBX1 9	Runner	Primary Care Clinics	Health	01/10/08	
SBX1 12	Runner	Health Care Cost and Quality Transparency	Health	01/04/08	

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SBX1 24
Author: Ashburn
Bill Date: October 11, 2007, introduced
Subject: Nurse Practitioners: scope of practice.
Sponsor: Author

STATUS OF BILL:

This bill is currently assigned to the Senate Rules Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would revise the scope of practice and educational requirements for nurse practitioners. Current law requires nurse practitioners to be supervised by a physician. This bill removes a majority of the physician supervision requirements.

ANALYSIS:

This bill expands the scope of practice for nurse practitioners and removes physician supervision. This bill would allow nurse practitioners to prescribe drugs once he or she is certified by the Board of Registered Nursing to have completed at least six months supervised experience in prescribing. This bill would delete the prohibition against a physician supervising more than four nurse practitioners at one time. This bill would make nurse practitioners eligible to receive direct payment for patient care services.

FISCAL: None

POSITION: Oppose

January 22, 2008

SENATE BILL No. 24

Introduced by Senator Ashburn

October 11, 2007

An act to amend Sections 2725.1, 2835.5, 2836, 2836.1, 2836.2, 2836.3, 3640, 3640.5, 4024, 4040, 4060, 4061, 4076, 4170, and 4174 of, and to add Section 2835.7 to, the Business and Professions Code, to amend Sections 11150 and 120582 of the Health and Safety Code, and to amend Sections 14111, 14111.5, and 16952 of the Welfare and Institutions Code, relating to nursing.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as introduced, Ashburn. Nurse practitioners: scope of practice.

(1) Existing law, the Nursing Practice Act, provides for the certification and regulation of nurse practitioners and nurse-midwives by the Board of Registered Nursing and requires the board to establish categories of, and standards for, nurse practitioners in consultation with specified health care practitioners, including physicians and surgeons with expertise in the nurse practitioner field. Existing law requires nurse practitioners to meet certain requirements, including educational requirements, and authorizes a nurse practitioner who has been issued a board number for the furnishing or ordering of drugs to furnish or order drugs under certain conditions, including pursuant to standardized procedures or protocols and under the supervision of a physician and surgeon. Existing law prohibits a physician and surgeon from supervising more than 4 nurse practitioners at one time. A violation of the Nursing Practice Act is a crime.

This bill would set forth the activities that a nurse practitioner is authorized to engage in, and would delete the requirement that the board

consult with physicians and surgeons in establishing categories of nurse practitioners. The bill would revise the educational requirements for certification as a nurse practitioner and would require a nurse practitioner to be certified by a nationally recognized certifying body approved by the board. The bill would allow a nurse practitioner to prescribe drugs and devices if he or she has been certified by the board to have satisfactorily completed at least 6 months of supervised experience in the prescribing of drugs and devices and if such prescribing is consistent with his or her education or established clinical competency, would delete the requirement for standardized procedures and protocols, and would delete the requirement of physician supervision. The bill would require that a nurse practitioner be issued a board number prior to prescribing drugs and devices and would allow revocation or suspension or denial of a board number for incompetence or gross negligence. The bill would delete the prohibition against a physician and surgeon supervising more than 4 nurse practitioners at one time.

Because this bill would impose additional requirements under the Nursing Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

(2) Existing law, the Medi-Cal Act, provides for the Medi-Cal program, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. The act authorizes certain covered health care services provided under in a long-term health care facility to be delegated to a nurse practitioner if specified conditions are met, including mandatory supervision by a physician and surgeon.

This bill would remove the requirement of mandatory supervision of the nurse practitioner by a physician and surgeon in order for the services to be delegated to a nurse practitioner.

(3) Existing law, the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act, requires a county to establish a Physician Services Account within its emergency medical services fund. Existing law makes a physician and surgeon eligible to receive payment from the fund for patient care services, as specified, performed by a nurse practitioner or nurse-midwife under the direct supervision of the physician and surgeon.

This bill would also make a nurse practitioner eligible to receive payment for those patient care services and would remove the requirement of supervision of the services by a physician and surgeon. The bill would authorize a nurse practitioner to receive reimbursement

for emergency services and inpatient and outpatient obstetric pediatric services that the nurse practitioner determines to be medically necessary.

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

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

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

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

SECTION 1. Section 2725.1 of the Business and Professions Code is amended to read:

2725.1. Notwithstanding any other provision of law, a registered nurse may dispense drugs or devices upon an order by a licensed physician and surgeon, *nurse practitioner, or nurse midwife* if the nurse is functioning within a licensed clinic as defined in paragraphs (1) and (2) of subdivision (a) of Section 1204 of, or within a clinic as defined in subdivision (b) or (c) of Section 1206, of the Health and Safety Code.

No clinic shall employ a registered nurse to perform dispensing duties exclusively. No registered nurse shall dispense drugs in a pharmacy~~,~~ *or* keep a pharmacy, open shop, or drugstore for the retailing of drugs or poisons. No registered nurse shall compound drugs. Dispensing of drugs by a registered nurse, except a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51 or a nurse practitioner ~~who functions pursuant to a standardized procedure described in Section 2836.1, or protocol~~, shall not include substances included in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code). Nothing in this section shall exempt a clinic from the provisions of Article 13 (commencing with Section 4180) of Chapter 9.

SEC. 2. Section 2835.5 of the Business and Professions Code is amended to read:

2835.5. (a) A registered nurse who is holding himself or herself out as a nurse practitioner or who desires to hold himself or herself out as a nurse practitioner shall, within the time prescribed by the board and prior to his or her next license renewal or the issuance

of an initial license, submit educational, experience, and other credentials and information as the board may require for it to determine that the person qualifies to use the title "nurse practitioner," pursuant to the standards and qualifications established by the board.

(b) Upon finding that a person is qualified to hold himself or herself out as a nurse practitioner, the board shall appropriately indicate on the license issued or renewed, that the person is qualified to use the title "nurse practitioner." The board shall also issue to each qualified person a certificate evidencing that the person is qualified to use the title "nurse practitioner."

(c) A person who has been found to be qualified by the board to use the title "nurse practitioner" prior to the effective date of this section, shall not be required to submit any further qualifications or information to the board and shall be deemed to have met the requirements of this section.

(d) On and after January 1, 2008, an applicant for initial qualification or certification as a nurse practitioner under this article who has not been qualified or certified as a nurse practitioner in California or any other state shall meet the following requirements:

(1) Hold a valid and active registered nursing license issued under this chapter.

(2) Possess a master's degree in nursing~~, a master's degree in a clinical field related to nursing,~~ or a ~~graduate~~ *doctoral* degree in nursing.

(3) Satisfactorily complete a nurse practitioner program approved by the board.

(4) Be certified as a nurse practitioner by a nationally recognized certifying body approved by the board.

SEC. 3. Section 2835.7 is added to the Business and Professions Code, to read:

2835.7. (a) A nurse practitioner may do all of the following:

(1) Perform a comprehensive history and physical examination.

(2) Establish diagnoses for physical, mental, or emotional ailments or potential ailments.

(3) Admit patients to hospitals and nursing facilities.

(4) Order, perform, and interpret laboratory, radiographic, and other diagnostic tests.

(5) Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.

(6) Perform therapeutic procedures that the nurse practitioner is qualified by education and experience to perform.

(7) Prescribe treatments.

(8) Prescribe and dispense medications when granted authority by the board.

(9) Refer patients to appropriate licensed physician and surgeons or other health care providers.

(10) Provide emergency care.

(11) Perform additional acts that the nurse practitioner is educationally prepared and clinically competent to perform.

(12) Sign death certificates, return-to-work, school certificates, and other related health certification forms.

(13) Certify incapacity for the purpose of activating durable power of attorney for health care.

(14) Sign handicapped parking applications.

(15) Order home health services.

(16) Order durable medical equipment.

(17) Order home schooling or tutoring.

(b) A nurse practitioner shall consult or refer a patient to a physician and surgeon or another health care provider if the referral will protect the health and welfare of the patient and if a situation or condition occurs in a patient that is beyond the nurse practitioner's knowledge and experience.

SEC. 4. Section 2836 of the Business and Professions Code is amended to read:

2836. (a) The board shall establish categories of nurse practitioners and standards for nurses to hold themselves out as nurse practitioners in each category. Such standards shall take into account the types of advanced levels of nursing practice ~~which~~ *that* are or may be performed and the clinical and didactic education, experience, or both needed to practice safely at those levels. In setting ~~such~~ *the* standards, the board shall consult with nurse practitioners~~, physicians and surgeons with expertise in the nurse practitioner field,~~ and health care organizations utilizing nurse practitioners. Established standards shall apply to persons without regard to the date of meeting ~~such~~ *those* standards. ~~If the board sets standards for use of nurse practitioner titles which include completion of an academically affiliated program, it shall provide equivalent standards for registered nurses who have not completed such a program.~~

(b) Any regulations promulgated by a state department, *board, commission, or bureau* that affect the scope of practice of a nurse practitioner shall be developed in consultation with the board.

SEC. 5. Section 2836.1 of the Business and Professions Code is amended to read:

~~2836.1. Neither this chapter nor any other provision of law shall be construed to prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of the following apply:~~

~~(a) The drugs or devices are furnished or ordered by a nurse practitioner in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and surgeon~~

2836.1. (a) A nurse practitioner may prescribe drugs and devices when the drugs or devices ~~furnished or ordered~~ *prescribed* are consistent with the practitioner's educational preparation or for which clinical competency has been established and maintained.

~~(b) The nurse practitioner is functioning pursuant to standardized procedure, as defined by Section 2725, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner, and the facility administrator or the designee.~~

~~(c) (1) The standardized procedure or protocol covering the furnishing of drugs or devices shall specify which nurse practitioners may furnish or order drugs or devices, which drugs or devices may be furnished or ordered, under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the nurse practitioner's competence, including peer review, and review of the provisions of the standardized procedure.~~

~~(2) In addition to the requirements in paragraph (1), for Schedule II controlled substance protocols, the provision for furnishing Schedule II controlled substances shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.~~

~~(d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include (1) collaboration on the development of the standardized procedure, (2) approval of the standardized procedure, and (3) availability by~~

~~telephonic contact at the time of patient examination by the nurse practitioner.~~

~~(e) For purposes of this section, no physician and surgeon shall supervise more than four nurse practitioners at one time.~~

~~(f) (1)~~

(b) Drugs or devices ~~furnished or ordered~~ *prescribed* by a nurse practitioner may include Schedule II through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) ~~and shall be further limited to those drugs agreed upon by the nurse practitioner and physician and surgeon and specified in the standardized procedure~~.

~~(2) When Schedule II or III controlled substances, as defined in Sections 11055 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a nurse practitioner, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the nurse practitioner's standardized procedure relating to controlled substances shall be provided, upon request, to any licensed pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse practitioner furnishing the order.~~

~~(g) (1) The~~

(c) A nurse practitioner may not prescribe drugs or devices under this section unless the board has certified in accordance with Section 2836.3 that the nurse practitioner has satisfactorily completed ~~(1)~~ at least six ~~month's physician and surgeon-supervised~~ *months' supervised* experience in the ~~furnishing or ordering~~ *prescribing* of drugs ~~or~~ *and* devices ~~and (2) a course in pharmacology covering the drugs or devices to be furnished or ordered under this section~~.

~~(2) Nurse practitioners who are certified by the board and hold an active furnishing number, who are authorized through standardized procedures or protocols to furnish Schedule II controlled substances, and who are registered with the United States Drug Enforcement Administration, shall complete, as part of their continuing education requirements, a course including Schedule II controlled substances based on the standards developed by the board. The board shall establish the requirements for satisfactory completion of this subdivision.~~

~~(h) Use of the term "furnishing" in this section, in health facilities defined in Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug or device in accordance with the standardized procedure and (2) transmitting an order of a supervising physician and surgeon.~~

~~(i) "Drug order" or "order" for purposes of this section means an order for medication which is dispensed to or for an ultimate user, issued by a nurse practitioner as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.~~

SEC. 6. Section 2836.2 of the Business and Professions Code is amended to read:

2836.2. ~~Furnishing or ordering of drugs or devices by nurse practitioners is defined to mean the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure.~~ All nurse practitioners who are authorized pursuant to Section ~~2831.1~~ *2836.1* to ~~furnish or issue drug orders for~~ *prescribe* controlled substances shall register with the United States Drug Enforcement Administration.

SEC. 7. Section 2836.3 of the Business and Professions Code is amended to read:

2836.3. (a) The ~~furnishing~~ *prescribing* of drugs or devices by nurse practitioners is conditional on issuance by the board of a number to the nurse *practitioner* applicant who has successfully completed the requirements of subdivision ~~(g)~~ *(c)* of Section 2836.1. The number shall be included on all ~~transmittals of orders~~ *prescriptions* for drugs or devices by the nurse practitioner. The board shall make the list of numbers issued available to the Board of Pharmacy. The board may charge the applicant a fee to cover all necessary costs to implement this section.

(b) The number shall be renewable at the time of the applicant's registered nurse license renewal.

(c) The board may revoke, suspend, or deny issuance of the numbers for incompetence or gross negligence in the performance of functions specified in Sections 2836.1 and 2836.2.

SEC. 8. Section 3640 of the Business and Professions Code is amended to read:

3640. (a) A naturopathic doctor may order and perform physical and laboratory examinations for diagnostic purposes, including, but not limited to, phlebotomy, clinical laboratory tests, speculum examinations, orificial examinations, and physiological function tests.

(b) A naturopathic doctor may order diagnostic imaging studies, including X-ray, ultrasound, mammogram, bone densitometry, and others, consistent with naturopathic training as determined by the bureau, but shall refer the studies to an appropriately licensed health care professional to conduct the study and interpret the results.

(c) A naturopathic doctor may dispense, administer, order, and prescribe or perform the following:

(1) Food, extracts of food, ~~nutraceuticals~~ *neutraceuticals*, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, all dietary supplements and nonprescription drugs as defined by the federal Food, Drug, and Cosmetic Act, consistent with the routes of administration identified in subdivision (d).

(2) Hot or cold hydrotherapy; naturopathic physical medicine inclusive of the manual use of massage, stretching, resistance, or joint play examination but exclusive of small amplitude movement at or beyond the end range of normal joint motion; electromagnetic energy; colon hydrotherapy; and therapeutic exercise.

(3) Devices, including, but not limited to, therapeutic devices, barrier contraception, and durable medical equipment.

(4) Health education and health counseling.

(5) Repair and care incidental to superficial lacerations and abrasions, except suturing.

(6) Removal of foreign bodies located in the superficial tissues.

(d) A naturopathic doctor may utilize routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular.

(e) The bureau may establish regulations regarding ocular or intravenous routes of administration that are consistent with the education and training of a naturopathic doctor.

(f) Nothing in this section shall exempt a naturopathic doctor from meeting applicable licensure requirements for the performance of clinical laboratory tests.

~~(g) The authority to use all routes for furnishing prescription drugs as described in Section 3640.5 shall be consistent with the oversight and supervision requirements of Section 2836.1.~~

SEC. 9. Section 3640.5 of the Business and Professions Code is amended to read:

3640.5. Nothing in this chapter or any other provision of law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when all of the following apply:

(a) The drugs are furnished or ordered by a naturopathic doctor in accordance with standardized procedures or protocols developed by the naturopathic doctor and his or her supervising physician and surgeon.

(b) The naturopathic doctor is functioning pursuant to standardized procedure~~, as defined by subdivisions (a), (b), (d), (e), (h), and (i) of Section 2836.1 and paragraph (1) of subdivision (c) of Section 2836.1,~~ or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the naturopathic doctor, and, where applicable, the facility administrator or his or her designee.

(c) The standardized procedure or protocol covering the furnishing of drugs shall specify which naturopathic doctors may furnish or order drugs, which drugs may be furnished or ordered under what circumstances, the extent of physician and surgeon supervision, *and* the method of periodic review of the naturopathic doctor's competence, including peer review~~,~~ and review of the provisions of the standardized procedure.

(d) The furnishing or ordering of drugs by a naturopathic doctor occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

(1) Collaboration on the development of the standardized procedure.

(2) Approval of the standardized procedure.

(3) Availability by telephonic contact at the time of patient examination by the naturopathic doctor.

(e) For purposes of this section, a physician and surgeon shall not supervise more than four naturopathic doctors at one time.

(f) Drugs furnished or ordered by a naturopathic doctor may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a naturopathic doctor, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the naturopathic doctor's standardized procedure relating to controlled substances shall be provided upon request, to a licensed pharmacist who dispenses drugs, when there is uncertainty about the naturopathic doctor furnishing the order.

(g) The bureau has certified that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be furnished or ordered under this section. The bureau shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include both of the following:

(1) Ordering a drug in accordance with the standardized procedure.

(2) Transmitting an order of a supervising physician and surgeon.

(i) For purposes of this section, "drug order" or "order" means an order for medication which is dispensed to or for an ultimate user, issued by a naturopathic doctor as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations.

(j) Notwithstanding any other provision of law, the following apply:

(1) A drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician.

(2) All references to prescription in this code and the Health and Safety Code shall include drug orders issued by naturopathic doctors.

(3) The signature of a naturopathic doctor on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

SEC. 10. Section 4024 of the Business and Professions Code is amended to read:

4024. (a) Except as provided in subdivision (b), "dispense" means the furnishing of drugs or devices upon a prescription from a physician *and surgeon*, dentist, optometrist, podiatrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

(b) "Dispense" also means and refers to the furnishing of drugs or devices directly to a patient by a physician *and surgeon*, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse-midwife, nurse practitioner, naturopathic doctor, or physician assistant acting within the scope of his or her practice.

SEC. 11. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) "Prescription" means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, ~~2836.1,~~ 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(2) Issued by a physician *and surgeon*, dentist, optometrist, podiatrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, ~~2836.1,~~ 3502.1, or ~~3460.5~~ *3640.5*, by a certified nurse-midwife, ~~nurse practitioner,~~ physician assistant, or naturopathic doctor licensed in this state, or pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 by a pharmacist licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall

be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 12. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician *and surgeon*, dentist, podiatrist, optometrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, ~~a nurse practitioner pursuant to Section 2836.1,~~ a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician *and surgeon*, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, ~~a nurse practitioner,~~ a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

SEC. 13. Section 4061 of the Business and Professions Code is amended to read:

4061. (a) No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician *and surgeon*, dentist, podiatrist, optometrist, veterinarian, *nurse practitioner,* or naturopathic doctor pursuant to Section 3640.7. However, a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ a physician assistant who functions pursuant to a protocol described in Section 3502.1, or a naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, may sign for the request and receipt of complimentary samples of

a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician *and surgeon*. A review process, consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the complimentary samples requested and received by ~~a nurse practitioner,~~ certified nurse-midwife, physician assistant, or naturopathic doctor~~,~~ shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife,~~ nurse practitioner,~~ physician assistant, or naturopathic doctor, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

(c) Nothing in this section is intended to expand the scope of practice of a certified nurse-midwife,~~ nurse practitioner,~~ physician assistant, or naturopathic doctor.

SEC. 14. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51,~~ the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients

may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 15. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, ~~a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol,~~ a physician assistant who functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section 3640.5, may hand to a patient of the supervising physician and surgeon *or nurse practitioner* a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, *a nurse practitioner,* or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and

the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds ~~a physician's~~ *physician* and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, ~~or~~ a certificate to practice podiatry, *or a license and certification as a nurse practitioner,* and who is duly registered by the Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, ~~or~~ the Board of Osteopathic Examiners, *or the Board of Registered Nursing* of this state.

SEC. 16. Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the drug order of ~~a nurse practitioner functioning pursuant to Section 2836.1 or~~ a certified nurse-midwife functioning pursuant to Section 2746.51, ~~a drug order of~~ a physician assistant functioning pursuant to Section 3502.1, or a naturopathic doctor functioning pursuant to Section 3640.5, or the order of a pharmacist acting under Section 4052.

SEC. 17. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician *and surgeon*, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within

the scope of ~~Section~~ *Sections 2835.7 and* 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

SEC. 18. Section 120582 of the Health and Safety Code is amended to read:

120582. (a) Notwithstanding any other provision of law, a physician and surgeon *or a nurse practitioner* who diagnoses ~~a~~ sexually transmitted chlamydia, gonorrhea, or ~~other~~ *another* sexually transmitted infection, as determined by the department, in an individual patient may prescribe, dispense, furnish, or otherwise provide prescription antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. The department may adopt regulations to implement this section.

(b) Notwithstanding any other provision of law, ~~a nurse practitioner pursuant to Section 2836.1 of the Business and Professions Code,~~ a certified nurse-midwife pursuant to Section 2746.51 of the Business and Professions Code~~,~~ and a physician assistant pursuant to Section 3502.1 of the Business and Professions Code may dispense, furnish, or otherwise provide prescription antibiotic drugs to the sexual partner or partners of a patient with a diagnosed sexually transmitted chlamydia, gonorrhea, or other sexually transmitted infection, as determined by the department, without examination of the patient's sexual partner or partners.

SEC. 19. Section 14111 of the Welfare and Institutions Code is amended to read:

14111. (a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed by Medicare, a physician and surgeon may delegate any of the following to a nurse practitioner:

(1) Alternating visits required by federal law and regulations with a physician and surgeon.

(2) Any duties consistent with federal law and regulations within the scope of practice of nurse practitioners, so long as ~~all~~ *both* of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

~~(B) The medical care of each resident is supervised by a physician and surgeon.~~

~~(C)~~

(B) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal law or regulation.

~~(c) All responsibilities delegated to a nurse practitioner pursuant to this section shall be performed under the supervision of the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.~~

~~(d)~~

(c) No task that is required by federal law or regulation to be performed personally by a physician *and surgeon* may be delegated to a nurse practitioner.

~~(e)~~

(d) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse practitioners so long as that employment is consistent with federal law and within the scope of practice of a nurse practitioner.

SEC. 20. Section 14111.5 of the Welfare and Institutions Code is amended to read:

14111.5. (a) As permitted by federal law or regulations, for health care services provided in a long-term health care facility that are reimbursed under this chapter, a nurse practitioner may, to the extent consistent with his or her scope of practice, perform any of the following tasks otherwise required of a physician and surgeon:

(1) With respect to visits required by federal law or regulations, making alternating visits, or more frequent visits if the physician and surgeon is not available.

(2) Any duty or task that is consistent with federal and state law or regulation within the scope of practice of nurse practitioners, so long as ~~all~~ *both* of the following conditions are met:

(A) A physician and surgeon approves, in writing, the admission of the individual to the facility.

~~(B) The medical care of each resident is supervised by a physician and surgeon.~~

~~(C)~~

(B) A physician and surgeon performs the initial visit and alternate required visits.

(b) This section does not authorize benefits not otherwise authorized by federal or state law or regulation.

~~(c) All responsibilities undertaken by a nurse practitioner pursuant to this section shall be performed in collaboration with the physician and surgeon and pursuant to a standardized procedure among the physician and surgeon, nurse practitioner, and facility.~~

~~(d)~~

(c) Except as provided in subdivisions (a)~~ to (c), inclusive~~ *and (b)*, any task that is required by federal law or regulation to be performed personally by a physician *and surgeon* may be delegated to a nurse practitioner who is not an employee of the long-term health care facility.

~~(e)~~

(d) Nothing in this section shall be construed as limiting the authority of a long-term health care facility to hire and employ nurse practitioners so long as that employment is consistent with federal law and with the scope of practice of a nurse practitioner.

SEC. 21. Section 16952 of the Welfare and Institutions Code is amended to read:

16952. (a) (1) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the Physician Services Account of the fund.

(2) (A) Each county may encumber sufficient funds to reimburse physician *and surgeon* losses incurred during the fiscal year for which bills will not be received until after the fiscal year.

(B) Each county shall provide a reasonable basis for its estimate of the necessary amount encumbered.

(C) All funds that are encumbered for a fiscal year shall be expended or disencumbered prior to the submission of the report of actual expenditures required by Sections 16938 and 16980.

(b) (1) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician *and surgeon* services provided by ~~physicians~~ *physician and surgeons* employed by county hospitals.

(2) No physician *and surgeon* who provides physician *and surgeon* services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county ~~physician services account~~ *Physician Services Account* shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16809, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account, whether by the county or by the department through the emergency medical services contract-back program, shall be reimbursed by the account based on actual administrative costs, not to exceed 10 percent of the amount of the account.

(e) For purposes of this article "administering agency" means the agency designated by the board of supervisors to administer this article, or the department, in the case of those CMSP counties electing to have the state administer this article on their behalf.

(f) The county Physician Services Account shall be used to reimburse ~~physicians~~ *physician and surgeons* for losses incurred for services provided during the fiscal year of allocation due to patients who do not have health insurance coverage for emergency services and care, who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government with the exception of claims submitted for reimbursement through Section 1011 of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(g) Nurse practitioners shall be eligible to receive payment for patient care services. Payment shall be limited to those claims that are substantiated by a medical record.

~~(g) Physicians~~

(h) Physician and surgeons shall be eligible to receive payment for patient care services provided by, or in conjunction with, a ~~properly credentialed nurse practitioner or~~ *licensed* physician's assistant for care rendered under the direct supervision of a physician and surgeon who is present in the facility where the patient is being treated and who is available for immediate consultation. Payment shall be limited to those claims that are substantiated by a medical record and that have been reviewed and countersigned by the supervising physician and surgeon in accordance with regulations established for the supervision of ~~nurse practitioners and~~ physician assistants in California.

~~(h)~~

(i) (1) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services as defined in Sections 16905.5 and 16907.5, respectively.

(2) It is the intent of this subdivision to allow reimbursement for all of the following:

(A) All inpatient and outpatient obstetric services ~~which~~ *that* are medically necessary, as determined by the attending physician *and surgeon or nurse practitioner*.

(B) All inpatient and outpatient pediatric services ~~which~~ *that* are medically necessary, as determined by the attending physician *and surgeon or nurse practitioner*.

~~(i)~~

(j) Any physician *and surgeon or nurse practitioner* may be reimbursed for up to 50 percent of the amount claimed pursuant to Section 16955 for the initial cycle of reimbursements made by the administering agency in a given year. All funds remaining at the end of the fiscal year shall be distributed proportionally, based on the dollar amount of claims submitted and paid to all ~~physicians~~ *physician and surgeons and nurse practitioners* who submitted qualifying claims during that year. The administering agency shall not disburse funds in excess of the total amount of a qualified claim.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SBX1 19
Author: Cogdill (Coauthor: Harman)
Bill Date: October 11, 2007, introduced
Subject: Medical corporations.
Sponsor: Author

STATUS OF BILL:

This bill is currently assigned to the Senate Health Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would delete the Corporate Practice prohibition in the Medical Practice Act that prohibits corporations and other artificial entities from having professional rights, privileges, and powers.

ANALYSIS:

Corporations and other artificial entities would have professional rights, privileges, and powers. This takes the health care decisions making away from physicians and puts it in the hands of the profit motive corporations.

FISCAL: None

POSITION: Oppose

January 22, 2008

SENATE BILL No. 19

Introduced by Senator Cogdill
(Coauthor: Senator Harman)

October 11, 2007

An act to amend Section 2400 of, and to repeal Sections 2401, 2401.1, and 2402 of, the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 19, as introduced, Cogdill. Medical corporations.

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons. The Medical Practice Act prohibits corporations and other artificial legal entities from having professional rights, privileges, or powers, except as specified.

This bill would delete the prohibition, and related exceptions, and would instead authorize corporations and artificial legal entities to have professional rights, privileges, or powers.

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

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

SECTION 1. Section 2400 of the Business and Professions Code is amended to read:

2400. Corporations and other artificial legal entities ~~shall have no~~ *may have* professional rights, privileges, or powers. ~~However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the~~

~~employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic.~~

SEC. 2. Section 2401 of the Business and Professions Code is repealed.

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

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

~~(c) Notwithstanding Section 2400, a narcotic treatment program operated under Section 11876 of the Health and Safety Code and regulated by the State Department of Alcohol and Drug Programs, may employ licensees and charge for professional services rendered by those licensees. However, the narcotic treatment program shall not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon in a manner prohibited by Section 2400 or any other provision of law.~~

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

SEC. 3. Section 2401.1 of the Business and Professions Code is repealed.

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

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

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

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

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

~~(b) A pilot project to provide for the direct employment of a total of 20 physicians and surgeons by qualified district hospitals is hereby established in order to improve the recruitment and retention of physicians and surgeons in rural and other medically underserved areas.~~

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

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

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

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

~~(4) Has net losses from operations in fiscal year 2000-01, as reported to the Office of Statewide Health Planning and Development.~~

~~(d) In addition to the requirements of subdivision (c), and in addition to other applicable laws, a qualified district hospital may~~

~~directly employ a licensee pursuant to subdivision (b) if all of the following conditions are satisfied:~~

~~(1) The total number of physicians and surgeons employed by all qualified district hospitals under this section does not exceed 20.~~

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

~~(3) The licensee enters into or renews a written employment contract with the qualified district hospital prior to December 31, 2006, for a term not in excess of four years. The contract shall provide for mandatory dispute resolution under the auspices of the board for disputes directly relating to the licensee's clinical practice.~~

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

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

~~(e) The board shall report to the Legislature not later than October 1, 2008, on the evaluation of the effectiveness of the pilot project in improving access to health care in rural and medically underserved areas and the project's impact on consumer protection as it relates to intrusions into the practice of medicine.~~

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

~~(g) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.~~

SEC. 4. Section 2402 of the Business and Professions Code is repealed.

~~2402. The provisions of Section 2400 do not apply to a medical or podiatry corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section~~

~~13400) of Division 3 of Title 1 of the Corporations Code) and this article, when such corporation is in compliance with the requirements of these statutes and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations and the conduct of their affairs.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: ABX1 1
Author: Nunez (Coauthor: Perata)
Bill Date: January 16, 2008, amended
Subject: Health Care Reform.
Sponsor: Author

STATUS OF BILL:

This bill is currently assigned to the Senate Health Committee and is set for hearing on January 23, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill enacts the California Health Care Security and Cost Reduction Act (Act). The Act includes an expansion of the Medi-Cal Program and the Healthy Families Program (HFP), creation of a statewide purchasing pool (the California Cooperative Health Insurance Purchasing Pool or Cal-CHIPP), creation of an individual mandate to purchase health insurance, modification of the individual and group insurance markets, expansion of preventive health programs and imposition of a medical loss ratio (MLR), which requires insurers to spend a specified proportion of premiums collected on medical care.

ANALYSIS:

As is relates to the Medical Board, this bill creates The Task Force on Nurse Practitioner Scope of Practice. The Task Force would consist of the Director of Consumer Affairs, three members of the Medical Board of California (Board), three members of the Board of Registered Nursing, and two representatives of an institution of higher education. Two of the Medical Board member representatives will be appointed by the Governor and the third will be appointed by the Senate Committee on Rules.

The Board's Executive Committee voted to issue a policy statement, rather than take an official position on this bill.

FISCAL: None

POSITION: Issue Policy Statement

January 22, 2008

AMENDED IN SENATE JANUARY 16, 2008

AMENDED IN ASSEMBLY DECEMBER 17, 2007

AMENDED IN ASSEMBLY DECEMBER 13, 2007

AMENDED IN ASSEMBLY NOVEMBER 8, 2007

CALIFORNIA LEGISLATURE—2007–08 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL No. 1

Introduced by Assembly Member Nunez
(Principal coauthor: Senator Perata)

September 11, 2007

An act to amend Section 2069 of, to add Sections 4040.1, 4071.2, 4071.3, and 4071.4 to, and to add and repeal Section 2838 of, the Business and Professions Code, to add Section 49452.9 to the Education Code, to add Sections 12803.2, 12803.25, 22830.5, and 22830.6 to, and to add Chapter 15 (commencing with Section 8899.50) to Division 1 of Title 2 of, the Government Code, to amend Sections 1357.54, 1365, 124900, 124905, 124910, 124920, 128745, and 128748 of, to amend, repeal, and add Section 1399.56 of, to add Sections 1262.9, 1342.9, 1347, 1356.2, 1367.16, 1367.205, 1367.38, 1368.025, 1378.1, 1395.2, 1399.58, 104376, 124905.1, 124946, and 130545 to, to add Chapter 1.6 (commencing with Section 155) to Part 1 of Division 1 of, to add Article 11.6 (commencing with Section 1399.820) to Chapter 2.2 of Division 2 of, to add Article 1 (commencing with Section 104250) to Chapter 4 of Part 1 of Division 103 of, to add Article 3 (commencing with Section 104705) to Chapter 2 of Part 3 of Division 103 of, and to add Chapter 4 (commencing with Section 128850) to Part 5 of Division 107 of, the Health and Safety Code, to amend Sections 12693.43, 12693.70, 12693.73, and 12693.76 of, to amend, repeal, and add Section 796.02 of, to add Sections 796.05, 10113.10, 10113.11, 10123.56, 10176.15,

10273.6, 12693.56, 12693.57, 12693.58, 12693.59, 12693.766, 12886, and 12887 to, to add Chapter 9.6 (commencing with Section 10919) to Part 2 of Division 2 of, and to add Part 6.45 (commencing with Section 12699.201) and Part 6.7 (commencing with Section 12739.50) to Division 2 of, the Insurance Code, to add Section 96.8 to the Labor Code, to amend Sections 19167 and 19611 of, to add Sections 17052.31, 17052.32, 19528.5, and 19553.5 to, and to add and repeal Section 17052.30 of, the Revenue and Taxation Code, to add Sections 301.1 and 1120 to, and to add Division 1.2 (commencing with Section 4800) to, the Unemployment Insurance Code, and to amend Sections 12306.1, 14005.30, and 14011.16 of, to add Sections 14005.301, 14005.305, 14005.306, 14005.310, 14005.311, 14005.331, 14005.333, 14011.16.1, 14074.5, 14081.6, 14092.5, 14132.105, and 14137.10 to, and to add Article 5.215 (commencing with Section 14167.22) to, and to add and repeal Article 5.21 (commencing with Section 14167.1) of, Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1, as amended, Nunez. Health care reform.

(1) Existing law creates the California Health and Human Services Agency.

This bill would require the agency, in consultation with the Board of Administration of the Public Employees' Retirement System (PERS), to assume lead agency responsibility for professional review and development of best practice standards for high-cost chronic diseases that state health care programs would be required to implement upon their adoption. The bill would additionally require the agency, in consultation with PERS and health care provider groups, to develop health care provider performance measurement benchmarks, as specified.

The bill, effective July 1, 2008, would create the California Health Care Cost and Quality Transparency Committee in the California Health and Human Services Agency, with various powers and duties, including the development and periodic review of a health care cost and quality transparency plan. The bill would require the Office of Statewide Health Planning and Development to assist the committee in that regard. The bill would require the Secretary of California Health and Human Services to track and assess the effects of health care reform and to

report to the Legislature by March 1, 2012, and biennially thereafter. The bill would also create the California Health Benefits Service within the State Department of Health Care Services, with various powers and duties relative to creation of joint ventures between certain county-organized health plans and various other entities. The bill would require these joint ventures to be licensed as health care service plans and would create a stakeholder committee.

(2) Existing law does not provide a system of health care coverage for all California residents. Existing law does not require employers to provide health care coverage for employees and dependents, other than coverage provided as part of the workers' compensation system for work-related employee injuries, and does not require individuals to maintain health care coverage. Existing law provides for the creation of various programs to provide health care coverage to persons who have limited incomes and meet various eligibility requirements. These programs include the Healthy Families Program, administered by the Managed Risk Medical Insurance Board, and the Medi-Cal program, administered by the State Department of Health Care Services and county welfare departments.

This bill would require California residents, subject to certain exceptions, to enroll in and maintain at least minimum creditable health care coverage, as determined by the Managed Risk Medical Insurance Board, for themselves and their dependents, as defined. The bill would require the board to establish, by regulation, the definition and standards for minimum creditable coverage, including an affordability standard and hardship exemptions, by March 1, 2009, and would require the board to facilitate enrollment in public or private coverage and to establish an education and awareness program, by January 1, 2010, relating to the requirement to obtain minimum creditable coverage. The bill would enact related provisions, including authorizing a school district, on and after January 1, 2010, to provide parents and guardians information explaining these health care coverage requirements.

The bill would, as of January 1, 2009, create the California Cooperative Health Insurance Purchasing Program (Cal-CHIPP), which would function as a statewide purchasing pool for health care coverage and be administered by the Managed Risk Medical Insurance Board. The bill would specify eligibility for Cal-CHIPP and would require the board to develop and offer a variety of benefit plan designs, including the Cal-CHIPP Healthy Families plan in which enrollment would be restricted to specified low-income persons. The bill would authorize

an employer to pay all or a part of the premium payment required of its employees enrolled in Cal-CHIPP. The bill would make it an unfair labor practice for an employer to refer an employee, or his or her dependent, to Cal-CHIPP or to arrange for their application to that program to separate them from group coverage provided through the employment relationship, and for an employer to change the share-of-cost ratio or modify coverage in order for an employee or his or her dependents to enroll in that program. Because an unfair labor practice may be punishable as a crime, the bill would impose a state-mandated local program. The bill would create the California Health Trust Fund in the State Treasury for the purposes of this act. The bill would require the State Department of Health Care Services to seek any necessary federal approval to enable the state to receive federal Medicaid funds for specified persons who could otherwise be made eligible for Medi-Cal benefits, with the state share of funds to be provided from the California Health Trust Fund. The bill, on and after July 1, 2010, would also extend Medi-Cal benefits to parents and caretaker relatives and various other persons meeting certain eligibility requirements. The bill would require certain of these individuals to receive their benefits in the form of a benchmark package, which would be the Cal-CHIPP Healthy Families benefit package. The bill would provide for the benchmark benefits to be administered by the Managed Risk Medical Insurance Board, pursuant to an interagency agreement with the department. The bill would make these provisions subject to federal financial participation and approval, as specified.

The bill would require the State Department of Health Care Services to establish a Healthy Action Incentives and Rewards Program to be provided as a covered benefit under the Medi-Cal program, subject to federal financial participation and approval. The bill would also require the Director of Health Care Services to establish a local coverage option program for low-income adults that would be the exclusive Medi-Cal coverage for a 4-year period beginning with the program's commencement, for county residents who, among other requirements, have a family income at or below 100% of the federal poverty level and are not otherwise eligible for the Medi-Cal program. The bill would specify that the program would become operational for services rendered on or after July 1, 2010. The bill would specify that coverage under the program would be provided at a county's option and only by a county that operates a designated public hospital, subject to approval by the State Department of Health Care Services and contingent on

establishment of a county share of cost. The bill would require the State Department of Health Care Services, by January 1, 2010, to contract with an independent 3rd party to develop an assessment tool to measure the care provided under the program. The bill would require the department, after 3 years of the program's operation, to evaluate the program using the assessment tool and would extend the program for an additional 2 years if the program substantially met certain criteria and would terminate the program if it did not. The bill would enact other related provisions.

The bill, subject to future appropriation of funds, would expand the number of children eligible for coverage under the Healthy Families Program on and after July 1, 2009. The bill would, on and after July 1, 2009, delete as an eligibility requirement for a child under the Healthy Families Program and the Medi-Cal program that the child satisfy citizen and immigration status requirements applicable to the programs under federal law, thereby creating a state-only element of the programs. The bill would additionally, on and after July 1, 2009, disregard all income over 250% but less than or equal to 300% of the federal poverty level and would apply Medi-Cal program income deductions to a family income greater than 300% of the federal poverty level in determining eligibility for the Healthy Families Program. The bill would authorize the board to provide, or arrange for the provision of, an electronic personal health record under the Healthy Families Program, to the extent funds are appropriated for that purpose, and would provide for the confidentiality of information obtained pursuant to the program.

The bill would require the department to exercise its federal option as necessary to simplify Medi-Cal eligibility by exempting all resources for certain applicants and recipients, commencing July 1, 2010.

The bill would enact the Medi-Cal Physician Services Rate Increase Act, which would establish, with respect to services rendered to Medi-Cal beneficiaries on and after July 1, 2010, to the extent funds are appropriated in the annual Budget Act, increased reimbursements of up to 100% of the Medicare rate for physicians, physician groups, as defined, and others that are enrolled Medi-Cal providers eligible to receive payments for Medi-Cal services. The bill would permit some of these rate increases to be linked to specified performance measures and would provide that these rate increases would be implemented only to the extent that state funds are appropriated for the nonfederal share of these increases. The bill would require the Director of Health Care Services to seek federal approval of the rate methodology set forth in

the act and would prohibit the methodology from being implemented if federal approval is not obtained.

Because each county is required to determine eligibility for the Medi-Cal program, expansion of program eligibility would impose a state-mandated local program.

This bill would also enact the Medi-Cal Hospital Rate Stabilization Act, which would revise the methodology by which safety net care pool funds are paid to designated public hospitals for providing uncompensated care to the uninsured. The bill would require the State Department of Health Care Services to determine an outpatient base rate and an inpatient base rate, as defined, for various types of hospitals. The bill would also, commencing July 1, 2010, establish specified reimbursement rate methodologies under the Medi-Cal program for hospital services, as defined, that are rendered by designated public hospitals and for managed health care plans, as specified, and would require managed health care plans to expend 100% of moneys received under the increased rates for payments to hospitals for providing services to Medi-Cal patients. The bill would make implementation of certain of these provisions contingent on the establishment of certain requirements under which counties pay a share of cost for persons enrolled in the Medi-Cal program, and would make implementation of all of these provisions contingent on the imposition of a 4% fee on the net patient revenue of general acute care hospitals.

This bill would also require a portion of the nonfederal share of the reimbursement for designated public hospitals be transferred to the Workforce Development Program Fund, which the bill would create in the State Treasury. Moneys in the fund would, upon appropriation, be used exclusively for retraining county hospital and clinic systems' health care workers and be allocated by the Office of Statewide Health Planning and Development.

(3) Existing law provides for the county administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization.

Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.

Existing law provides that when any increase in provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium, the county shall use county only funds for the state and county share of any increase in the program, unless otherwise provided in the Budget Act or appropriated by statute.

Existing law establishes a formula with regard to provider wages or benefits increases negotiated or agreed to by a public authority or nonprofit consortium, and specifies the percentages required to be paid by the state and counties, beginning with the 2000–01 fiscal year, with regard to the nonfederal share of any increases.

This bill would revise the formula for state participation in provider health benefit increases. The bill would also authorize a county employee representative to elect to provide health benefits through a trust fund, as specified.

(4) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, 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 act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

This bill would enact various health insurance market reforms, to be operative on specified dates, including requirements for guarantee issue of individual health care service plan contracts and health insurance policies and other requirements relating to individual coverage, modified disclosures, and other related changes. The bill, on and after July 1, 2010, would require at least 85% of full-service health care service plan dues, fees, and other periodic payments and health insurance premiums to be spent on health care benefits and not on administrative costs. The bill would allow a health care service plan and a health insurer to provide notices by electronic transmission using specified procedures.

The bill would require a health care service plan providing prescription drug benefits and maintaining a drug formulary to, commencing on or before January 1, 2010, make the most current formularies available electronically to prescribers and pharmacies and would require health care service plans that provide services to certain beneficiaries under a Medi-Cal managed care program to be subject solely to the filing, reporting, monitoring, and survey requirements established by the State Department of Health Care Services for the Medi-Cal managed care program for designated subjects. The bill would require the department and the State Department of Health Care Services to develop a joint filing and review process for medical quality surveys.

The bill would also require group health care service plan contracts and group health insurance policies offered, amended, or renewed on or after January 1, 2009, to offer to include a Healthy Action Incentives and Rewards Program, as specified. 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.

Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

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

This bill would, for taxable years beginning on or after January 1, 2010, and before January 1, 2015, allow to a qualified taxpayer, as defined, a refundable credit against those taxes in an amount equal to those qualified health care plan premium costs, as defined, that are in excess of 5.5% of a qualified taxpayer's adjusted gross income for the taxable year, except as provided. This bill would, upon appropriation by the Legislature, require that all amounts deposited into the California Health Trust Fund be transferred to the Managed Risk Medical Insurance Board for purposes of advancing the refundable credit and to the Franchise Tax Board for purposes of recovering amounts expended for the refunds, as provided.

(6) Existing law creates the Employment Development Department in the Labor and Workforce Development Agency and vests that department with the duties, purposes, responsibilities, and jurisdiction previously exercised by the State Department of Benefit Payments or the California Health and Human Services Agency with respect to job creation activities.

This bill would require the department to establish data collection and reporting methods and requirements, as specified, to collect and report information related to employer health expenditures on behalf of their employees. The bill would require the department to report on that data to the Managed Risk Medical Insurance Board and the Legislature on an annual basis commencing April 1, 2011, and would authorize the department to adopt regulations to implement these provisions.

(7) Under existing federal law, a cafeteria plan is a written plan through which employees choose among 2 or more benefits consisting of cash and qualified benefits. Existing federal law provides that, except as specified, no amount is included in the gross income of a participant

in a cafeteria plan solely because the participant may choose among the benefits of the plan.

This bill would, beginning January 1, 2010, require an employer to adopt and maintain a cafeteria plan to allow employees to pay premiums for health care coverage to the extent amounts for that coverage are excludable from the gross income of the employee, as specified. The bill would require an employer who fails to establish or maintain a cafeteria plan to pay a penalty of $100 or $500 per employee, as specified.

(8) Existing law authorizes the Board of Administration of the Public Employees' Retirement System to contract with carriers offering health benefit plans for coverage for eligible employees and annuitants.

This bill would require the board, on or before January 1, 2010, to provide or arrange for the provision of an electronic personal health record for enrollees receiving health care benefits.

(9) Existing law establishes the State Department of Public Health, which licenses and regulates health facilities and also administers funds for programs relating to smoking cessation. Under existing law, a noncontracting hospital is required to contact an enrollee's health care service plan to obtain the enrollee's medical record information prior to admitting the enrollee for inpatient poststabilization care, as defined, or prior to transferring the enrollee, if certain conditions apply. Existing law prohibits the hospital from billing the enrollee for poststabilization care if it is required to, and fails to, contact the enrollee's health care service plan. Under existing law, a violation of any of these provisions is punishable as a misdemeanor.

This bill would prohibit a noncontracting hospital, as defined, from billing a covered patient for emergency health care services and poststabilizing care except for applicable copayments and cost shares. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

The bill would also require the department to maintain the California Diabetes Program to provide information and assistance pertaining to the prevention and treatment of diabetes. The bill would also establish the Comprehensive Diabetes Services Program in the State Department of Health Care Services to provide diabetes prevention and management services to certain beneficiaries in the Medi-Cal program, to the extent funding is available for this purpose. The bill would also require the department, in consultation with the Department of Managed Health Care, the State Department of Health Care Services, the Managed Risk

Medical Insurance Board, and the Department of Insurance, to annually identify the 10 largest providers of health care coverage in the state, to ascertain and summarize the smoking cessation benefits provided by those coverage providers, to publish the benefit summary on the department's Internet Web site, to include the benefit summary as part of its preventive health education against tobacco use campaign, and to evaluate any changes in connection with the smoking cessation benefits provided by the coverage providers, as provided. The bill would also require the department, to the extent that funds are available and appropriated for this purpose, to increase the capacity of effective smoking cessation services available from, and expand the awareness of, services available through, the California Smokers' Helpline, as prescribed.

The bill would also create the Community Makeover Grant program that would be administered by the department and would require it to award grants to local health departments in cities and counties, which would serve as the local lead agencies in administering the program, for the purpose of developing new programs or improving existing programs that promote active living and healthy eating. The bill would require the department to issue guidelines and to specify data reporting requirements for local lead agencies to comply with various requirements relating to the administration of the program. The bill would also require the department to develop a sustained media campaign to educate the public about the importance of obesity prevention.

(10) Existing law requires the State Department of Health Care Services to select certain primary care clinics to be reimbursed for delivering medical services, including preventive health care and smoking prevention and cessation health education, to program beneficiaries, based upon specified criteria. Existing law requires that a clinic meet specified requirements in order to receive a reimbursement. Under existing law, a program beneficiary is a person whose income is at or below 200% of the federal poverty level. Existing law requires the department to utilize existing contractual claims processing services to promote efficiency and maximize the use of funds.

This bill would additionally require that, in order receive a reimbursement, a clinic serve as a designated primary care medical home for program beneficiaries, as specified. The bill would also revise the definition of program beneficiary to mean a person whose income is at or below 250% of the poverty level and who either does not have

private or employer-based health care coverage or is not enrolled in or is ineligible for public health care coverage programs. This bill would delete the provision requiring the department to utilize existing contractual claims processing services and instead authorize the department to contract with public and private entities or utilize existing health care service provider enrollment and payment mechanisms in order to perform its duties, as specified. The bill would additionally require that the department maximize the availability of federal funding for services provided pursuant to these provisions. The bill would make related changes.

(11) Existing law provides for the Office of Statewide Health Planning and Development, which has specified powers and duties. Existing law requires the office to publish specified reports.

This bill would require the office to publish risk-adjusted outcome reports for percutaneous coronary interventions, commencing January 1, 2010, and would require the office to establish a clinical data collection program to collect data on percutaneous coronary interventions and establish by regulation the data to be reported by each hospital.

(12) Existing law provides for the certification and regulation of nurses, including nurse practitioners and nurse-midwives, by the Board of Registered Nursing and for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. 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.

(13) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurse practitioners by the Board of Registered Nursing which is within the Department of Consumer Affairs.

This bill would, until July 1, 2011, create the Task Force on Nurse Practitioner Scope of Practice that would consist of specified members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules. The bill would make the task force responsible for developing a recommended scope of practice for nurse practitioners

and would require the task force to report the recommended scope of practice to the Governor and the Legislature on or before June 30, 2009. The bill would require the Director of Consumer Affairs, on or before July 1, 2010, to promulgate regulations that adopt the recommended scope of practice. The bill would require the aforementioned boards to pay the state administrative costs of implementing these provisions.

(14) Existing law, the Pharmacy Law, defines an electronic transmission prescription and sets forth the requirements for those types of prescriptions.

This bill would require electronic prescribing systems to meet specified standards and requirements and would require a prescriber or prescriber's authorized agent to offer patients a written receipt of information transmitted electronically, including the patient's name and the drug prescribed, and would require the State Department of Health Care Services to develop a pilot program to foster the adoption and use of electronic prescribing by health care providers that contract with the Medi-Cal program, as specified. The bill would require every licensed prescriber, or prescriber's authorized agent, or pharmacy operating in California, on or before January 1, 2010, to have the ability to transmit and receive prescriptions by electronic data transmission.

(15) This bill would give the State Department of Health Care Services, in consultation with the Department of Finance, authority to take various actions as necessary to implement the bill, including promoting flexibility of implementation and maximizing federal financial participation. The bill would require the Director of Health Care Services to notify the Chair of the Joint Legislative Budget Committee prior to exercising this flexibility. The bill would declare the intent of the Legislature to implement the bill to harmonize and best effectuate the purposes and intent of the bill.

(16) This bill would declare the Legislature's intent that the act's provisions be financed by contributions from various sources, including payments by acute care hospitals and employers, and by increasing the taxes on cigarettes and other tobacco products.

(17) The bill would make its provisions operative upon the date that the Director of Finance files a finding with the Secretary of State that, among other circumstances, sufficient state resources will exist in the Health Care Trust Fund to implement those provisions. The bill would also require the director to transmit that finding to the Chief Clerk of the Assembly, the Secretary of the Senate, and the chairs of the

appropriate committees of the Legislature at least 90 days prior to implementation of its provisions.

(18) The bill would require that all of its provisions become inoperative, as specified, if any portion of the bill is held to be invalid, as determined by a final judgment of a court of competent jurisdiction.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. This act shall be known and may be cited as the Health Care Security and Cost Reduction Act.

SEC. 2. It is the intent of the Legislature to accomplish the goal of universal health care for all California residents. To accomplish this goal, the Legislature proposes to take all of the following steps:

(a) Ensure that all Californians have access to affordable, comprehensive health care.

(b) Leverage available federal funds to the greatest extent possible through existing federal programs.

(c) Maintain and strengthen the health insurance system and improve availability and affordability of private health care coverage for all purchasers through (1) insurance market reforms; (2) enhanced access to effective primary and preventive services, including management of chronic illnesses; (3) promotion of cost-effective health technologies; and (4) implementation of meaningful, systemwide cost containment strategies.

(d) Engage in early and systematic evaluation at each step of the implementation process to identify the impacts on state costs, the costs of coverage, employment and insurance markets, health

delivery systems, quality of care, and overall progress in moving toward universal coverage.

SEC. 3. Section 2069 of the Business and Professions Code is amended to read:

2069. (a) (1) Notwithstanding any other provision of law, a medical assistant may administer medication only by intradermal, subcutaneous, or intramuscular injections and perform skin tests and additional technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon, nurse practitioner, nurse-midwife, physician assistant, or licensed podiatrist.

(2) The licensed physician and surgeon may, at his or her discretion, in consultation with the nurse practitioner, nurse-midwife, or physician assistant, provide written instructions to be followed by a medical assistant in the performance of tasks or supportive services. These written instructions may provide that the supervisory function for the medical assistant for these tasks or supportive services may be delegated to the nurse practitioner, nurse-midwife, or physician assistant within the standardized procedures or protocol, and that tasks may be performed when the licensed physician and surgeon is not onsite, so long as the following apply:

(A) The nurse practitioner or nurse-midwife is functioning pursuant to standardized procedures, as defined by Section 2725, or protocol. The standardized procedures or protocol shall be developed and approved by the supervising physician and surgeon, the nurse practitioner or nurse-midwife, and the facility administrator or his or her designee.

(B) The physician assistant is functioning pursuant to regulated services defined in Section 3502 and is approved to do so by the supervising physician or surgeon.

(b) As used in this section and Sections 2070 and 2071, the following definitions shall apply:

(1) "Medical assistant" means a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services in compliance with this section and Section 2070 for a licensed physician and surgeon or a licensed podiatrist, or group thereof, for a medical, nursing, or podiatry corporation, for a physician assistant, a nurse practitioner, or a nurse-midwife as provided in subdivision (a), or for a health care service plan,

who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Division of Licensing. The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the required training. A copy of the certificate shall be retained as a record by each employer of the medical assistant.

(2) "Specific authorization" means a specific written order prepared by the licensed physician and surgeon, nurse practitioner, nurse-midwife, physician assistant, or licensed podiatrist authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record, or a standing order prepared by the licensed physician and surgeon, nurse practitioner, nurse-midwife, physician assistant, or licensed podiatrist, authorizing the procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

(3) "Supervision" means the supervision of procedures authorized by this section by the following practitioners, within the scope of their respective practices, who shall be physically present in the treatment facility during the performance of those procedures:

(A) A licensed physician and surgeon.

(B) A licensed podiatrist.

(C) A physician assistant, nurse practitioner, or nurse-midwife.

(4) "Technical supportive services" means simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon, a licensed podiatrist, a physician assistant, a nurse practitioner, or a nurse-midwife.

(c) Nothing in this section shall be construed as authorizing the licensure of medical assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a medical assistant. Nothing in this section shall be construed as authorizing the division to adopt any regulations that violate the prohibitions on diagnosis or treatment in Section 2052.

(d) Notwithstanding any other provision of law, a medical assistant may not be employed for inpatient care in a licensed

general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(e) Nothing in this section shall be construed as authorizing a medical assistant to perform any clinical laboratory test or examination for which he or she is not authorized by Chapter 3 (commencing with Section 1200). Nothing in this section shall be construed as authorizing a nurse practitioner, nurse-midwife, or physician assistant to be a laboratory director of a clinical laboratory, as those terms are defined in paragraph (7) of subdivision (a) of Section 1206 and subdivision (a) of Section 1209.

SEC. 5. Section 2838 is added to the Business and Professions Code, to read:

2838. (a) The Task Force on Nurse Practitioner Scope of Practice is hereby created and shall consist of the following members:

(1) The Director of Consumer Affairs, who shall serve as an ex officio member of the task force and shall cast the deciding vote in any matter voted upon by the task force that results in a tie vote.

(2) Three members of the Medical Board of California, two of whom shall be appointed to the task force by the Governor, and one of whom shall be appointed to the task force by the Speaker of the Assembly.

(3) Three members of the Board of Registered Nursing, two of whom shall be appointed to the task force by the Governor, and one of whom shall be appointed to the task force by the Senate Committee on Rules.

(4) Two representatives of an institution of higher education, who shall be appointed to the task force by the Governor as nonvoting members.

(b) The duty of the task force shall be to develop a recommended scope of practice for nurse practitioners.

(c) The task force shall report its recommended scope of practice for nurse practitioners to the Governor and the Legislature on or before June 30, 2009.

(d) On or before July 1, 2010, the Director of Consumer Affairs shall promulgate regulations *consistent with existing law* that adopt the task force's recommended scope of practice.

(e) The Medical Board of California and the Board of Registered Nursing shall pay the state administrative costs of implementing this section.

(f) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 4040.1 is added to the Business and Professions Code, to read:

4040.1. (a) Electronic prescribing shall not interfere with a patient's existing freedom to choose a pharmacy, and shall not interfere with the prescribing decision at the point of care.

(b) Notwithstanding subdivision (c) of Section 4040, "electronic prescribing" or "e-prescribing" means a prescription or prescription-related information transmitted between the point of care and the pharmacy using electronic media.

SEC. 8. Section 4071.2 is added to the Business and Professions Code, to read:

4071.2. (a) On or before January 1, 2012, every licensed prescriber, prescriber's authorized agent, or pharmacy operating in California shall have the ability to transmit and receive prescriptions by electronic data transmission.

(b) The Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this section with respect to their respective licensees.

(c) Nothing in this section shall be construed to diminish or modify any requirements or protections provided for in the prescription of controlled substances as otherwise established by this chapter or by the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).

SEC. 9. Section 4071.3 is added to the Business and Professions Code, to read:

4071.3. Every electronic prescription system shall meet all of the following requirements:

(a) Comply with nationally recognized or certified standards for data exchange or be accredited by a recognized accreditation organization.

(b) Allow real-time verification of an individual's eligibility for benefits and whether the prescribed medication is a covered benefit.

(c) Comply with applicable state and federal confidentiality and data security requirements.

(d) Comply with applicable state record retention and reporting requirements.

SEC. 10. Section 4071.4 is added to the Business and Professions Code, to read:

4071.4. A prescriber or prescriber's authorized agent using an electronic prescription system shall offer patients a written receipt of the information that has been transmitted electronically to the pharmacy. The receipt shall include the patient's name, the dosage and drug prescribed, the name of the pharmacy where the electronic prescription was sent, and shall indicate that the receipt cannot be used as a duplicate order for the same medicine.

SEC. 11. Section 49452.9 is added to the Education Code, to read:

49452.9. (a) On and after January 1, 2010, the school district may provide an information sheet regarding health insurance requirements to the parent or guardian of all of the following:

(1) A pupil enrolled in kindergarten.

(2) A pupil enrolled in first grade if the pupil was not previously enrolled in kindergarten.

(3) A pupil enrolled during the course of the year in the case of children who have recently arrived, and intend to remain, in California.

(b) The information sheet described in subdivision (a) shall include all of the following:

(1) An explanation of the health insurance requirements under Section 8899.50 of the Government Code.

(2) Information on the important relationship between health and learning.

(3) A toll-free telephone number to request an application for Healthy Families, Medi-Cal, or other government-subsidized health insurance programs.

(4) Contact information for county public health departments.

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SJR 19
Author: Ridley-Thomas
Bill Date: January 7, 2008, introduced
Subject: Health professionals: torture
Sponsor: American Friends Services Committee

STATUS OF BILL:

This bill is currently in the Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This resolution states that the United States Department of Defense (DOD) authorizes participation of military health personnel in the interrogation of detainees in Guantanamo Bay and other foreign military prisons operated by the United States in violation of profession ethics. This resolution requests the DOD and the Central Intelligence Agency to remove all the California-licensed health professionals from participating in prisoner and detainee interrogations.

ANALYSIS:

This resolution comes as a result of reports that many physicians, including some licensed in California, are part of the U.S. system of torture. The State of California has an obligation to notify its licensees of laws concerning torture that may result in their prosecution. The American Friends Service Committee (AFSC) reports that there are California licensed physicians, psychologists and other medical professionals involved in activities that constitute torture under U.S. and internationally-recognized laws. The AFSC states that California should be the first state in the nation to withdraw its consent to torture, should require that the state medical and health boards notify all licensees regarding their professional obligations under current state, federal, and international laws and to inform licensees that they may be subject to prosecution if they do in fact violate their legal obligations, and should call upon the U.S. Department of Defense and the CIA to remove all California-licensed health professionals from participating in any way in prisoner of detainee interrogations.

FISCAL: Minor and absorbable.

POSITION: Recommendation: Watch

January 22, 2008

Senate Joint Resolution No. 19

Introduced by Senator Ridley-Thomas

January 7, 2008

Senate Joint Resolution No. 19—Relative to health professionals.

LEGISLATIVE COUNSEL'S DIGEST

SJR 19, as introduced, Ridley-Thomas. Health professionals: torture.

This measure would request all relevant California agencies to notify California-licensed health professionals about their professional obligations under international law relating to torture and the treatment of detainees, as specified, and to also notify those professionals that those who participate in torture, among other forms of treatment, may be subject to prosecution. In addition, the measure would request the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals from participating in prisoner and detainee interrogations.

Fiscal committee: yes.

WHEREAS, The citizens of the United States and the residents of the State of California acknowledge January 15th as the birthday of Dr. Martin Luther King, Jr., and mark the third Monday in January as a federal and state holiday to commemorate his lifework as a civil rights leader, an activist, and an internationally acclaimed proponent of human rights who warned, "He who passively accepts evil is as much involved in it as he who helps to perpetrate it"; and

WHEREAS, Dr. King challenged Americans to remain true to their most basic values, stating, "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy"; and

WHEREAS, In 2002, for the first time in American history, the Bush administration initiated a radical new policy allowing the torture of prisoners of war and other captives with confirmed reports from the International Red Cross, The New England Journal of Medicine, The Lancet (a British medical journal), military records, and first-person accounts stating that California-licensed physicians, psychologists, and nurses have participated in torture or its cover up against detainees in United States custody; and

WHEREAS, In honor of the birthday of Dr. Martin Luther King, Jr., a broad coalition of medical, human rights, and legal organizations are petitioning the State of California to warn its medical licensees of the legal prohibitions against torture and the risks of prosecution, and are demanding that the United States government remove California doctors and psychologists from interrogation and torture of detainees; and

WHEREAS, Representatives of Californians to Stop Medical Torture are carrying petition signatures to the California State Senate, asking that the Senate warn California-licensed physicians, psychologists, nurses, and other health care workers of possible future prosecution for participation in torture — cruel and degrading practices that have become a national shame; and

WHEREAS, Health professionals licensed in California, including, but not limited to, physicians, osteopaths, naturopaths, psychologists, psychiatric workers, and nurses, have and continue to serve nobly and honorably in the armed services of the United States; and

WHEREAS, United States Army regulations and the War Crimes Act and, relative to the treatment of prisoners of war, Common Article III of the Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) require that all military personnel report and not engage in acts of abuse or torture; and

WHEREAS, CAT defines the term "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of

or with the consent or acquiescence of a public official or other person acting in an official capacity"; and

WHEREAS, In 2002, the United States Department of Justice reinterpreted national and international law related to the treatment of prisoners of war in a manner that purported to justify long-prohibited interrogation methods and treatment of detainees; and

WHEREAS, Physicians and other medical personnel and psychologists serving in noncombat roles are bound by international law and professional ethics to care for enemy prisoners and to report any evidence of coercion or abuse of detainees; and

WHEREAS, The World Medical Association (WMA) issued guidelines stating that physicians shall not use nor allow to be used their medical knowledge or skills, or health information specific to individuals, to facilitate or otherwise aid any interrogation, legal or illegal; and

WHEREAS, The guidelines issued by the WMA also state that physicians shall not participate in or facilitate torture or other forms of cruel, inhuman, or degrading procedures of prisoners or detainees in any situations; and

WHEREAS, The American Medical Association's (AMA) ethical policy prohibits physicians from conducting or directly participating in an interrogation and from monitoring interrogations with the intention of intervening; and

WHEREAS, AMA policy also states that "[t]orture refers to the deliberate, systematic or wanton administration of cruel, inhumane and degrading treatments or punishments during imprisonment or detainment. Physicians must oppose and must not participate in torture for any reason .... Physicians should help provide support for victims of torture and, whenever possible, strive to change the situation in which torture is practiced or the potential for torture is great"; and

WHEREAS, Section 2340 of Title 18 of the United States Code defines the term "torture" as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control. That section further defines the term "severe mental pain or suffering" as the prolonged mental harm

caused by or resulting from: (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

WHEREAS, In May 2006, the American Psychiatric Association stated that psychiatrists should not "participate directly in the interrogation of persons held in custody by military or civilian investigative or law enforcement authorities, whether in the United States or elsewhere," and that "psychiatrists should not participate in, or otherwise assist or facilitate, the commission of torture of any person. Psychiatrists who become aware that torture has occurred, is occurring, or has been planned must report it promptly to a person or persons in a position to take corrective action"; and

WHEREAS, In August 2006, the American Psychological Association stated that "psychologists shall not knowingly participate in any procedure in which torture or other forms of cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment is used or threatened" and that "should torture or other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment evolve during a procedure where a psychologist is present, the psychologist shall attempt to intervene to stop such behavior, and failing that exit the procedure"; and

WHEREAS, In June 2005, the House of Delegates of the American Nurses Association issued a resolution stating all of the following: "prisoners and detainees have the right to health care and humane treatment"; "registered nurses shall not voluntarily participate in any deliberate infliction of physical or mental suffering"; "registered nurses who have knowledge of ill-treatment of any individuals including detainees and prisoners must take appropriate action to safeguard the rights of that individual"; "the American Nurses Association shall condemn interrogation procedures that are harmful to mental and physical health"; "the American Nurses Association shall advocate for nondiscriminatory

access to health care for wounded military and paramilitary personnel and prisoners of war"; and "the American Nurses Association shall counsel and support nurses who speak out about acts of torture and abuse"; and

WHEREAS, In March 2005, the California Medical Association stated that it "condemns any participation in, cooperation with, or failure to report by physicians and other health professionals the mental or physical abuse, sexual degradation, or torture of prisoners or detainees"; and

WHEREAS, In November 2004, the American Public Health Association stated that it "condemns any participation in, cooperation with, or failure to report by health professionals the mental or physical abuse, sexual degradation, or torture of prisoners or detainees," that it "urges health professionals to report abuse or torture of prisoners and detainees," and that it "supports the rights of health workers to be protected from retribution for refusing to participate or cooperate in abuse or torture in military settings"; and

WHEREAS, The United States military medical system in Guantanamo Bay, Afghanistan, Iraq, and other foreign military prisons operated by the United States failed to protect detainees' rights to medical treatment, failed to prevent disclosure of confidential medical information to interrogators and others, failed to promptly report injuries or deaths caused by beatings, failed to report acts of psychological and sexual degradation, and sometimes collaborated with abusive interrogators and guards; and

WHEREAS, Current United States Department of Defense guidelines authorize the participation of certain military health personnel, especially psychologists, in the interrogation of detainees as members of "Behavioral Science Consulting Teams" in violation of professional ethics. These guidelines also permit the use of confidential clinical information from medical records to aid in interrogations; and

WHEREAS, Evidence in the public record indicates that military psychologists participated in the design and implementation of psychologically abusive interrogation methods used at Guantanamo Bay, in Iraq, and elsewhere, including sleep deprivation, long-term isolation, sexual and cultural humiliation, forced nudity, induced hypothermia and other temperature extremes, stress positions,

sensory bombardment, manipulation of phobias, force-feeding hunger strikers, and more; and

WHEREAS, Published reports indicate that the so-called "enhanced interrogation methods" of the Central Intelligence Agency reportedly include similar abusive methods and that agency psychologists may have assisted in their development; and

WHEREAS, Medical and psychological studies and clinical experience show that these abuses can cause severe or serious mental pain and suffering in their victims, and therefore may violate the "torture" and "cruel and inhuman treatment" provisions of CAT and the United States War Crimes Act, as amended by the Military Commissions Act of 2006; and

WHEREAS, The United States Department of Defense has failed to oversee the ethical conduct of California-licensed health professionals related to torture; and

WHEREAS, Nobel Peace Prize Laureate Dr. Martin Luther King, Jr., said, "Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country and a finer world to live in"; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature hereby requests all relevant California agencies, including, but not limited to, the Board of Behavioral Sciences, the Dental Board of California, the Medical Board of California, the Osteopathic Medical Board of California, the Bureau of Naturopathic Medicine, the California State Board of Pharmacy, the Physician Assistant Committee of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Vocational Nursing and Psychiatric Technicians, the Board of Psychology, and the Board of Registered Nursing, to notify California-licensed health professionals via newsletter, email, and Web site about their professional obligations under international law, specifically Common Article III of the Geneva Conventions, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the amended War Crimes Act, which prohibit the torture of, and the cruel, inhuman, and degrading treatment or punishment of, detainees in United States custody; and be it further

Resolved, That the Legislature hereby requests all relevant California agencies to notify health professionals licensed in California that those who participate in torture and other forms of

cruel, inhuman, or degrading treatment or punishment may one day be subject to prosecution; and be it further

Resolved, That the Legislature hereby requests the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals, including, but not limited to, physicians and psychologists, from participating in any way in prisoner and detainee interrogations, in view of their respective ethical obligations, the record of abusive interrogation practices, and the Legislature's interest in protecting California health professionals from the risk of criminal liability; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the United States Department of Defense, the Central Intelligence Agency, and all relevant California agencies, including, but not limited to, the Board of Behavioral Sciences, the Dental Board of California, the Medical Board of California, the Osteopathic Medical Board of California, the Bureau of Naturopathic Medicine, the California State Board of Pharmacy, the Physician Assistant Committee of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Vocational Nursing and Psychiatric Technicians, the Board of Psychology, and the Board of Registered Nursing.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 797
Author: Ridley-Thomas
Bill Date: September 7, 2007, amended
Subject: Professions and Vocations
Sponsor: Author
Board Position: Support

STATUS OF BILL:

This bill is currently the Assembly Floor.

DESCRIPTION OF LEGISLATION:

This bill would extend the provisions of the Health Quality Enforcement Section within the Department of Justice which is responsible for investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, and would make other related changes.

The bill would specify that an investigator is not under the supervision of the deputy attorney general who is simultaneously assigned to a complaint. The bill would require the medical board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices. The bill would require the Medical Board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

FISCAL: Within existing resources.

POSITION: Support MBC provisions.

January 22, 2008

AMENDED IN ASSEMBLY SEPTEMBER 7, 2007

SENATE BILL No. 797

Introduced by Senator Ridley-Thomas

February 23, 2007

An act to amend Sections ~~7026.1 and 7028~~ *490, 2006, 2531, 2531.75, 2841, 2847, 3041.3, 4501, 4503, 4982, 4989.54, 4990.32, 4992.3, 5552.5, 7026.1, 7028, 7303, 8005, 22258, and 22259* of the Business and Professions Code, *and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code,* relating to ~~contractors~~ *professions and vocations*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Ridley-Thomas. ~~Contractors.~~ *Professions and vocations.*

~~Existing~~

(1) 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 certain bases, including the licensee's conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

This bill would specify that this authorization to suspend or revoke a license is in addition to any other action that a board is permitted to take against the licensee.

(2) Existing law, the Speech-Language Pathologists and Audiologists Licensure Act, establishes the Speech-Language Pathology and Audiology Board and provides for its issuance of a speech-language pathology license and an audiology license to qualified applicants and for its regulation of those licensees. Under existing law, the provisions

establishing the board and authorizing its appointment of an executive officer will become inoperative on July 1, 2008, and will be repealed on January 1, 2009.

This bill would extend those dates, making the provisions inoperative on July 1, 2009, and repealing them on January 1, 2010.

(3) Existing law, the Vocational Nursing Practice Act, establishes the Board of Vocational Nursing and Psychiatric Technicians and provides for its issuance of a vocational nurse license and a psychiatric technician's license to qualified applicants and for its regulation of those licensees. Under existing law, the provisions establishing the board and authorizing its selection of an executive officer will become inoperative on July 1, 2008, and will be repealed on January 1, 2009.

This bill would extend those dates, making the provisions inoperative on July 1, 2009, and repealing them on January 1, 2010.

(4) Existing law, the Architects Practice Act, establishes the California Architects Board and provides for its licensure and regulation of architects. Under existing law, the board is authorized to implement an intern development program until July 1, 2009.

This bill would extend the authority of the board to implement this program to July 1, 2011.

(5) Existing law provides for the certification of optometrists to diagnose and treat certain conditions of the human eye or its appendages, and to use therapeutic pharmaceutical agents. It requires the board to decide all issues relating to the equivalency of an optometrists' education or training for certification, as specified.

This bill would delete an obsolete reference to the Therapeutic Pharmaceutical Agent Advisory Committee.

(6) Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law defines "contractor" and includes certain persons who perform tree removal, tree pruning, stump removal, and tree or limb cabling or guying, except as specified, within that definition. Existing law requires contractors to pay specified fees, which are deposited into the continuously appropriated Contractors' License Fund, and requires the deposit of fines collected under the Contractors' State License Law into the fund. Existing law, makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license, and subjects a person who violates this prohibition to specified fines and imprisonment.

This bill would also define "contractor" to include a person who offers to perform, purport to have the capacity to perform, or submits a bid to perform tree removal, tree pruning, stump removal, or tree or limb cabling or guying, except as specified. The bill would revise the penalties provisions accordingly and would apply specified penalty provisions to a person named on a revoked license and held responsible for the act or omission resulting ~~the~~ in the revocation. Because the bill would increase moneys deposited into the continuously appropriated Contractors' License Fund, the bill would make an appropriation. Because the bill would expand the definition of a contractor and thereby create new crimes, it would impose a state-mandated local program.

~~The~~

(7) Existing law, the Barbering and Cosmetology Act, establishes the State Board of Barbering and Cosmetology and provides for its issuance of a cosmetology license, a barbering license, an esthetician license, a manicurist license, and an electrologist license and for its regulation of those licensees. Under existing law, the provisions establishing the board will become inoperative on July 1, 2008, and will be repealed on January 1, 2009.

This bill would extend those dates, making the provisions inoperative on July 1, 2009, and repealing them on January 1, 2010.

(8) Existing law provides for the licensure or registration, and regulation of marriage and family therapists, licensed educational psychologists, and clinical social workers by the Board of Behavioral Sciences. Under existing law, the board may refuse to issue a registration or license, or may suspend or revoke a license or registration, if the applicant, registrant, or licensee has been guilty of unprofessional conduct, as specified. Under existing law, the board may refuse to issue a registration or license, or may suspend or revoke a license or registration, if the applicant, registrant, or licensee has been guilty of unprofessional conduct, as specified. Existing law authorizes the board to file a specified accusation against these licensees or registrants within certain limitations periods for, among other things, an alleged act or omission involving a minor that is the basis for disciplinary action.

This bill would specify that unprofessional conduct includes engaging in specified acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. The bill would also specify that, if after the limitations periods have expired, the board discovers a specified alleged act with a minor,

and there is independent evidence corroborating the allegation, an accusation shall be filed within 3 years from the date the board discovers that alleged act.

(9) Existing law imposes specified requirements and prohibitions on tax preparers, as defined, and exempts specified persons from these requirements and prohibitions. A violation of those provisions is a misdemeanor. Under existing law, those provisions will become inoperative on July 1, 2008, and will be repealed on January 1, 2009.

This bill would extend the inoperative and repeal dates, making the provisions inoperative on July 1, 2009, and repealing them on January 1, 2010. The bill would also expand the category of persons exempted from these provisions and revise the requirements for exemption, including imposing a requirement that specified tax returns are signed by a licensed accountant, attorney, or by a person who is enrolled to practice before the Internal Revenue Service. The bill would also specify that preparation of a tax return includes the inputting of tax data into a computer. Because this bill would impose additional qualifications on the exemption from tax preparer provisions, the violation of which would be a crime, it would impose a state-mandated local program.

(10) Existing law authorizes the Court Reporters Board to, among other things, appoint an executive officer and employ other employees as may be necessary. These provisions will become inoperative on July 1, 2008, and be repealed on January 1, 2009.

This bill would extend those dates, making the provisions inoperative on July 1, 2009, and repealing them on January 1, 2010.

(11) Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. Existing law requires that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. Existing law also simultaneously assigns a complaint received by the medical board to an investigator and a deputy attorney general in the Health Quality Enforcement Section, and provides that, for the duration of the assignment, the investigator is under the direction of the deputy attorney general. Existing law makes these provisions inoperative on July 1, 2008, and repeals them on January 1, 2009, unless a later enacted statute deletes or extends those dates. Existing law also requires the medical board, in consultation with specified agencies, to report and

make recommendations to the Governor and the Legislature on this prosecution model by July 1, 2007.

This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, and would make other related changes. The bill would specify that an investigator is not under the supervision of the deputy attorney general simultaneously assigned to a complaint. The bill would require the medical board to increase its computer capabilities and compatibilities with the Health Quality Enforcement Section and to establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in the same offices. The bill would also require the medical board, in consultation with specified agencies, to report and make recommendations to the Governor and the Legislature on this enforcement and prosecution model by July 1, 2009.

(12) This bill would incorporate additional changes in Section 490 of the Business and Professions Code, proposed by AB 1025, to be operative only if AB 1025 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

(13) This bill would incorporate additional changes in Sections 12529 and 12529.5 of the Government Code, proposed by SB 1048, to be operative only if SB 1048 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

(14) 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: yes. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 490 of the Business and Professions Code is amended to read:

490. ~~A~~ *(a) In addition to any other action that a board is permitted to take against a licensee, a* board may suspend or revoke a license on the ground that the licensee has been convicted 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.~~A~~

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action ~~which~~ *that* a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007–08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

SEC. 1.5 Section 490 of the Business and Professions Code is amended to read:

490. ~~A~~*(a) In addition to any other action that a board is permitted to take against a licensee, a* board may suspend or revoke a license on the ground that the licensee has been convicted 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. ~~A~~

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications,

functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action ~~which~~ *that* a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence~~, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code~~.

(d) No license shall be suspended or revoked based solely on any criminal conviction that has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code, since that dismissal creates a presumption of rehabilitation for purposes of this section, unless the board provides substantial evidence to the contrary in writing to the person justifying the board's suspension or revocation of the license based solely on his or her dismissed conviction that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was made.

(e) The department shall annually prepare a report, to be submitted to the Legislature on October 1, that documents board suspensions or revocations of licenses based solely on dismissed criminal convictions as specified in subdivision (d).

(f) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007–08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

SEC. 2. Section 2006 of the Business and Professions Code is amended to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions,

shall be deemed to refer to an investigation ~~conducted~~ *directed* by employees of the Department of Justice.

(b) This section shall become inoperative on July 1, ~~2008~~ *2010*, and as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 2531 of the Business and Professions Code is amended to read:

2531. There is in the Department of Consumer Affairs a Speech-Language Pathology and Audiology Board in which the enforcement and administration of this chapter is vested. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members.

This section shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, that becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends the inoperative and repeal dates. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4. Section 2531.75 of the Business and Professions Code is amended to read:

2531.75. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2010*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 2841 of the Business and Professions Code is amended to read:

2841. There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, consisting of 11 members.

Within the meaning of this chapter, board, or the board, refers to the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This section shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 2847 of the Business and Professions Code is amended to read:

2847. (a) The board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The person selected to be the executive officer of the board shall be a duly licensed vocational nurse under this chapter, a duly licensed professional nurse as defined in Section 2725, or a duly licensed psychiatric technician. The executive officer shall not be a member of the board.

(c) With the approval of the Director of Finance, the board shall fix the salary of the executive officer.

(d) The executive officer shall be entitled to traveling and other necessary expenses in the performance of his or her duties. He or she shall make a statement, certified before some duly authorized person, that the expenses have been actually incurred.

(e) This section shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 3041.3 of the Business and Professions Code is amended to read:

3041.3. (a) In order to be certified to use therapeutic pharmaceutical agents and authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Section 3041, an optometrist shall apply for a certificate from the board and meet all requirements imposed by the board.

(b) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry prior to January 1, 1996, is licensed as an optometrist in California, and meets all of the following requirements:

(1) Satisfactorily completes a didactic course of no less than 80 classroom hours in the diagnosis, pharmacological, and other treatment and management of ocular disease provided by either an accredited school of optometry in California or a recognized residency review committee in ophthalmology in California.

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

(3) Successfully completes a minimum of 20 hours of self-directed education.

(4) Passes the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" examination or, in the event this examination is no longer offered, its equivalent, as determined by the State Board of Optometry.

(5) Passes the examination issued upon completion of the 80-hour didactic course required under paragraph (1) and provided by the accredited school of optometry or residency program in ophthalmology.

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to

use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

(7) Any optometrist who graduated from an accredited school of optometry on or after January 1, 1992, and before January 1, 1996, shall not be required to fulfill the requirements contained in paragraphs (1), (4), and (5).

(c) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who graduated from a California accredited school of optometry on or after January 1, 1996, who is licensed as an optometrist in California, and who meets all of the following requirements:

(1) Passes the National Board of Examiners in Optometry's national board examination, or its equivalent, as determined by the State Board of Optometry.

(2) Of the total clinical training required by a school of optometry's curriculum, successfully completed at least 65 of those hours on the diagnosis, treatment, and management of ocular, systemic disease.

(3) Is certified by an accredited school of optometry as competent in the diagnosis, treatment, and management of ocular, systemic disease to the extent authorized by this section.

(4) Is certified by an accredited school of optometry as having completed at least 10 hours of experience with a board-certified ophthalmologist.

(d) The board shall grant a certificate to use therapeutic pharmaceutical agents to any applicant who is an optometrist who obtained his or her license outside of California if he or she meets all of the requirements for an optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

(1) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and graduated from an accredited school of optometry prior to January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (b). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received at the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry in

California for persons who graduate before January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (b) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(2) In order to obtain a certificate to use therapeutic pharmaceutical agents, any optometrist who obtained his or her license outside of California and who graduated from an accredited school of optometry on or after January 1, 1996, shall be required to fulfill the requirements set forth in subdivision (c). In order for the applicant to be eligible for the certificate to use therapeutic pharmaceutical agents, the education he or she received by the accredited out-of-state school of optometry shall be equivalent to the education provided by any accredited school of optometry for persons who graduate on or after January 1, 1996. For those out-of-state applicants who request that any of the requirements contained in subdivision (c) be waived based on fulfillment of the requirement in another state, if the board determines that the completed requirement was equivalent to that required in California, the requirement shall be waived.

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision~~, and the committee established pursuant to Section 3041.1 shall recommend protocols for the board to use in this regard, as described in Section 3041.1~~.

SEC. 8. Section 4501 of the Business and Professions Code is amended to read:

4501. (a) "Board," as used in this chapter, means the Board of Vocational Nursing and Psychiatric Technicians.

(b) This section shall become inoperative on July 1,~~2008~~ *2009*, and, as of January 1,~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1,~~2009~~ *2010*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 4503 of the Business and Professions Code is amended to read:

4503. (a) The board shall administer and enforce this chapter.

(b) This section shall become inoperative on July 1,~~2008~~ *2009*, and, as of January 1,~~2009~~ *2010*, is repealed, unless a later enacted

statute, which becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or

license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered intern or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to

perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board.

SEC. 11. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

(d) Conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in subdivision (c) or any combination thereof.

(e) Advertising in a manner that is false, misleading, or deceptive.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist.

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(*l*) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting

misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to

utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board.

SEC. 12. Section 4990.32 of the Business and Professions Code is amended to read:

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

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

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

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

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled

until the minor reaches the age of majority. *However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.*

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

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

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

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

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

SEC. 13. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may refuse to issue a registration or a license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere

made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Gross negligence or incompetence in the performance of clinical social work.

(e) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(h) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner which is false, misleading, or deceptive.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of any registered associate clinical social worker or intern by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(t) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board.

SEC. 14. Section 5552.5 of the Business and Professions Code is amended to read:

5552.5. The board may, by regulation, implement an intern development program until July 1, ~~2009~~ *2011*.

~~SECTION 1.~~

SEC. 15. Section 7026.1 of the Business and Professions Code is amended to read:

7026.1. The term "contractor" includes all of the following:

(a) Any person not exempt under Section 7053 who maintains or services air-conditioning, heating, or refrigeration equipment that is a fixed part of the structure to which it is attached.

(b) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation,

or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid, to construct any building or home improvement project, or part thereof.

(c) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter. The provisions of this subdivision shall not apply if there is a properly licensed contractor who exercises supervision in accordance with Section 7068.1 and who is directly responsible for the final results of the work. Nothing in this subdivision shall require a qualifying individual, as provided in Section 7068, to be present during the supervision of work covered by this chapter. A contractor requesting the services of a temporary labor service agency shall provide his or her license number to that temporary labor service agency.

(d) Any person not otherwise exempt by this chapter, who performs, offers to perform, purports to have the capacity to perform, or submits a bid to perform tree removal, tree pruning, stump removal, or tree or limb cabling or guying. The term contractor does not include a person performing the activities of a nurseryperson who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(e) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, reperforating, or abandoning any water well, cathodic protection well, or monitoring well.

~~SEC. 2.~~

SEC. 16. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.

(b) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (c) are applicable, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed, or offered to perform, contracting work, or four thousand five

hundred dollars ($4,500), whichever is greater, and, unless the sentence prescribed in subdivision (c) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(c) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than four thousand five hundred dollars ($4,500) nor more than the greater amount of either ten thousand dollars ($10,000) or 20 percent of the contract price under which the unlicensed person performed, or offered to perform, contracting work or by imprisonment in a county jail for not more than one year or less than 90 days, or by both that fine and imprisonment. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(d) A person who violates this section is subject to the penalties prescribed in subdivision (c) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(e) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(f) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

SEC. 17. Section 7303 of the Business and Professions Code is amended to read:

7303. (a) Notwithstanding Article 8 (commencing with Section 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, there is in the Department of Consumer Affairs the State Board of Barbering and Cosmetology in which the administration of this chapter is vested.

(b) The board shall consist of nine members. Five members shall be public members, and four members shall represent the professions. The Governor shall appoint three of the public members and the four professions members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms.

(c) The board shall appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director. ~~In the event that~~ *If* a newly authorized board replaces an existing or previous bureau, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

(d) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.

(e) This section shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2009~~

2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 22258 of the Business and Professions Code is amended to read:

22258. *(a)* The following persons are exempt from the requirements of this title, *subject to the requirements of subdivision (b)*:

~~(a)~~

(1) A person with a current and valid license issued by the California Board of Accountancy ~~and his or her employees while functioning within the scope of their employment~~.

~~(b)~~

(2) A person who is an active member of the State Bar of California ~~and his or her employees while functioning within the scope of their employment~~.

~~(c) An employee of any~~

(3) Any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code ~~while functioning within the scope of his or her employment~~.

~~(d)~~

(4) A financial institution regulated by the state or federal government, ~~and employees thereof,~~ insofar as the activities ~~of the employees are related to their employment and the activities~~ of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.

~~(e)~~

(5) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations, ~~and his or her employees while functioning within the scope of his or her employment~~.

(6) Any employee of any person described in paragraph (1), (2), (3), (4), or (5).

(7) Any employee of any corporation, partnership, association, or any entity described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 2225.

(b) (1) Paragraph (6) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by an employer described in paragraph (1), (2), or (5) of subdivision (a).

(2) Paragraph (7) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by an employer described in paragraph (7) of subdivision (a).

(3) No person described in this subdivision as an employee may sign a tax return, unless that employee is otherwise exempt under this section, is registered as a tax preparer with the Council, or is an employee of either a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a).

(4) In the case of any employee of a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a), the exemption provided under this subdivision shall only apply to activities conducted by that employee that are within the scope of his or her employment.

(c) For purposes of this section, preparation of a tax return includes the inputting of tax data into a computer.

SEC. 20. Section 22259 of the Business and Professions Code is amended to read:

22259. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall become inoperative on July 1, ~~2008~~ *2009*, and, as of January 1, ~~2009~~ *2010*, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2009~~ *2010*, deletes or extends that date on which it becomes inoperative and is repealed.

SEC. 21. Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed

to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 21.5 Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California ~~including all committees~~, *the California Board of Podiatric Medicine, the Board of Psychology, or any committee* under the jurisdiction of the ~~board~~ *Medical Board of California* or a division of the board~~, including the Board of Podiatric Medicine, and the Board of Psychology~~.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the

management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, *the Board of Psychology,* and the committees under the jurisdiction of the Medical Board of California or a division of the board~~, and the Board of Psychology~~, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, ~~2008~~ *2010*.

SEC. 22.5 Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California ~~including all committees~~, *the California Board of Podiatric Medicine, the Board of Psychology, or any committee* under the jurisdiction of the ~~board~~ *Medical Board of California* or a division of the board~~, including the Board of Podiatric Medicine, and the Board of Psychology~~, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the

most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, *the Board of Psychology,* and the committees under the jurisdiction of the Medical Board of California or a division of the board~~, and the Board of Psychology~~, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, ~~2008~~ *2010*.

SEC. 23. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*,

deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23.5. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, *the California Board of Podiatric Medicine,* or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or ~~allied health committees, including the Board of Podiatric Medicine,~~ *committees* in designing and providing initial and in-service training programs for staff of the division, boards, or ~~allied health~~ committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, ~~the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology~~ *boards, or committees*, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that becomes operative on or before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24. Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of

California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, ~~2008~~ *2010.*

SEC. 24.5 Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of

California, *the California Board of Podiatric Medicine,* or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or ~~allied health committees, including the Board of Podiatric Medicine,~~ *committees* in designing and providing initial and in-service training programs for staff of the division, boards, or ~~allied health~~ committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, ~~the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology~~ *boards, or committees*, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, ~~2008~~ *2010*.

SEC. 26. Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety

of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical *enforcement and* prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction *but not the supervision* of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

(e) It is the intent of the Legislature to enhance the vertical enforcement and prosecution model as set forth in subdivision (a). The Medical Board of California shall do both of the following:

(1) Increase its computer capabilities and compatibilities with the Health Quality Enforcement Section in order to share case information.

(2) Establish and implement a plan to locate its enforcement staff and the staff of the Health Quality Enforcement Section in

the same offices, as appropriate, in order to carry out the intent of the vertical enforcement and prosecution model.

~~(c)~~

(f) This section shall become inoperative on July 1, ~~2008~~ *2010*, and, as of January 1, ~~2009~~ *2011*, is repealed, unless a later enacted statute, that is enacted before January 1, ~~2009~~ *2011*, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 12529.7 of the Government Code is amended to read:

12529.7. By July 1, ~~2007~~ *2009*, the Medical Board of California, in consultation with the Department of Justice, the Department of Consumer Affairs, the Department of Finance, and the Department of Personnel Administration, shall report and make recommendations to the Governor and the Legislature on the vertical *enforcement and* prosecution model created under Section 12529.6.

SEC. 28. Section 1.5 of this bill incorporates amendments to Section 490 of the Business and Professions Code proposed by both this bill and AB 1025. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 490 of the Business and Professions Code, and (3) this bill is enacted after AB 1025, in which case Section 1 of this bill shall not become operative.

SEC. 29. Sections 21.5 and 22.5 of this bill incorporate amendments to Section 12529 of the Government Code proposed by both this bill and SB 1048. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12529 of the Government Code, and (3) this bill is enacted after SB 1048, in which case Sections 21 and 22 of this bill shall not become operative.

SEC. 30. Sections 23.5 and 24.5 of this bill incorporate amendments to Section 12529.5 of the Government Code proposed by both this bill and SB 1048. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 12529.5 of the Government Code, and (3) this bill is enacted after SB 1048, in which case Sections 23 and 24 of this bill shall not become operative.

~~SEC. 3.~~

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 761
Author: Ridley-Thomas
Bill Date: July 18, 2007, amended
Subject: Healing arts: diversion and investigations
Sponsor: Medical Board of California
Board Position: Sponsor/Support

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 extend the dates on which the provisions for the diversion program are repealed from January 1, 2009 to January 1, 2011. It would have required the board to create and appoint a Diversion Advisory Council (DAC). It would have extended the sunset date of the Vertical Enforcement/Prosecution (E/P) model, extending the dates on which the provisions for the vertical (E/P) model are repealed from January 1, 2009 to January 1, 2011. It would authorize the board to employ special agents and to transition investigators who are peace officers to a special agents classification. It would delete the requirement that an investigator be under the direction of the deputy attorney general who is simultaneously assigned a complaint, and instead, required that investigator assist the deputy attorney general, who would be responsible for the legal direction of the case.

This bill was set to be amended to delete all the provisions related to Diversion once it passed out of the Assembly Appropriations Committee. This bill was held in the committee due to concerns related to the legislative reclassification of investigators.

The provisions of this bill regarding Vertical Enforcement/Prosecution were incorporated into SB 797 (see analysis) which was held on the Assembly Floor.

FISCAL: None

POSITION: Sponsor/Support

January 22, 2008

AMENDED IN ASSEMBLY JULY 18, 2007

AMENDED IN SENATE MARCH 27, 2007

SENATE BILL No. 761

Introduced by Senator Ridley-Thomas

February 23, 2007

An act to amend Sections 2006, *2020,* and 2358 of, and to add Section 2347 to, the Business and Professions Code, and to amend Sections 12529, 12529.5, and 12529.6 of the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 761, as amended, Ridley-Thomas. Healing arts: diversion: investigations.

Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Existing law, until July 1, 2010, authorizes the board to employ an executive director and to employ investigators, legal counsel, medical consultants, and other assistance as it deems necessary.

This bill would also authorize the board to employ special agents, and would require the board, commencing on July 1, 2008, to transition investigators who are peace officers and who handle the most complex and varied types of disciplinary investigations into a special agent classification, as specified. The bill would require the first reclassification to be completed on or before June 30, 2009.

~~Existing law, the~~

The Medical Practice Act~~,~~ provides for the Division of Medical Quality of the Medical Board of California to oversee diversion programs for physician and surgeons with impairment due to abuse of drugs or alcohol, or due to mental or physical illness. Under existing

law, these provisions become inoperative on July 1, 2008, and are repealed on January 1, 2009.

This bill would extend the dates on which the provisions become inoperative to July 1, 2010, and would extend the dates on which the provisions are repealed to January 1, 2011. The bill would also require the board to create and appoint a Diversion Advisory Council. The council would be required to make recommendations and provide clinical quality improvement advice on matters specified by the board or a committee of the board. The council would also be required to elect a chairperson who would be required to report to the board, or a committee of the board, at its regularly scheduled meetings, as specified.

Existing law creates the Health Quality Enforcement Section within the Department of Justice with the primary responsibility of investigating and prosecuting proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and various other boards. Existing law requires that attorneys staff the intake unit of specified regulatory boards to evaluate and screen complaints and develop uniform standards for their processing. Existing law also simultaneously assigns a complaint received by the medical board to an investigator and a deputy attorney general in the Health Quality Enforcement Section, *and provides that, for the duration of the assignment, the investigator is under the direction of the deputy attorney general.* Existing law makes these provisions inoperative on July 1, 2008, and repeals them on January 1, 2009, unless a later enacted statute deletes or extends those dates.

This bill would make those provisions inoperative on July 1, 2010, repeal them on January 1, 2011, unless a later enacted statute deletes or extends those dates, and would make other related changes. *The bill would delete the requirement that an investigator be under the direction of the deputy attorney general simultaneously assigned to a complaint, and would instead require that the investigator assist the deputy attorney general, who would be responsible for legal case direction.*

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

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

SECTION 1. Section 2006 of the Business and Professions Code is amended to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions, shall be deemed to refer to an investigation conducted by employees of the Department of Justice.

(b) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

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

2020. *(a)* The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ *special agents,* investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. ~~The~~

(b) The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. ~~Investigators~~

(c) Investigators employed by the board shall be provided special training in investigating medical practice activities.

~~The~~

(d) The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it. ~~This~~

(e) The board shall begin the transition of investigators who are peace officers and who handle the most complex and varied types of disciplinary investigations into the special agent classification used by the Attorney General pursuant to Article 6 (commencing with Section 12570) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code. The first reclassification shall be initiated on or before July 1, 2008, and shall be completed on or before June 30, 2009.

(f) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 2.~~

SEC. 3. Section 2347 is added to the Business and Professions Code, to read:

2347. (a) The board shall create and appoint a Diversion Advisory Council.

(b) The council shall make recommendations and provide clinical quality improvement advice on matters specified by the board or a committee of the board. The council shall elect from its membership a chairperson. The chairperson, or his or her designee, shall report to the board, or a committee of the board, at its regularly scheduled meetings.

(c) For purposes of this section, "committee" means a committee created by the board.

~~SEC. 3.~~

SEC. 4. Section 2358 of the Business and Professions Code is amended to read:

2358. This article shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 4.~~

SEC. 5. Section 12529 of the Government Code, as amended by Section 24 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the

most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 5.~~

SEC. 6. Section 12529 of the Government Code, as added by Section 25 of Chapter 674 of the Statutes of 2005, is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, 2010.

~~SEC. 6.~~

SEC. 7. Section 12529.5 of the Government Code, as amended by Section 26 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

~~SEC. 7.~~

SEC. 8. Section 12529.5 of the Government Code, as added by Section 27 of Chapter 674 of the Statutes of 2005, is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, 2010.

~~SEC. 8.~~

SEC. 9. Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall~~, under the direction of the deputy attorney general,~~ *assist the deputy attorney general, who shall provide legal case direction, and shall* be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute,

that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1154
Author: Leno
Bill Date: January 17, 2008, amended
Subject: Diabetes Pilot Program
Sponsor: Author

STATUS OF BILL:

This bill has been referred to the Assembly Appropriations Committee and is set for hearing on January 24, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

The bill as introduced contained intent language by which the State would create a program which gives free diabetes medicine/supplies to government employees who have diabetes if they volunteer counseling with their pharmacists.

As amended, this bill would require the Department of Health Services, in consultation with the California Health Alliance Commission, to develop a diabetes risk reduction pilot program within 24 counties to analyze and report the outcomes from integrative care to the causes of diabetes through proactive prevention.

This bill was amended to require the Department of Public Health to consult with the Task Force on Obesity and Diabetes Causes, which is created by the bill, on the diabetes risk reduction program within the minimum number of counties necessary to represent the demographic populations in the state to review, analyze, and report on the outcomes from integrative care of diabetes through proactive prevention.

ANALYSIS:

This bill as introduced declares the intent of the legislature to create a statewide pilot program which gives free diabetes medicine and supplies to state, county, and municipal employees who have diabetes. Free medicine and supplies are provided only if the program participants volunteer to undergo monthly counseling with specially trained pharmacists. The author's office has indicated that this program will be modeled after a similar program in North Carolina which has proven to be successful. However, staff has indicated that they are working on extensive amendments which will fully delineate the parameters of the program. The bill will not move until amendments are made.

The amendments to this bill would require the Department of Health Services (DHS) in consultation with the California Health Alliance Commission to develop a diabetes risk reduction pilot program. This bill fully describes the pilot program.

This program would use information technology and media to facilitate and reinforce messages of the benefits of more nutritious whole foods, along with good hydration and physical activity. The communities selected to enroll in the pilot program shall be provided with dedicated health professionals and support personnel by the DHS to implement the pilot program, as recommended by the commission's Diabetes Risk Reduction Update. This pilot program is to analyze and report the outcomes of integrated care through proactive prevention.

At the same time, the DHS and the Department of Public Health are involved in a Diabetes Prevention and Management Initiative pursuant to the Governor's health care reform proposal. Many departments and professional groups are involved in this initiative, including the Medical Board. This initiative is to develop a diabetes care model for targeted medi-cal populations for short and long term savings to the state.

In addition the Board is involved with the Department of Managed Health Care (DMHC) and UC Davis in examining use of the telemedicine education model as a part of diabetes prevention and care. The Board has taken a support position on AB 329, a telemedicine bill giving the Board clear authority to pursue its efforts with DMHC and UC Davis.

Amendments to the bill create the Task Force on Obesity and Diabetes Causes and require the Department of Public Health to consult with the task force on a diabetes risk reduction pilot program within the minimum number of counties necessary to represent the demographic populations in the state to review, analyze, and report on the outcomes from integrative care of diabetes through proactive prevention.

FISCAL: None

POSITION: Refer to Access to Care Committee should this bill pass out of the Assembly.

January 22, 2008

AMENDED IN ASSEMBLY JANUARY 17, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1154

Introduced by Assembly Member Leno

February 23, 2007

An act to add and repeal Section 131086 of the Health and Safety Code, relating to diabetes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1154, as amended, Leno. Diabetes.

Existing law authorizes the State Department of Public Health to perform studies, demonstrate innovative methods, and disseminate information relating to the protection, preservation, and advancement of public health.

This bill would require the department, in consultation with the ~~California Health Alliance Commission~~ *Task Force on Obesity and Diabetes Causes, which is created by the bill,* to develop and administer a diabetes risk reduction pilot program within ~~24~~ *the minimum number of* counties *necessary to represent the demographic populations in the state* to review, analyze, and report on the outcomes from integrative care of diabetes through proactive prevention. The bill would establish the Diabetes Prevention and Treatment Pilot Program Fund in the State Treasury, and would require the department to deposit any moneys received from the federal government or from private donations into the fund to be used, upon appropriation by the Legislature, for the pilot program. The bill would provide that it shall only become operative if

adequate funds, as determined by the department, are appropriated *from the fund* in the annual Budget Act for the pilot program. The bill would provide that its provisions shall become inoperative on July 1 following the 4th fiscal year after the first appropriation is made for purposes of the bill and are repealed on the January 1 following that date.

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

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

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

(a) Clear and substantial evidence indicates that a combination of better food and hydration, with prudent activity and a healthy attitude, promotes health and reduces the risk of chronic diseases, particularly diabetes. The benefits of this combination range from restorative sleep to enhanced hormone and neurochemical balance. All of these contribute to, and are synergistic in achieving, a healthy balance of sugar and energy in the body. As a result, effective habit modification is able to reduce the risk of diabetes, particularly in at-risk participants.

(b) Recent research confirms a rapid and accelerating increase in diabetes, particularly in California's children. The human and financial costs are staggering and avoidable. Access to healthier choices and resources facilitates the practice of healthy habits.

(c) Diabetes and its antecedents and consequences drain precious resources from the state.

(d) Diabetes negatively impacts productivity and quality of life, while increasing substantially the risk of complications ranging from heart attacks to kidney failure, stroke to blindness, and fragile blood vessels to amputation. The promotion of healthy habits that is reinforced with information and documentation of perceived and tangible benefits is more effective than communicating a general message of prevention while largely focusing on early disease detection and communicating the principles of prevention in the abstract rather than actionable terms.

(e) Proactive prevention in diabetes risk mitigation is a public health concept that supports community health promotion habits and practices that show evidence-based efficacy in at-risk populations. Proactive prevention programs include incentives for

more whole foods, fruits, vegetables, pulses, nuts, seeds, and herbs along with adequate water, regular physical activity, and expression or receipt of appreciation and for the help we can be to ourselves and those in need. All this contributes to better weight maintenance by eating a balanced variety of nourishing foods and drinking adequate amounts of water and herbal teas, choosing moments in which to appreciate what we have, and enjoying the kind of regular activity appropriate to our functional age and abilities.

(f) A primary strategy of proactive prevention is to increase access to health enhancing practices, resources, and choices. Reinforcement of healthier choices and reduction of barriers coupled with incentives for use are components of this approach. Incentives for health promoting actions are both financial and emotional.

(g) Existing law requires the State Department of Health Services to promote the public health and welfare.

(h) It is the intent of the Legislature that the program established pursuant to this act will document the program outcomes in rigorous tests and formal statistical measures, as well as by consumer quality of life outcome surveys performed by the California Health Alliance.

(i) It is the intent of the Legislature that the program established pursuant to this act will document the benefits of proactive prevention in diabetes risk mitigation at its cause.

(j) It is also the intent of the Legislature for the pilot program established pursuant to this act to improve the health and well-being of at-risk Californians by addressing the causes of diabetes and monitoring the benefits people enjoy through the application of proactive prevention.

SEC. 2. Section 131086 is added to the Health and Safety Code, to read:

131086. (a) As used in this section:

~~(1) "Commission" means the California Health Alliance Commission, a private nonprofit organization focused upon the health of the state's citizens.~~

~~(2)~~

(1) "Department" means the State Department of Public Health.

~~(3)~~

(2) "Director" means the state public health officer.

(3) "Task force" means the Task Force on Obesity and Diabetes Causes.

(b) There hereby established in the department the Task Force on Obesity and Diabetes Causes, which shall be comprised of the following members:

(1) A representative of the Californians Health Alliance.

(2) A representative of the American Society of Integrative Medical Practice.

(3) A representative of Health Studies Collegium.

(4) A representative of a community foundation.

(5) Three ex officio members, one of which shall be appointed by the Governor, one of which shall be appointed by the President pro Tempore of the Senate, and one of which shall be appointed by the Speaker of the Assembly.

~~(b)~~

(c) The department shall, in consultation with the ~~California Health Alliance Commission~~ *task force*, develop and administer a diabetes risk reduction pilot program within ~~24 counties~~ *the minimum number of counties necessary to represent the demographic populations of California* to review, analyze, and report on the outcomes from integrative care of diabetes through proactive prevention.

~~(c)~~

(d) The department, in consultation with the ~~commission~~ *task force*, shall design the pilot program to include all of the following components:

(1) Strategies aimed at diabetes risk reduction that are directed at low-income, at-risk communities and populations. In communities invited to participate in the pilot program, the pilot program shall provide dedicated health professionals and support personnel to implement this pilot program as recommended by the ~~California Health Alliance Commission's~~ *task force's* Diabetes Risk Reduction Update.

(2) The department shall provide technical and logistical support as needed and predicated upon funding of the public-private partnership responsible for this pilot program. Nothing in the pilot program shall be in conflict with the federal Diabetes Prevention Guidelines of the Centers for Disease Control and Prevention (CDC). This proactive prevention pilot program shall document

the risk and harm reduction as well as the outcomes of this community-based public health initiative.

(3) Strategies aimed at providing incentives for food stamp recipients to promote their health and reduce health risk behaviors shall be a priority of this program. Increasing access, reinforcing the benefits, and documenting the results of those strategies as implemented under the pilot program shall also be included, the department shall report quarterly to the ~~California Health Alliance Commission~~ *task force* no later than 30 days after the close of each quarter on the effectiveness of the pilot program.

(4) The department shall seek any necessary federal government approval to allow the use of food stamp electronic benefits cards, as provided in Chapter 3 (commencing with Section 10065) of Part 1 of Division 9 of the Welfare and Institutions Code, to provide those incentives, and to implement this pilot program as an essential priority for the 2009–10 fiscal year.

~~(d)~~

(e) In developing the pilot program, the department shall ~~include~~ *consider* all of the following:

(1) ~~At least two counties~~ *Counties* that have above the food stamp average county participation.

(2) ~~At least two counties~~ *Counties* that have below the food stamp average county participation.

(3) ~~At least two counties~~ *Counties* with above-average rates of diabetes.

(4) ~~At least two counties~~ *Counties* with above-average rates of obesity.

(5) ~~At least two counties~~ *Counties* with above-average rates of cardiovascular diseases.

(6) ~~At least two counties~~ *Counties* with ~~a predominantly~~ *the highest percentage of* Native American population.

(7) ~~At least two counties~~ *Counties* with ~~a predominantly~~ *the highest percentage of* African-American population.

(8) ~~At least two counties~~ *Counties* with ~~a predominantly~~ *the highest percentage of* Hispanic population.

~~(9) At least two urban counties.~~

~~(10) At least two rural counties.~~

(9) Counties with the highest percentage of Asian Pacific Islander population.

(10) Urban counties.

(11) Rural counties.

~~(c) The department shall consider all of the following in choosing counties to participate in the program.~~

~~(1) The level of need in the community.~~

~~(2) The size of the food stamp population.~~

~~(3) The need for geographic diversity.~~

~~(4) The availability of technology in targeted counties and communities to implement the program and collect the data necessary to evaluate the pilot program.~~

(f) The department shall consider the availability of appropriate technology in targeted counties and communities to implement the program and collect the data necessary to evaluate the pilot program.

~~(f)~~

(g) The department shall develop a process for evaluating the effectiveness of the pilot program. The evaluation shall examine the impact of the various strategies employed in the pilot program regarding the use of healthier choices, particularly those aimed at diabetes risk reduction. The evaluation shall also consider options that are appropriate to each community and implement those options with the highest likely benefit for that community. The department shall also conduct and perform real time data collection and prompt data analysis of outcomes. The department shall, at the earliest feasible time, make recommendations to the Legislature regarding the continuation of the pilot program, and shall include a statement of any federal policy changes needed to support the goals of the pilot program.

~~(g)~~

(h) The Diabetes Prevention and Treatment Pilot Program Fund is hereby created in the State Treasury. The department shall deposit any moneys received from the federal government or from private donations, and, notwithstanding Section 16305.7 of the Government Code, any interest earned on moneys in the fund, into the fund to be used, upon appropriation by the Legislature, for the pilot program.

~~(h)~~

(i) This section shall only be implemented if adequate implementation funds, as determined by the department, are appropriated *from the Diabetes Prevention and Treatment Pilot Program Fund* in the annual Budget Act or other statute. *No other*

state funds shall be used to fund the pilot program created pursuant to this section.

~~(i)~~

(j) This section shall become inoperative on July 1, following the fourth fiscal year after the first appropriation is made for purposes of this section in the annual Budget Act or other statute, and, as of the following January 1, is repealed, unless a later enacted statute, that is enacted before the date on which this section is repealed, deletes or extends the dates on which it becomes inoperative and is repealed.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 547
Author: Ma
Bill Date: January 7, 2008, amended
Subject: "Cap" on Fees
Sponsor: Medical Board of California

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has been set for hearing on January 24, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is set to be amended to included language that will establish a "cap" or "ceiling" on the physician licensing fees instead of a fixed amount as in current law. The initial licensing fee will be fixed by the Board at no greater than seven hundred ninety dollars ($790). The biennial renewal fee will also be fixed at no greater than seven hundred ninety dollars ($790).

ANALYSIS:

This bill is a result of a fiscal audit by the Bureau of State Audits where it concluded that the Board had excess in its reserve fund and should reduce the fee. In order to reduce the fee the Board would need legislation to allow for a fee set by regulation. The Board, in November 2007, authorized staff to seek legislation allowing for a "cap" on the current ($790) physician initial and renewal fees. Inserting the "fixed by the board" language into the law will allow the Board to set and revise the fee by regulatory action up to the "cap."

In addition, the Board authorized staff to seek authority to have a fund reserve between two and six months instead of at approximately two months. This amendment has not been accepted by the author to date. Staff continues to work with the author's office on this amendment.

FISCAL: None

POSITION: Executive Committee: Support if amended to provide flexibility in the fund's reserve.

January 22, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 19, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 547

Introduced by Assembly Member Ma

February 21, 2007

~~An act to add and repeal Section 12699.64 of the Insurance Code, relating to health care coverage.~~ *An act to amend Section 2435 of the Business and Professions Code, relating to medicine, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 547, as amended, Ma. ~~County Health Initiative Matching Fund: application assistance.~~ *Medical Board of California: licensure fees.*

Existing law~~, the County Health Initiative Matching Fund, establishes a fund that is managed by the Managed Risk Medical Insurance Board. Under existing law, a county, county agency, a local initiative, or a county organized health system, defined as applicants, may apply to the board for funding to provide comprehensive health insurance coverage to a person who meets specified income criteria~~ *creates the Medical Board of California to license and regulate physicians and surgeons. 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.*

This bill would ~~establish a pilot program to authorize, until December 31, 2008, the applicants, defined as the City and County of San Francisco and the local initiative with which it contracts to provide~~

~~comprehensive health care coverage, to pay a fee to a person or entity who assists another to apply for coverage or to renew his or her coverage with the applicant, as specified. The bill would prohibit the applicants from using federal financial participation revenue from the County Health Initiative Matching Fund to pay the fee and would authorize the applicants to adopt procedures regarding implementation of the fee award process~~ *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.*

This bill, by January 1, 2012, would require the Bureau of State Audits to conduct a review of the board's financial status, including, but not limited to, a review of the board's revenue projections, and, on the basis of that review, to report to the Joint Legislative Audit Committee on any adjustment to fees required to maintain a 2-month reserve in the Contingent Fund of the Medical Board of California, a continuously appropriated fund, and also taking into account the projected number of new licensees of the board. The review would be funded from licensure fees in the fund, thereby making an appropriation.

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

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

SECTION 1. Section 2435 of the Business and Professions Code is amended to read:

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

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

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

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any, *which fee shall be fixed by the board consistent with this section.* The initial license fee shall be *up to* seven hundred ninety dollars ($790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be *fixed by the board consistent with this section. The biennial renewal fee shall be up to* seven hundred ninety dollars ($790).

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

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

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

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

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

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Medical Board of California equal to approximately two months' operating expenditures.

(i) ~~Not later than July 1, 2007, the Bureau of State Audits (BSA) shall conduct a review of the board's financial status, its financial projections and historical projections, including, but not limited to, its projections related to expenses, revenues, and reserves. The BSA shall, on the basis of the review, report to the Joint Legislative Audit Committee before January 1, 2008, on any adjustment to the amount of the licensure fee that is required to maintain the reserve amount in the Contingent Fund of the Medical Board of California pursuant to subdivision (h) of Section 2435, and whether a refund of any excess revenue should be made to licentiates~~ *Not later than January 1, 2012, the Bureau of State Audits (BSA) shall conduct a review of the board's financial status, including, but not limited to, a review of the board's revenue projections. The BSA shall, on the basis of the review, report to the Joint Legislative Audit Committee on any adjustment to the fees imposed by this section required to maintain the reserve in the Contingent Fund of the Medical Board of California as provided by subdivision (h), and also taking into account the projected number of new licensees of the board. The review shall be funded from licensure fees in the fund.*

~~SECTION 1. Section 12699.64 is added to the Insurance Code, to read:~~

~~12699.64. (a) An applicant may, but is not required to, pay an application assistance fee to a person or entity if the following conditions are met:~~

~~(1) The person or entity assists an individual to complete an application to enroll in the comprehensive health insurance coverage provided by the applicant or to renew that coverage with the applicant.~~

~~(2) The individual enrolls or renews his or her coverage with the applicant as a result of the application assistance. Placement~~

~~of an individual on a waiting list shall not constitute enrollment or renewal for purposes of payment of an application assistance fee.~~

~~(b) The applicant shall not use any federal financial participation revenue from the fund to pay an application assistance fee.~~

~~(c) The applicant may establish procedures for the implementation of the fee award described in subdivision (a), including establishing a list of persons or entities or categories of persons or entities who are eligible for the fee, the amount of the fee, and other rules to ensure the integrity of the fee award process.~~

~~(d) "Applicant," for purposes of this section, means the City and County of San Francisco and the local initiative that contracts with the City and County of San Francisco to provide comprehensive health care coverage, as described in Section 12699.53.~~

~~(e) This section constitutes a pilot program that shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.~~

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Medical Board of California
Tracker - Legislative Bill File
1/22/2008

BILL	AUTHOR	TITLE	STATUS	POSITION	VERSION OF BILL POS. BASED	LAST AMEND
AB 547	Ma	"Cap" on Fees	Approps. (1/24)	Support if Amended	Amended	1/7/2008
AB 1154	Leno	Diabetes	Approps. (1/24)	Refer to Access to Care	Amended	1/17/2008
SB 761	Ridley-Thomas	Diversion and Vertical Prosecution	Asm. Approps.	Sponsor/Support	Amended	7/18/2007
SB 797	Ridley-Thomas	Professions and Vocations	Floor	Contained VE/P - Support	Amended	9/7/2007
SJR 19	Ridley-Thomas	Health professionals: torture	Approps.	Rec: Watch	Introduced	
ABX1 1	Nunez	Health Care Reform	Sen. Health (1/23)	Issue Policy Statement	Amended	1/16/2008
SBX1 19	Cogdill	Medical Corporations	Health	Oppose	Introduced	
SBX1 24	Ashburn	Nurse Practitioners: scope of practice	Health	Oppose	Introduced	

The following are legislative proposals staff is developing for 2008 Legislation.

Legislation to allow for a "cap" on the current ($790) physician initial and renewal fees. This will allow the board to set and revise the fee by regulatory action. Additionally, allow the board to have two to six months in reserves.

The "cap" has been introduced in AB 547. Staff is working with the author to include a range for the amount in the reserve.

Legislation for the extension of the vertical enforcement/prosecution pilot.

SB 797 is on the Assembly floor. It needs to be amended to include an urgency clause to take effect immediately upon signature (before July 1, 2008). Staff is working with Senate Business & Professions staff.

Legislation on the peer reporting under B&P 821.5 and 821.6 that will be consistent with existing law to continue reporting this information to the board and to ensure the confidentiality of these reports as currently ensured by the diversion program.

Staff has sent the language to Dr. Salomonson, per the direction of the board, for review. Staff has secured a member to carry this language, to be introduced soon.

Legislation to amend section 2233 of the Business & Professions Code to allow the Executive Director to ask for an education course to be included with the public letter of reprimand.

Staff has reviewed the proposed language with Mr. Zerunyan, per the direction of the board. Staff has secured a member to carry this language, to be introduced soon.

Authorized staff to develop language to clarify 801.1 and 801.01 reporting related to multiple physician reporting in settlements, judgments and arbitration awards. Also, to develop language to clarify what is meant by a canceled license.

Staff has met with legal staff and will attempt to draft the clarifications in regulations. If this is not successful, then staff will seek legislation.

Authorize staff to reopen discussions regarding the proposal for an initial limited license (disabled) to determine if it is feasible for introduction into legislation.

Staff has met with legislative members regarding this concept, but has not met with the various interested parties and Dr. Gitnick, who was designated by the board as the point person on this issue. Staff expects to begin those discussions during February and March.

Legislation to allow for a Public Letter of Reprimand at the time of initial license for minor issues that would not lead to a denial or probation.

Staff has developed this language and it will go in the bill that carries the training addition to the Public Letter of Reprimand used in enforcement.

Develop proposed "fixes" to the Licensing laws and place as many as possible in an omnibus bill.

Staff has developed this language and shared it with CMA for input. This language will be submitted to the Senate Business & Professions staff for inclusion in the health professions omnibus bill.

Other proposals developed by the board.