Medical Board of California
Tracker - Legislative Bill File
4/21/2008

BILL	AUTHOR	TITLE	STATUS	POSITION	VERSION	AMENDED
AB 547	Ma	"Cap" on Fees	Sen. B&P	Support if Amended	Amended	1/7/2008
AB 1154	Leno	Diabetes Task Force and Pilot Program	Sen. Health	Support	Amended	1/24/2008
AB 1869	**Anderson**	**Transition DCA Boards to Bureaus**	**Asm. B&P***	**Failed to Pass**	**Amended**	**4/3/2008**
AB 1944	Swanson	Authorizing District Hospitals to Employ Physicians	Asm. Health (4/22)	Rec: Oppose	Amended	4/9/2008
AB 1951	Hayashi	Psychiatrists: suicide prevention training	Asm. Floor	Rec: Oppose unless amended	Amended	4/8/2008
AB 2398	Nakanishi	Cosmetic Surgery: supervision	Asm. Approps.	Rec: Support	Amended	4/10/2008
AB 2439	De La Torre	Loan Repayment Program: mandatory fees	Asm. Floor	Rec: Oppose unless amended	Amended	4/8/2008
AB 2442	Nakanishi	MBC: peer review proceedings	Asm. Floor	Sponsor/Support	Amended	3/25/2008
AB 2443	Nakanishi	MBC: physician well-being	Asm. Approps. (4/23)	Sponsor/Support	Introduced	
AB 2444	Nakanishi	MBC: PLR with education	Asm. Floor	Sponsor/Support	Introduced	
AB 2445	Nakanishi	MBC: licensing PLR	Asm. Floor	Sponsor/Support	Amended	4/1/2008
AB 2482	Maze	Physician Assistants: continuing education	Ams. Floor	Rec: Support	Introduced	
AB 2516	Mendoza	Prescriptions: electronic transmission	Asm. B&P (4/29)	Rec: Support with amends	Introduced	
AB 2543	Berg	Loan Repayment Program: geriatric workforce	Asm. Approps.	Rec: Support	Amended	4/7/2008
AB 2649	Ma	Medical Assistants: authorized services	Asm. B&P (4/29)	Rec: Neutral	Amended	3/24/2008
AB 2661	**Dymally**	**Telemedicine: without appropriate exam**	**Asm. Health***	**Bill Dropped**	**Amended**	**3/24/2008**
AB 2721	**Fuller**	**Telemedicine Task Force**	**Introduced***	**Bill Dropped**	**Introduced**	
AB 2734	Krekorian	Advertisements: license # and MBC website	Asm. Approps. (4/23)	Rec: Support	Amended	4/17/2008
AB 2747	Berg	End-of-Life Care	Asm. Jud. (4/29)	Rec: Neutral if amended	Amended	4/7/2008
AB 2841	Ma	Medical Procedures: reusable adipose cannula	Asm. B&P (4/29)	Rec: Oppose	Introduced	
AB 2968	Carter	Cosmetic Surgery: physical examination	Asm. Health (4/29)	Rec: Support if amended	Introduced	
AB 2969	Lieber	Workers' Comp.: med. treat. utilization reviews	Asm. Floor	Rec: Support	Introduced	

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** Amended 4-15-16, not included

Medical Board of California
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4/21/2008

BILL	AUTHOR	TITLE	STATUS	POSITION	VERSION	AMENDED
SB 761	Ridley-Thomas	Diversion and Vertical Prosecution	Asm. App.-Held*	Sponsor/Support	Amended	7/18/2007
SB 797	Ridley-Thomas	VE/P Extension	Asm. Floor	Contained VE/P - Support	Amended	9/7/2007
SB 1125	Denham	Polysomnographic Technologists Licensing	Sen. B&P*	Rec: Neutral	Introduced	
SB 1156	Aanestad	Medical Practice Act: spot bill	Sen Rules*	Bill Dropped	Introduced	
SB 1294	Ducheny	Employed Physicians: pilot project expansion	Sen. Approps.**	Rec: Neutral	Introduced	
SB 1379	Ducheny	Loan Repayment: permanent funding source	Sen. Floor	Rec: Support	Introduced	
SB 1394	Lowenthal	Lapses of Consciousness: reports to DMV	Sen. Approps.	Rec: Support	Amended	4/15/2008
SB 1415	Kuehl	Patient Records: disclosure of retention period	Sen. Inact. (4/29)**	Rec: Support	Amended	4/10/2008
SB 1427	Calderon	Psychologists: prescribing drugs	Sen. Health*	Held in Committee	Introduced	
SB 1441	Ridley-Thomas	Task Force: address standards for impaired	Sen. Approps.	Rec: Support if amended	Amended	4/7/2008
SB 1454	Ridley-Thomas	Advertising, OSM, Cosmetic Surgery Standards	Sen. Approps.	Rec: Support	Amended	4/7/2008
SB 1526	Perata	Polysomnographic Technologists Registration	Sen. Approps.	Rec: Neutral w/ Bd. Member	Amended	4/16/2008
SB 1535	Kuehl	MBC: medical directors	Sen. B&P*	Bill Dropped	Introduced	
SB 1579	Calderon	Referrals for Hair Restoration	Sen. B&P (4/28)	Rec: Oppose	Amended	3/27/2008
SB 1603	Calderon	Discount Health Care Programs	Sen. Health*	Failed to Pass	Amended	4/7/2008
SB 1640	Ashburn	Employed Physicians: pilot project expansion	Sen. B&P*	Failed to Pass	Amended	3/26/2008
SB 1779	B&P Com.	Healing Arts: Omnibus	Sen. Approps.	Rec: Support MBC Provisions	Amended	4/16/2008
SJR 19	Ridley-Thomas	Health professionals: torture	Sen. Floor*	Watch	Amended	3/25/2008
ABX1 1	Nunez	Health Care Reform	Sen. Health*	Issue Policy Statement	Amended	1/16/2008
SBX1 19	Cogdill	Medical Corporations	Sen. Health*	Oppose	Introduced	
SBX1 24	Ashburn	Nurse Practitioners: scope of practice	Sen. Health*	Oppose	Introduced	

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** Amended 4/15-16, not included

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 Senate Business and Professions Committee and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill includes 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 pursue a reduction to 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.

The author introduced the current bill without Board sponsorship.

Staff continues to work with the author's office on an amendment for the reserve fund and to clean up a technical issue allowing the fee to be equal to $790. These amendments have not been accepted by the author to date.

FISCAL: Minor and absorbable should the Board pursue regulatory authority to reduce the fee.

POSITION: Support if amended to provide flexibility in the fund's reserve and fix the technical issue.

April 18, 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
LEGISLATIVE ANALYSIS

Bill Number: AB 1154
Author: Leno
Bill Date: January 24, 2008, amended
Subject: Diabetes Task Force and Pilot Program
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Health Committee and has not been set for hearing.

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 would 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.

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. The pilot would be implemented in a minimum number of counties necessary to represent the demographic populations in the state in order to review, analyze, and report on the outcomes from integrative care of diabetes through proactive prevention.

Since the Governors health care reform proposal did not move forward, this bill provides another option to pursue a best practices model for diabetes care prevention.

FISCAL: None

POSITION: Support

April 15, 2008

AMENDED IN ASSEMBLY JANUARY 24, 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 Task Force on Obesity and Diabetes Causes, which is created by the bill, to develop and administer 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. 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) "At-risk" refers to persons at risk for prediabetes or type II diabetes, as defined by accepted clinical standards.

~~(1)~~

(2) "Department" means the State Department of Public Health.

(3) "Diabetes" means type II diabetes, as defined by accepted clinical standards.

~~(2)~~

(4) "Director" means the state public health officer.

~~(3)~~

(5) "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.

(c) The department shall, in consultation with the task force, develop and administer a diabetes risk reduction pilot program within 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.

(d) The department, in consultation with the 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 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 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.

(e) In developing the pilot program, the department shall consider all of the following:

(1) Counties that have above the food stamp average county participation.

(2) Counties that have below the food stamp average county participation.

(3) Counties with above-average rates of diabetes.

(4) Counties with above-average rates of obesity.

(5) Counties with above-average rates of cardiovascular diseases.

(6) Counties with the highest percentage of Native American population.

(7) Counties with the highest percentage of African American population.

(8) Counties with the highest percentage of Hispanic population.

(9) Counties with the highest percentage of Asian Pacific Islander population.

(10) Urban counties.

(11) Rural counties.

(f) In developing the pilot program, the department shall consider the efforts of other federal, state, private, and clinical diabetes programs, such as those of the federal Centers for Disease Control and Prevention's National Center for Chronic Disease Prevention and Health Promotion, the California Diabetes Project, and Champions for Change: Network for a Healthy California.

~~(f)~~

(g) 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.

~~(g)~~

(h) 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.

~~(h)~~

(i) 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. *No other state funds shall be used to fund the pilot program created pursuant to this section.*

~~(i)~~

(j) 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.~~

~~(j)~~

(k) 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 1944
Author: Swanson
Bill Date: April 9, 2008, amended
Subject: Authorizing District Hospitals to Employ Physicians
Sponsor: Association of California Healthcare Districts

STATUS OF BILL:

This bill is currently in the Assembly Health Committee and is set for hearing on April 22, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill eliminates a current pilot program which allows for the limited direct employment of physicians by district hospitals, and instead, this bill allows for any health care district to employ the physicians directly, to work at any district facility or clinic.

ANALYSIS:

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

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

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

Although it was anticipated that this pilot program would bring about significant improvement in access to healthcare in these areas, only five hospitals throughout all of California have participated, employing a total of six physicians. The last date for

physicians to enter into or renew a written employment contract with the qualified district hospital was December 31, 2006, and for a term not in excess of four years.

Current law requires the Board to evaluate the program and to issue a report to the Legislature no later than October 1, 2008. In March, 2008, staff sent letters to the six physicians and five hospital administrators participating in the program, asking each to define the successes, problems, if any, and overall effectiveness of this program for the hospital and on consumer protection. Additional input was sought as to how the program could be strengthened, and the participating physicians were asked to share thoughts on how the program impacted them personally. Responses have been requested by April 15, 2008, and the report will be prepared during this summer. In addition, staff will attempt to contact eligible hospitals that did not participate in order to evaluate other program improvements.

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

This bill eliminates the pilot program and instead would allow *carte blanche* to any heath care district to employ physicians at any facility or clinic which it operates. There are no limitations as to which hospitals could participate, as are provided in the current pilot program: 1) the hospital must be located in smaller counties (a population of less than 750,000); 2) the hospital must provide a majority of care to underserved populations; 3) the hospital must notify the Medical Board. Also, while the purpose of the original pilot program was to recruit physicians and surgeons to provide medically necessary services in rural and medically underserved communities, no such intent is made by this bill.

Until the success of the program has been evaluated, this bill seems premature with an unwarranted expansion. Further, although under current law and under this bill the participating hospital is prohibited from interfering with, controlling, or otherwise directing the physician's professional judgment, it is still of concern that there would be an unlimited number of physicians in California who could be employed.

FISCAL: Unable to determine.

POSITION: Recommendation: Oppose. A full evaluation of the pilot program should be completed before such a broad variance to the prohibition against the corporate practice of medicine is allowed.

April 18, 2008

AMENDED IN ASSEMBLY APRIL 9, 2008

AMENDED IN ASSEMBLY MARCH 13, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1944

Introduced by Assembly Member Swanson
(Coauthors: Assembly Members Dymally, Laird, and Portantino)

February 13, 2008

An act to amend Section 2401 of, and to repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1944, as amended, Swanson. ~~Healing arts.~~ *Physicians and surgeons: health care districts.*

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes until January 1, 2011, a pilot project to allow qualified district hospitals, as defined, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete the pilot project and would instead authorize a health care district, as defined, to employ a physician and surgeon if specified requirements are met and the district does not interfere with,

control, or otherwise direct the professional judgment of the physician and surgeon.

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

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

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

2401. (a) Notwithstanding Section 2400, a clinic operated primarily for the purpose of medical education by a public or private nonprofit university medical school, which is approved by the Division of Licensing 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 health care district operated pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code may employ a physician and surgeon; and may charge for professional services rendered by the physician and surgeon, if the physician and surgeon in whose name the charges are made approves the charges. However, the district 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. 2. Section 2401.1 of the Business and Professions Code is repealed.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 1951
Author: Hayashi
Bill Date: April 8, 2008, amended
Subject: Psychiatrists: suicide prevention training
Sponsor: Author

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require an applicant for licensure as a physician who is intending to specialize in psychiatry who begins medical school on or after January 1, 2010, to complete six hours of coursework in suicide prevention, assessment, intervention, and post intervention strategies. This bill will require physicians specializing in psychiatry who began medical school prior to January 1, 2010 to complete coursework as a condition of renewal.

ANALYSIS:

This bill requires medical students, who begin medical education after January 10, 2010 to meet requirements of six hours of specialized training. This training can be obtained from a variety of sources, some of whom are not currently approved as providers. This will require the Board to review and approve these providers for this specialized training.

This bill, in addition to requiring applicants for licensure as a physician, requires, commencing January 1, 2011, all licensed physicians specializing in psychiatry, who began medical school prior to January 1, 2010, to complete six hours of coursework as a condition of license renewal.

The bill states that the six hours of credit can be obtained from a variety of continuing education providers that are not approved by the Medical Board (Board). These providers are the same who would provide training to initial applicants.

There are several other technical issues with the language in this bill that need to be clarified. The bill allows for an exemption from the requirement. This bill creates workload in evaluating requests for exemptions and in the approval of prior training.

FISCAL: May require one staff person to work on the development of the approval process and to carry out on going workload for the Board.

POSITION: Recommendation: Oppose unless amended to allow the Board to use courses approved by physician continuing education providers or those approved by other Boards.

April 18, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

AMENDED IN ASSEMBLY MARCH 11, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1951

Introduced by Assembly Member Hayashi
(Coauthor: Assembly Member Dymally)

February 13, 2008

An act to add Sections *2089.8, 2190.6,* 2915.8, 2915.9, 4980.415, 4980.416, 4989.23, 4989.35, 4996.27, and 4996.275 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1951, as amended, Hayashi. Mental health professionals: suicide prevention training.

Existing law provides for the licensure and regulation of various professionals who provide mental health-related services, including psychologists, marriage and family therapists, educational psychologists, and clinical social workers. Under existing law, an applicant for licensure in these professions is required to complete certain coursework or training in order to be eligible for a license. Existing law also requires these professionals to participate in continuing education as a prerequisite for renewing their license.

This bill would require ~~that~~ an applicant for licensure as a psychologist, marriage and family therapist, educational psychologist, or clinical social worker~~, or for renewal of one of those licenses,~~ *who begins graduate school on or after January 1, 2010, to* complete 6 hours of training in suicide prevention, assessment, intervention, and postintervention strategies, as specified. *Commencing January 1, 2011,*

the bill would require a licensed psychologist, marriage and family therapist, educational psychologist, or clinical social worker who began graduate school prior to January 1,2010, to complete that coursework as a condition of license renewal.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires an applicant for that license to complete a medical curriculum providing instruction in specified subjects. Under existing law, the board is required to adopt and administer standards for the continuing education of licensed physicians and surgeons.

This bill would require an applicant for licensure as a physician and surgeon intending to specialize in psychiatry who begins medical school on or after January 1, 2010, to complete 6 hours of coursework in suicide prevention, assessment, intervention, and postintervention strategies, as specified. Commencing January 1, 2011, the bill would require a licensed physician and surgeon specializing in psychiatry who began medical school prior to January 1, 2010, to complete that coursework as a condition of license renewal.

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 2089.8 is added to the Business and Professions Code, to read:

2089.8. (a) An applicant for licensure as a physician and surgeon intending to specialize in psychiatry who began medical school on or after January 1, 2010, shall complete, as a condition of licensure, a minimum of six hours of coursework in suicide prevention, assessment, intervention, and postintervention strategies. This coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) The coursework required by this section shall be obtained from one of the following:

(1) An approved medical school, as provided in Section 2084.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(d) An applicant shall submit to the board evidence acceptable to the board of the applicant's satisfactory completion of the coursework required by subdivision (a).

(e) An applicant may request an exemption from this section if he or she intends to practice in an area where the training required by this section would not be needed.

(f) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 2. Section 2190.6 is added to the Business and Professions Code, to read:

2190.6. (a) A physician and surgeon specializing in psychiatry who began medical school prior to January 1, 2010, shall complete a minimum of six hours of continuing education coursework in suicide prevention, assessment, intervention, and postintervention strategies during his or her first renewal period after the operative date of this section. The coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) The coursework required by this section shall be obtained from one of the following:

(1) An approved medical school, as provided in Section 2084.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education

provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) A licensee shall submit to the board evidence acceptable to the board of the licensee's satisfactory completion of the coursework required by subdivision (a).

(d) A person seeking to meet the requirements of this section may submit to the board a certificate evidencing completion of equivalent coursework in suicide prevention, assessment, intervention, and postintervention strategies taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(e) A licensee may request an exemption from this section if he or she practices in an area where the training required by this section is not needed.

(f) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(g) Continuing education courses taken pursuant to this section shall be applied to the required minimum number of continuing education hours established by regulation.

(h) This section shall become operative on January 1, 2011.

~~SECTION 1.~~

SEC. 3. Section 2915.8 is added to the Business and Professions Code, to read:

2915.8. (a) An applicant for licensure as a psychologist who began graduate study on or after January 1, 2010, shall complete, as a condition of licensure, a minimum of six hours of coursework in suicide prevention, assessment, intervention, and postintervention strategies. This coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) ~~Coursework~~ *The coursework* required by this section shall be obtained from one of the following sources:

(1) An accredited or approved educational institution, as defined in Section 2902.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(d) An applicant shall submit to the board evidence acceptable to the board of the applicant's satisfactory completion of the coursework required by subdivision (a).

(e) An applicant may request an exemption from this section if he or she intends to practice in an area where the training required by this section would not be needed.

(f) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

~~SEC. 2.~~

SEC. 4. Section 2915.9 is added to the Business and Professions Code, to read:

2915.9. (a) A licensee who began graduate study prior to January 1, 2010, shall complete a minimum of six hours of continuing education coursework in suicide prevention, assessment, intervention, and postintervention strategies during his or her first renewal period after the operative date of this section. The coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) The coursework required by this section shall be obtained from one of the following:

(1) An accredited or approved educational institution, as defined in Section 2902.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education

provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) A licensee shall submit to the board evidence acceptable to the board of the licensee's satisfactory completion of the coursework required by subdivision (a).

(d) A person seeking to meet the requirements of this section may submit to the board a certificate evidencing completion of equivalent coursework in suicide prevention, assessment, intervention, and postintervention strategies taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(e) A licensee may request an exemption from this section if he or she practices in an area where the training required by this section is not needed.

(f) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(g) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 2915.

(h) This section shall become operative on January 1, 2011.

~~SEC. 3.~~

SEC. 5. Section 4980.415 is added to the Business and Professions Code, to read:

4980.415. (a) An applicant for licensure as a marriage and family therapist who began graduate study on or after January 1, 2010, shall complete, as a condition of licensure, a minimum of six hours of coursework in suicide prevention, assessment, intervention, and postintervention strategies. This coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) ~~Coursework~~ *The coursework* required by this section shall be obtained from one of the following sources:

(1) An accredited or approved educational institution, as specified in Section 4980.40.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(d) An applicant shall submit to the board evidence acceptable to the board of the applicant's satisfactory completion of the coursework required by subdivision (a).

(e) An applicant may request an exemption from this section if he or she intends to practice in an area where the training required by this section would not be needed.

(f) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

~~SEC. 4.~~

SEC. 6. Section 4980.416 is added to the Business and Professions Code, to read:

4980.416. (a) A licensee who began graduate study prior to January 1, 2010, shall complete a minimum of six hours of continuing education coursework in suicide prevention, assessment, intervention, and postintervention strategies during his or her first renewal period after the operative date of this section. The coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) The coursework required by this section shall be obtained from one of the following:

(1) An accredited or approved educational institution, as specified in Section 4980.40.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education

provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) A licensee shall submit to the board evidence acceptable to the board of the licensee's satisfactory completion of the coursework required by subdivision (a).

(d) A person seeking to meet the requirements of this section may submit to the board a certificate evidencing completion of equivalent coursework in suicide prevention, assessment, intervention, and postintervention strategies taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(e) A licensee may request an exemption from this section if he or she practices in an area where the training required by this section is not needed.

(f) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(g) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 4980.54.

(h) This section shall become operative on January 1, 2011.

~~SEC. 5.~~

SEC. 7. Section 4989.23 is added to the Business and Professions Code, to read:

4989.23. (a) An applicant for licensure as an educational psychologist who began graduate study on or after January 1, 2010, shall complete, as a condition of licensure, a minimum of six hours of coursework in suicide prevention, assessment, intervention, and postintervention strategies. This coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) ~~Coursework~~ *The coursework* required by this section shall be obtained from one of the following sources:

(1) An educational institution approved by the board, as provided in paragraph (1) of subdivision (a) of Section 4989.20.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(d) An applicant shall submit to the board evidence acceptable to the board of the applicant's satisfactory completion of the coursework required by subdivision (a).

(e) An applicant may request an exemption from this section if he or she intends to practice in an area where the training required by this section would not be needed.

(f) The board shall not issue a license to an applicant until the applicant has met the requirements of this section.

~~SEC. 6.~~

SEC. 8. Section 4989.35 is added to the Business and Professions Code, to read:

4989.35. (a) A licensee who began graduate study prior to January 1, 2010, shall complete a minimum of six hours of continuing education coursework in suicide prevention, assessment, intervention, and postintervention strategies during his or her first renewal period after the operative date of this section. The coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) The coursework required by this section shall be obtained from one of the following:

(1) An educational institution approved by the board, as provided in paragraph (1) of subdivision (a) of Section 4989.20.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education

provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) A licensee shall submit to the board evidence acceptable to the board of the ~~person's~~ *licensee's* satisfactory completion of the coursework required by subdivision (a).

(d) A person seeking to meet the requirements of this section may submit to the board a certificate evidencing completion of equivalent coursework in suicide prevention, assessment, intervention, and postintervention strategies taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(e) A licensee may request an exemption from this section if he or she practices in an area where the training required by this section is not needed.

(f) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(g) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 4989.34.

(h) This section shall become operative on January 1, 2011.

~~SEC. 7.~~

SEC. 9. Section 4996.27 is added to the Business and Professions Code, to read:

4996.27. (a) An applicant for licensure as a licensed clinical social worker who began graduate study on or after January 1, 2010, shall complete, as a condition of licensure, a minimum of six hours of coursework in suicide prevention, assessment, intervention, and postintervention strategies. This coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) ~~Coursework~~ *The coursework* required by this section shall be obtained from one of the following sources:

(1) An accredited or approved educational institution, as specified in Section 4996.18.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(d) An applicant shall submit to the board evidence acceptable to the board of the ~~person's~~ *applicant's* satisfactory completion of the coursework required by subdivision (a).

(e) An applicant may request an exemption from this section if he or she intends to practice in an area where the training required by this section would not be needed.

(f) The board shall not issue a license to an applicant until the applicant has met the requirements of this section.

~~SEC. 8.~~

SEC. 10. Section 4996.275 is added to the Business and Professions Code, to read:

4996.275. (a) A licensee who began graduate study prior to January 1, 2010, shall complete a minimum of six hours of continuing education coursework in suicide prevention, assessment, intervention, and postintervention strategies during his or her first renewal period after the operative date of this section. The coursework shall also include training in community resources and an understanding of cultural factors that promote help-seeking behavior.

(b) The coursework required by this section shall be obtained from one of the following:

(1) An accredited or approved educational institution, as specified in Section 4996.18.

(2) A continuing education provider approved by the board.

(3) A course sponsored or offered by a professional association and approved by the board.

(4) A course sponsored or offered by a local, county, or state department of health or mental health and approved by the board.

(5) A course offered by a nationally certified nonprofit agency, including, but not limited to, a crisis center or a suicide prevention hotline, provided that the agency is a continuing education

provider, has at least five years of experience conducting suicide prevention training, and is approved by the board.

(c) A licensee shall submit to the board evidence acceptable to the board of the ~~person's~~ *licensee's* satisfactory completion of the coursework required by subdivision (a).

(d) A person seeking to meet the requirements of this section may submit to the board a certificate evidencing completion of equivalent coursework in suicide prevention, assessment, intervention, and postintervention strategies taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(e) A licensee may request an exemption from this section if he or she practices in an area where the training required by this section is not needed.

(f) The board may not renew an applicant's license until the applicant has met the requirements of this section.

(g) Continuing education courses taken pursuant to this section shall be applied to the 36 hours of approved continuing education required in Section 4996.22.

(h) This section shall become operative on January 1, 2011.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2398
Author: Nakanishi
Bill Date: April 10, 2008, amended
Subject: Cosmetic Surgery: Supervision
Sponsor: American Society for Dermatological Surgery

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 seeks to address the problem of physicians lending their name and license number to businesses that perform cosmetic surgery for monetary payout by establishing supervision requirements for physicians who delegate the performance of elective cosmetic procedures. This bill allows for license revocation of a physician who violates these provisions.

ANALYSIS:

Current law requires specified disclosures to patients undergoing procedures involving collagen injections. In addition, existing law requires the Medical Board (Board) to adopt standards in regard to body liposuction procedures performed outside of a general acute care hospital. A violation of any of these provisions is a misdemeanor.

According to the author, current state regulatory guidance leaves unclear whether a physician must directly supervise an allied health professional when delegating certain types of cosmetic medical procedures that are provided in 'medi-spas,' including treatment involving lasers and pulse light. The author feels that the existing laws have been unsuccessful in deterring physicians from committing these illegal acts, and additional provisions are necessary.

Legislation such as SB 1423 (Figueroa), which required the Board and the Board of Registered Nursing (BRN) to study the issue of safety with the use of lasers in cosmetic procedures, has been directed at curbing this dangerous practice.

This bill seeks to strengthen current law on this issue and provide greater protection to patients seeking safe and responsible cosmetic care. Specifically, this bill would:

- Require any physician who delegates the performance or administration of any elective cosmetic medical procedure for treatment to a registered nurse must first perform an initial, good faith, and appropriate prior examination of the patient.
- State that direct supervision by the delegating physician to a nurse practitioner, physician assistant, or registered nurse is not required in a physician owned and operated treatment setting.
- Allow the patient to request "direct" supervisions of a procedure which would require the physicians be on site and available for immediate consultation. The bill does not require the practitioner to ask the patients if they desire direct supervision of a delegated procedure, so it is not clear how this provision protects an unaware patient.
- Limit the number and location of settings the physician may have for delegated procedures.
- Require the physician be available within 24 hours for emergent patient issues.
- Allow the Board to revoke the license of physicians, engaged in elective cosmetic medical practice, who knowingly contract to serve as the medical director of a business organization in violation of the prohibition against the corporate practice of medicine. A physician who violates this provision would also be guilty of a public offense punishable by imprisonment for two, three, or five years, or by a fine not exceeding $50,000.
- Make a violation of these provisions by a person or entity subject to a fine of up to $25,000 per occurrence pursuant to a civil penalty, or a citation issued by the Board, or imprisonment for up to six months, or both fine and imprisonment.

FISCAL: Minor

POSITION: Recommendation: Support

April 18, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2398

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to amend Section 2417 of, and to add Section 2259.6 to, the Business and Professions Code, relating to the practice of medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, Nakanishi. Practice of medicine: ~~cosmetic surgery:~~ employment of physicians and surgeons.

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

Existing law, the Medical Practice Act, requires specified disclosures to patients undergoing procedures involving collagen injections, defined as any substance derived from, or combined with, animal protein. Existing law also requires the board to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would require a physician and surgeon who delegates to a registered nurse the performance or administration of any elective cosmetic medical procedure or treatment, as defined, to perform an initial, good faith, and appropriate prior examination of the patient for whom treatment has been delegated and to provide direct supervision

of that procedure or treatment under certain conditions. The bill would prohibit a physician and surgeon from delegating the performance or administration of elective cosmetic medical procedures or treatments to more than 4 separately addressed locations under his or her supervision, which must be located as specified. The bill would provide that a violation of that provision may subject the person or entity that has committed the violation to either a fine of up to $25,000 per occurrence pursuant to a citation issued by the board or a civil penalty of $25,000 per occurrence. The bill would also provide that multiple acts by any person or entity in violation of that provision shall be punishable by a fine not to exceed $25,000 or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. The bill would authorize the Attorney General to bring an action to enforce those provisions.

Because multiple violations of those provisions would be a crime, this bill would impose a state-mandated local program.

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

This bill would ~~permanently revoke~~ *authorize the revocation of* the license of a physician and surgeon who practices medicine with a business organization knowing that it is owned or operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists. The bill would also make a business organization that is owned and operated in violation of the prohibition, and that contracts with or employs a physician and surgeon to facilitate the offer or provision of professional services that may only be provided by a licensed physician and surgeon, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because ~~this~~ *the* bill would expand a public offense, it would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 2259.6 is added to the Business and Professions Code, to read:

2259.6. (a) Any physician and surgeon who delegates the performance or administration of any elective cosmetic medical procedure or treatment to a registered nurse shall, pursuant to the requirements of this article, perform an initial, good faith, and appropriate prior examination of the patient for whom treatment has been delegated. Subject to the provisions of subdivision (d), in a physician and surgeon-owned and operated treatment setting, direct supervision is not required upon delegation to a nurse practitioner, physician assistant, or registered nurse. In all circumstances, upon request of the patient, the delegating physician and surgeon shall afford the patient direct supervision of the procedure or treatment.

(b) Direct supervision shall mean that the physician and surgeon must be onsite and available for immediate consultation at the time of performance or administration of the procedure or treatment.

(c) As used in this section, "elective cosmetic medical procedure or treatment" means a medical procedure or treatment that is performed to alter or reshape normal structures of the body solely in order to improve appearance.

(d) In no event may a physician and surgeon delegate the performance or administration of elective cosmetic medical procedures or treatments to more than four separately addressed locations under his or her supervision, one of which shall be his or her primary practice location. These sites shall be located within a radius no greater than that which may be reached within 60 minutes from the physician and surgeon's primary practice location. A delegating physician and surgeon shall be available to attend to emergent patient circumstances within a reasonable time, not to exceed 24 hours from the onset of those circumstances.

(e) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed

the violation to either a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

(f) Multiple acts by any person or entity in violation of this section shall be punishable by a fine not to exceed twenty-five thousand dollars ($25,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(g) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (d) or (e).

SEC. 2. Section 2417 of the Business and Professions Code is amended to read:

2417. (a) If the Department of Insurance has evidence that a business is being operated in violation of this chapter, Part 4 (commencing with Section 13400) of Division 3 of the Corporations Code, or Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code, and that the business may be in violation of Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code, then the department shall report the business, and any physician and surgeon suspected of knowingly providing medical services for that business relative to a violation of Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code, to the appropriate regulatory agency. Upon receiving a report from the Department of Insurance of a suspected violation, the regulatory agency shall conduct an investigation. The requirement in subdivision (a) of Section 1872.95 of the Insurance Code for investigations to be conducted within existing resources does not apply to investigations required by this section. The Department of Insurance may consult with the appropriate regulatory department or agency prior to making its report to that department or agency, and this consultation shall not be deemed to require the department or agency to conduct an investigation.

(b) A physician and surgeon who practices medicine with a business organization knowing that it is owned or operated in violation of Section 1871.4 of the Insurance Code, Section 14107

or 14107.2 of the Welfare and Institutions Code, or Section 549 or 550 of the Penal Code shall have his or her license to practice permanently revoked.

(c) A physician and surgeon who practices medicine with a business organization, knowing that it is owned or operated in violation of Section 2400, ~~shall~~ *may* have his or her license to practice ~~permanently~~ revoked. A physician and surgeon who contracts to serve as, or otherwise allows himself or herself to be employed as, the medical director of a business organization that he or she does not own and that offers to provide or provides professional services that may only be provided by the holder of a valid physician's and surgeon's certificate under this chapter shall be deemed to have knowledge that the business organization is in violation of Section 2400.

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

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2439
Author: De La Torre
Bill Date: April 8, 2008, amended
Subject: Loan Repayment Program: Mandatory Fees
Sponsor: Author

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Medical Board (Board) to asses an additional $50 fee for the issuance and bi-annual renewal of a physician's license for the purpose of helping to fund the Steven M. Thompson Physician Corps Loan Repayment Program for the purpose of providing loan repayment awards. In addition, 15% of the funds collected would be dedicated to physicians practicing in geriatric settings.

ANALYSIS:

The Steven M. Thompson Corps Loan Repayment Program (Program) was established in 2002 through AB 982 (Firebaugh). Physicians who participate in this program and practice medicine in underserved communities are provided with a financial contribution to help defray the costs of their student loan dept. Since its inception, 399 physicians have submitted applications to participate in the program. Due to insufficient funding, only 94 applicants have been selected to receive awards through the program. Participants have served in communities including Los Angeles, Oakland, San Bernardino, Sonoma, Woodland, San Diego, San Francisco, and Humblodt.

This bill requires the assessment in addition to the set or waived fees. This means that every physician, including those in a status where renewal fees are waived must pay the $50 assessment for the program.

This bill directs the Program to direct 15% of the money collected pursuant to this bill to loan repayment applicants working in geriatric settings. This is to encourage physicians to work in those settings and to address the shortages of geriatric physicians.

FISCAL: Minor and absorbable to MBC.

Revenue this will generate for the physicians:

Annual paid renewals:	54,000 x $50 =	$2,700,000
Annual fee-exempt renewals:	5,000 x $50 =	$250,000
Initial Licenses:	2,000 x $50 =	$100,000
Initial Licenses (1/2) fee:	3,400 x $50 =	$170,000

TOTAL ADDITIONAL ANNUAL REVENUE = $3,220,000

POSITION: Recommendation: Oppose unless amended to require the mandatory fee to apply to only those licensees who are required to pay fees.

Or, oppose unless amended lower the mandatory fee to $25, which is essentially equal to the proposed reduction in fees for the diversion program ($22).

April 18, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

AMENDED IN ASSEMBLY MARCH 28, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2439

Introduced by Assembly Member De La Torre
(Coauthor: Assembly Member Berg)

February 21, 2008

An act to amend Section 2023 of, and to amend and renumber Section 2435.2 of, the Business and Professions Code, *and to amend Section 128553 of the Health and Safety Code,* relating to physicians and surgeons, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2439, as amended, De La Torre. Steven M. Thompson Physician Corps Loan Repayment Program: fees.

Existing law establishes the Steven M. Thompson Physician Corps Loan Repayment Program in the California Physician Corps Program within the Health and Professions Education Foundation, which provides financial incentives, as specified, to a physician and surgeon for practicing in a medically underserved community. Existing law requires the Medical Board of California to assess an applicant for issuance or renewal of a physician and surgeon's license a voluntary $50 fee to be deposited into the Medically Underserved Account for Physicians, which is continuously appropriated to provide funding for operations of the loan repayment program.

This bill would make the payment of the $50 fee mandatory for applicants for issuance or renewal of a physician and surgeon's license. The bill would also provide that at least 15% of the funds collected be

dedicated to loan assistance for physicians and surgeons who agree to practice in geriatric care settings or settings that primarily serve adults over the age of 65 years or adults with disabilities. Because the bill would provide for the deposit of additional fees in a continuously appropriated fund, it would make an appropriation.

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

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

SECTION 1. Section 2023 of the Business and Professions Code is amended to read:

2023. (a) The board, in conjunction with the Health Professions Education Foundation, shall study the issue of its providing medical malpractice insurance to physicians and surgeons who provide voluntary, unpaid services as described in subdivision (b) of Section 2083, and report its findings to the Legislature on or before January 1, 2008.

(b) The report shall include, but not be limited to, a discussion of the following items:

(1) The cost of administering a program to provide medical malpractice insurance to the physicians and surgeons and the process for administering the program.

(2) The options for providing medical malpractice insurance to the physicians and surgeons and for funding the coverage.

(3) Whether the licensure surcharge fee assessed under Section 2436.5 is sufficient to fund the provision of medical malpractice insurance for the physicians and surgeons.

(c) This section shall be implemented only after the Legislature has made an appropriation from the Contingent Fund of the Medical Board of California to fund the study.

SEC. 2. Section 2435.2 of the Business and Professions Code, as added by Section 1 of Chapter 293 of the Statutes of 2005, is amended and renumbered to read:

2436.5. (a) In addition to the fees charged for the initial issuance or biennial renewal of a physician and surgeon's certificate pursuant to Section 2435, and at the time those fees are charged, the board shall charge each applicant or renewing licensee an additional fifty-dollar ($50) fee for the purposes of this section.

(b) This fifty-dollar ($50) fee shall be paid at the time of application for initial licensure or biennial renewal. The fifty-dollar ($50) fee shall be due and payable along with the fee for the initial certificate or biennial renewal.

(c) The board shall transfer all funds collected pursuant to this section, on a monthly basis, to the Medically Underserved Account for Physicians created by Section 128555 of the Health and Safety Code for the Steven M. Thompson Physician Corps Loan Repayment Program.

(d) At least 15 percent of the funds collected pursuant this section shall be dedicated to loan assistance for physicians and surgeons who agree to practice in geriatric care settings or settings that primarily serve adults over the age of 65 years or adults with disabilities. Priority consideration shall be given to those physicians and surgeons who are trained in, and practice, geriatrics and who can meet the cultural and linguistic needs and demands of diverse populations of older Californians.

SEC. 3. Section 128553 of the Health and Safety Code is amended to read:

128553. (a) Program applicants shall possess a current valid license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code.

(b) The foundation, in consultation with those identified in subdivision (b) of Section 123551, shall use guidelines developed by the Medical Board of California for selection and placement of applicants until the office adopts other guidelines by regulation.

(c) The guidelines shall meet all of the following criteria:

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

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have received significant training in cultural and linguistically appropriate service delivery.

(D) Have three years of experience working in medically underserved areas or with medically underserved populations.

(E) Have recently obtained a license to practice medicine.

(2) Include a process for determining the needs for physician services identified by the practice setting and for ensuring that the

practice setting meets the definition specified in subdivision (h) of Section 128552.

(3) Give preference to applicants who have completed a three-year residency in a primary specialty.

(4) Seek to place the most qualified applicants under this section in the areas with the greatest need.

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

(6) On and after January 1, 2009, at least 15 percent of the funds collected pursuant to Section 2436.5 of the Business and Professions Code shall be dedicated to loan assistance for physicians and surgeons who agree to practice in geriatric care settings or settings that primarily serve adults over the age of 65 years or adults with disabilities. Priority consideration shall be given to those who are trained in, and practice, geriatrics and who can meet the cultural and linguistic needs and demands of diverse populations of older Californians.

(d) (1) The foundation may appoint a selection committee that provides policy direction and guidance over the program and that complies with the requirements of subdivision (*l*) of Section 128552.

(2) The selection committee may fill up to 20 percent of the available positions with program applicants from specialties outside of the primary care specialties.

(e) Program participants shall meet all of the following requirements:

(1) Shall be working in or have a signed agreement with an eligible practice setting.

(2) Shall have full-time status at the practice setting. Full-time status shall be defined by the board and the selection committee may establish exemptions from this requirement on a case-by-case basis.

(3) Shall commit to a minimum of three years of service in a medically underserved area. Leaves of absence shall be permitted for serious illness, pregnancy, or other natural causes. The selection committee shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Loan repayment shall be deferred until the physician is back to full-time status.

(f) The office shall adopt a process that applies if a physician is unable to complete his or her three-year obligation.

(g) The foundation, in consultation with those identified in subdivision (b) of Section 128551, shall develop a process for outreach to potentially eligible applicants.

(h) The foundation may recommend to the office any other standards of eligibility, placement, and termination appropriate to achieve the aim of providing competent health care services in approved practice settings.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2442
Author: Nakanishi
Bill Date: March 25, 2008, amended
Subject: MBC: Peer Review Proceedings
Sponsor: Medical Board of California
Board Position: Sponsor/Support

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would repeal Business and Professions Code sections 821.5 and 821.6 which require reporting to the Medical Board (Board) diversion program by health entities physicians under investigation with mental and physical illnesses.

ANALYSIS:

Business and Professions Code sections 821.5 and 821.6 were added to law in 1996 to require reporting to the Board's diversion program related to physicians under investigation by health entities with mental and physical illnesses. This provided the diversion program a "heads up" that there maybe an issue and that a physician may be recommended to enter the program.

With the diversion program due to sunset June 30, 2008 those reporting requirements will no longer be necessary. Should the investigation by the health entity lead to actions that rise to a high enough level, then those physicians must be reported to the Board under Business and Professions Code section 805. Therefore these provisions are no longer necessary.

FISCAL: None

POSITION: Sponsor/Support

April 18, 2008

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2442

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to ~~amend~~ *repeal* Sections 821.5 and 821.6 of the Business and Professions Code, relating to healing arts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2442, as amended, Nakanishi. Medicine: peer review proceedings.

~~Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California.~~

Existing law requires peer review bodies that review physicians and surgeons to report certain information regarding investigations of physicians and surgeons who may be suffering from a disabling mental or physical condition to the diversion program of the Medical Board of California, *which program becomes inoperative July 1, 2008,* and requires the diversion program administrator to carry out specified duties in this regard. Existing law requires the board to adopt regulations implementing the monitoring responsibility of the diversion program administrator on or before January 1, 1997, as specified. ~~Under existing law, the diversion program becomes inoperative on July 1, 2008.~~

~~This bill would transfer the duties of the diversion program and the diversion program administrator with regard to the peer review body reports to the Medical Board of California and the board's executive director or designee. The bill would require the board to adopt regulations implementing the monitoring responsibility of the executive~~

~~director or designee on or before January 1, 2009, as specified. The bill would make conforming changes.~~

This bill would delete these provisions.

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

Vote: $^2/_3$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 821.5 of the Business and Professions Code is repealed.

~~821.5. (a) A peer review body, as defined in Section 805, that reviews physicians and surgeons, shall, within 15 days of initiating a formal investigation of a physician and surgeon's ability to practice medicine safely based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care, report to the diversion program of the Medical Board the name of the physician and surgeon under investigation and the general nature of the investigation. A peer review body that has made a report to the diversion program under this section shall also notify the diversion program when it has completed or closed an investigation.~~

~~(b) The diversion program administrator, upon receipt of a report pursuant to subdivision (a), shall contact the peer review body that made the report within 60 days in order to determine the status of the peer review body's investigation. The diversion program administrator shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the diversion program administrator determines that the progress of the investigation is not adequate to protect the public, the diversion program administrator shall notify the chief of enforcement of the Division of Medical Quality of the Medical Board of California, who shall promptly conduct an investigation of the matter. Concurrently with notifying the chief of enforcement, the diversion program administrator shall notify the reporting peer review body and the chief executive officer or an equivalent officer of the hospital of its decision to refer the case for investigation by the chief of enforcement.~~

~~(c) For purposes of this section "formal investigation" means an investigation ordered by the peer review body's medical executive committee or its equivalent, based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care. "Formal investigation" does not include the usual activities of the well-being or assistance committee or the usual quality assessment and improvement activities undertaken by the medical staff of a health facility in compliance with the licensing and certification requirements for health facilities set forth in Title 22 of the California Code of Regulations, or preliminary deliberations or inquiries of the executive committee to determine whether to order a formal investigation.~~

~~For purposes of this section, "usual activities" of the well-being or assistance committee are activities to assist medical staff members who may be impaired by chemical dependency or mental illness to obtain necessary evaluation and rehabilitation services that do not result in referral to the medical executive committee.~~

~~(d) Information received by the diversion program pursuant to this section shall be governed by, and shall be deemed confidential to the same extent as program records under, Section 2355. The records shall not be further disclosed by the diversion program, except as provided in subdivision (b).~~

~~(e) Upon receipt of notice from a peer review body that an investigation has been closed and that the peer review body has determined that there is no need for further action to protect the public, the diversion program shall purge and destroy all records in its possession pertaining to the investigation unless the diversion program administrator has referred the matter to the chief of enforcement pursuant to subdivision (b).~~

~~(f) A peer review body that has made a report under subdivision (a) shall not be deemed to have waived the protections of Section 1157 of the Evidence Code. It is not the intent of the Legislature in enacting this subdivision to affect pending litigation concerning Section 1157 or to create any new confidentiality protection except as specified in subdivision (d). "Pending litigation" shall include Arnett v. Dal Cielo (No. S048308), pending before the California Supreme Court.~~

~~(g) The report required by this section shall be submitted on a short form developed by the board. The board shall develop the~~

~~short form, the contents of which shall reflect the requirements of this section, within 30 days of the effective date of this section. The board shall not require the filing of any report until the short form is made available by the board.~~

~~(h) This section shall become operative on January 1, 1997, unless the regulations required to be adopted pursuant to Section 821.6 are adopted prior to that date, in which case this section shall become operative on the effective date of the regulations.~~

SEC. 2. Section 821.6 of the Business and Professions Code is repealed.

~~821.6. The board shall adopt regulations to implement the monitoring responsibility of the diversion program administrator described in subdivision (b) of Section 821.5, and the short form required to be developed pursuant to subdivision (g), on or before January 1, 1997.~~

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

In order to ensure that reporting requirements administered by the diversion program of the Medical Board of California are deleted when that program becomes inoperative, it is necessary that this act take effect immediately.

~~SECTION 1. Section 821.5 of the Business and Professions Code is amended to read:~~

~~821.5. (a) A peer review body, as defined in Section 805, that reviews physicians and surgeons, shall, within 15 days of initiating a formal investigation of a physician and surgeon's ability to practice medicine safely based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care, report to the Medical Board the name of the physician and surgeon under investigation and the general nature of the investigation. A peer review body that has made a report under this section to the Medical Board's executive director or designee, who is not in the enforcement program, shall also notify the executive director or designee when it has completed or closed an investigation.~~

~~(b) The executive director or designee, upon receipt of a report pursuant to subdivision (a), shall contact the peer review body that made the report within 60 days in order to determine the status of~~

~~the peer review body's investigation. The executive director or designee shall contact the peer review body periodically thereafter to monitor the progress of the investigation. At any time, if the executive director or designee determines that the progress of the investigation is not adequate to protect the public, the executive director or designee shall notify the chief of enforcement of the Medical Board of California, who shall promptly conduct an investigation of the matter. Concurrently with notifying the chief of enforcement, the executive director or designee shall notify the reporting peer review body and the chief executive officer or an equivalent officer of the hospital of its decision to refer the case for investigation by the chief of enforcement.~~

~~(c) For purposes of this section, "formal investigation" means an investigation ordered by the peer review body's medical executive committee or its equivalent, based upon information indicating that the physician and surgeon may be suffering from a disabling mental or physical condition that poses a threat to patient care. "Formal investigation" does not include the usual activities of the well-being or assistance committee or the usual quality assessment and improvement activities undertaken by the medical staff of a health facility in compliance with the licensing and certification requirements for health facilities set forth in Title 22 of the California Code of Regulations, or preliminary deliberations or inquiries of the executive committee to determine whether to order a formal investigation.~~

~~For purposes of this section, "usual activities" of the well-being or assistance committee are activities to assist medical staff members who may be impaired by chemical dependency or mental illness to obtain necessary evaluation and rehabilitation services that do not result in referral to the medical executive committee.~~

~~(d) Information received by the board pursuant to this section shall be deemed confidential. The records shall not be further disclosed by the board, except as provided in subdivision (b).~~

~~(e) Upon receipt of notice from a peer review body that an investigation has been closed and that the peer review body has determined that there is no need for further action to protect the public, the board shall purge and destroy all records in its possession pertaining to the investigation unless the executive director or designee has referred the matter to the chief of enforcement pursuant to subdivision (b).~~

~~(f) A peer review body that has made a report under subdivision (a) shall not be deemed to have waived the protections of Section 1157 of the Evidence Code. It is not the intent of the Legislature in enacting this subdivision to affect pending litigation concerning Section 1157 or to create any new confidentiality protection except as specified in subdivision (d).~~

~~(g) The report required by this section shall be submitted on a short form developed by the board. The board shall develop the short form, the contents of which shall reflect the requirements of this section, within 30 days of the effective date of this section. The board shall not require the filing of any report until the short form is made available by the board.~~

~~(h) This section shall become operative on January 1,, unless the regulations required to be adopted pursuant to Section 821.6 are adopted prior to that date, in which case this section shall become operative on the effective date of the regulations.~~

~~SEC. 2. Section 821.6 of the Business and Professions Code is amended to read:~~

~~821.6. The board shall adopt regulations to implement the monitoring responsibility of the executive director or designee described in subdivision (b) of Section 821.5, and the short form required to be developed pursuant to subdivision (g), on or before January 1, 2009.~~

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

~~In order to ensure that duties of the diversion program of the Medical Board of California are transferred prior to the inoperative date of that program, it is necessary that this act take effect immediately.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2443
Author: Nakanishi
Bill Date: February 21, 2008, introduced
Subject: MBC: Physician Well-Being
Sponsor: Medical Board of California
Position: Sponsor/Support

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has been set for hearing on April 23, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require the Medical Board (Board) to establish a program to promote the well-being of medical students, post graduate trainees, and licensed physicians. The program should address and prevent illness and burnout due to stress, overworking, and professional dissatisfaction by including an evaluation of wellness education.

ANALYSIS:

Through their extensive education and training, physicians are seen as the preeminent healthcare providers of the world. But the wellness of the patient relies on the wellness of the practitioner, who often gives priority to those under his care before his own well being and that of his family. The stresses of the job are created by a broad spectrum of factors yet can significantly impact the effectiveness of a physician.

Current law does not address the issue of physician wellness. However, since the mission of the Board is to protect healthcare consumers, it must be recognized that this best can be achieved by having healthy physicians care for their patients

During the past year, the Board has been discussing the issue of physician wellness. The focus of the review centered on the benefits that might be derived from the implementation of the program to assist with licensees' well-being. The Board believes that any action which promotes the prevention of physician "unwellness" is a worthwhile effort. This concept was formalized in the creation of a Wellness Committee in summer of 2007.

Concerns have been raised regarding the cost of this program. Staff offered the author amendments to establish the program within existing resources.

FISCAL: None

POSITION: Sponsor/Support

April 18, 2008

ASSEMBLY BILL No. 2443

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to add Section 2005 to the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 2443, as introduced, Nakanishi. Medical Board of California: physician and surgeon well-being.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and vests the board with certain responsibilities.

This bill would require the board to establish a program to promote the well-being of physicians and surgeons and would require the program to include, but not be limited to, an examination of wellness education for medical students, postgraduate trainees, and licensed physicians and surgeons.

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 2005 is added to the Business and Professions Code, to read:

2005. The board shall establish a program to promote the well-being of physicians and surgeons. This program shall include, but not be limited to, an examination of wellness education for

medical students, postgraduate trainees, and licensed physicians and surgeons.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 2444
Author:	Nakanishi
Bill Date:	February 21, 2008, introduced
Subject:	MBC: Public Letters of Reprimand with Education
Sponsor:	Medical Board of California
Board Position:	Sponsor/Support

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow the Medical Board (Board) to include requirements for specific education and training as part of rehabilitation for offenses in public letters of reprimand.

ANALYSIS:

Currently, if the Board feels the appropriate level of discipline for a physician is a public letter of reprimand with some required training in ethics or record keeping, the Board must file a formal accusation against a physician in order to require the specific education and training as part of the settlement which includes a public letter of reprimand. This process is time consuming and costly for both the Board and the physician, as the filing of an accusation is a full blown legal proceeding and goes on the public record in this form. If the board were allowed to issue a public letter of reprimand with specified education and training as the only additional requirements being sought by the Board, this would expedite the disciplinary process for both the consumer and the physician.

Allowing the Board to include requirements for specific education and training as part of rehabilitation for offenses in public letters of reprimand would reduce the number of formal accusations filed by Enforcement, while continuing to allow for public disclosure of the fiscal action. This would benefit the consumer by expediting the final action, and the Board and the physician by drastically reducing time and costs. In addition, it would further the mission of consumer protection by providing public disclosure of the discipline and rehabilitation of physicians.

FISCAL: None

POSITION: Sponsor/Support

April 18, 2008

ASSEMBLY BILL No. 2444

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to amend Section 2233 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 2444, as introduced, Nakanishi. Medical Board of California: disciplinary actions.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under existing law, the board is responsible for administering the disciplinary provisions of the act and is authorized to issue public letters of reprimand under specified circumstances, rather than filing or prosecuting a formal accusation.

This bill would allow the board to include in a public letter of reprimand a requirement for specified training.

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 2233 of the Business and Professions Code is amended to read:

2233. *(a)* The ~~Division of Medical Quality~~ *board* may, by stipulation or settlement with the affected physician and surgeon, issue a public letter of reprimand after it has conducted an investigation or inspection as provided in this article, in lieu of

filing or prosecuting a formal accusation. The affected physician and surgeon shall indicate agreement or nonagreement in writing within 30 days of formal notification by the ~~division~~ *board* of its intention to issue the letter. The ~~division~~ *board*, at its option, may extend the response time. Use of a public reprimand shall be limited to minor violations and shall be issued under guidelines established by regulations of the board. A public letter of reprimand issued pursuant to this section may be disclosed to an inquiring member of the public.

(b) Notwithstanding any other provision of law, a public letter of reprimand issued pursuant to this section may, at the discretion of the board, include a requirement for specified training.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2445
Author: Nakanishi
Bill Date: April 1, 2008, amended
Subject: MBC: Licensing Public Letters of Reprimand
Sponsor: Medical Board of California
Board Position: Sponsor/Support

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow the Medical Board (Board) to issue a public letter of reprimand to applicants who have committed lesser violations with regard to unprofessional conduct.

ANALYSIS:

Current law does not allow the Board to issue a public letter of reprimand to an applicant. Applicants who have previous violations are issued a physician's license in a probationary status.

Allowing the Board to issue a public letter of reprimand in lieu of probation to applicants who have committed lesser violations with regard to unprofessional conduct would benefit the Board as well as the physician, while continuing the mission of public protection, as the public letter of reprimand is a public document. The public letter of reprimand would be purged from the licensee's record after three years, the same period of time a probationary license would terminate for the lesser violations.

FISCAL: None

POSITION: Sponsor/Support

April 18, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2445

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to amend Section 2221 of, and to add Section 2221.05 to, the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 2445, as amended, Nakanishi. Medical Board of California: disciplinary procedures: applicants.

Existing law, the Medical Practice Act, creates the Medical Board of California and makes it responsible for issuing a physician's and surgeon's certificate to qualified applicants. Upon a determination that an applicant is guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license, the act authorizes the board to deny his or her application or to issue a probationary certificate that is subject to conditions of probation.

This bill would authorize the board to issue a physician's and surgeon's certificate to an applicant who has committed lesser violations, as specified, and to concurrently issue a public letter of reprimand, *which would be purged 3 years from the date of issuance.*

This bill would also make technical, nonsubstantive, and clarifying changes to a related provision with regard to reapplication procedures and obsolete references, as specified.

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

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

SECTION 1. Section 2221 of the Business and Professions Code is amended to read:

2221. (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license; or, the board in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.

(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical practice.

(8) Compliance with all provisions of this chapter.

(9) Payment of the cost of probation monitoring.

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

(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the board in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code, and the review procedures set forth in Section 2335.

(d) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

(e) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the final decision or action regarding the denial of his or her application, except that the board may, in its discretion and for good cause demonstrated, permit reapplication after not less than one year has elapsed from the effective date of the final decision or action regarding the denial.

SEC. 2. Section 2221.05 is added to the Business and Professions Code, to read:

2221.05. (a) Notwithstanding subdivision (a) of Section 2221, the board may issue a physician's and surgeon's certificate to an applicant who has committed lesser violations that ~~do not, in the board's discretion,~~ *the board deems, in its discretion, do not* merit the denial of a certificate or require probationary status under Section 2221, and may concurrently issue a public letter of reprimand.

(b) A public letter of reprimand issued concurrently with a physician's and surgeon's certificate shall be purged three years from the date of issuance.

(c) A public letter of reprimand issued pursuant to this section may be disclosed to an inquiring member of the public.

~~(b)~~

(d) Nothing in this section shall be construed to affect the board's authority to issue an unrestricted license.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2482
Author: Maze
Bill Date: February 21, 2008, Introduced
Subject: Physician Assistants: continuing education
Sponsor: Author

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would permit the Physician Assistant Committee (PAC) to require, by regulatory action, its licensees to complete up to 50 hours of continuing education in order to renew their licenses. The bill would also give the PAC discretion to accept certification by the National Commission on Certification of Physician Assistants (NCCPA) or another qualified certifying body as evidence of compliance with continuing education requirements.

ANALYSIS:

Current law requires physician assistants to renew their licenses every two years by completing an application form and paying a renewal fee to the PAC. Existing law does not have any requirements for continuing medical education, however, most other states do require continuing education or its equivalent. The PAC believes it is an important public protection to require licensees to keep educated on current medical practices and community care standards.

Although there is no current requirement for continuing education in order to renew a physician assistant license, a physician assistant may choose to be certified by the NCCPA, which permits a designation of Physician Assistant Certified (PA-C). This certification requires 100 hours of continuing education every two years and taking a recertification exam every six years. Approximately 90 percent of physician assistants in California are PA-Cs.

This bill would allow the Committee to set continuing education requirements. Those physician assistants who are also PA-Cs could satisfy both requirements simultaneously.

FISCAL: None

POSITION: Recommendation: Support

April 18, 2008

ASSEMBLY BILL No. 2482

Introduced by Assembly Members Maze and Bass

February 21, 2008

An act to add Section 3524.5 to the Business and Professions Code, relating to physician assistants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2482, as introduced, Maze. Physician assistants: continuing education.

Existing law, the Physician Assistant Practice Act, establishes the Physician Assistant Committee of the Medical Board of California. Under existing law, the committee licenses physician assistants under the name of the board and regulates the practice of physician assistants. Existing law provides for the renewal of unexpired licenses and certain expired licenses by applying for renewal on a form provided by the committee and paying certain fees, as specified.

This bill would authorize the committee to require a licensee to complete continuing education as a condition of license renewal. The bill would prohibit the committee from requiring more than 50 hours of continuing education every 2 years and would require the committee to, as it deems appropriate, accept certification by a specified commission or another qualified certifying body as evidence of compliance with continuing education requirements.

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 3524.5 is added to the Business and Professions Code, to read:

3524.5. The committee may require a licensee to complete continuing education as a condition of license renewal under Section 3523 or 3524. The committee shall not require more than 50 hours of continuing education every two years. The committee shall, as it deems appropriate, accept certification by the National Commission on Certification of Physician Assistants (NCCPA), or another qualified certifying body, as determined by the committee, as evidence of compliance with continuing education requirements.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2516
Author: Mendoza
Bill Date: February 21, 2008, introduced
Subject: Prescriptions: electronic transmission
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Business and Professions Committee and has been set for hearing on April 29, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require physicians to send prescriptions electronically to a patient's pharmacy of choice.

ANALYSIS:

Electronic prescribing is a safe and efficient system of filling prescriptions that avoids misunderstandings between doctors and pharmacies. Errors caused by paper mix-ups and unclear handwriting have resulted in sickness and death. According to the Institute for Safe Medicine Practices (ISMP), the number of reports of illegible handwriting and incorrect dosages has reached over an estimated 150 million. The ISMP also says that research shows that injuries resulting from medication errors and not the fault of the practitioner, but rather represent the failure of a complex healthcare system.

On January 1, 2010, this bill will require physicians to send prescription notices to a patient's pharmacy with a few exceptions. This will make the process of filling prescriptions simple and fast, but it will require all prescribers to have the capability and security features by 2010. This may be workable for large systems and practices but it may not be realistic for those single practitioner offices or those in outlying areas.

Electronic prescriptions are often filled before the patient arrives at the pharmacy. Currently, Kaiser and UC medical centers are among the many healthcare providers already using the E-prescribing system.

FISCAL: None

POSITION: Recommendation: Support if amended to provide an exception or extended implementation date for special cases appealed to the Pharmacy Board.

April 18, 2008

ASSEMBLY BILL No. 2516

Introduced by Assembly Member Mendoza

February 21, 2008

An act to add Section 4072.5 to the Business and Professions Code, relating to prescriptions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2516, as introduced, Mendoza. Prescriptions: electronic transmission.

The Pharmacy Law regulates, among other matters, the dispensing by prescription of dangerous drugs and dangerous devices, and sets forth specified requirements for prescriptions. Existing law authorizes a prescriber or his or her authorized agent to electronically transmit a prescription to a pharmacist, subject to certain exceptions. A knowing violation of the Pharmacy Law is a crime.

This bill would, commencing January 1, 2010, require a prescriber to ensure that any prescription issued or made by him or her be electronically transmitted to the patient's pharmacy of choice, except as specified. The bill would provide that a violation of these provisions is not a crime.

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

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

SECTION 1. Section 4072.5 is added to the Business and Professions Code, to read:

4072.5. (a) A prescriber shall ensure that any prescription issued or made by him or her be electronically transmitted to the patient's pharmacy of choice, except for any of the following:

(1) A prescription required by federal law to be transmitted in another manner.

(2) A prescription that is prevented from being transmitted electronically at the time of issuance by an emergency or unexpected technical problem.

(3) An order meeting the requirements of Section 4019 if the prescribed drug is to be administered at the hospital.

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

(c) This section shall become operative on January 1, 2010.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2543
Author: Berg
Bill Date: April 7, 2008, amended
Subject: Loan Repayment Program: geriatric workforce
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would establish the Geriatric and Gerontology Workforce Expansion Act, which would be administered by the Office of Statewide Health Planning, and Development (OSHPD), to provide loan repayment assistance to nurses, social workers, and marriage and family therapists who work in a geriatric care setting.

This bill would also require the Steven M. Thompson Physician Corps Loan Repayment Program, within the Health and Professions Education Foundation, to fill 15% of the available positions with program applicants that agree to practice in a geriatric care setting. These provisions would become operative only if AB 2439 (De La Torre) is enacted and becomes effective on or before January 1, 2009.

ANALYSIS:

California currently faces a severe shortage of professionals needed to operate programs and provide services to older adults. The greatest gaps in the geriatric workforce are shown to be in the medical and social work fields. There are approximately 890 board-certified geriatricians in the state, only one for every 4,000 Californians over the age of 65.

In an attempt to fill the growing workforce gaps in geriatric services, this bill establishes the California Geriatric and Gerontology Workforce Expansion Act of 2008. Administered by the OSHPD, this act would set up loan repayment assistance for physicians, nurses, social workers, and marriage and family therapists.

For physicians, this bill would require the Steven M. Thompson Physician Corps Loan Repayment Program under the Health and Professions Education Foundation to fill 15% of the available positions within the program with applicants who agree to practice in a geriatric care setting.

FISCAL: None to the Board.

POSITION: Recommendation: Support

April 18, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

AMENDED IN ASSEMBLY MARCH 25, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2543

Introduced by Assembly Member Berg
(Coauthor: Assembly Member De La Torre)

February 22, 2008

An act to add Sections 2815.2, 4984.75, and 4996.66 to the Business and Professions Code, and to amend Sections 128552 and 128553 of, to add Article 5 (commencing with Section 128305) and Article 6 (commencing with Section 128310) to Chapter 4 of Part 3 of Division 107 of, and to add Chapter 6 (commencing with Section 128559) to Part 3 of Division 107 of, the Health and Safety Code, relating to loan assistance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2543, as amended, Berg. Geriatric and Gerontology Workforce Expansion Act.

(1) Existing law provides for the licensure and regulation of nurses, social workers, and marriage and family therapists by specified boards. Existing law requires those persons to pay licensing and renewal fees for licensure, as specified.

This bill would establish the Geriatric and Gerontology Workforce Expansion Act, which would be administered by the Office of Statewide Health Planning and Development to provide loan repayment assistance to nurses, social workers, and marriage and family therapists who work in a geriatric care setting, as specified. For those purposes, the bill would

raise the licensing and renewal fees of these licensees by $10, as specified, for deposit into the continuously appropriated funds of the boards described above, thereby making an appropriation.

This bill would also establish the California Geriatric and Gerontology Student Loan Assistance Program of 2008, which would be administered by the Office of Statewide Health Planning and Development for purposes of providing loan assistance to students who intend to become employed as licensed health care professionals, social workers, or marriage and family therapists in a geriatric care setting, as specified. Those provisions would only become operative if appropriate funding, as determined by the office, is made available. The bill would require the office to report annually to the Legislature with regard to the program, as specified.

(2) Existing law establishes the Steven M. Thompson Physician Corps Loan Repayment Program in the California Physician Corps Program within the Health and Professions Education Foundation, which provides financial incentives, as specified, to a physician and surgeon for practicing in a medically underserved community. Existing law authorizes the foundation to appoint a selection committee to provide policy direction and guidance over the program.

This bill would require that selection committee to fill 15% of the available positions with program applicants that agree to practice in a geriatric care setting. These provisions would become operative only if AB 2439 is enacted and becomes effective on or before January 1, 2009.

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

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

SECTION 1. This act shall be known and may be cited as the Geriatric and Gerontology Workforce Expansion Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) The population of California is aging at an exponential rate with Californians who are 65 years of age or over reaching 6.5 million by 2010, which is over 14 percent of the total population, and reaching over 9 million by 2020.

(b) The greatest growth within the aging population will be those who are 85 years of age or older who will, by 2030, comprise one in five of California's older residents.

(c) As California ages, it will become more racially and ethnically diverse, with African Americans, Latinos, and Asian Americans exceeding 40 percent of the older adult population, many of whom were born outside the United States; meaning, therefore, that there is a greater need for those providing services to older adults to be bilingual or multilingual.

(d) It is the policy of the Mello-Granlund Older Californians Act (Division 8.5 (commencing with Section 9000) of the Welfare and Institutions Code) that older adults and those with disabilities live as independent from institutions as much as possible and as long as possible.

(e) It is the policy of the Mello-Granlund Older Californians Act (Division 8.5 (commencing with Section 9000) of the Welfare and Institutions Code) that to live independently, older Californians must have an array of home and community-based services, in conjunction with the federal Older Americans Act (42 U.S.C. Sec. 3001 et seq.), that support a quality of life and saves taxpayer dollars in contrast to the cost of institutionalization.

(f) In order to sustain an independent lifestyle for older adults, there must be trained gerontologists and health care professionals trained in geriatrics to address the social and health needs of older adults as they age.

(g) At present, California faces a severe shortage of professional and paraprofessional gerontologists and geriatricians needed to operate programs and provide services for older adults. Currently, there is only one board-certified physician geriatrician per 4,000 Californians who are 65 years of age or older; and currently, only 5 percent of social workers are trained in gerontology or geriatrics, yet 62 percent of licensed social workers have, or have had, care management responsibilities.

(h) Incentives for recruiting students into training for careers in gerontology and geriatrics must be developed in order to fill the gap between workforce supply and demand lest the state incur the greater cost of institutionalization and the quality of life for older Californians suffers.

(i) Student loan forgiveness programs are a proven method of inducing health care professionals to pursue stipulated career fields for a specified time in exchange for loan assistance.

SEC. 3. Section 2815.2 is added to the Business and Professions Code, to read:

2815.2. In addition to the fees charged for initial issuance or biennial renewal of a license pursuant to Section 2815, and at the time those fees are charged, the board shall charge each applicant or licensee an additional fee of ten dollars ($10) for the purposes of the California Geriatric Registered Nurses Loan Assistance Program of 2008 (Article 5 (commencing with Section 128305) of Chapter 4 of Part 3 of Division 107 of the Health and Safety Code). Payment of this ten-dollar ($10) fee shall be made at the time of application for initial licensure or biennial renewal. All fees collected pursuant to this section shall be deposited in the Geriatric Registered Nurses Account, as provided in Section 128305.4 of the Health and Safety Code.

SEC. 4. Section 4984.75 is added to the Business and Professions Code, to read:

4984.75. In addition to the fees charged for initial issuance or biennial renewal of a license pursuant to Section 4984.7, and at the time those fees are charged, the board shall charge each applicant or licensee an additional fee of ten dollars ($10) for the purposes of the California Geriatric Social Workers and Marriage and Family Therapists Loan Assistance Program of 2008 (Article 6 (commencing with Section 128310) of Chapter 4 of Part 3 of Division 107 of the Health and Safety Code). Payment of this ten-dollar ($10) fee shall be made at the time of application for initial licensure or biennial renewal. All fees collected pursuant to this section shall be deposited in the Geriatric Social Workers and Marriage and Family Therapists Account, as provided in Section 128310.4 of the Health and Safety Code.

SEC. 5. Section 4996.66 is added to the Business and Professions Code, to read:

4996.66. In addition to the fees charged for initial issuance or biennial renewal of a license pursuant to Section 4996.3, and at the time those fees are charged, the board shall charge each applicant or licensee an additional fee of ten dollars ($10) for the purposes of the California Geriatric Social Workers and Marriage and Family Therapists Loan Assistance Program of 2008 (Article 6 (commencing with Section 128310) of Chapter 4 of Part 3 of Division 107 of the Health and Safety Code). Payment of this ten-dollar ($10) fee shall be made at the time of application for initial licensure or biennial renewal. All fees collected pursuant to this section shall be deposited in the Geriatric Social Workers and

Marriage and Family Therapists Account, as provided in Section 128310.4 of the Health and Safety Code.

SEC. 6. Article 5 (commencing with Section 128305) is added to Chapter 4 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 5. California Geriatric Registered Nurses Loan Assistance Program of 2008

128305. There is hereby established in the Office of Statewide Health Planning and Development, the California Geriatric Registered Nurses Loan Assistance Program of 2008.

128305.1. It is the intent of this article that the office, in consultation with the board, the medical community, including representatives of ethnic minority groups, medical schools, health advocates, primary care clinics, public hospitals and health care systems, statewide agencies administering state and federally funded health programs targeting communities of older Californians, and members of the public with health care issue-area expertise, shall develop and implement the California Geriatric Registered Nurses Loan Assistance Program of 2008.

128305.2. For purposes of this article, the following terms have the following meanings:

(a) "Account" means the Geriatric Registered Nurses Account that is contained within the fund.

(b) "Board" means the Board of Registered Nursing.

(c) "Fund" means the Board of Registered Nursing Fund.

(d) "Geriatrics" means the practice of nursing, with training in, and application to, older adults who are 65 years of age or older or those with disabilities.

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

(f) "Program" means the California Geriatric Registered Nurses Loan Assistance Program of 2008.

128305.3. (a) Program applicants shall possess a current valid license to practice registered nursing in this state issued by the board pursuant to Section 2742 of the Business and Professions Code.

(b) The office shall develop the guidelines for selection and placement of applicants. The guidelines shall do all of the following:

(1) Provide priority consideration to applicants who are trained in, and practice, geriatric nursing, including, but not limited to, nurses with doctorate degrees in gerontology, geriatric nurse practitioners, and geriatric nurse clinicians, and who can meet the cultural and linguistic needs and demands of diverse populations of older Californians.

~~(2) Provide priority consideration to applicants who are recognized as geriatric nurse practitioners or geriatric nurse clinicians and that have recently obtained their license to practice as a registered nurse.~~

~~(3)~~

(2) Give preference to applicants who have completed a residency in nursing.

~~(4)~~

(3) Seek to place the most qualified applicants under this section in the areas with the greatest need.

~~(5)~~

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

~~(6)~~

(5) Ensure that applicants may not discriminate against those who cannot pay for medical services or those who are funded, in part or in whole, by Medicare or Medi-Cal.

(c) Program participants shall be working in, or have a signed agreement with, an eligible practice setting. The program participant shall have full-time status, as defined by the office. The office may establish exemptions to this requirement on a case-by-case basis.

(d) Program participants shall commit to a minimum of three years of service in a geriatric care setting. Leaves of absence shall be permitted for serious illnesses, pregnancy, or other natural causes. The office shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Loan repayment shall be deferred until the nurse is back to full-time status.

(e) The office shall develop the process *to reconcile the loan* should a nurse be unable to complete his or her three-year obligation.

(f) The office shall develop a process for outreach to potentially eligible applicants.

(g) The office may adopt any other standards of eligibility, placement, or termination appropriate to achieve the aim of providing competent health care services in geriatrics.

128305.4. (a) The Geriatric Registered Nurses Account is hereby created in the fund.

(b) Funding for the account shall be from fees paid at the time of initial licensure or renewal pursuant to Section 2815.2 of the Business and Professions Code.

(c) Funds placed into the account shall be used by the office to repay the loans of program participants pursuant to agreements made under the program.

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

(2) Loan repayments shall not exceed thirty thousand dollars ($30,000) per program participant.

(3) Loan repayments shall not exceed the amount of the educational loans incurred by the program participant.

(d) Notwithstanding Section 11005 of the Government Code, the office may seek and receive matching funds from foundations and private sources to be placed into the account. The office also may contract with an exempt foundation for the receipt of matching funds to be transferred to the account for use by this program.

128305.5. The terms of loan repayment granted under this article shall be as follows:

(a) After a program participant has completed one year of providing services as a registered nurse in a geriatric setting, the office shall provide up to seven thousand five hundred dollars ($7,500) for loan repayment.

(b) After a program participant has completed two consecutive years of providing services as a registered nurse in a geriatric setting, the office shall provide up to an additional ten thousand dollars ($10,000) of loan repayment, for a total loan repayment of up to seventeen thousand five hundred dollars ($17,500).

(c) After a program participant has completed three consecutive years of providing services as a registered nurse in a geriatric

setting, the office shall provide up to a maximum of an additional twelve thousand five hundred dollars ($12,500) of loan repayment, for a total loan repayment of up to thirty thousand dollars ($30,000).

128305.6. (a) On and after January 1, 2010, applications from registered nurses for program participation may be submitted.

(b) The office may work in conjunction with the Health Professions Education Foundation for the implementation and administration of this program.

(c) The office may promulgate emergency regulations to implement the program.

SEC. 7. Article 6 (commencing with Section 128310) is added to Chapter 4 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 6. California Geriatric Social Workers and Marriage and Family Therapists Loan Assistance Program of 2008

128310. There is hereby established in the Office of Statewide Health Planning and Development, the California Geriatric Social Workers and Marriage and Family Therapists Loan Assistance Program of 2008.

128310.1. It is the intent of this article that the office, in consultation with the board, the medical community, including representatives of ethnic minority groups, schools of social work, health advocates, primary care clinics, public hospitals and health care systems, statewide agencies administering state and federally funded health programs targeting communities of older Californians, and members of the public with health care issue-area expertise, shall develop and implement the California Geriatric Social Workers and Marriage and Family Therapists Loan Assistance Program of 2008.

128310.2. For purposes of this article, the following terms have the following meanings:

(a) "Account" means the Geriatric Social Workers and Marriage and Family Therapists Account that is contained within the fund.

(b) "Board" means the Board of Behavioral Sciences.

(c) "Fund" means the Behavioral Sciences Fund.

(d) "Geriatrics" means the practice of ~~medicine~~ *social work or marriage and family therapy*, with training in, and application to,

older adults who are 65 years of age or older or those with disabilities.

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

(f) "Program" means the California Geriatric Social Workers and Marriage and Family Therapists Loan Assistance Program of 2008.

128310.3. (a) Program applicants shall be registered associate clinical social workers receiving supervision or shall possess a current valid license to practice social work or marriage and family therapy in this state issued by the board pursuant to Section 4980.30 or 4996.1 of the Business and Professions Code.

(b) The office shall develop the guidelines for selection and placement of applicants. The guidelines shall do all of the following:

(1) Provide priority consideration to applicants who are trained in, and practice, geriatric social work or marriage and family therapy, and who can meet the cultural and linguistic needs and demands of diverse populations of older Californians.

(2) Provide priority consideration to applicants who have recently obtained their license to practice marriage and family therapy or clinical social work or be a registered associate clinical social worker receiving supervision.

(3) Give preference to applicants who have completed an internship in geriatric social work or marriage and family therapy.

(4) Seek to place the most qualified applicants under this section in the areas with the greatest need.

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

(6) Ensure that applicants may not discriminate against those who cannot pay for medical services or those who are funded, in part or in whole, by Medicare or Medi-Cal.

(c) Program participants shall be working in, or have a signed agreement with, an eligible practice setting. The program participant shall have full-time status, as defined by the office. The office may establish exemptions to this requirement on a case-by-case basis.

(d) Program participants shall commit to a minimum of three years of service in a geriatric care setting. Leaves of absence shall be permitted for serious illnesses, pregnancy, or other natural

causes. The office shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Loan repayment shall be deferred until the participant is back to full-time status.

(e) The office shall develop the process *to reconcile the loan* should a participant be unable to complete his or her three-year obligation.

(f) The office shall develop a process for outreach to potentially eligible applicants.

(g) The office may adopt any other standards of eligibility, placement, or termination appropriate to achieve the aim of providing competent social services in geriatrics.

128310.4. (a) The Geriatric Social Workers and Marriage and Family Therapists Account is hereby created in the fund.

(b) Funding for the account shall be from fees paid at the time of initial licensure or renewal pursuant to Sections 4984.75 and 4996.66 of the Business and Professions Code.

(c) Funds placed into the account shall be used by the office to repay the loans of program participants pursuant to agreements made under the program.

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

(2) Loan repayments shall not exceed thirty thousand dollars ($30,000) per program participant.

(3) Loan repayments shall not exceed the amount of the educational loans incurred by the program participant.

(d) Notwithstanding Section 11005 of the Government Code, the office may seek and receive matching funds from foundations and private sources to be placed into the account. The office also may contract with an exempt foundation for the receipt of matching funds to be transferred to the account for use by this program.

128310.5. The terms of loan repayment granted under this article shall be as follows:

(a) After a program participant has completed one year of providing services as a licensed marriage and family therapist or a licensed or associate clinical social worker in a geriatric setting, the office shall provide up to seven thousand five hundred dollars ($7,500) for loan repayment.

(b) After a program participant has completed two consecutive years of providing services as a licensed marriage and family

therapist or a licensed or associate clinical social worker in a geriatric setting, the office shall provide up to an additional ten thousand dollars ($10,000) of loan repayment, for a total loan repayment of up to seventeen thousand five hundred dollars ($17,500).

(c) After a program participant has completed three consecutive years of providing services as a licensed marriage and family therapist or a licensed or associate clinical social worker in a geriatric setting, the office shall provide up to a maximum of an additional twelve thousand five hundred dollars ($12,500) of loan repayment, for a total loan repayment of up to thirty thousand dollars ($30,000).

128310.6. (a) On and after January 1, 2010, applications from marriage and family therapists, registered associate social workers, and licensed social workers for program participation may be submitted.

(b) The office may work in conjunction with the Health Professions Education Fund in the implementation and administration of this program.

(c) The office may promulgate emergency regulations to implement the program.

SEC. 8. Section 128552 of the Health and Safety Code is amended to read:

128552. For purposes of this article, the following definitions shall apply:

(a) "Account" means the Medically Underserved Account for Physicians established within the Health Professions Education Fund pursuant to this article.

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

(c) "Fund" means the Health Professions Education Fund.

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

(e) "Medically underserved area" means an area defined as a health professional shortage area in Part 5 of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations or an

area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225.

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

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

(h) "Physician Volunteer Program" means the Physician Volunteer Registry Program established by the Medical Board of California.

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

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

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

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

(k) "Program" means the Steven M. Thompson Physician Corps Loan Repayment Program.

(l) "Selection committee" means a minimum three-member committee of the board, that includes a member that was appointed by the Medical Board of California.

SEC. 9. Section 128553 of the Health and Safety Code is amended to read:

128553. (a) Program applicants shall possess a current valid license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code.

(b) The foundation, in consultation with those identified in subdivision (b) of Section 123551, shall use guidelines developed by the Medical Board of California for selection and placement of applicants until the office adopts other guidelines by regulation.

(c) The guidelines shall meet all of the following criteria:

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

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have received significant training in cultural and linguistically appropriate service delivery.

(D) Have three years of experience working in medically underserved areas or with medically underserved populations.

(E) Have recently obtained a license to practice medicine.

(2) Include a process for determining the needs for physician services identified by the practice setting and for ensuring that the practice setting meets the definition specified in subdivision (h) of Section 128552.

(3) Give preference to applicants who have completed a three-year residency in a primary specialty.

(4) Seek to place the most qualified applicants under this section in the areas with the greatest need.

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

(d) (1) The foundation may appoint a selection committee that provides policy direction and guidance over the program and that complies with the requirements of subdivision (*l*) of Section 128552.

(2) The selection committee may fill up to 20 percent of the available positions with program applicants from specialties outside of the primary care specialties.

(3) The selection committee shall fill 15 percent of the available positions with program applicants that agree to practice in a geriatric care setting. Priority consideration shall be given to applicants who are trained in, and practice, geriatrics, and who can meet the cultural and linguistic needs and demands of diverse populations of older Californians.

(e) Program participants shall meet all of the following requirements:

(1) Shall be working in or have a signed agreement with an eligible practice setting.

(2) Shall have full-time status at the practice setting. Full-time status shall be defined by the board and the selection committee

may establish exemptions from this requirement on a case-by-case basis.

(3) Shall commit to a minimum of three years of service in a medically underserved area. Leaves of absence shall be permitted for serious illness, pregnancy, or other natural causes. The selection committee shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Loan repayment shall be deferred until the physician is back to full-time status.

(f) The office shall adopt a process ~~that applies if a physician is~~ *to reconcile the loan should a physician be* unable to complete his or her three-year obligation.

(g) The foundation, in consultation with those identified in subdivision (b) of Section 128551, shall develop a process for outreach to potentially eligible applicants.

(h) The foundation may recommend to the office any other standards of eligibility, placement, and termination appropriate to achieve the aim of providing competent health care services in approved practice settings.

SEC. 10. Chapter 6 (commencing with Section 128559) is added to Part 3 of Division 107 of the Health and Safety Code, to read:

CHAPTER 6. CALIFORNIA GERIATRIC AND GERONTOLOGY STUDENT LOAN ASSISTANCE PROGRAM OF 2008

128559. This chapter shall be known and may be cited as the California Geriatric and Gerontology Student Loan Assistance Program of 2008.

128559.1. It is the intent of this chapter that the Office of Statewide Health Planning and Development, in consultation with the Medical Board of California, state allied health professional and behavioral sciences licensing boards, postsecondary schools of health sciences and social work, health advocates representing diverse ethnic communities, primary care clinics, public hospitals and health care systems, statewide agencies administering state and federally funded programs targeting treatment and services for older adults, and members of the public with health care issue-area expertise, shall develop and implement the program.

128559.2. (a) There is hereby established in the Office of Statewide Health Planning and Development, the California Geriatric and Gerontology Student Loan Assistance Program of 2008.

(b) The Office of Statewide Health Planning and Development shall operate the program in accordance with, but not limited to, the following:

(1) Increased efforts in educating students trained in geriatrics and gerontology of the need for health care and social work professionals to meet the demands of the exponential increase in the older adult population, and of programs that are available that provide incentives, financial and otherwise, to practice in settings and areas in need.

(2) Strategic collaboration with California postsecondary schools of health sciences and social work to better prepare health care professionals and social workers to meet the distinctive cultural and medical needs of California's older adult populations.

(3) Establish, encourage, and expand programs for students of the health care and social work professions for mentoring at primary and secondary schools, and college levels to increase the number of students entering the studies of health professions and social work with a concentration in geriatrics or gerontology.

(4) Administer financial or other incentives to encourage new or experienced health care professionals and social workers to practice in the fields of geriatrics and gerontology.

128559.3. For purposes of this chapter:

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

(b) "Program" means the California Geriatric and Gerontology Student Loan Assistance Program of 2008.

128559.4. (a) The office shall administer the program. Any individual enrolled in an institution of postsecondary education participating in the programs set forth in this chapter may be eligible to receive a conditional warrant for loan repayment, to be redeemed upon becoming employed as a licensed health professional, marriage and family therapist, or social worker or registered associate social worker in a setting serving primarily older adult populations. In order to be eligible to receive a conditional loan repayment warrant, an applicant shall satisfy all of the following conditions:

(1) The applicant has been judged by his or her postsecondary institution to have outstanding ability on the basis of criteria that may include, but not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(2) In order to meet the costs associated with obtaining a health professional or social work degree, the applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (10 U.S.C. Sec. 1071 et seq.).

(B) Any loan program approved by the Student Aid Commission.

(3) The applicant has agreed to provide services as a licensed health professional, marriage and family therapist, or social worker, or to be registered as an associate clinical social worker with satisfactory progress toward licensure, for up to three consecutive years, after obtaining a license or associate registration from the applicable state health professional or behavioral ~~science~~ *sciences* licensing board, in a setting providing health or social services primarily to older adults.

(4) The applicant has agreed that he or she shall not discriminate against any patient or client who cannot pay for services or those who are funded, in part or in whole, by Medicare or Medi-Cal.

(b) The office shall ensure that priority consideration be given to applicants who are best suited to meet the cultural and linguistic needs and demands of geriatric populations and who meet one or more of the following criteria:

(1) Have received significant training in cultural and linguistically appropriate service delivery.

(2) Have done a clinical rotation or social work internship, of at least two semesters, serving older adult populations.

(c) A person participating in the program pursuant to this chapter shall not receive more than one warrant.

(d) The office shall adopt rules and regulations regarding the reallocation of warrants if a participating institution is unable to

utilize its allocated warrants or is unable to distribute them within a reasonable time period.

128559.5. (a) The office shall develop the process to redeem an applicant's warrant and commence loan repayment.

(b) The office shall distribute student applications to participate in the program to postsecondary institutions eligible to participate in the state and federal financial aid programs and that have a program of professional preparation for health care professionals, social workers, or marriage and family therapists.

(c) Each participating institution shall sign an institutional agreement with the office, certifying its intent to administer the program according to all applicable published rules, regulations, and guidelines, and shall make special efforts to notify students regarding the availability of the program particularly to economically disadvantaged students.

(d) To the extent feasible, the office and each participating institution shall coordinate this program with other existing programs designed to recruit or encourage students to enter the health care, social work, or marriage and family therapy profession. These programs shall include, but not be limited to, the following:

(1) The Song-Brown Family Physician Training Act (Article 1 (commencing with Section 128200) of Chapter 4).

(2) The Health Education and Academic Loan Act (Article 2 (commencing with Section 128250) of Chapter 4).

(3) The National Health Service Corps.

128559.6. (a) The office shall administer the program and shall adopt rules and regulations for that purpose. The rules and regulations shall include, but not be limited to, provisions regarding the period of time for which a warrant shall remain valid, the reallocation of warrants that are not utilized, and the development of projections for funding purposes.

(b) The office shall work in conjunction with lenders participating in federal or similar loan programs to develop a streamlined application process for participation in the program.

128559.7. (a) The office shall establish a fund to utilize for the purposes of this chapter.

(b) The office may seek matching funds from foundations and private sources. The office may also contract with an exempt foundation for the receipt of matching funds to be transferred to the fund for use by this program.

(c) The provisions of this chapter shall not become operative unless appropriate funding, as determined by the office, is made available.

128559.8. (a) On or before January 31 of each year, the office shall provide an annual report to the Legislature regarding the program that includes all of the following:

(1) The number of program participants by profession.

(2) Practice locations.

(3) The amount expended for the program.

(4) Information on annual performance reviews by the practice setting and program participants.

(5) An evaluation of the program's effectiveness in improving access to health and social services for older adults.

(6) Recommendations for maintaining or expanding the program.

(b) This section shall become operative on January 1, 2010.

SEC. 11. Sections 8 and 9 of this act shall become operative only if Assembly Bill 2439 of the 2007–08 Regular Session is enacted and becomes effective on or before January 1, 2009.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2649
Author: Ma
Bill Date: March 24, 2008, amended
Subject: Medical Assistants: authorized services
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Business and Professions Committee and has been set for hearing on April 29, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would specify that the provisions that allow a medical assistant to perform services relating to the administration of medication and performance of skin tests and simple routine medical tasks under the supervision of a physician do not authorize a medical assistant to trim the nails of, or debride in an manner using a scalpel, paring instrument, or other object the corns, bunions, or callus of, a patient who is diabetic or suffers from any form of circulatory disorder affecting the extremities.

ANALYSIS:

Current law authorizes a medical assistant to perform specified services relating to administration of medication and performance of skin tests and simple routine tasks and procedures under the supervision of a physician. Regulations allow medical assistants to cut the nails of an otherwise health person (Code of regulations Section 1366(b)(12)).

This bill would specify that these provisions do not authorize a medical assistant to trim the nails of, or debride in any manner using a scalpel, paring instrument, or other object the corns, bunions, or callus of, a patient who is diabetic or suffers from any form of circulatory disorder affecting the extremities.

This appears to clarify existing laws and regulations, although it may be unnecessary.

FISCAL: None

POSITION: Recommendation: Neutral

April 18, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2649

Introduced by Assembly Member ~~Carter~~ *Ma*

February 22, 2008

~~An act to amend Section 100 of the Business and Professions Code, relating to business.~~ *An act to amend Section 2069 of the Business and Professions Code, relating to healing arts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2649, as amended, ~~Carter~~ *Ma.* ~~Department of Consumer Affairs.~~ *Medical assistants: authorized services.*

Existing law authorizes a medical assistant to perform specified services relating to administration of medication and performance of skin tests and simple routine medical tasks and procedures upon specific authorization from and under the supervision of a licensed physician and surgeon or podiatrist, or a physician and surgeon or podiatrist group or corporation.

This bill would specify that these provisions do not authorize a medical assistant to trim the nails of, or debride in any manner using a scalpel, paring instrument, or other object the corns, bunions, or callus of, any patient who is diabetic or suffers from any form of circulatory disorder affecting the extremities.

~~Existing law creates the Department of Consumer Affairs in the State and Consumer Services Agency.~~

~~This bill would make a nonsubstantive change to these provisions.~~

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

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

SECTION 1. Section 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 or a licensed podiatrist. A medical assistant may also perform all these tasks and services in a clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code upon the specific authorization of a physician assistant, a nurse practitioner, or a nurse-midwife.

(2) The supervising physician and surgeon at a clinic described in paragraph (1) 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 supervising 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 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 supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the nurse-midwife as provided in subdivision (a), 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 supervising physician and surgeon or the supervising podiatrist, or the physician assistant, the nurse practitioner, or the nurse-midwife as provided in subdivision (a), 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 as provided in subdivision (a).

(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 or a licensed podiatrist, or a physician assistant, a nurse practitioner, or a nurse-midwife as provided in subdivision (a).

(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 1206.5). 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.

(f) Nothing in this section shall be construed as authorizing a medical assistant to trim the nails of, or debride in any manner using a scalpel, paring instrument, or other object the corns, bunions, or callus of, any patient who is diabetic or suffers from any form of circulatory disorder affecting the extremities.

~~SECTION 1. Section 100 of the Business and Professions Code is amended to read:~~

~~100. There is in the state government, within the State and Consumer Services Agency, a Department of Consumer Affairs.~~

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2734
Author: Krekorian
Bill Date: April 17, 2008, amended
Subject: Advertisements: license # and MBC website
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Appropriations Committee and has been set for hearing on April 23, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require on July 1, 2009, business cards of physicians to include the licensing agency and a valid license # or ficticious name permit (FNP) #. It would prohibit, effective July 1, 2009, a physician from advertising unless that advertising contains the physician's name, a valid license number, and the FNP #. All required information must appear in close proximity to the physician's name. This bill would also require, commencing July 1, 2009, any advertising by physicians to contain the licensing agency, the physician's valid license number, and the current Website for the licensing agency.

ANALYSIS:

Current law imposes limitations on advertising by health care practitioners. The author of this bill believes that, in the interests of public protection, consumers need the ability to verify that healthcare practitioners are properly licensed and in good standing with their respective licensing authorities.

This bill would require all business cards for physicians to contain the physician's licensing agency immediately followed by the valid license number. The business cards must also contain the FNP #, if applicable.

This bill would require all advertisements and promotional material disseminated by a licensed physician to include the physician's name immediately followed by a valid license number for that physician, the current Website for the Board, and, in the case of an entity other than an individual, the fictitious name permit. This bill also prohibits the willful and intentional use of a license number that is not current and valid, and makes a violation of this is punishable by a fine for the first occurrence up to one thousand dollars

($1,000) and for a second offense up to ten thousand dollars ($10,000), imprisonment for up to one year, or both. This bill also states that an intentional violation constitutes unprofessional conduct and grounds for suspension or revocation of the physician's license.

FISCAL: None

POSITION: Recommendation: Support

April 18, 2008

AMENDED IN ASSEMBLY APRIL 17, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2734

Introduced by Assembly Member Krekorian

February 22, 2008

An act to add Section 605 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2734, as amended, Krekorian. Health care practitioners: *business cards and* advertisements.

Existing law provides for the licensure and regulation of the practice of medicine by the Medical Board of California and provides for the licensure and regulation of the practice of dentistry by the Dental Board of California. Existing law imposes certain limitations on advertising by health care practitioners.

This bill would ~~require a public communication, as defined, by~~, *commencing July 1, 2009, require a business card or professional card disseminated by or caused to be disseminated by a licensed physician and surgeon, dentist, chiropractor, or osteopath, or a person required to be licensed as such, in connection with the practice of medicine, dentistry, chiropractic, or osteopathy to include a valid license number or a fictitious name permit number. The bill would also, commencing July 1, 2009, prohibit* a licensed physician and surgeon, dentist, chiropractor, or osteopath, or a person required to be licensed as such, ~~to include a valid license number, contact information for the appropriate licensing agency, a notice to contact the agency for further licensing details, and, in the case of an entity other than an individual, the fictitious name permit number, as specified~~ *from disseminating or causing to be*

disseminated an advertisement or promotional material that does not contain specified information, except that this prohibition would not apply until January 1, 2010, to any advertising or promotional material that is published annually and prior to July 1, 2009. The bill would also, *commencing January 1, 2009,* prohibit the willful and intentional use of a license number that is not the person's current, valid license number. The bill would make a violation of these provisions ~~a crime,~~ punishable as specified, *and would make specified violations a crime. The bill would also make an intentional violation unprofessional conduct and grounds for suspension or revocation of a license, as specified.*

Because this bill would create new crimes, it would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 605 is added to the Business and Professions Code, to read:

605. (a) ~~No~~ *On and after July 1, 2009, no* person licensed or required to be licensed pursuant to Chapter 4 (commencing with Section 1600) or Chapter 5 (commencing with Section 2000) or under any initiative act referred to in this division shall disseminate, or cause to be disseminated, any ~~form of public communication for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products~~ *business card or professional card in connection with the professional practice or business for which a license is required pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), or an initiative act referred to in this division, unless the card contains the applicable state licensing agency immediately followed by the valid license number issued to that person in the following form:*

"(insert state agency) License number: (insert valid license number)"

The following abbreviations may be used: "CA" or "Calif." may be substituted for "State," "Med." may be substituted for "Medical," "Dent." may be substituted for "Dental," "Bd." may be substituted for "Board," "Bur." may be substituted for "Bureau," "Lic." may be substituted for "License" and "No." or "#" may be substituted for "number."

A business card or professional card on behalf of, in whole or part, a person practicing under a fictitious business name shall include the fictitious name permit number issued by the applicable state licensing agency.

(b) On and after July 1, 2009, no person licensed or required to be licensed pursuant to Chapter 4 (commencing with Section 1600) or Chapter 5 (commencing with Section 2000) or under any initiative act referred to in this division shall disseminate, or cause to be disseminated, any form of advertisement or promotional material in connection with the professional practice or business for which a license is required pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), or an initiative act referred to in this division, unless that dissemination *clearly and conspicuously* contains all of the following information:

~~(1) A valid license number issued by the applicable licensing authority for the person offering the services or products, the Web site and telephone number of the licensing authority, and a notice to contact that agency for further licensing information.~~

~~(2) If the dissemination is on behalf of, in whole or part, any person other than an individual, the dissemination shall also include the person's fictitious name permit number.~~

(1) The name of the person or the fictitious business name of the person as approved by the licensing authority.

(2) (A) If the dissemination is oral and contains no written or visual component, the applicable state licensing agency immediately followed by the valid license number issued to that person.

(B) For all other forms of dissemination, the applicable state licensing agency immediately followed by both the valid license number issued to that person and the current valid Internet Web site of the applicable state licensing agency, all of which shall appear in close proximity to the name of the person and in the following form:

"(Name of state agency) License number: ____" "www.____"
The following abbreviations may be used: "CA" or "Calif." may be substituted for "State," or for "California," "Med." may be substituted for "Medical," "Dent." may be substituted for "Dental," "Bd." may be substituted for "Board," "Bur." may be substituted for "Bureau," "Lic." may be substituted for "License" and "No." or "#" may be substituted for "number."
(3) An advertisement or promotional material on behalf of, in whole or part, a person practicing under a fictitious business name shall include the fictitious name permit number issued by the applicable state licensing agency.
this subdivision shall not apply until January 1, 2010, to any advertisement or promotional material that is published annually and prior to July 1, 2009.
~~(b)~~
(c) For purposes of this section, the following terms have the following meanings:
(1) "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.
(2) ~~A "public communication"~~ *An "advertisement" or "promotional material"* includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, ~~business card, list or directory of healing arts practitioners~~ *directory*, Internet, or other electronic communication. *It does not include a directory listing that contains no additional information other than the licensee's name, address, and telephone number.*
~~(c) A violation of this section constitutes a misdemeanor and is punishable by imprisonment in the county jail for not more than six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.~~
(d) (1) A violation of this section by a licensed person described in subdivision (a) or (b) is punishable by a fine not exceeding one thousand dollars ($1,000). A second or subsequent violation of this section by a licensed person described in subdivision (a) or (b) is a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000).
(2) A violation of this section by a person described in subdivision (a) or (b) who has no license, or who has a license

that is suspended or revoked, is a misdemeanor offense, punishable by imprisonment in the county jail for not more than six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

~~(d)~~

(e) Any person described in subdivision (a) *or (b)* who willfully and intentionally uses a license number that does not correspond to the number on a currently valid license held by that person, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The penalty provided by this section is cumulative to the penalties available under all other laws.

~~(e) A~~

(f) An intentional violation of this section in the case of a licensed person described in subdivision (a) *or (b)* constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein.

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2747
Author: Berg
Bill Date: April 7, 2008, amended
Subject: End-of-Life Care
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Judiciary Committee and has been set for hearing on April 29, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require that when an attending physician makes a diagnosis that a patient has a terminal illness the physician must provide the patient an opportunity to receive information and counseling regarding all legal end-of-life care options if the patient requests the information.

ANALYSIS:

Information and counseling regarding end-of-life care options are essential for many terminally ill patients and their families. Patients need to know how to weigh all of their options and make informed decisions. It gives the physician an opportunity to discuss the benefits and disadvantages of all available treatments and it can facilitate earlier access to hospice care.

AB 2747 requires attending physicians who diagnose a patient as terminally ill to provide the patient an opportunity to receive information and counseling regarding end-of-life care. It appears this "opportunity" applies if the patient requests the information. If physicians do not wish to comply with the patient's choice of end-of-life options, they must refer the patients to another health care provider or provide them with information on procedures to transfer to another provider.

The current language of the bill does not address from where the physicians obtain the information on end-of-life care options, although it does state this information need not be in writing.

FISCAL: None

POSITION: Recommendation: Neutral if amended to clarify what materials or information should be provided.

April 18, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2747

Introduced by Assembly Members Berg and Levine

February 22, 2008

An act to add Part 1.8 (commencing with Section 442) to Division 1 of the Health and Safety Code, relating to end-of-life care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2747, as amended, Berg. End-of-life care.

Existing law provides for the licensure and regulation of health facilities and hospices by the State Department of Public Health. Existing law provides for the regulation and licensing of physicians and surgeons by the Medical Board of California.

This bill would provide that when an attending physician makes a diagnosis that a patient has a terminal illness or makes a prognosis that a patient has less than one year to live, the health care provider shall provide the patient with the opportunity to receive information and counseling regarding legal end-of-life options, as specified, and provide for the referral or transfer of a patient if the patient's physician does not wish to comply with the patient's choice of end-of-life options.

Vote: majority. Appropriation: no. Fiscal committee: no. 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) Palliative and hospice care are invaluable resources for terminally ill Californians in need of comfort and support at the end of life.

(b) Palliative care and conventional medical treatment should be thoroughly integrated rather than viewed as separate entities.

(c) Even though Californians with a prognosis of six months or less to live are eligible for hospice care, nearly two-thirds of them receive hospice services for less than one month.

(d) Many patients benefit from being referred to hospice care earlier, where they receive better pain and symptom management and have an improved quality of life.

(e) Significant information gaps may exist between health care providers and their patients on end-of-life care options potentially leading to delays to, or lack of, referrals to hospice care for terminally ill patients. The sharing of important information regarding specific treatment options in a timely manner by health care providers is a key component of quality end-of-life care. Information that is helpful to patients and their families includes, but is not limited to, the availability of hospice care, the efficacy and potential side effects of continued curative treatment, and withholding or withdrawal of life sustaining treatments.

(f) Terminally ill and dying patients rely on their health care providers to give them timely and informative data. Research shows a lack of communication between health care providers and their terminally ill patients can cause problems, including poor availability of, and lack of clarity regarding, advanced health care directives and patients' end-of-life care preferences. This lack of information and poor adherence to patient choices ~~results~~ *result* in "bad deaths" that cause needless physical and psychological suffering to patients and their families.

(g) Those problems are complicated by social issues, such as cultural and religious pressures for the providers, patients, and their family members. A recent survey found that providers that object to certain practices are less likely than others to believe they have an obligation to present all of the options to patients and refer patients to other providers, if necessary.

(h) Every medical school in California is required to include end-of-life care issues in its curriculum and every physician in California is required to complete continuing education courses in end-of-life care.

(i) Palliative care is not a one-size-fits-all approach. Patients have a range of diseases and respond differently to treatment options. A key benefit of palliative care is that it customizes treatment to meet the needs of each individual person.

(j) Informed patient choices will help terminally ill patients and their families cope with one of life's most challenging situations.

SEC. 2. Part 1.8 (commencing with Section 442) is added to Division 1 of the Health and Safety Code, to read:

PART 1.8. END-OF-LIFE CARE

442. For the purposes of this part, the following definitions shall apply:

(a) "Curative treatment" means treatment intended to cure or alleviate symptoms of a given disease or condition.

(b) "Hospice" means a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient, and that meets all of the criteria specified in subdivision (b) of Section 1746.

(c) "Palliative care" means medical treatment, interdisciplinary care, or consultation provided to a patient or family members, or both, that has as its primary purpose the prevention of, or relief from, suffering and the enhancement of the quality of life, rather than treatment aimed at investigation and intervention for the purpose of cure or prolongation of life as described in subdivision (b) of Section 1339.31.

(d) "Palliative sedation" means the use of sedative medications to relieve extreme suffering by making the patient unaware and unconscious, while artificial food and hydration are withheld, during the progression of the disease leading to the death of the patient.

(e) "Refusal or withdrawal of life sustaining treatment" means forgoing treatment or medical procedures that replace or support an essential bodily function, including, but not limited to, cardiopulmonary resuscitation, mechanical ventilation, artificial nutrition and hydration, dialysis, and any other treatment or discontinuing any or all of those treatments after they have been used for a reasonable time.

(f) "Voluntary stopping of eating and drinking" or "VSED" means the voluntary refusal of a patient to eat and drink in order to alleviate his or her suffering, and includes the withholding or withdrawal of life-sustaining treatment at the request of the patient.

442.5. When an attending physician makes a diagnosis that a patient has a terminal illness or makes a prognosis that a patient has less than one year to live, the physician~~, or in the case of a patient in a health facility, as defined in Section 1250, the health facility,~~ shall provide the patient with the opportunity to receive comprehensive information and counseling regarding legal end-of-life care options. *When a patient is in a health facility, as defined in Section 1250, the attending physician or medical director may refer the patient to a hospice provider or private or public agencies and community-based organizations that specialize in end-of-life care case management and consultation to receive information and counseling regarding legal end-of-life care options.*

(a) If the patient indicates a desire to receive the information and counseling, the information shall include, but not be limited to, the following:

(1) Hospice care at home or in a health care setting.

(2) A prognosis with and without the continuation of curative treatment.

(3) The patient's right to refusal *of* or withdrawal from life-sustaining treatment.

(4) The patient's right to continue to pursue curative treatment while receiving palliative care.

(5) The patient's right to comprehensive pain and symptom management at the end of life, including, but not limited to, adequate pain medication, treatment of nausea, palliative chemotherapy, relief of shortness of breath and fatigue, VSED, and palliative sedation.

(b) The information described in subdivision (a) may, but is not required to be, in writing.

(c) Counseling may include, but not be limited to, discussions about the outcomes on the patient and his or her family, based on the interest of the patient.

442.7. If a physician does not wish to comply with his or her patient's choice of end-of-life options, the health care provider shall do both of the following:

(a) Refer or transfer a patient to an alternative health care provider.

(b) Provide the patient with information on procedures to transfer to an alternative health care provider.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2841
Author: Ma
Bill Date: February 22, 2008, introduced
Subject: Medical Procedures: reusable adipose cannula
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Business and Professions Committee and has been set for hearing on April 29, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require that patients be notified through written disclosure prior to any medical procedure in which a reusable adipose cannula is to be used for the second time, and for each use thereafter. Patient signature is required on the disclosure form and must be maintained in the patients' medical record.

ANALYSIS:

Current law requires specified disclosures to patients undergoing procedures involving collagen injections and silicone implants under the Medical Practice Act. Additionally, the Medical Board is required to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician when performed outside of a general acute care hospital.

According to the author, a large number of the adipose cannulas that are used in procedures are reusable. Although they are regulated by the United States Food and Drug Administration, there are no regulations or laws regarding the number of times that a reusable cannula may be used, number of patients that a reusable cannula can be used on, or the number of years that as adipose cannula can be used before it needs to be discarded.

As it is currently written, the bill does not identify a significant problem related to the use of reusable adipose cannulas relative to any other piece of surgical equipment that would warrant these disclosures. The California Society of Plastic Surgeons notes that the majority of all surgical instruments used during a procedure are used again and again. Sterilization procedures, when correctly followed, can prevent all risk of infection.

This bill would require the disclosure of a common practice that may cause more concern or confusion for patients, rather than providing better consumer protection. In addition, the disclosure must include the number of times the cannula has been used on other patients, the length of time the cannula has been in use, and how it has been sterilized. Much of this date is not currently maintained by the physician. The disclosure must contain information on alternatives to the disposable instrument.

The bill only applies to physician use of this instrument.

FISCAL: Minor and absorbable.

POSITION: Recommendation: Oppose

April 18, 2008

ASSEMBLY BILL No. 2841

Introduced by Assembly Member Ma

February 22, 2008

An act to add Section 2259.9 to the Business and Professions Code, relating to medical procedures.

LEGISLATIVE COUNSEL'S DIGEST

AB 2841, as introduced, Ma. Medical procedures: reusable adipose cannula.

Existing law, the Medical Practice Act, establishes the Medical Board of California under the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice. Existing law requires specified disclosures to patients undergoing procedures involving collagen injections, defined as any substance derived from, or combined with, animal protein. Existing law also requires the board to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would enact the Reusable Adipose Cannula Full Disclosure Act, which would require a physician and surgeon to provide specified written disclosures to a patient prior to that patient undergoing any adipose medical procedure, as defined, for which a reusable adipose cannula, as defined, is to be used. The bill would define adipose as tissue made up of fat cells located beneath the skin, and adipose cannula, generally, as the device used to remove adipose from, or inject adipose into, a patient. The bill would also provide that a violation of these provisions would not constitute a crime.

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

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

SECTION 1. This act shall be known and may be cited as the Reusable Adipose Cannula Full Disclosure Act.

SEC. 2. Section 2259.9 is added to the Business and Professions Code, to read:

2259.9. (a) Prior to any adipose medical procedure in which a reusable adipose cannula is to be used, the physician and surgeon performing the procedure or a member of his or her staff shall, in writing, disclose to the patient or legal guardian of a minor patient all of the following:

(1) The reusable adipose cannula has been used on other patients to perform an adipose medical procedure.

(2) The number of patients for which the reusable adipose cannula has been used to perform adipose medical procedures.

(3) The length of time that the reusable adipose cannula has been in use by the physician and surgeon.

(4) The process by which the reusable adipose cannula has been cleaned, sterilized, and stored after each adipose medical procedure.

(5) That an alternative to reusable adipose cannulas may be available for the adipose medical procedure in the form of disposable adipose cannulas.

(b) The disclosure required in subdivision (a) shall be signed by the patient or the legal guardian of a minor patient prior to the adipose medical procedure being performed. The signed disclosure shall be maintained in the patient's medical records file.

(c) The disclosure described in subdivision (a) shall not be required if the reusable adipose cannula is being used for the first time.

(d) Section 2314 shall not apply to this section.

(e) For purposes of this section:

(1) "Adipose" means tissue made up of fat cells located beneath the skin.

(2) "Adipose cannula" means any device that is inserted into the body of a patient for the removal of adipose from, or for the injection of adipose into, the body of that patient.

(3) "Adipose medical procedure" means any procedure to remove adipose from the body of a patient or to inject a patient's own adipose into the body of that patient.

(4) "Disposable adipose cannula" means an adipose cannula that is used on a patient during an adipose medical procedure followed by disposal of that cannula. A disposable adipose cannula is not used on more than one patient.

(5) "Patient" means a natural person.

(6) "Reusable adipose cannula" means an adipose cannula that is used on multiple patients, followed by cleaning, sterilization, and storage after each adipose medical procedure.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2968
Author: Carter
Bill Date: February 22, 2008, introduced
Subject: Cosmetic Surgery: physical examination
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Assembly Health Committee and has been set for hearing on April 29, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill enacts the Donda West Law, which would prohibit elective cosmetic surgery on a patient unless, prior to surgery, the patient has completed a physical examination by, and has received written clearance for the procedure from, a physician.

ANALYSIS:

According to the author, better consumer protections are needed regarding unnecessary bodily trauma that could result from elective cosmetic surgery for patients who are not physically fit to undergo these procedures. This bill comes from the author's "It Ought to Be a Law" contest. Many plastic surgeons require their patients to have a medical clearance before they will perform elective cosmetic surgery, however, it is not a requirement in law. This bill would address those health care providers who may not require the physical examination clearance.

This bill would, through enactment of the Donda West Law, prohibit elective cosmetic surgery on a patient unless the patient has completed a physical examination by a licensed physician and has received written clearance for the procedure prior to surgery.

The bill states that only a physician is authorized to complete the physical examination that would be required in law for a patient seeking elective cosmetic surgery. Current law allows physician assistants and nurse practitioners to complete physical examinations and they should be included in this bill as authorized to complete physicals for patients seeking cosmetic procedures.

The requirement for a physical already exists in law, but it is not applied in many cases especially in medi-spas. This will clarify that a prior examination is necessary prior to elective cosmetic surgery.

Since Dentists with a special permit are now authorized to perform facial cosmetic surgery, are they qualified and should they be authorized to perform a physical examination?

FISCAL: None

POSITION: Recommendation: Support if amended to allow all healthcare practitioners who are authorized to perform physical examinations to be able to complete physical examinations for patients seeking elective cosmetic surgery.

April 18, 2008

ASSEMBLY BILL No. 2968

Introduced by Assembly Member Carter

February 22, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2968, as introduced, Carter. Cosmetic surgery.

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

Existing law, the Medical Practice Act, requires specified disclosures to patients undergoing procedures involving collagen injections, defined as any substance derived from, or combined with, animal protein. Existing law also requires the board to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would enact the Donda West Law, which would prohibit the performance of an elective cosmetic surgery procedure on a patient unless, prior to surgery, the patient has completed a physical examination by, and has received written clearance for the procedure from, a licensed physician and surgeon. The bill would also provide that a violation of these provisions would not constitute a crime.

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

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

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

SEC. 2. Section 2259.8 is added to the Business and Professions Code, to read:

2259.8. (a) Notwithstanding any other provision of law, a cosmetic surgery procedure may not be performed on a patient unless, prior to surgery, the patient has completed a physical examination by, and has received written clearance for the procedure from, a licensed physician and surgeon.

(b) "Cosmetic surgery" means an elective surgery that is performed to alter or reshape normal structures of the body in order to improve the patient's appearance, including, but not limited to, liposuction and elective facial cosmetic surgery.

(c) Section 2314 shall not apply to this section.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 2969
Author: Lieber
Bill Date: February 22, 2008, introduced
Subject: Workers' Comp.: medical treatment utilization reviews
Sponsor: Author

STATUS OF BILL:

This bill is currently on the Assembly Floor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require a physician who is conducting utilization review to be licensed in California.

ANALYSIS:

Current law does not require physicians who perform utilization reviews of workers' compensation claims to be licenses in California as long as the physicians are licensed in another state.

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

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

FISCAL: None

POSITION: Recommendation: Support

April 18, 2008

ASSEMBLY BILL No. 2969

Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Beall and Ruskin)

February 22, 2008

An act to amend Section 4610 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2969, as introduced, Lieber. Workers' compensation: medical treatment utilization reviews.

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment, and requires an employer to pay for all reasonable costs of medical services necessary to care for or relieve work-related injuries. Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

This bill would require that any licensed physician who is conducting such an evaluation be licensed in California.

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

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

SECTION 1. Section 4610 of the Labor Code is amended to read:

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

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

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

(d) If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, delay, or deny requests for authorization, the employer shall request only the information reasonably necessary to make the determination. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or Section 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, delays, or denies requests by physicians prior

to, retrospectively, or concurrent with the provision of medical treatment services, complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

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

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

(1) Developed with involvement from actively practicing physicians.

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

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

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

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

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

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

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

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

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical

care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees shall be levied upon insurers or self-insured employers making reports required by this section.

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

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

employer shall also notify the physician and employee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).

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

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 797
Author: Ridley-Thomas
Bill Date: September 7, 2007, amended
Subject: VE/P Extension
Sponsor: Author
Board Position: Support MBC Provisions

STATUS OF BILL:

This bill is currently on 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.

ANALYSIS:

This bill carries the provisions the Board requested with exception of the reclassification to retain investigators. The Board has contracted for a study to review this request.

This bill is supposed to be amended to include an urgency clause so that the provisions take effect immediately however, this amendment has not been made to date.

FISCAL: Within existing resources.

POSITION: Support MBC provisions.

April 15, 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.

(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 1379
Author: Ducheny
Bill Date: February 21, 2008, introduced
Subject: Loan Repayment: permanent funding source
Sponsor: Author

STATUS OF BILL:

This bill is currently on the Assembly Floor and has not been set for hearing.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would prohibit the Department of Managed Health Care (DMHC) from using fines and penalty revenues to reduce assessments levied on health care service plans and redirects these penalty revenues to the Physician Corps Loan Repayment Program.

ANALYSIS:

The Department of Managed Health Care (DMHC) regulates the operations of health plans to assure access to medical care and to protect the interests of consumers and providers. The department has an annual budget of approximately $44 million with three hundred employees supported entirely by an assessment on licensed health plans. The department is authorized to levy fines and administrative penalties against plans for violations of the Knox-Keene Act, and under current practice, the department now deposits any resulting fine revenue into its operating budget. The fiscal effect of depositing these revenues is to reduce the assessments of health plans. Penalty revenues vary from year to year. In 2005, penalties totaled $1.5 million, in 2006 fines generated $ 3.3 million, and in 2007 the department collected $ 4.8 million. At present, roughly $2.5 million in fines are challenged by the plans and are outstanding.

This bill would redirect the fine revenue from the DMHC's budget to the Steven M. Thompson Physician Loan Repayment Program. The program has been funded from a variety of sources, currently has less than $1 million in funding and has eligible requests for more than $15 million.

FISCAL: None to MBC.

POSITION: Recommendation: Support

April 17, 2008

SENATE BILL No. 1379

Introduced by Senator Ducheny

February 21, 2008

An act to amend Sections 1367.01, 1367.03, 1368, 1368.04, 1374.9, 1374.34, 1393.6, and 128555 of, and to add Section 1341.45 to, the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1379, as introduced, Ducheny. Fines and penalties: physician loan repayment.

Existing law establishes the Medically Underserved Account for Physicians within the Health Professions Education Fund that is managed by the Health Professions Education Foundation and the Office of Statewide Health Planning and Development. Under existing law, the primary purpose of the account is to fund the Steven M. Thompson Physician Corps Loan Repayment Program, which provides for the repayment of educational loans, as specified, obtained by a physician and surgeon who practices in a medically underserved area of the state, as defined. Under existing law, funds placed in the account for those purposes are continuously appropriated.

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. Existing law subjects health care service plans to various fines and administrative penalties for failing to comply with specified provisions of the act and requires that certain administrative penalties be deposited in the Managed Care Fund. Existing law also requires health care service plans to pay specified assessments each fiscal year as a reimbursement of their share of the costs and expenses reasonably incurred in the administration of the act. Existing law requires the adjustment of those assessments and

other charges set forth in the act if the director of the department determines that they are in excess of the amount necessary, or are insufficient, to meet the expenses of the act.

This bill would prohibit using the fines and administrative penalties authorized by the act to reduce those assessments. The bill would also require that the fines and administrative penalties authorized pursuant to the act be paid to the Medically Underserved Account for Physicians to be used, upon appropriation by the Legislature, for the purposes of the Physician Corps Loan Repayment Program. The bill would specify that those funds are not continuously appropriated.

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

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

SECTION 1. Section 1341.45 is added to the Health and Safety Code, to read:

1341.45. The fines and administrative penalties authorized pursuant to this chapter shall be paid to the Medically Underserved Account for Physicians within the Health Professions Education Fund and shall, upon appropriation by the Legislature, be used for the purposes of the Steven M. Thompson Physician Corps Loan Repayment Program, as specified in Article 5 (commencing with Section 128550) of Chapter 5 of Part 3 of Division 107 and, notwithstanding Section 128555, shall not be used to provide funding for the Physician Volunteer Program. Notwithstanding Section 1356.1, these fines and penalties shall not be used to reduce the assessments imposed on health care service plans pursuant to Section 1356.

SEC. 2. Section 1367.01 of the Health and Safety Code is amended to read:

1367.01. (a) A health care service plan and any entity with which it contracts for services that include utilization review or utilization management functions, that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, or that delegates these functions to medical groups or independent practice

associations or to other contracting providers, shall comply with this section.

(b) A health care service plan that is subject to this section shall have written policies and procedures establishing the process by which the plan prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers of health care services for plan enrollees. These policies and procedures shall ensure that decisions based on the medical necessity of proposed health care services are consistent with criteria or guidelines that are supported by clinical principles and processes. These criteria and guidelines shall be developed pursuant to Section 1363.5. These policies and procedures, and a description of the process by which the plan reviews and approves, modifies, delays, or denies requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, shall be filed with the director for review and approval, and shall be disclosed by the plan to providers and enrollees upon request, and by the plan to the public upon request.

(c) A health care service plan subject to this section, except a plan that meets the requirements of Section 1351.2, shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code or pursuant to the Osteopathic Act, or, if the plan is a specialized health care service plan, a clinical director with California licensure in a clinical area appropriate to the type of care provided by the specialized health care service plan. The medical director or clinical director shall ensure that the process by which the plan reviews and approves, modifies, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, complies with the requirements of this section.

(d) If health plan personnel, or individuals under contract to the plan to review requests by providers, approve the provider's request, pursuant to subdivision (b), the decision shall be communicated to the provider pursuant to subdivision (h).

(e) No individual, other than a licensed physician or a licensed health care professional who is competent to evaluate the specific clinical issues involved in the health care services requested by

the provider, may deny or modify requests for authorization of health care services for an enrollee for reasons of medical necessity. The decision of the physician or other health care professional shall be communicated to the provider and the enrollee pursuant to subdivision (h).

(f) The criteria or guidelines used by the health care service plan to determine whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall be consistent with clinical principles and processes. These criteria and guidelines shall be developed pursuant to the requirements of Section 1363.5.

(g) If the health care service plan requests medical information from providers in order to determine whether to approve, modify, or deny requests for authorization, the plan shall request only the information reasonably necessary to make the determination.

(h) In determining whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, based in whole or in part on medical necessity, a health care service plan subject to this section shall meet the following requirements:

(1) Decisions to approve, modify, or deny, based on medical necessity, requests by providers prior to, or concurrent with the provision of health care services to enrollees that do not meet the requirements for the 72-hour review required by paragraph (2), shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed five business days from the plan's receipt of the information reasonably necessary and requested by the plan to make the determination. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of the receipt of information that is reasonably necessary to make this determination, and shall be communicated to the provider in a manner that is consistent with current law. For purposes of this section, retrospective reviews shall be for care rendered on or after January 1, 2000.

(2) When the enrollee's condition is such that the enrollee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the enrollee's

life or health or could jeopardize the enrollee's ability to regain maximum function, decisions to approve, modify, or deny requests by providers prior to, or concurrent with, the provision of health care services to enrollees, shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed 72 hours after the plan's receipt of the information reasonably necessary and requested by the plan to make the determination. Nothing in this section shall be construed to alter the requirements of subdivision (b) of Section 1371.4. Notwithstanding Section 1371.4, the requirements of this division shall be applicable to all health plans and other entities conducting utilization review or utilization management.

(3) Decisions to approve, modify, or deny requests by providers for authorization prior to, or concurrent with, the provision of health care services to enrollees shall be communicated to the requesting provider within 24 hours of the decision. Except for concurrent review decisions pertaining to care that is underway, which shall be communicated to the enrollee's treating provider within 24 hours, decisions resulting in denial, delay, or modification of all or part of the requested health care service shall be communicated to the enrollee in writing within two business days of the decision. In the case of concurrent review, care shall not be discontinued until the enrollee's treating provider has been notified of the plan's decision and a care plan has been agreed upon by the treating provider that is appropriate for the medical needs of that patient.

(4) Communications regarding decisions to approve requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall specify the specific health care service approved. Responses regarding decisions to deny, delay, or modify health care services requested by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall be communicated to the enrollee in writing, and to providers initially by telephone or facsimile, except with regard to decisions rendered retrospectively, and then in writing, and shall include a clear and concise explanation of the reasons for the plan's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. Any written communication to a physician or other health care provider of a

denial, delay, or modification of a request shall include the name and telephone number of the health care professional responsible for the denial, delay, or modification. The telephone number provided shall be a direct number or an extension, to allow the physician or health care provider easily to contact the professional responsible for the denial, delay, or modification. Responses shall also include information as to how the enrollee may file a grievance with the plan pursuant to Section 1368, and in the case of Medi-Cal enrollees, shall explain how to request an administrative hearing and aid paid pending under Sections 51014.1 and 51014.2 of Title 22 of the California Code of Regulations.

(5) If the health care service plan cannot make a decision to approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2) because the plan is not in receipt of all of the information reasonably necessary and requested, or because the plan requires consultation by an expert reviewer, or because the plan has asked that an additional examination or test be performed upon the enrollee, provided the examination or test is reasonable and consistent with good medical practice, the plan shall, immediately upon the expiration of the timeframe specified in paragraph (1) or (2) or as soon as the plan becomes aware that it will not meet the timeframe, whichever occurs first, notify the provider and the enrollee, in writing, that the plan cannot make a decision to approve, modify, or deny the request for authorization within the required timeframe, and specify the information requested but not received, or the expert reviewer to be consulted, or the additional examinations or tests required. The plan shall also notify the provider and enrollee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the plan, the plan shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2), whichever applies.

(6) If the director determines that a health care service plan has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected, in

accordance with subdivision (a) of Section 1397. The administrative penalties shall not be deemed an exclusive remedy for the director. ~~These penalties shall be paid to the State Managed Care Fund.~~

(i) A health care service plan subject to this section shall maintain telephone access for providers to request authorization for health care services.

(j) A health care service plan subject to this section that reviews requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall establish, as part of the quality assurance program required by Section 1370, a process by which the plan's compliance with this section is assessed and evaluated. The process shall include provisions for evaluation of complaints, assessment of trends, implementation of actions to correct identified problems, mechanisms to communicate actions and results to the appropriate health plan employees and contracting providers, and provisions for evaluation of any corrective action plan and measurements of performance.

(k) The director shall review a health care service plan's compliance with this section as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, and shall include a discussion of compliance with this section as part of its report issued pursuant to that section.

(l) This section shall not apply to decisions made for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of religion as set forth in subdivision (a) of Section 1270.

(m) Nothing in this section shall cause a health care service plan to be defined as a health care provider for purposes of any provision of law, including, but not limited to, Section 6146 of the Business and Professions Code, Sections 3333.1 and 3333.2 of the Civil Code, and Sections 340.5, 364, 425.13, 667.7, and 1295 of the Code of Civil Procedure.

SEC. 3. Section 1367.03 of the Health and Safety Code is amended to read:

1367.03. (a) Not later than January 1, 2004, the department shall develop and adopt regulations to ensure that enrollees have access to needed health care services in a timely manner. In developing these regulations, the department shall develop

indicators of timeliness of access to care and, in so doing, shall consider the following as indicators of timeliness of access to care:

(1) Waiting times for appointments with physicians, including primary care and specialty physicians.

(2) Timeliness of care in an episode of illness, including the timeliness of referrals and obtaining other services, if needed.

(3) Waiting time to speak to a physician, registered nurse, or other qualified health professional acting within his or her scope of practice who is trained to screen or triage an enrollee who may need care.

(b) In developing these standards for timeliness of access, the department shall consider the following:

(1) Clinical appropriateness.

(2) The nature of the specialty.

(3) The urgency of care.

(4) The requirements of other provisions of law, including Section 1367.01 governing utilization review, that may affect timeliness of access.

(c) The department may adopt standards other than the time elapsed between the time an enrollee seeks health care and obtains care. If the department chooses a standard other than the time elapsed between the time an enrollee first seeks health care and obtains it, the department shall demonstrate why that standard is more appropriate. In developing these standards, the department shall consider the nature of the plan network.

(d) The department shall review and adopt standards, as needed, concerning the availability of primary care physicians, specialty physicians, hospital care, and other health care, so that consumers have timely access to care. In so doing, the department shall consider the nature of physician practices, including individual and group practices as well as the nature of the plan network. The department shall also consider various circumstances affecting the delivery of care, including urgent care, care provided on the same day, and requests for specific providers. If the department finds that health care service plans and health care providers have difficulty meeting these standards, the department may make recommendations to the Assembly Committee on Health and the Senate Committee on Insurance of the Legislature pursuant to subdivision (i).

(e) In developing standards under subdivision (a), the department shall consider requirements under federal law, requirements under other state programs, standards adopted by other states, nationally recognized accrediting organizations, and professional associations. The department shall further consider the needs of rural areas, specifically those in which health facilities are more than 30 miles apart and any requirements imposed by the State Department of Health *Care* Services on health care service plans that contract with the State Department of Health *Care* Services to provide Medi-Cal managed care.

(f) (1) Contracts between health care service plans and health care providers shall assure compliance with the standards developed under this section. These contracts shall require reporting by health care providers to health care service plans and by health care service plans to the department to ensure compliance with the standards.

(2) Health care service plans shall report annually to the department on compliance with the standards in a manner specified by the department. The reported information shall allow consumers to compare the performance of plans and their contracting providers in complying with the standards, as well as changes in the compliance of plans with these standards.

(g) (1) When evaluating compliance with the standards, the department shall focus more upon patterns of noncompliance rather than isolated episodes of noncompliance.

(2) The director may investigate and take enforcement action against plans regarding noncompliance with the requirements of this section. Where substantial harm to an enrollee has occurred as a result of plan noncompliance, the director may, by order, assess administrative penalties subject to appropriate notice of, and the opportunity for, a hearing in accordance with Section 1397. The plan may provide to the director, and the director may consider, information regarding the plan's overall compliance with the requirements of this section. The administrative penalties shall not be deemed an exclusive remedy available to the director. ~~These penalties shall be paid to the State Managed Care Fund.~~ The director shall periodically evaluate grievances to determine if any audit, investigative, or enforcement actions should be undertaken by the department.

(3) The director may, after appropriate notice and opportunity for hearing in accordance with Section 1397, by order, assess administrative penalties if the director determines that a health care service plan has knowingly committed, or has performed with a frequency that indicates a general business practice, either of the following:

(A) Repeated failure to act promptly and reasonably to assure timely access to care consistent with this chapter.

(B) Repeated failure to act promptly and reasonably to require contracting providers to assure timely access that the plan is required to perform under this chapter and that have been delegated by the plan to the contracting provider when the obligation of the plan to the enrollee or subscriber is reasonably clear.

(C) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed warranted by the director to enforce this chapter.

~~(4) The administrative penalties authorized pursuant to this section shall be paid to the State Managed Care Fund.~~

(h) The department shall work with the patient advocate to assure that the quality of care report card incorporates information provided pursuant to subdivision (f) regarding the degree to which health care service plans and health care providers comply with the requirements for timely access to care.

(i) The department shall report to the Assembly Committee on Health and the Senate Committee on Insurance of the Legislature on March 1, 2003, and on March 1, 2004, regarding the progress toward the implementation of this section.

(j) Every three years, the department shall review information regarding compliance with the standards developed under this section and shall make recommendations for changes that further protect enrollees.

SEC. 4. Section 1368 of the Health and Safety Code is amended to read:

1368. (a) Every plan shall do all of the following:

(1) Establish and maintain a grievance system approved by the department under which enrollees may submit their grievances to the plan. Each system shall provide reasonable procedures in accordance with department regulations that shall ensure adequate

consideration of enrollee grievances and rectification when appropriate.

(2) Inform its subscribers and enrollees upon enrollment in the plan and annually thereafter of the procedure for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Provide forms for grievances to be given to subscribers and enrollees who wish to register written grievances. The forms used by plans licensed pursuant to Section 1353 shall be approved by the director in advance as to format.

(4) (A) Provide for a written acknowledgment within five calendar days of the receipt of a grievance, except as noted in subparagraph (B). The acknowledgment shall advise the complainant of the following:

(i) That the grievance has been received.

(ii) The date of receipt.

(iii) The name of the plan representative and the telephone number and address of the plan representative who may be contacted about the grievance.

(B) Grievances received by telephone, by facsimile, by e-mail, or online through the plan's Web site pursuant to Section 1368.015, that are not coverage disputes, disputed health care services involving medical necessity, or experimental or investigational treatment and that are resolved by the next business day following receipt are exempt from the requirements of subparagraph (A) and paragraph (5). The plan shall maintain a log of all these grievances. The log shall be periodically reviewed by the plan and shall include the following information for each complaint:

(i) The date of the call.

(ii) The name of the complainant.

(iii) The complainant's member identification number.

(iv) The nature of the grievance.

(v) The nature of the resolution.

(vi) The name of the plan representative who took the call and resolved the grievance.

(5) Provide subscribers and enrollees with written responses to grievances, with a clear and concise explanation of the reasons for the plan's response. For grievances involving the delay, denial, or modification of health care services, the plan response shall describe the criteria used and the clinical reasons for its decision,

including all criteria and clinical reasons related to medical necessity. If a plan, or one of its contracting providers, issues a decision delaying, denying, or modifying health care services based in whole or in part on a finding that the proposed health care services are not a covered benefit under the contract that applies to the enrollee, the decision shall clearly specify the provisions in the contract that exclude that coverage.

(6) Keep in its files all copies of grievances, and the responses thereto, for a period of five years.

(b) (1) (A) After either completing the grievance process described in subdivision (a), or participating in the process for at least 30 days, a subscriber or enrollee may submit the grievance to the department for review. In any case determined by the department to be a case involving an imminent and serious threat to the health of the patient, including, but not limited to, severe pain, the potential loss of life, limb, or major bodily function, or in any other case where the department determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or to participate in the process for at least 30 days before submitting a grievance to the department for review.

(B) A grievance may be submitted to the department for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the department may refer any grievance that does not pertain to compliance with this chapter to the State Department of Health Services, the California Department of Aging, the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance to the department as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance to the department. In addition, following submission of the grievance to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a "relative" includes the parent, stepparent, spouse, adult son or daughter,

grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

(3) The department shall review the written documents submitted with the subscriber's or the enrollee's request for review, or submitted by the agent on behalf of the subscriber or enrollee. The department may ask for additional information, and may hold an informal meeting with the involved parties, including providers who have joined in submitting the grievance or who are otherwise assisting or advocating on behalf of the subscriber or enrollee. If after reviewing the record, the department concludes that the grievance, in whole or in part, is eligible for review under the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30), the department shall immediately notify the subscriber or enrollee, or agent, of that option and shall, if requested orally or in writing, assist the subscriber or enrollee in participating in the independent medical review system.

(4) If after reviewing the record of a grievance, the department concludes that a health care service eligible for coverage and payment under a health care service plan contract has been delayed, denied, or modified by a plan, or by one of its contracting providers, in whole or in part due to a determination that the service is not medically necessary, and that determination was not communicated to the enrollee in writing along with a notice of the enrollee's potential right to participate in the independent medical review system, as required by this chapter, the director shall, by order, assess administrative penalties. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice of, and the opportunity for, a hearing with regard to the person affected in accordance with Section 1397. The administrative penalties shall not be deemed an exclusive remedy available to the director. ~~These penalties shall be paid to the State Managed Care Fund.~~

(5) The department shall send a written notice of the final disposition of the grievance, and the reasons therefor, to the subscriber or enrollee, the agent, to any provider that has joined with or is otherwise assisting the subscriber or enrollee, and to the plan, within 30 calendar days of receipt of the request for review unless the director, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate

the relevant grievance. In any case not eligible for the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30), the department's written notice shall include, at a minimum, the following:

(A) A summary of its findings and the reasons why the department found the plan to be, or not to be, in compliance with any applicable laws, regulations, or orders of the director.

(B) A discussion of the department's contact with any medical provider, or any other independent expert relied on by the department, along with a summary of the views and qualifications of that provider or expert.

(C) If the enrollee's grievance is sustained in whole or part, information about any corrective action taken.

(6) In any department review of a grievance involving a disputed health care service, as defined in subdivision (b) of Section 1374.30, that is not eligible for the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30), in which the department finds that the plan has delayed, denied, or modified health care services that are medically necessary, based on the specific medical circumstances of the enrollee, and those services are a covered benefit under the terms and conditions of the health care service plan contract, the department's written notice shall do either of the following:

(A) Order the plan to promptly offer and provide those health care services to the enrollee.

(B) Order the plan to promptly reimburse the enrollee for any reasonable costs associated with urgent care or emergency services, or other extraordinary and compelling health care services, when the department finds that the enrollee's decision to secure those services outside of the plan network was reasonable under the circumstances.

The department's order shall be binding on the plan.

(7) Distribution of the written notice shall not be deemed a waiver of any exemption or privilege under existing law, including, but not limited to, Section 6254.5 of the Government Code, for any information in connection with and including the written notice, nor shall any person employed or in any way retained by the department be required to testify as to that information or notice.

(8) The director shall establish and maintain a system of aging of grievances that are pending and unresolved for 30 days or more that shall include a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more.

(9) A subscriber or enrollee, or the agent acting on behalf of a subscriber or enrollee, may also request voluntary mediation with the plan prior to exercising the right to submit a grievance to the department. The use of mediation services shall not preclude the right to submit a grievance to the department upon completion of mediation. In order to initiate mediation, the subscriber or enrollee, or the agent acting on behalf of the subscriber or enrollee, and the plan shall voluntarily agree to mediation. Expenses for mediation shall be borne equally by both sides. The department shall have no administrative or enforcement responsibilities in connection with the voluntary mediation process authorized by this paragraph.

(c) The plan's grievance system shall include a system of aging of grievances that are pending and unresolved for 30 days or more. The plan shall provide a quarterly report to the director of grievances pending and unresolved for 30 or more days with separate categories of grievances for Medicare enrollees and Medi-Cal enrollees. The plan shall include with the report a brief explanation of the reasons each grievance is pending and unresolved for 30 days or more. The plan may include the following statement in the quarterly report that is made available to the public by the director:

"Under Medicare and Medi-Cal law, Medicare enrollees and Medi-Cal enrollees each have separate avenues of appeal that are not available to other enrollees. Therefore, grievances pending and unresolved may reflect enrollees pursuing their Medicare or Medi-Cal appeal rights."

If requested by a plan, the director shall include this statement in a written report made available to the public and prepared by the director that describes or compares grievances that are pending and unresolved with the plan for 30 days or more. Additionally, the director shall, if requested by a plan, append to that written report a brief explanation, provided in writing by the plan, of the reasons why grievances described in that written report are pending and unresolved for 30 days or more. The director shall not be required to include a statement or append a brief explanation to a

written report that the director is required to prepare under this chapter, including Sections 1380 and 1397.5.

(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance or resolution procedures authorized by this section shall be in addition to any other procedures that may be available to any person, and failure to pursue, exhaust, or engage in the procedures described in this section shall not preclude the use of any other remedy provided by law.

(e) Nothing in this section shall be construed to allow the submission to the department of any provider grievance under this section. However, as part of a provider's duty to advocate for medically appropriate health care for his or her patients pursuant to Sections 510 and 2056 of the Business and Professions Code, nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the department about any concerns he or she has regarding compliance with or enforcement of this chapter.

SEC. 5. Section 1368.04 of the Health and Safety Code is amended to read:

1368.04. (a) The director shall investigate and take enforcement action against plans regarding grievances reviewed and found by the department to involve noncompliance with the requirements of this chapter, including grievances that have been reviewed pursuant to the independent medical review system established pursuant to Article 5.55 (commencing with Section 1374.30). Where substantial harm to an enrollee has occurred as a result of plan noncompliance, the director shall, by order, assess administrative penalties subject to appropriate notice of, and the opportunity for, a hearing with regard to the person affected in accordance with Section 1397. The administrative penalties shall not be deemed an exclusive remedy available to the director. ~~These penalties shall be paid to the State Managed Care Fund.~~ The director shall periodically evaluate grievances to determine if any audit, investigative, or enforcement actions should be undertaken by the department.

(b) The director may, after appropriate notice and opportunity for hearing in accordance with Section 1397, by order, assess administrative penalties if the director determines that a health care service plan has knowingly committed, or has performed with

a frequency that indicates a general business practice, either of the following:

(1) Repeated failure to act promptly and reasonably to investigate and resolve grievances in accordance with Section 1368.01.

(2) Repeated failure to act promptly and reasonably to resolve grievances when the obligation of the plan to the enrollee or subscriber is reasonably clear.

(c) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed warranted by the director to enforce this chapter.

~~(d) The administrative penalties authorized pursuant to this section shall be paid to the State Managed Care Fund.~~

SEC. 6. Section 1374.9 of the Health and Safety Code is amended to read:

1374.9. For violations of Section 1374.7, the director may, after appropriate notice and opportunity for hearing, by order, levy administrative penalties as follows:

(a) Any health care service plan that violates Section 1374.7, or that violates any rule or order adopted or issued pursuant to this section, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) for each second violation, and of not less than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

~~(b) The administrative penalties shall be paid to the Managed Health Care Fund.~~

~~(c)~~

(b) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the director to enforce the provisions of this chapter.

SEC. 7. Section 1374.34 of the Health and Safety Code is amended to read:

1374.34. (a) Upon receiving the decision adopted by the director pursuant to Section 1374.33 that a disputed health care service is medically necessary, the plan shall promptly implement

the decision. In the case of reimbursement for services already rendered, the plan shall reimburse the provider or enrollee, whichever applies, within five working days. In the case of services not yet rendered, the plan shall authorize the services within five working days of receipt of the written decision from the director, or sooner if appropriate for the nature of the enrollee's medical condition, and shall inform the enrollee and provider of the authorization in accordance with the requirements of paragraph (3) of subdivision (h) of Section 1367.01.

(b) A plan shall not engage in any conduct that has the effect of prolonging the independent review process. The engaging in that conduct or the failure of the plan to promptly implement the decision is a violation of this chapter and, in addition to any other fines, penalties, and other remedies available to the director under this chapter, the plan shall be subject to an administrative penalty of not less than five thousand dollars ($5,000) for each day that the decision is not implemented. ~~Administrative penalties shall be deposited in the State Managed Care Fund.~~

(c) The director shall require the plan to promptly reimburse the enrollee for any reasonable costs associated with those services when the director finds that the disputed health care services were a covered benefit under the terms and conditions of the health care service plan contract, and the services are found by the independent medical review organization to have been medically necessary pursuant to Section 1374.33, and either the enrollee's decision to secure the services outside of the plan provider network was reasonable under the emergency or urgent medical circumstances, or the health care service plan contract does not require or provide prior authorization before the health care services are provided to the enrollee.

(d) In addition to requiring plan compliance regarding subdivisions (a), (b), and (c) the director shall review individual cases submitted for independent medical review to determine whether any enforcement actions, including penalties, may be appropriate. In particular, where substantial harm, as defined in Section 3428 of the Civil Code, to an enrollee has already occurred because of the decision of a plan, or one of its contracting providers, to delay, deny, or modify covered health care services that an independent medical review determines to be medically

necessary pursuant to Section 1374.33, the director shall impose penalties.

(e) Pursuant to Section 1368.04, the director shall perform an annual audit of independent medical review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the department, particularly if a plan repeatedly fails to act promptly and reasonably to resolve grievances associated with a delay, denial, or modification of medically necessary health care services when the obligation of the plan to provide those health care services to enrollees or subscribers is reasonably clear.

SEC. 8. Section 1393.6 of the Health and Safety Code is amended to read:

1393.6. For violations of Article 3.1 (commencing with Section 1357) and Article 3.15 (commencing with Section 1357.50), the director may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows:

(a) Any person, solicitor, or solicitor firm, other than a health care service plan, who willfully violates any provision of this chapter, or who willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than two hundred fifty dollars ($250) for each first violation, and of not less than one thousand dollars ($1,000) and not more than two thousand five hundred dollars ($2,500) for each subsequent violation.

(b) Any health care service plan that willfully violates any provision of this chapter, or that willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than two thousand five hundred dollars ($2,500) for each first violation, and of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000) for each second violation, and of not less than fifteen thousand dollars ($15,000) and not more than one hundred thousand dollars ($100,000) for each subsequent violation.

~~(c) The administrative penalties shall be paid to the Managed Health Care Fund.~~

~~(d)~~

(c) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative

remedies deemed advisable by the director to enforce the provisions of this chapter.

SEC. 9. Section 128555 of the Health and Safety Code is amended to read:

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

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

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

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

(2) Loan repayments may not exceed one hundred five thousand dollars ($105,000) per individual licensed physician.

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

(d) Notwithstanding Section 11105 of the Government Code, effective January 1, 2006, the foundation may seek and receive matching funds from foundations and private sources to be placed in the account. "Matching funds" shall not be construed to be limited to a dollar-for-dollar match of funds.

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

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

state budget process. This limitation shall only apply to the state appropriation for the program.

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1394
Author: Lowenthal
Bill Date: April 15, 2008, amended
Subject: Lapses of Consciousness: reports to DMV
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize a physician to report to the Department of Motor Vehicles (DMV) specified information relating to a patient whom the physician has diagnosed as having suffered a lapse of consciousness. This would be reported if the physician reasonably believes that reporting the patient will serve the public interest. This bill exempts physicians from civil and criminal liability for making these reports. The DMV would be required, upon receiving a report from a physician pursuant to this bill, to reexamine the person's qualifications to operate a vehicle and make a determination whether to restrict, make subject to terms and conditions of probation, revoke, or suspend a license based on the assessment by the reporting physician.

ANALYSIS:

Current law requires physicians to report in writing immediately to the local health officer any patient at least 14 years of age or older who the physician has diagnosed as having a disorder characterized by lapses of consciousness. The Department of Public Health (DPH) defines disorders characterized by lapses of consciousness. The local health officers are responsible for reporting the information received from physicians regarding patient diagnoses of disorders characterized by lapses of consciousness to the DMV.

This bill would instead require physicians to report directly to the DMV the specified information relating to patients whom the physician has diagnosed as having suffered a lapse of consciousness. The physician only need report if, in his or her professional judgment, the risk of reoccurrence. Thus reporting the patient will serve the public interest.

The bill specified conditions when reporting is not necessary.

In addition, this bill would require physicians to report to the DMV, in writing, regarding patients the physician has diagnosed with Alzheimer's disease and another dementia disorder.

This bill would exempt physician from civil and criminal liability for making a report authorized or required by this bill.

The provisions of this bill would commence January 1, 2010 and the DMV would be required to develop physician reporting forms on or before July 1 2009 and adopt regulations by January 1, 2010 that define disorders characterized by recurrent lapses of consciousness and listing those disorders that do not require reporting under this bill.

FISCAL: None

POSITION: Recommendation: Support

April 17, 2008

AMENDED IN SENATE APRIL 15, 2008

AMENDED IN SENATE APRIL 3, 2008

SENATE BILL No. 1394

Introduced by Senator Lowenthal

February 21, 2008

An act to repeal Section 103900 of the Health and Safety Code, and to amend Section 12818 of, and to add Article 6 (commencing with Section 13010) to Chapter 1 of Division 6 of, the Vehicle Code, relating to lapses in consciousness.

LEGISLATIVE COUNSEL'S DIGEST

SB 1394, as amended, Lowenthal. Lapses of consciousness: reports to the Department of Motor Vehicles.

Under existing law, a physician and surgeon is required to report in writing immediately to the local health officer, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a disorder characterized by lapses of consciousness. Existing law requires the State Department of Public Health, in cooperation with the Department of Motor Vehicles, to define disorders characterized by lapses of consciousness, and to include within the defined disorders Alzheimer's disease and related disorders that are severe enough to be likely to impair a person's ability to operate a motor vehicle. Existing law further requires the local health officer to provide this information to the Department of Motor Vehicles, for the information of that department in enforcing the Vehicle Code.

This bill would delete these existing provisions and instead would authorize a physician and surgeon to report to the Department of Motor Vehicles (DMV), in good faith, specified information relating to a patient at least 15 years of age, or 14 years of age if the patient has a

junior permit, whom the physician and surgeon has diagnosed as having suffered a lapse of consciousness, if the physician and surgeon reasonably believes that reporting the patient will serve the public interest.

This bill, commencing with January 1, 2010, would require a physician and surgeon to report specified information to the DMV, in writing, regarding certain patients the physician and surgeon has diagnosed with Alzheimer's disease or another dementia disorder, or with a disorder characterized by lapses of consciousness within the previous 6 months, as specified. The bill would excuse a physician and surgeon from these mandatory reporting requirements relating to lapse of consciousness disorders under designated circumstances.

This bill would exempt a physician and surgeon from civil and criminal liability for making a report authorized or required by the bill. The bill, commencing January 1, 2010, would require the DMV, upon receipt of a report made pursuant to the bill, to reexamine the person's qualifications to operate a vehicle, as prescribed, and make a determination whether to restrict, make subject to terms and conditions of probation, revoke, or suspend a license based on the evaluation, reexamination, and assessment provided by the reporting physician.

This bill would require the DMV to develop physician reporting forms on or before July 1, 2009, and, in cooperation with the State Department of Public Health and in consultation with appropriate professional medical organizations, to adopt regulations by January 1, 2010, defining disorders characterized by recurrent lapses of consciousness and listing those disorders that do not require reporting under the bill.

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 103900 of the Health and Safety Code is repealed.

SEC. 2. Section 12818 of the Vehicle Code, as amended by Section 13 of Chapter 985 of the Statutes of 2000, is amended to read:

12818. (a) Upon receipt of a request for reexamination and presentation of a legible copy of a notice of reexamination by a person issued the notice pursuant to Section 21061, or upon receipt of a report from a local health officer issued pursuant to subdivision

(b) of Section 103900 of the Health and Safety Code, the department shall reexamine the person's qualifications to operate a motor vehicle, including a demonstration of the person's ability to operate a motor vehicle as described in Section 12804.9.

(b) Based on the department's reexamination of the person's qualifications pursuant to subdivision (a), the department shall determine if either of the following actions should be taken:

(1) Suspend or revoke the driving privilege of that person if the department finds that any of the grounds exist which authorize the refusal to issue a license.

(2) Restrict, make subject to terms and conditions of probation, suspend, or revoke the driving privilege of that person based upon the records of the department as provided in Chapter 3 (commencing with Section 13800).

(c) As an alternative to subdivision (a), the department may suspend or revoke the person's driving privilege as provided under Article 2 (commencing with Section 13950) of Chapter 3.

(d) Upon request, the department shall notify the law enforcement agency which employs the traffic officer who issued the notice of reexamination described in subdivision (a) of the results of the reexamination.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. Section 12818 of the Vehicle Code, as added by Section 14 of Chapter 985 of the Statutes of 2000, is amended to read:

12818. (a) Upon receipt of a request for reexamination and presentation of a legible copy of a notice of reexamination by a person issued the notice pursuant to Section 21061, the department shall reexamine the person's qualifications to operate a motor vehicle pursuant to Section 13801, notwithstanding the notice requirement of Section 13801.

(b) Based on the department's reexamination of the person's qualifications pursuant to subdivision (a), the department shall determine if either of the following actions should be taken:

(1) Suspend or revoke the driving privilege of that person if the department finds that any of the grounds exist which authorize the refusal to issue a license.

(2) Restrict, make subject to terms and conditions of probation, suspend, or revoke the driving privilege of that person based upon the records of the department as provided in Chapter 3 (commencing with Section 13800).

(c) As an alternative to subdivision (a), the department may suspend or revoke the person's driving privilege as provided under Article 2 (commencing with Section 13950) of Chapter 3.

(d) Upon request, the department shall notify the law enforcement agency that employs the traffic officer who issued the notice of reexamination of the results of the reexamination.

(e) Upon receipt of a report made pursuant to Section 13010 or 13011, the department shall reexamine the reported person's qualifications to operate a motor vehicle, including requiring a road examination pursuant to Section 12804.9. The department shall make a determination to restrict, make subject to terms and conditions of probation, revoke, or suspend a license based upon the evaluation and assessment provided by the reporting physician and surgeon, a road examination pursuant to Section 12804.9, and the factors enumerated in Section 110.01 of Title 13 of the California Code of Regulations.

(f) This section shall become operative on January 1, 2010.

SEC. 4. Article 6 (commencing with Section 13010) is added to Chapter 1 of Division 6 of the Vehicle Code, to read:

Article 6. Physician and Surgeon Reporting of Medical Conditions

13010. (a) A physician and surgeon shall report immediately to the department, in writing, the name, date of birth, and address of every patient at least 15 years of age, or 14 years of age if the patient has a junior permit, whom the physician and surgeon has diagnosed with Alzheimer's disease or another dementia disorder; or the physician and surgeon has diagnosed as suffering from a single lapse of consciousness within the previous six months, if the patient suffers from a disorder identified in Section 2806 of Title 17 of the California Code of Regulations, and the physician and surgeon believes, in his or her professional judgment, that the risk of recurrence is sufficient to pose a threat to public safety; or the physician and surgeon has diagnosed the patient as previously suffering multiple lapses of consciousness, and whose medical

condition is identified in Section 2806 of Title 17 of the California Code of Regulations, if substantial medical evidence suggests a recurrence of a lapse of consciousness or that the condition adversely affects the patient's ability to operate a motor vehicle.

(b) ~~A~~ *(1) Except as provided in paragraph (2), a* physician and surgeon is not required to make a report pursuant to this section if any of the following occurs:

~~(1)~~

(A) Within the previous six months, the physician and surgeon previously made a report pursuant to this section for this patient, and the condition has not substantially changed.

~~(2)~~

(B) Within the previous six months, the patient's condition was initially diagnosed by another physician and surgeon, and the physician and surgeon has knowledge that the prior physician and surgeon either determined that a report was not required under this chapter, or made a report to the department, unless there is substantial medical evidence that the condition has substantially changed and may adversely affect the person's ability to drive.

~~(3)~~

(C) The physician and surgeon making the initial diagnosis, relying on substantial medical evidence, determines both of the following:

~~(A)~~

(i) That the disorder can and likely will be controlled and stabilized within 30 days of the initial diagnosis by medication, therapy, surgery, a restriction on activities, or devices, and the treatment has been prescribed, administered, or referred.

~~(B)~~

(ii) That the patient's condition during the 30-day period does not pose an undue risk to public safety while operating a motor vehicle.

(2) If, during the 30-day period described in subparagraph (C) of paragraph (1), the physician and surgeon determines that the patient poses an imminent risk to public safety while operating a motor vehicle or the patient's impairment or disorder has not been controlled and stabilized at the conclusion of the 30-day period described in subparagraph (C) of paragraph (1), the physician and surgeon shall report immediately to the department in accordance with subdivision (a).

(c) A physician and surgeon shall not be civilly or criminally liable to the reported patient for making any report required or authorized by this section.

(d) For purposes of this section, "disorders characterized by lapses of consciousness" means those disorders defined pursuant to paragraph (1) of subdivision (a) of Section 13012.

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

13011. (a) A physician and surgeon may report immediately to the Department of Motor Vehicles, in writing, the name, date of birth, and address of every patient at least 15 years of age or older, or 14 years of age if the person has a junior permit, whom the physician and surgeon has diagnosed as having a disorder characterized by lapses of consciousness, if a physician and surgeon reasonably and in good faith believes that reporting the patient will serve the public interest. The physician and surgeon may report a patient's condition even if it may not be required under the department's definition of disorders characterized by lapses of consciousness pursuant to this article.

(b) A physician and surgeon who reports a patient pursuant to this article shall contemporaneously complete and transmit to the department the form prepared by the department for this purpose, and shall address each of the factors specified in Section 110.01 of Title 13 of the California Code of Regulations of which the physician and surgeon has knowledge.

(c) The reports transmitted pursuant to this article shall be for use by the department only, and shall be kept confidential and used solely by the department for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this state, or for the purpose of a bona fide research project, if the data is solely provided by the department in anonymous form.

(d) A physician and surgeon shall not be civilly or criminally liable to the reported patient for making any report required or authorized by this section.

(e) For purposes of this section, "disorders characterized by lapses of consciousness" shall be those disorders defined pursuant to paragraph (1) of subdivision (a) of Section 13012.

(f) This section shall become operative on January 1, 2010.

13011.5. On or before July 1, 2009, the department shall develop a physician reporting form that incorporates the factors contained in Section 110.01 of Title 13 of the California Code of

Regulations. The form shall be made available on the department's official Internet Web site for use by all physicians and surgeons.

13012. (a) The department, in cooperation with the State Department of Public Health, by January 1, 2010, shall adopt regulations that do all of the following:

(1) Define disorders characterized by recurrent lapses of consciousness, based upon existing clinical standards for that definition for purposes of this article, and shall include in that definition Alzheimer's disease and those related disorders that are severe enough to result in recurrent lapses of consciousness and are likely to impair a person's ability to operate a motor vehicle.

(2) List circumstances that shall not require reporting pursuant to Section 13011, because the patient is unable to ever operate a motor vehicle or is otherwise unlikely to represent a danger that requires reporting.

(3) List circumstances that do not require reporting pursuant to this section.

(b) The department shall consult with professional medical organizations whose members have specific expertise in treatment of those impairments, conditions, and disorders, including, but not limited to, those associations related to epilepsy, in the development of any required definitions and necessary reporting guidelines to ensure that cases reported pursuant to this section are limited to impairments, conditions, and disorders that are characterized by a recurrent lapse of consciousness and that compromise a patient's ability to safely operate a motor vehicle.

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1441
Author: Ridley-Thomas
Bill Date: April 7, 2008, amended
Subject: Task Force: address standards for impaired
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill would specify legislative intent that the Bureau of State Audits (BSA) conduct a thorough performance audit of the diversion programs to evaluate the effectiveness and efficiency of the programs and providers chosen by the DCA to manage the programs. This bill would establish the Diversion Coordination Committee (DCC) and the Licensee Drug and Alcohol Addiction Coordination Committee (LDAACC) within DCA responsible for establishing guidelines and recommendations relating to licentiates with alcohol and drug problems.

ANALYSIS:

This bill addresses the issue of impaired licensees in various professions in the wake of the Medical Board's (Board) failed audits of the physician diversion program, which is due to sunset June 30, 2008. The bill is also in response to the fact that no audits or reviews have been conducted on the other health care licensing boards that maintain and operate diversion programs for licensees that suffer from chemical dependency. The purpose of this bill is to increase public protection and restore public confidence by establishing and maintaining common and uniform standards governing the different health care licensing boards' diversion programs.

Many boards outsource their diversion functions. DCA currently manages a master contract with Maximus, a publicly traded corporation for six boards and one committee's diversion programs. The individual boards oversee the programs but Maximus provides the services. The boards' diversion programs follow the same general principles of the Board's diversion program. DCA's master contract standardizes certain tasks, such as designing and implementing a case management system, maintaining 24-hours access lines,

and providing initial intake in in-person assessments. Each board specifies its own policies and procedures regarding its program.

In addition to specifying intent to have performance audits conducted, this bill establishes the DCC for those Boards with programs to issue a set of best practices and recommendations to govern the boards' diversion programs and diversion evaluation committees. The bill also establishes the LDAACC responsible for issuing a set of best practices and recommendations to govern those boards within DCA that do not establish and maintain diversion programs or evaluation committees. (This would include the Board) Both the DCC and the LDAACC would be comprised of the executive officers of the boards and the Director of DCA would act as chair of both committees.

A concern raised at the committee hearing was the lack of addiction healthcare expertise on these committees.

FISCAL: None

POSITION: Recommendation: Support if amended to require both committees to have provider expertise.

April 17, 2008

AMENDED IN SENATE APRIL 7, 2008

SENATE BILL No. 1441

Introduced by Senator Ridley-Thomas

February 21, 2008

~~An act to amend Section 2307 of the Business and Professions Code, relating to medicine.~~ *An act to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of the Business and Professions Code, relating to health care.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. ~~Physicians and surgeons: disciplinary procedures.~~ *Healing arts practitioners: alcohol and drug abuse.*

Existing law requires various healing arts licensing boards to establish and administer diversion programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol.

This bill would establish in the Department of Consumer Affairs the Diversion Coordination Committee, which would be comprised of the executive officers of those healing arts boards, as specified, that establish and maintain a diversion program or diversion evaluation committee, and would establish in the department the Licensee Drug and Alcohol Addiction Coordination Committee, which would be comprised of the executive officers of all other healing arts boards. The bill would require these committees to meet periodically at the discretion of the department and to each issue, by an unspecified date, a set of best practices and recommendations, as specified.

~~Existing law, the Medical Practice Act, creates the Medical Board of California and makes it responsible for disciplining a physician and~~

~~surgeon for acts of unprofessional conduct. Under the act, a physician and surgeon whose certificate is revoked, suspended, or placed on probation for unprofessional conduct may petition for reinstatement or modification after a specified time period. Existing law requires that petition to be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.~~

~~This bill would also allow those recommendations to be made by physicians and surgeons licensed in other states. The bill would also make other technical, nonsubstantive changes to obsolete references.~~

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

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

SECTION 1. It is the intent of the Legislature that the Bureau of State Audits conduct a thorough performance audit of the diversion programs created pursuant to this act in order to evaluate the effectiveness and efficiency of the programs and the providers chosen by the Department of Consumer Affairs to manage the programs, and to make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health practitioners who are impaired due to alcohol or drug abuse or mental or physical illness. The department and its staff shall cooperate with the audit, and shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

SEC. 2. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6 Healing Arts Licensee Addiction and Diversion

315. (a) There is established in the Department of Consumer Affairs the Diversion Coordination Committee. The committee shall be comprised of the executive officers of those healing arts licensing boards within the department that establish and maintain diversion programs or diversion evaluation committees. The Director of Consumer Affairs shall act as the chair of the committee.

(b) The committee shall meet periodically at the discretion of the director and shall, no later than ____, issue a set of best practices and recommendations to govern those healing arts licensing boards' diversion programs or diversion evaluation committees. These recommendations shall propose best practices, regulations, or changes in law, as are necessary, and shall include, but shall not be limited to, recommendations addressing all of the following issues:

(1) When a licensee is to be irrevocably terminated from the diversion program and referred for disciplinary action.

(2) Periodic audits of the program.

(3) Whether a licensee enrolled in the program who may pose a risk to patients may continue to practice while in the program without the knowledge or consent of patients.

(4) How best to ensure that drug tests are random, accurate, and reliable, and that results for those tests are obtained quickly.

(5) Whether there should be criteria for entry into the program, such as criteria that differentiate between licensees who the board has reason to believe pose a risk to patients and those where the risk is speculative.

316. (a) There is established in the Department of Consumer Affairs the Licensee Drug and Alcohol Addiction Coordination Committee. The committee shall be comprised of the executive officers of the healing arts licensing boards within the department that do not establish and maintain diversion programs or diversion evaluation committees. The Director of Consumer Affairs shall act as the chair of the committee.

(b) The committee shall meet periodically at the discretion of the department and shall, no later than ____, issue a set of best practices and recommendations to govern those healing arts licensing boards' disciplinary programs as they relate to

disciplinary matters relating to drug or alcohol addiction. These recommendations shall propose best practices, regulations, or changes in law, as are necessary, and shall include, but shall not be limited to, recommendations addressing all of the following issues, related to drug or alcohol abuse:

(1) Criteria for placing a licensee on probation and related criteria for reporting and monitoring the probation.

(2) Criteria for refusing a request for probation.

(3) Criteria for imposition of discipline and the level of discipline.

(4) Criteria for restoration of a license.

317. For purposes of this article, "healing arts licensing board" means any board established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California.

~~SECTION 1. Section 2307 of the Business and Professions Code is amended to read:~~

~~2307. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.~~

~~(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:~~

~~(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.~~

~~(2) At least two years for early termination of probation of three years or more.~~

~~(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.~~

~~(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.~~

~~(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.~~

~~(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.~~

~~(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.~~

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

~~(h) This section is applicable to and may be carried out with regard to licensees of the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from podiatrists licensed by the board who have personal knowledge of the activities of the petitioner since the date the disciplinary penalty was imposed.~~

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

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MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1454
Author: Ridley-Thomas
Bill Date: April 7, 2008, amended
Subject: Advertising, OSM, Cosmetic Surgery Standards
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill requires health care practitioners to provide the type of license under which the licensee is practicing and the type of degree received on all advertisements. This bill requires a health care practitioner who is practicing in an outpatient setting to wear a name tag which includes his or her name and license status. This bill requires the Medical Board (Board) to adopt regulations on the appropriate level of physician supervision necessary within clinics using laser or intense pulse light devices for elective cosmetic surgery. This bill requires the Board post on its website a fact sheet to educate the public about cosmetic surgery and the risks involved with such surgeries.

ANALYSIS:

This bill aims to further public protection by strengthening the regulation and oversight of surgical centers and clinics performing cosmetic procedures, and to ensure that quality of care standards are in place at these clinics and they are monitored by the appropriate credentialing agency.

The American Society of Plastic Surgeons (ASPS) reports that the top five surgical procedures of the almost 12 million cosmetic procedures performed in 2007 were breast augmentation, liposuction, nose reshaping, eyelid surgery, and tummy tuck. Less invasive procedures such as laser surgery and Botox are increasingly becoming popular as well. As a result, consumers are inundated with advertisements for these services. Although the federal Food and Drug Administration oversees the safety of machines and skin-care products used, there is little regulation of these medical spas to guarantee that patients are aware of the potential risks associated with all treatments.

Many physicians who are performing cosmetic surgery have not been trained specifically in that field, and are conducting increasingly complex procedures in settings outside of hospitals, such as outpatient surgery centers and doctors' offices. It is also common for doctors performing cosmetic surgeries to receive their training only from weekend courses and instructional videos. Currently, there are no uniform standards for

physician training related to cosmetic surgery. The author believes regulation of allied health professionals in outpatient settings and the settings themselves needs to be strengthened as well.

Prior attempts to regulate the practice of cosmetic surgery have included SB 1423 (Figueroa) Chapter 873, Statutes of 2006, which required the Board in conjunction with the Board of Registered Nursing to promulgate regulations to implement changes relating to the use of laser or intense pulse light devices for cosmetic procedures by physicians, nurses, and physician assistants. SB 835 (Figueroa) of 1999, would have enacted the Cosmetic Surgery Patient Disclosure Act, which would have required physicians who perform cosmetic surgery to provide the Board with information on their training, board certifications, and the number of procedures performed. SB 836 (Figueroa) Chapter 856, Statutes of 1999, expanded and revised the prohibition against fraudulent advertising by health practitioners.

This bill would require the following:

- Advertising by a physician and other health care practitioners must include the type of license under which the licensee is practicing and the type of degree received upon graduation from professional training. This will provide to consumers information to understand the type of healthcare practitioner advertising services.
- Health care practitioners who work in an outpatient setting clinic must wear a name tag which includes their name and license status. Currently, if the license is displayed in the office, name tags are not required.
- The Board must make investigation of unlicensed activity or corporate practice of medicine violations in outpatient clinics one of its priorities.
- The Board must adopt regulations regarding the appropriate level of physician supervision for health professionals needed within clinics or other settings using laser or intense pulse light devices.
- The Board must post on its website a fact sheet to educate the public about cosmetic surgery and its risks.
- The Board must additionally notify the public whether a setting is licensed, or that the setting's status is in revocation, suspension, or probation.
- The Board or the accrediting agency must periodically inspect every outpatient setting. Cycles should be set in regulation. The results of these inspections must be kept on file and shall be available for public inspection.
- The Board must evaluate the performance of an approved accreditation agency no less than every three years, this section is currently permissive.

The author intends to continue to strengthen the laws for outpatient surgery settings as the bill moves through the process.

FISCAL: None

POSITION: Recommendation: Support

April 17, 2008

AMENDED IN SENATE APRIL 7, 2008

SENATE BILL No. 1454

Introduced by Senator Ridley-Thomas

February 21, 2008

An act to amend Sections 651, 680, and 2023.5 of, and to add Section ~~2218~~ *2027.5* to, the Business and Professions Code, and to ~~add Section 1249 to~~ *amend Sections 1248.15, 1248.2, 1248.25, 1248.35, and 1248.5 of* the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Ridley-Thomas. Healing arts: *outpatient settings.*

~~Existing~~

(1) Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement; or image to induce the provision of services or the rendering of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

~~Existing~~

(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status, on a specified name tag. However, existing law exempts from this requirement a health care

practitioner whose license is prominently displayed in a practice or office.

This bill would ~~delete that exemption~~ *exclude from that exemption a health care practitioner working in an outpatient clinic.*

~~Existing~~

(3) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

This bill would require the Medical Board of California to establish, as a priority, the investigation of unlicensed activity or other specified violations in clinics *or other settings* using laser or intense pulse light devices. *The bill would also require the board to adopt regulations by July 1, 2009, regarding the appropriate level of physician supervision needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures.*

~~Existing law prohibits physicians and surgeons from performing procedures in an outpatient setting using anesthesia, except as specified, and existing law imposes other personnel and security requirements for the performance of these procedures. Existing law also requires outpatient settings to meet certain standards.~~

~~This bill would require physicians and surgeons performing procedures in an outpatient setting and outpatient settings to establish standardized procedures and protocols to be followed in the event of serious complications or side effects from cosmetic surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations. By changing the definition of a crime, this bill would impose a state-mandated local program.~~

(4) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Web site an easy to understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform

accreditation of outpatient settings, ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations.

This bill would include, among those specified aspects, the submission for approval by an accrediting agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery, as specified.

(6) Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended or placed on probation, or the setting has received a reprimand by the accreditation agency.

(7) Existing law requires accreditation of an outpatient setting to be denied by the accreditation agency if the setting does not meet specified standards. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

(8) Existing law authorizes the Medical Board of California or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the requirement that the board give reasonable prior notice and presentation of proper identification to perform those inspections. The bill would also require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

(9) Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency,

or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

~~The~~

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

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

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

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

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered

in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be

prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself

or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by

a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements

approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a

psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Advertising by any person licensed under Chapter 2 (commencing with Section 1000), Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6 (commencing with Section 2700), Chapter 6.5 (commencing with Section 2840), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), Chapter 7.7 (commencing with Section 3500), and Chapter 8 (commencing with Section 3600) shall include all of the following information:

(1) The type of license under which the licensee is practicing.

(2) The type of degree received upon graduation from professional training.

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement

of any regulation shall be deemed to be acting as an agent of the state.

(k) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(*l*) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

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

680. (a) Except as otherwise provided in this section, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. *A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag unless the health care practitioner is working in a clinic accredited pursuant to Chapter 1.3 (commencing with Section 1248) of Division 2 of the Health and Safety Code.* If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse or a licensed vocational nurse, or as otherwise provided in

Section 2800. Nothing in this section shall prohibit a certified nurse assistant from using his or her title.

(b) Facilities licensed by the State Department of Social Services, the State Department of Mental Health, or the State Department of ~~Health Care Services~~ *Public Health* shall develop and implement policies to ensure that health care practitioners providing care in those facilities are in compliance with subdivision (a). The State Department of Social Services, the State Department of Mental Health, and the State Department of ~~Health Care Services~~ *Public Health* shall verify through periodic inspections that the policies required pursuant to subdivision (a) have been developed and implemented by the respective licensed facilities.

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

SEC. 3. Section 2023.5 of the Business and Professions Code is amended to read:

2023.5. (a) The board, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, shall review issues and problems surrounding the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants. The review shall include, but need not be limited to, all of the following:

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

(3) Guidelines for standardized procedures and protocols that address, at a minimum, all of the following:

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

(b) On or before January 1, 2009, the board and the Board of Registered Nursing shall promulgate regulations to implement changes determined to be necessary with regard to the use of laser or intense pulse light devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

(c) On or before July 1, 2009, the board shall adopt regulations regarding the appropriate level of physician supervision needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures.

~~(c)~~

(d) The board shall establish, as one of its priorities, the investigation of unlicensed activity or corporate practice of medicine violations in clinics *or other settings* using laser or intense pulse light devices.

~~SEC. 4. Section 2218 is added to the Business and Professions Code, to read:~~

~~2218. Physicians and surgeons performing procedures in an outpatient setting shall establish standardized procedures and protocols to be followed in the event of serious complications or side effects from cosmetic surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations.~~

~~SEC. 5. Section 1249 is added to the Health and Safety Code, to read:~~

~~1249. Outpatient settings shall establish standardized procedures and protocols to be followed in the event of serious complications or side effects from cosmetic surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations.~~

SEC. 4. Section 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its Web site an easy to understand factsheet to educate the public about cosmetic surgery and procedures, including their risks. Included with the factsheet shall be a comprehensive list of questions for patients to ask their physician and surgeon regarding cosmetic surgery.

SEC. 5. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The division shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~(iii) Submit~~

(D) Submission for approval by an accrediting agency *of* a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(E) Submission for approval by an accrediting agency at the time of accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm and to govern emergency and urgent care situations.

~~(D)~~

(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the

State Department of Health Services, and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of* the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of* the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of* the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the division. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects

to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the division to protect the public health and safety.

(d) No accreditation standard adopted or approved by the division, and no standard included in any certification program of any accreditation agency approved by the division, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

SEC. 6. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the division under this chapter.

(b) The division shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information

provided by the accreditation, certification, and licensing agencies approved by the division, and shall notify the public, ~~upon inquiry,~~ whether a setting is accredited, certified, or licensed, or ~~whether~~ the setting's accreditation, certification, or license has been revoked, *suspended or placed on probation, or the setting has received a reprimand by the accreditation agency.*

SEC. 7. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the division, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. *The accrediting agency shall immediately report to the division if the outpatient setting's certificate for accreditation has been denied.*

SEC. 8. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. (a) *Every outpatient setting which is accredited shall be periodically inspected by the Division of Medical Quality or the accreditation agency. The frequency of inspections shall depend upon the type and complexity of the outpatient setting to be inspected. Inspections shall be conducted no less often than once every three years and as often as necessary to ensure the quality of care provided.* The Division of Medical Quality or ~~an~~ *the* accreditation agency may, ~~upon reasonable prior notice and presentation of proper identification,~~ enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

(b) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the division or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

(c) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and *the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting* reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. *During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view.* The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

(d) If the division determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the division, the division may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.

(e) Reports on the results of each inspection shall be kept on file with the division or the accrediting agency along with the plan of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

(f) The accrediting agency shall immediately report to the division if the outgoing patient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

SEC. 9. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. The division ~~may~~ *shall* evaluate the performance of an approved accreditation agency no less than every three years,

or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the division.

~~SEC. 6.~~

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

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1526
Author: Perata
Bill Date: April 16, 2008, amended
Subject: Polysomnographic Technologists
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

This bill requires the Medical Board (Board) to adopt regulations by July 1, 2009, to establish qualifications for certified polysomnographic technologists. This bill authorizes persons who meet the specified education, examination, and certifications requirements to use the title "certified polysomnographic technologist" and engage in the practice of polysomnography under the supervision and direction of a licensed physician.

ANALYSIS:

This bill is sponsored by the American Academy of Sleep Medicine for the purpose of establishing criteria for individuals assisting licensed physicians in the practice of sleep medicine. Respiratory Care Board (RCB) feels that polysomnogrphy is the unlicensed practice of respiratory care and has threatened to issue fines against those involved in the practice of sleep medicine. This has caused significant concern and uncertainty among the trained medical professionals practicing sleep medicine and has threatened the availability of these important medical services. This bill places no limitations on other health care practitioners acting within their own scope of practice.

SB 1526 does not establish a full licensing practice act. It is a proposal to require those who engage in the practice of polysomnography or use the title "certified polysomnographic technologist" to meet certain education, examination, and certification requirements, work under the supervision and direction of a physician, and undergo a criminal record clearance.

The Board would be required to adopt regulations regarding the qualifications for polysomnographic technologists and approve the entity that credentials practitioners, approve educational programs, and approve the certifying examination.

The author will be presenting proposed amendments which clarify the meaning of "supervision" under the bill. The amendment would require the supervising physician to be available, either in person or by telephone or electronic means, at the time the polysomnographic services are provided.

The author does not want to impose a burdensome program on the Medical Board and is willing to consider a registration fee to support the work required to implement and maintain the program.

FISCAL: A one time set up cost plus staff for a year and minimal ongoing costs to MBC.

POSITION: Recommendation: Neutral while bill is in development. Assign a board member to work with staff and interested parties in the development of this final bill.

April 18, 2008

AMENDED IN SENATE APRIL 16, 2008

AMENDED IN SENATE MARCH 28, 2008

SENATE BILL No. 1526

Introduced by Senator Perata
(Coauthor: Senator Denham)

February 22, 2008

An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1526, as amended, Perata. Polysomnographic technologists: sleep and wake disorders.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law prescribes the medical services that may be performed by a physician assistant under the supervision of a licensed physician and surgeon.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy, and prohibits its practice without a license issued by the board, subject to certain exceptions.

This bill would require the Medical Board of California to adopt regulations by July 1, 2009, to establish qualifications for certified polysomnographic technologists, including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination. The bill

would require a certified polysomnographic technologist to be supervised by a licensed physician and surgeon and to undergo criminal record clearance by the Department of Justice. The bill would define polysomnography to mean the treatment, management, diagnostic testing, research, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board to adopt regulations related to the employment of polysomnographic technicians and trainees.

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. Chapter 7.8 (commencing with Section 3575) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

3575. (a) As used in this section, "board" means the Medical Board of California.

(b) The board shall promulgate regulations by July 1, 2009, relative to the qualifications for designation of an individual as a certified polysomnographic technologist. Those qualifications shall include all of the following:

(1) He or she shall have valid, current credentials as a polysomnographic technologist by a national accrediting agency approved by the board.

(2) He or she shall have graduated from a polysomnographic educational program that has been approved by the board.

(3) He or she shall have passed a national certifying examination that has been approved by the board.

(c) Notwithstanding any other provision of law, an individual may use the title "certified polysomnographic technologist" and may engage in the practice of polysomnography only under the following circumstances:

(1) He or she works under the supervision and direction of a licensed physician and surgeon.

(2) He or she has submitted electronic fingerprint images and related information to the Department of Justice for a criminal record clearance. The results of that criminal record clearance shall

be provided to the facility employing the polysomnographic technologist.

(3) He or she meets the requirements of this section.

(d) "Polysomnography" means the treatment, management, diagnostic testing, research, control, education, and care of patients with sleep and wake disorders. Polysomnography shall include, but not be limited to, the process of analysis, monitoring, and recording of physiologic data during sleep and wakefulness to assist in the treatment and research of disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep and wake cycles and activities. Polysomnography shall also include, but not be limited to, the therapeutic and diagnostic use of oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bilevel modalities, and maintenance of nasal and oral airways that do not extend into the trachea.

(e) The board shall adopt regulations by July 1, 2009, that establish the means and circumstances in which a licensed physician and surgeon may employ polysomnographic technicians and polysomnographic trainees.

~~(f) As used in this section, "supervision" shall not be construed to require the physical presence of the supervising physician and surgeon.~~

(f) As used in this section, "supervision" means that the supervising physician and surgeon shall remain available, either in person or through telephonic or electronic means, at the time that the polysomnographic services are provided.

(g) This section shall not apply to the following:

(1) Allied health professionals providing in-home diagnostic testing and the set up, education, and training of patients requiring positive airway pressure treatment to maintain their upper airways.

(2) Respiratory care practitioners working within the scope of practice of their license.

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1579
Author: Calderon
Bill Date: March 27, 2008, amended
Subject: Referrals for Hair Restoration
Sponsor: Author

STATUS OF BILL:

This bill is currently in the Senate Business and Professions Committee and has been set for hearing on April 28, 2008.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would allow physicians to offer compensation to licensed barbers or cosmetologists for providing general hair restoration information or education to a client, including referring or recommending the client to a physician for consultation regarding hair restoration.

ANALYSIS:

Current law prohibits the offer, receipt, or acceptance of any rebate, commission, preference, discount, or other compensation by any healing arts licensee as compensation or an inducement for referring patients to any person. Current law also prohibits a person, partnership, or corporation from referring or recommending a person for profit to a physician, hospital, or health-related facility for any form of medical care or treatment of any ailment or physical condition.

Allowing barbers and cosmetologists to be compensated by physicians for referring patients for hair restoration and related medical services could lead to the encouragement of referrals for unnecessary medical care. In addition, there are no checks and balances provided related to quality of care. Consumers could be at great risk of being unnecessarily recommended to seek treatment for hair loss and related conditions because of monetary incentives. Consumers could be preyed upon by unscrupulous practitioners who are in cahoots with barbers and cosmetologists.

FISCAL: None

POSITION: Recommendation: Oppose

April 17, 2008

AMENDED IN SENATE MARCH 27, 2008

SENATE BILL No. 1579

Introduced by Senator Calderon

February 22, 2008

~~An act to add Section 650.03 to the Business and Professions Code, relating to physicians and surgeons.~~ *An act to add Section 7318.5 to the Business and Professions Code, relating to barbering and cosmetology.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1579, as amended, Calderon. ~~Physicians and surgeons: referrals.~~ *Medical referrals.*

Existing law, with certain exceptions, prohibits the offer, delivery, receipt, or acceptance by any healing arts licensee regulated by the Business and Professions Code or under the Chiropractic Initiative Act, of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, as compensation or an inducement for referring patients, clients, or customers to any person. *Existing law prohibits a person, firm, partnership, association, or corporation, or an agent or employee thereof, from referring or recommending a person for profit to a physician, hospital, health-related facility, or dispensary for any form of medical care or treatment of any ailment or physical condition, and specifies that the imposition of a fee or charge for any such referral or recommendation creates a presumption that the referral or recommendation is for profit.*

This bill would authorize a licensed physician and surgeon to offer or deliver, and a licensed barber or cosmetologist to receive, consideration for providing general hair restoration information or education to a client, including referring or recommending the client

to the licensed physician and surgeon for consultation regarding hair restoration.

~~This bill would provide that it is not unlawful for a physician and surgeon to provide consideration for a referral.~~

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

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

SECTION 1. Section 7318.5 is added to the Business and Professions Code, to read:

7318.5. (a) Notwithstanding Section 445 of the Health and Safety Code, it shall be lawful for a licensed barber or cosmetologist to receive consideration from a licensed physician or surgeon for providing general hair restoration information or education to a client, including referring or recommending the client to the licensed physician and surgeon for consultation regarding hair restoration.

(b) Notwithstanding Section 650, it shall be lawful for a licensed physician and surgeon to offer or deliver consideration to a licensed barber or cosmetologist for the barber's or cosmetologist's provision of general hair restoration information or education to a client, including the referral or recommendation of the client to the physician and surgeon for consultation regarding hair restoration.

~~SECTION 1. Section 650.03 is added to the Business and Professions Code, to read:~~

~~650.03. Notwithstanding Section 650, or any other provision of law, it shall not be unlawful for a physician and surgeon licensed under this division to provide consideration for a referral.~~

O

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 1779
Author: Senate Business and Professions Committee
Bill Date: April 16, 2008, amended
Subject: Healing Arts: Omnibus
Sponsor: Author

STATUS OF BILL:

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

DESCRIPTION OF CURRENT LEGISLATION:

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

ANALYSIS:

This bill is proposing non-substantive and non-controversial changes to law. The provisions relating to the Medical Board are in the Business and Professions Code and are as follows:

- 2089.5 – Specify type of residency programs; and technical changes.
- 2096 – Specify type of residency programs; and technical changes.
- 2102 – Federation of State Medical Boards (FSMB) will not test anyone without a state license; and technical changes.
- 2107 – Technical changes.
- 2135 –
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency between all licensing pathways.
  - Technical changes.

- 2172 – Repeal; board no longer administers examinations.
- 2173 – Repeal; board no longer administers examinations.
- 2174 – Repeal; board no longer administers examinations.
- 2175 – Repeal; board no longer administers examinations.
- 2307 – Specify that recommendations can come from physicians licensed in any state; and technical changes.
- 2335 – Re-amending section from AB 253 due to subsequent section amendments signed later.

FISCAL: None

POSITION: Recommendation: Support the technical provisions regarding the Medical Board.

April 17, 2008

AMENDED IN SENATE APRIL 16, 2008

SENATE BILL No. 1779

Introduced by Committee on Business, Professions and Economic Development (Senators Ridley-Thomas (Chair), Aanestad, Calderon, Corbett, Denham, Florez, Harman, Simitian, and Yee)

March 13, 2008

An act to amend Sections 683, 733, 800, 2089.5, 2096, 2102, 2107, *2135,* 2175, 2307, 2335, 2486, 2488, 2570.5, 2760.1, 3625, 3633.1, 3635, 3636, 3685, 3750.5, 3753.5, 3773, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4174, 4231, 4301, 4305, 4329, and 4330 of, to amend and renumber Section 2570.185 of, to add Sections 2570.35, 2570.36, 4036.5, and 4990.09 to, and to repeal Sections 2172, 2173, and 2174 of, the Business and Professions Code, to amend Section 8659 of the Government Code, and to amend Sections 11150 and 11165 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1779, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture

Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

(2) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, in the Department of Consumer Affairs. The act requires each applicant for a physician and surgeon's license to meet specified training and examinations requirements, authorizes the appointment of examination commissioners, requires that examinations be conducted in English, except as specified, allows the examinations to be conducted in specified locations, requires notice of examinations to contain certain information, and requires examination records to be kept on file for a period of 2 years or more. The act authorizes a person whose certificate has been surrendered, revoked, suspended, or placed on probation, as specified, to petition for reinstatement of the certificate or modification of the penalty if specified requirements are met.

This bill would ~~specify that certain training required~~ *revise the training requirements* for a physician and surgeon's license ~~must be approved by, or in programs approved by, the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada~~, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2069. The bill would revise the requirements for a petition for reinstatement or modification, as specified.

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The

bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(3) Existing law, the Occupational Therapy Practice Act, provides for the licensure and regulation of occupational therapists by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in a patient record. Existing law authorizes a limited permit to practice occupational therapy to be granted if specified education and examination requirements are met, but provides that if the person fails to qualify for or pass the first announced licensure examination, all limited permit privileges automatically cease upon due notice.

This bill would require an occupational therapy assistant to document in a patient record the services provided to the patient, and would require an occupational therapist or assistant to document and sign a patient record legibly. The bill would revise the provisions related to limited permit privileges to instead provide that a person's failure to pass the licensure examination during the initial eligibility period would cause the privileges to automatically cease upon due notice. The bill would require an employer of an occupational therapy practitioner to report to the board the suspension or termination for cause of any practitioner in its employ, or be subject to a specified administrative fine, and would require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(4) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurses by the Board of Registered Nursing in the Department of Consumer Affairs. Existing law authorizes a registered nurse whose license is revoked or suspended, or who is placed on probation, to petition for reinstatement of his or her license or modification of the penalty after a specified time period.

This bill would require a petition by a registered nurse whose initial license application is subject to a disciplinary decision to be filed after a specified time period from the date upon which his or her initial license was issued.

(5) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Bureau of Naturopathic Medicine in the Department of Consumer Affairs. Existing law authorizes the bureau to grant a license to a person meeting certain requirements who has graduated from training prior to 1986 if the

application is received prior to 2008, and requires licensees to obtain continuing education through specified continuing education courses. Existing law requires a licensee on inactive status to meet certain requirements in order to restore his or her license to active status, including paying a reactivation fee.

This bill would require an application for licensure by a person who graduated from training prior to 1986 to be received by the bureau prior to 2011, and would revise the standards for continuing education courses. The bill would delete the requirement that a licensee on inactive status pay a reactivation fee in order to restore his or her license to active status, and would instead require him or her to be current with all licensing fees.

Existing law authorizes the Director of Consumer Affairs to establish an advisory council related to naturopathic doctors composed of members who receive no compensation, travel allowances, or reimbursement of expenses.

This bill would delete the requirement that the members of the advisory council receive no compensation, travel allowances, or reimbursement of expenses.

(6) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Existing law authorizes the board to deny, suspend, or revoke a license to practice respiratory therapy if the licensee obtains or possesses in violation of the law, except as directed by a licensed physician and surgeon, dentist, or podiatrist, or furnishes or administers or uses a controlled substance or dangerous drug, as defined. Existing law authorizes the board to direct a practitioner or applicant who is found to have violated the law to pay the costs of investigation and prosecution. Existing law requires an applicant for renewal of a respiratory care practitioner license to notify the board of specified information.

This bill would revise the board's authority to deny, suspend, or revoke a license to practice respiratory therapy for obtaining, possessing, using, administering, or furnishing controlled substances or dangerous drugs, and would also authorize the board to deny, suspend, or revoke a license if a licensee uses any controlled substance, dangerous drug, or alcoholic beverage to an extent or manner dangerous or injurious to himself or herself, the public, or another person, or to the extent that it impairs his or her ability to practice safely. The bill would also authorize the board to direct a practitioner or applicant who is found to have

violated a term or condition of board probation to pay the costs for investigation and prosecution. The bill would require an applicant for renewal of a respiratory care practitioner license to cooperate in furnishing additional information to the board, as requested, and would provide that, if a licensee fails to furnish the information within 30 days of a request, his or her license would become inactive until the information is received.

Existing law exempts certain healing arts practitioners from liability for specified services rendered during a state of war, state of emergency, or local emergency.

This bill would also exempt respiratory care practitioners from liability for the provision of specified services rendered during a state of war, state of emergency, or local emergency.

(7) Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy in the Department of Consumer Affairs.

Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines.

This bill would provide that any violation of this provision by any person or entity would subject the person to the fine.

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

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

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(8) Existing law provides for the licensure and regulation of psychologists, social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of $1,500 or less for more than 5 years from the date of issuance of the citation.

(9) 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 683 of the Business and Professions Code is amended to read:

683. (a) A board shall report, within 10 working days, to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.

(b) "Board," as used in this section, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, and the California Board of Occupational Therapy.

SEC. 2. Section 733 of the Business and Professions Code is amended to read:

733. (a) No licentiate shall obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other provision of law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough

to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient. The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (*l*) of Section 12940 of the Government Code.

(c) For the purposes of this section, "prescription drug or device" has the same meaning as the definition in Section 4022.

(d) The provisions of this section shall apply to the drug therapy described in Section 4052.3.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third-party payer accepted by the licentiate or payment of any required copayment by the patient.

(f) The notice to consumers required by Section 4122 shall include a statement that describes patients' rights relative to the requirements of this section.

SEC. 3. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board

of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology Board, the California Board of Occupational Therapy, and the Acupuncture Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

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

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

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

(4) Disciplinary information reported pursuant to Section 805.

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

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

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

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity

of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

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

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

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

SEC. 4. Section 2089.5 of the Business and Professions Code is amended to read:

2089.5. (a) Clinical instruction in the subjects listed in subdivision (b) of Section 2089 shall meet the requirements of this section and shall be considered adequate if the requirements of subdivision (a) of Section 2089 and the requirements of this section are satisfied.

(b) Instruction in the clinical courses shall total a minimum of 72 weeks in length.

(c) Instruction in the core clinical courses of surgery, medicine, family medicine, pediatrics, obstetrics and gynecology, and psychiatry shall total a minimum of 40 weeks in length with a minimum of eight weeks instruction in surgery, eight weeks in medicine, six weeks in pediatrics, six weeks in obstetrics and gynecology, a minimum of four weeks in family medicine, and four weeks in psychiatry.

(d) Of the instruction required by subdivision (b), including all of the instruction required by subdivision (c), 54 weeks shall be performed in a hospital that sponsors the instruction and shall meet one of the following:

(1) Is a formal part of the medical school or school of osteopathic medicine.

(2) Has a residency program, approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC), in family practice or in the clinical area of the instruction for which credit is being sought.

(3) Is formally affiliated with an approved medical school or school of osteopathic medicine located in the United States or Canada. If the affiliation is limited in nature, credit shall be given only in the subject areas covered by the affiliation agreement.

(4) Is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada.

(e) If the institution, specified in subdivision (d), is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada, it shall meet the following:

(1) The formal affiliation shall be documented by a written contract detailing the relationship between the medical school, or a school of osteopathic medicine, and hospital and the responsibilities of each.

(2) The school and hospital shall provide to the board a description of the clinical program. The description shall be in sufficient detail to enable the board to determine whether or not the program provides students an adequate medical education. The board shall approve the program if it determines that the program provides an adequate medical education. If the board does not approve the program, it shall provide its reasons for disapproval to the school and hospital in writing specifying its findings about each aspect of the program that it considers to be deficient and the changes required to obtain approval.

(3) The hospital, if located in the United States, shall be accredited by the Joint Commission on Accreditation of Hospitals, and if located in another country, shall be accredited in accordance with the law of that country.

(4) The clinical instruction shall be supervised by a full-time director of medical education, and the head of the department for each core clinical course shall hold a full-time faculty appointment of the medical school or school of osteopathic medicine and shall be board certified or eligible, or have an equivalent credential in that specialty area appropriate to the country in which the hospital is located.

(5) The clinical instruction shall be conducted pursuant to a written program of instruction provided by the school.

(6) The school shall supervise the implementation of the program on a regular basis, documenting the level and extent of its supervision.

(7) The hospital-based faculty shall evaluate each student on a regular basis and shall document the completion of each aspect of the program for each student.

(8) The hospital shall ensure a minimum daily census adequate to meet the instructional needs of the number of students enrolled in each course area of clinical instruction, but not less than 15 patients in each course area of clinical instruction.

(9) The board, in reviewing the application of a foreign medical graduate, may require the applicant to submit a description of the clinical program, if the board has not previously approved the program, and may require the applicant to submit documentation to demonstrate that the applicant's clinical training met the requirements of this subdivision.

(10) The medical school or school of osteopathic medicine shall bear the reasonable cost of any site inspection by the board or its agents necessary to determine whether the clinical program offered is in compliance with this subdivision.

SEC. 5. Section 2096 of the Business and Professions Code is amended to read:

2096. In addition to other requirements of this chapter, before a ~~physician~~ *physician's* and surgeon's license may be issued, each applicant, including an applicant applying pursuant to Article 5 (commencing with Section 2100), shall show by evidence satisfactory to the board that he or she has satisfactorily completed at least one year of postgraduate training, which includes at least four months of general medicine, in a postgraduate training program approved by the Accreditation Council for Graduate

Medical Education (ACGME) or Royal College of Physicians and Surgeons of Canada (RCPSC).

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

SEC. 6. Section 2102 of the Business and Professions Code is amended to read:

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

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

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

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

(d) Pass the written examination as provided under Article 9 (commencing with Section 2170). An applicant shall be required

to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

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

SEC. 7. Section 2107 of the Business and Professions Code is amended to read:

2107. (a) The Legislature intends that the board shall have the authority to substitute postgraduate education and training to remedy deficiencies in an applicant's medical school education and training. The Legislature further intends that applicants who substantially completed their clinical training shall be granted that substitute credit if their postgraduate education took place in an accredited program.

(b) To meet the requirements for licensure set forth in Sections 2089 and 2089.5, the board may require an applicant under this article to successfully complete additional education and training. In determining the content and duration of the required additional education and training, the board shall consider the applicant's medical education and performance on standardized national examinations, and may substitute approved postgraduate training in lieu of specified undergraduate requirements. Postgraduate training substituted for undergraduate training shall be in addition to the postgraduate training required by Sections 2102 and 2103.

SEC. 8. Section 2135 of the Business and Professions Code is amended to read:

2135. The ~~Division of Licensing~~ *board* shall issue a physician and surgeon's certificate to an applicant who meets all of the following requirements:

(a) The applicant holds an unlimited license as a physician and surgeon in another state or states, or in a Canadian province or Canadian provinces, which was issued upon:

(1) Successful completion of a resident course of professional instruction *leading to a degree of medical doctor* equivalent to that specified in Section 2089. However, nothing in this section shall be construed to require the ~~division~~ *board* to evaluate for equivalency any coursework obtained at a medical school

disapproved by the ~~division~~ *board* pursuant to Article 4 (commencing with Section 2080).

(2) Taking and passing a written examination that is recognized by the division to be equivalent in content to that administered in California.

(b) The applicant has held an unrestricted license to practice medicine, in a state or states, in a Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program, for a period of at least four years. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the ~~division~~ *board* shall not be included in the calculation of this four-year period.

(c) The ~~division~~ *board* determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine that the division determines constitutes evidence of a pattern of negligence or incompetence.

(d) The applicant (1) *has satisfactorily completed at least one year of approved postgraduate training and* is certified by a specialty board approved by the American Board of Medical Specialties or approved by the division pursuant to subdivision (h) of Section 651; (2) has satisfactorily completed at least two years of approved postgraduate training; or (3) *has satisfactorily completed at least one year of approved postgraduate training and* takes and passes the clinical competency written examination.

(e) The applicant has not committed any acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475) or Article 12 (commencing with Section 2220).

(f) Any application received from an applicant who has held an unrestricted license to practice medicine, in a state or states, or Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program for four or more years shall be reviewed and processed pursuant to this section. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the ~~division~~ *board* shall not be included in the calculation of this four-year period. This subdivision does not

apply to applications that may be reviewed and processed pursuant to Section 2151.

~~SEC. 8.~~

SEC. 9. Section 2172 of the Business and Professions Code is repealed.

~~SEC. 9.~~

SEC. 10. Section 2173 of the Business and Professions Code is repealed.

~~SEC. 10.~~

SEC. 11. Section 2174 of the Business and Professions Code is repealed.

~~SEC. 11.~~

SEC. 12. Section 2175 of the Business and Professions Code is amended to read:

2175. State examination records shall be kept on file by the board until June 1, 2069. Examinees shall be known and designated by number only, and the name attached to the number shall be kept secret until the examinee is sent notification of the results of the examinations.

~~SEC. 12.~~

SEC. 13. Section 2307 of the Business and Professions Code is amended to read:

2307. (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

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

(h) This section is applicable to and may be carried out with regard to licensees of the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from podiatrists licensed in any state who have personal knowledge of the activities of the petitioner since the date the disciplinary penalty was imposed.

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

~~SEC. 13.~~

SEC. 14. Section 2335 of the Business and Professions Code is amended to read:

2335. (a) All proposed decisions and interim orders of the Medical Quality Hearing Panel designated in Section 11371 of the Government Code shall be transmitted to the executive director of the board, or the executive director of the California Board of Podiatric Medicine as to the licensees of that board, within 48 hours of filing.

(b) All interim orders shall be final when filed.

(c) A proposed decision shall be acted upon by the board or by any panel appointed pursuant to Section 2008 or by the California Board of Podiatric Medicine, as the case may be, in accordance with Section 11517 of the Government Code, except that all of the following shall apply to proceedings against licensees under this chapter:

(1) When considering a proposed decision, the board or panel and the California Board of Podiatric Medicine shall give great weight to the findings of fact of the administrative law judge, except to the extent those findings of fact are controverted by new evidence.

(2) The board's staff or the staff of the California Board of Podiatric Medicine shall poll the members of the board or panel or of the California Board of Podiatric Medicine by written mail ballot concerning the proposed decision. The mail ballot shall be sent within 10 calendar days of receipt of the proposed decision, and shall poll each member on whether the member votes to approve the decision, to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of additional evidence, to defer final decision pending discussion of the case by the panel or board as a whole, or to nonadopt the decision. No party to the proceeding, including employees of the agency that filed the accusation, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the decision, may communicate directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any member of the panel or board, without notice and opportunity for all parties

to participate in the communication. The votes of a majority of the board or of the panel, and a majority of the California Board of Podiatric Medicine, are required to approve the decision with an altered penalty, to refer the case back to the administrative law judge for the taking of further evidence, or to nonadopt the decision. The votes of two members of the panel or board are required to defer final decision pending discussion of the case by the panel or board as a whole. If there is a vote by the specified number to defer final decision pending discussion of the case by the panel or board as a whole, provision shall be made for that discussion before the 100-day period specified in paragraph (3) expires, but in no event shall that 100-day period be extended.

(3) If a majority of the board or of the panel, or a majority of the California Board of Podiatric Medicine vote to do so, the board or the panel or the California Board of Podiatric Medicine shall issue an order of nonadoption of a proposed decision within 100 calendar days of the date it is received by the board. If the board or the panel or the California Board of Podiatric Medicine does not refer the case back to the administrative law judge for the taking of additional evidence or issue an order of nonadoption within 100 days, the decision shall be final and subject to review under Section 2337. Members of the board or of any panel or of the California Board of Podiatric Medicine who review a proposed decision or other matter and vote by mail as provided in paragraph (2) shall return their votes by mail to the board within 30 days from receipt of the proposed decision or other matter.

(4) The board or the panel or the California Board of Podiatric Medicine shall afford the parties the opportunity to present oral argument before deciding a case after nonadoption of the administrative law judge's decision.

(5) A vote of a majority of the board or of a panel, or a majority of the California Board of Podiatric Medicine, are required to increase the penalty from that contained in the proposed administrative law judge's decision. No member of the board or panel or of the California Board of Podiatric Medicine may vote to increase the penalty except after reading the entire record and personally hearing any additional oral argument and evidence presented to the panel or board.

Medical Board of California
2008 Tracker II - Legislative Bills
4/18/2008

BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
AB 54	Dymally	Health Care Coverage: acupuncture	Sen. Health	03/03/08	
AB 55	Laird	Referral Fee: technology and services	Sen. Health	03/03/08	
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	Sen. Health	01/24/08	
AB 638	Bass	Physician Assistants: educational loan program	Sen. Health	01/18/08	
AB 865	Davis	State Agencies: live customer service agents	Sen. G.O.	01/22/08	
AB 1057	Beall	Health Care: traumatic brain injury: pilot program	Sen. Health	07/03/07	
AB 1137	Eng	Chiropractors	Sen. B&P	06/04/07	
AB 1390	Huffman	Health Care Service Plans: unfair payment patterns	Sen. Health	Introduced	
AB 1436	Hernandez	Nurse Practitioners	Sen. B&P	01/07/08	
AB 1486	Calderon	Licensed Professional Counselors	Sen. B&P	06/26/07	
AB 1861	Emmerson	State Board of Chiropractice Examiners	Asm. Approps.	03/28/08	
AB 1922	Hernandez	Healing Arts Practitioners: peer review	Sen. Rules	Introduced	
AB 1925	Eng	Franchise Tax Board: business and prof. licenses	Asm. Approps.	04/07/08	
AB 1940	DeVore	Temporary Disabled Persons' Placards: pregnancy	Asm. Approps.	Introduced	
AB 2049	Saldana	Sexual Batter: healing professionals	Asm. Approps.	04/09/08	
AB 2111	Smyth	Physical Therapists	Asm. Approps. (4/23)	04/14/08	
AB 2117	Evans	Dependent Children: psychotropic medications	Asm. Approps.-susp	03/28/08	
AB 2120	Galgiani	Medical Telemedicine	Asm. Approps.	04/03/08	
AB 2122	Plescia	Surgical Clinics: licensure	Asm. Approps.-susp	03/24/08	
AB 2207	Lieu	Emergency Rooms: overcrowding	Asm. Approps.	04/03/08	
AB 2210	Price	Dentistry: emergency services	Asm. Floor	03/25/08	
AB 2234	Portantino	Health Care Coverage: breast conditions	Asm. Approps.	Introduced	
AB 2351	Garrick	Workers' Comp.: medical treatment utilization reviews	Asm. Ins. (4/30)	Introduced	
AB 2423	Bass	Professions and Vocations: Licensure	Asm. Approps.	Introduced	
AB 2539	Strickland	State Boards and Commissions: salaries: suspension	Asm. B&P	03/10/08	

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BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
AB 2542	Nakanishi	Patient Safety	Introduced	Introduced	
AB 2690	Krekorian	Prod. Liability Actions: pres. pharmaceutical products	Asm. Jud. (4/29)	Introduced	
AB 2697	Huffman	Hospitals: emergency medical services	Asm. Approps.	04/15/08	
AB 2702	Nunez	Maddy Emerg. Med. Serv. Fund: phys. reimburs.: LA county	Asm. Health (4/28)	Introduced	
AB 2787	Arambula	Clinics: licensing: hours of operation	Asm. Approps.-susp	Introduced	
AB 2794	Blakeslee	Diagnostic Imaging Services	Asm. Approps.	04/09/08	
AB 2807	Adams	Department of Consumer Affairs	Introduced	Introduced	
AB 2811	Bass	Physician Assistant Practice Act	Introduced	Introduced	
AB 2847	Krekorian	Health Care Coverage	Asm. Approps.	03/24/08	
AB 3000	Wolk	Health Care Decisions: life sustaining treatment	Asm. Jud. (4/22)	Introduced	
ABX1 2	Nunez	Health Care Reform	Asm. Health	11/08/07	
ABX1 6	Nakanishi	Physician Assistants: educational loan program	Introduced	Introduced	
ACR 87	Hayashi	Legislative Task Force on Peripheral Neuroopathy	Asm. Health (4/29)	Introduced	
ACR 112	Soto	Legislative Task Force on Fibromyalgia	Asm. Health (4/29)	04/15/08	

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4/18/2008

BILL	AUTHOR	TITLE	STATUS	AMENDED	POSITION
SB 356	Negrete McLeod	List of Reportable Diseases and Conditions	Inactive File	08/20/07	
SB 676	Ridley-Thomas	Health: immunizations	Asm. Approps.-susp	08/20/07	
SB 721	Ashburn	State Agencies: succession plans	Asm. Approps.-susp	Introduced	
SB 731	Oropeza	Massage Therapy	Asm. Approps.-susp	07/09/07	
SB 825	Padilla	Public Health: shaken baby syndrome	Asm. Desk	01/29/08	
SB 840	Kuehl	Single-Payer Health Care Coverage	Asm. Approps.	07/10/07	
SB 963	Ridley-Thomas	Regulatory Boards: Operations	Asm. B&P	06/25/07	
SB 1098	Migden	Medical Marijuana	Sen. Rev. & Tax-susp	03/11/08	
SB 1260	Runner	Health Clinics	Sen. Approps. (4/21)	03/24/08	
SB 1288	Scott	Cal. State Univ.: Doctor of Nursing Practice Degree	Sen. Approps.	Introduced	
SB 1338	Migden	Workers' Comp.: med. treatment: predesignation of phy.	Sen. L&I.R. (4/23)	Introduced	
SB 1402	Corbett	Reporting Requirements	Sen. Approps. (4/28)	04/10/08	
SB 1406	Correa	Optometry	Sen. Approps.	Introduced	
SB 1494	McClintock	State Agency Web Sites: information	Sen. Approps. (4/21)	04/10/08	
SB 1505	Yee	Board of Behavioral Sciences: fees	Sen. B&P (4/28)	04/07/08	
SB 1525	Kuehl	Health Care Coverage: medical necessity determinations	Sen. Approps.	04/10/08	
SB 1633	Kuehl	Dental Services: credit	Sen Approps. (4/28)	Introduced	
SB 1639	Ashburn	Nurse Practitioners	Sen. Rules	Introduced	
SB 1729	Migden	Nursing Home: training	Sen. Approps.	04/08/08	
SB 1769	Perata	Department of Consumer Affairs	Sen. Rules	Introduced	
SBX1 6	Runner	Hospitals: preventative medical services	Rules	Introduced	
SBX1 9	Runner	Primary Care Clinics	Sec. of Senate	01/10/08	
SBX1 12	Runner	Health Care Cost and Quality Transparency	Rules	01/14/08	
SJR 20	Migden	Medical Marijuana	Sen. Jud.	04/03/08	