

**MEDICAL BOARD OF CALIFORNIA**  
**Status of Pending Regulations**

<b>Subject</b>	<b>Current Status</b>	<b>Date Approved by Board</b>	<b>Date Notice Published by OAL</b>	<b>Date of Public Hearing</b>	<b>Date of Final Adoption</b>	<b>Date to DCA for Review *</b>	<b>Date to OAL for Review **</b>	<b>Date to Sec. of State***</b>
Oral and Written Arguments	Became effective 6/6/08	7/28/07	9/7/07	11/2/07	11/2/07	2/8/08	4/9/08	5/7/08
Continuing Education Requirements	Staff working to complete the file	11/2/07	12/07/07	2/1/08	3/17/08			
Delegation of Services (on behalf of the Physician Assistant Comm)	Filed with Secretary of State 7/8/08; to become effective 8/7/08	11/2/07	12/07/07	2/1/08	2/1/08	3/13/08	5/23/08	7/8/08
Disciplinary Guidelines	At DCA for review (to Agency on 7/1/08)	2/1/08	2/29/08	4/25/08	4/25/08	6/5/08		
Fee Reduction to Offset Elimination of Diversion Prog.	Modified Text to be considered at July 08 Board meeting.	2/1/08	2/29/08	4/25/08	4/25/08			
Non-substantive changes from all units (Section 100 changes)	Next review of MBC regulations pending Summer-Fall 2008							

\* - DCA is allowed 30 calendar days for review  
 \*\* - OAL is allowed 30 working days for review  
 \*\*\* - Regs take effect 30 days after filing with Sec. of State

Prepared by Kevin A. Schunke  
 Updated July 8, 2008  
 For questions, call (916) 263-2368

# LEGISLATIVE PACKET

July 24 – July 25, 2008  
San Francisco, CA

for

FULL-BOARD MEETING  
July 25, 2008



**Medical Board of California  
Tracker - Legislative Bill File  
7/17/2008**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>POSITION</u>	<u>VERSION</u>	<u>AMENDED</u>
AB 214	Fuentes	Physician Health Program Act of 2008	Sen. Approps. (8/4)	Rec:	Amended	7/1/2008
AB 547	Ma	"Cap" on fees	Asm. Consent	Support if Amended (ltr)	Amended	7/3/2008
AB 1436	Hernandez	Nurse Practitioners	Sen. B&P		Amended	6/10/2008
AB 1944	Swanson	Authorizing District Hospitals to Employ Physicians	Sen. Health	Oppose (ltr)	Amended	5/8/2008
AB 2398	Nakanishi	Cosmetic Surgery: employment of physicians	Sen. Approps. (8/4)	Watch Rec: Support	Amended	6/30/2008
AB 2439	De La Torre	Loan Repayment Program: mandatory fees	Sen. Approps. (8/4)	Oppose unless amended (ltr) Rec: Support if amended	Amended	6/30/2008
AB 2442	Nakanishi	MBC: peer review proceedings	Sen. Approps. Suspense	Sponsor/Support (ltr)	Amended	6/16/2008
AB 2443	Nakanishi	MBC: physician well-being	Sen. Approps. (8/4)	Sponsor/Support (ltr)	Amended	6/16/2008
AB 2444	Nakanishi	MBC: PLR with education	Enrolled	Sponsor/Support (ltr)	Amended	7/1/2008
AB 2445	Nakanishi	MBC: licensing PLR	Enrolled	Sponsor/Support (ltr)	Amended	6/4/2008
AB 2482	Maze	Physician Assistants: continuing education	Chapter #76	Support (ltr)	Introduced	
AB 2543	Berg	Loan Repayment Program: geriatric workforce	Sen. Approps. (8/4)	Oppose Rec: Support	Amended	6/17/2008
AB 2637	Eng	Dental Auxiliaries	Sen. Approps. (8/4)	Rec: Neutral	Amended	6/17/2008
AB 2649	Ma	Medical Assistants: authorized services	Enrolled	Neutral	Amended	6/16/2008
AB 2747	Berg	End-of-Life Care	Sen. Floor	Neutral/amends taken	Amended	7/2/2008
AB 2968	Carter	Cosmetic Surgery: physical examination	Sen. Floor	Neutral (ltr) - amends taken	Amended	6/30/2008
AB 2969	Lieber	Workers' Comp: med. treat. utilization reviews	Sen. Floor	Support (ltr)	Introduced	

\* Board Sponsored Bills

\* Consent Bills

\* Under Review

**Medical Board of California  
Tracker - Legislative Bill File  
7/17/2008**

<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>POSITION</u>	<u>VERSION</u>	<u>AMENDED</u>
SB 797	Ridley-Thomas	VE/P Extension	Chapter 4336	Contained VE/P Support (ltr)	Amended	4/24/2008
SB 963	Ridley-Thomas	Regulatory Boards: Operations	Asm. Approps. - suspense	Rec: Oppose unless amended	Amended	7/1/2008
SB 1294	Ducheny	Employed Physicians: pilot project expansion	Asm. Approps. - suspense	Neutral	Amended	7/1/2008
SB 1379	Ducheny	Loan Repayment: permanent funding source	Asm. Approps. - suspense	Support (ltr)	Introduced	
SB 1394	Lowenthal	Lapses of Consciousness: reports to DMV	Asm. Floor	Support (ltr)	Amended	7/2/2008
SB 1406	Correa	Optometry	Asm. Approps. - suspense	Rec: Oppose unless amended	Amended	7/1/2008
SB 1415	Kuehl	Patient Records: disclosure of retention period	Asm. Floor	Support (ltr)	Amended	7/4/2008
SB 1441	Ridley-Thomas	Task Force: address standards for impaired	Asm. Approps. - suspense	Support if amended (ltr)	Amended	7/3/2008
SB 1454	Ridley-Thomas	Advertising: OSM Cosmetic Surgery Standards	Asm. Approps. - suspense	Support (ltr)	Amended	6/16/2008
SB 1526	Perata	Polysomnographic Technologists Registration	Asm. Approps. - suspense	Neutral w/ Bd. Member	Amended	6/11/2008
SB 1779	B&P Com.	Healing Arts: Omnibus	Asm. Floor	Support MBC Provisions (ltr)	Amended	6/12/2008
SJR 19	Ridley-Thomas	Health professionals: torture	Asm. Floor	Watch	Amended	6/16/2008

\* Board Sponsored Bills

\* Consent Bills

\* Other Bills



## AB 214

Author/Sponsor currently  
working on new draft.  
Language will be transmitted  
electronically to Board  
members when it is received  
by staff.

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 547  
**Author:** Ma  
**Bill Date:** July 3, 2008, amended  
**Subject:** "Cap" on Fees  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently on the Senate Floor.

**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).

This bill appropriates one hundred thirty-five thousand dollars (\$135,000) from the Contingent Fund of the Board to the Bureau of State Audits for the purposes of conducting an audit of the Board. The audit must be conducted no later than January 1, 2012.

**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. This amendment has not been accepted by the author to date.

Amendments to this bill include an appropriation of one hundred thirty-five thousand dollars (\$135,000) from the Contingent Fund of the Board to the Bureau of State Audits for the purposes of conducting an audit of the fiscal condition of the Board. The audit must be conducted no later than January 1, 2012.

**FISCAL:** Minor and absorbable should the Board pursue regulatory authority to reduce the fee.  
\$135,000 for the audit.

**POSITION:** Support if amended to provide flexibility in the fund's reserve.

July 16, 2008

AMENDED IN SENATE JULY 3, 2008  
AMENDED IN SENATE JUNE 16, 2008  
AMENDED IN ASSEMBLY JANUARY 7, 2008  
AMENDED IN ASSEMBLY APRIL 19, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 547**

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**Introduced by Assembly Member Ma**

February 21, 2007

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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. Medical Board of California: licensure fees.

Existing law 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 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 bill would appropriate \$135,000 from the Contingent Fund of the Medical Board of California to the Bureau of State Audits for this purpose.~~

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

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

1 SECTION 1. Section 2435 of the Business and Professions  
2 Code is amended to read:

3 2435. The following fees apply to the licensure of physicians  
4 and surgeons:

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

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

16 (c) Each applicant who qualifies for a certificate, as a condition  
17 precedent to its issuance, in addition to other fees required herein,  
18 shall pay an initial license fee, if any, which fee shall be fixed by  
19 the board consistent with this section. The initial license fee shall  
20 be a maximum of seven hundred ninety dollars (\$790). An  
21 applicant enrolled in an approved postgraduate training program  
22 shall be required to pay only 50 percent of the initial license fee.

23 (d) The biennial renewal fee shall be fixed by the board  
24 consistent with this section. The biennial renewal fee shall be a  
25 maximum of seven hundred ninety dollars (\$790).

26 (e) Notwithstanding subdivisions (c) and (d) and to ensure that  
27 subdivision (k) of Section 125.3 is revenue neutral with regard to  
28 the board, the board may, by regulation, increase the amount of

1 the initial license fee and the biennial renewal fee by an amount  
2 required to recover both of the following:

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

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

11 When calculating the amount of costs for services for which the  
12 board paid an hourly rate, the board shall use the average number  
13 of hours for which the board paid for those costs over these prior  
14 three fiscal years, multiplied by the hourly rate paid by the board  
15 for those costs as of July 1, 2005. Beginning January 1, 2009, the  
16 board shall instead use the average number of hours for which it  
17 paid for those costs over the three-year period of fiscal years  
18 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate  
19 paid by the board for those costs as of July 1, 2005. In calculating  
20 the increase in the amount of investigation and enforcement costs,  
21 the board shall include only those costs for which it was eligible  
22 to obtain reimbursement under Section 125.3 and shall not include  
23 probation monitoring costs and disciplinary costs, including those  
24 associated with the citation and fine process and those required to  
25 implement subdivision (b) of Section 12529 of the Government  
26 Code.

27 (f) Notwithstanding Section 163.5, the delinquency fee shall be  
28 10 percent of the biennial renewal fee.

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

32 (h) It is the intent of the Legislature that, in setting fees pursuant  
33 to this section, the board shall seek to maintain a reserve in the  
34 Contingent Fund of the Medical Board of California equal to  
35 approximately two months' operating expenditures.

36 (i) Not later than January 1, 2012, the Bureau of State Audits  
37 (BSA) shall conduct a review of the board's financial status,  
38 including, but not limited to, a review of the board's revenue  
39 projections. The BSA shall, on the basis of the review, report to  
40 the Joint Legislative Audit Committee on any adjustment to the

1 fees imposed by this section required to maintain the reserve in  
2 the Contingent Fund of the Medical Board of California as provided  
3 by subdivision (h), and also taking into account the projected  
4 number of new licensees of the board. ~~The review shall be funded~~  
5 ~~from licensure fees in the fund.~~

6 *SEC. 2. The sum of one hundred thirty-five thousand dollars*  
7 *(\$135,000) is hereby appropriated from the Contingent Fund of*  
8 *the Medical Board of California to the Bureau of State Audits for*  
9 *the purposes of conducting the review and issuing the report*  
10 *required pursuant to subdivision (i) of Section 2435 of the Business*  
11 *and Professions Code.*

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2398  
**Author:** Nakanishi  
**Bill Date:** June 30, 2008, amended  
**Subject:** Cosmetic surgery: employment of physicians and surgeons.  
**Sponsor:** American Society for Dermatological Surgery

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill seeks to significantly improve patient safety by making it tougher for corporate entities to practice medicine illegally in California. This bill would authorize the revocation of the license of a physician who practices medicine with a business organization that offers to provide, or provides, outpatient elective cosmetic procedures, knowing that it is owned or operated in violation of the prohibition against the corporate practice of medicine.

**ANALYSIS:**

This bill originally contained provisions seeking to strengthen current law on the issue of physician supervision in cosmetic surgery settings and provide greater protection to patients seeking safe and responsible cosmetic care. These provisions have since been amended out of the bill.

This bill would authorize the revocation of the license of a physician who practices medicine with a business organization that offers to provide, or provides, outpatient elective cosmetic procedures, knowing that it is owned or operated in violation of the prohibition against the corporate practice of medicine. This bill also provides that a physician 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 outpatient elective cosmetic procedures or treatments that may only be provided by the holder of a valid physician's license is deemed to have knowledge that the business organization is in violation of the corporate practice of medicine.

**FISCAL:** Minor

**POSITION:** Recommend: Support

July 15, 2008



VICE CHAIR:  
LABOR AND EMPLOYMENT

COMMITTEES:  
APPROPRIATIONS  
HEALTH

# Assembly California Legislature

ALAN NAKANISHI  
ASSEMBLY MEMBER, TENTH DISTRICT



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Richard D. Fantozzi, M.D., President  
Medical Board of California  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95814

**RE: Request for Medical Board of California Support for AB 2398 (Nakanishi)  
Patient Safety in Cosmetic Medical Procedures**

Dear Dr. Fantozzi and Members of the Medical Board:

I write to respectfully request that the Medical Board of California support my Assembly Bill 2398 to help deter the casual offering of elective cosmetic medical procedures in California, and to stiffen penalties for the unlawful corporate practice of medicine common to settings offering and rendering medical procedures which happen to be cosmetic. Elective cosmetic medical procedures or treatments are those performed solely to alter or reshape normal structures of the body solely in order to improve appearance.

AB 2398 has received overwhelming votes of bipartisan support without a single "no" vote in the Assembly and, to date, the first and only 2 "no" votes in the Senate (a total of 116 votes for the bill, and only 2 in opposition).

**AB 2398**

AB 2398 drops the enforcement hammer most heavily on corporate entities unlawfully engaged in the practice of medicine in California in violation of existing law, and on those that facilitate their unlawful invasion of the practice of medicine. This accomplishes the Board's goal of strengthening enforcement of current laws and going after the most frequent and pernicious offenders -- unlawful, corporate-owned, chain med-spa operators -- who want to practice medicine without proper licensure or ownership structure. The substantial improvement in penalties will justify the commitment of enforcement resources to these kinds of cases by the MBC and other consumer protection agencies, and will function more effectively as deterrents to would be scofflaws.

The findings of the consumer protection boards (MBC and BRN) conducting the hearings, in no small part, centered around strategies to improve enforcement in the context of always-limited resources, and competing priorities for investigation and enforcement actions ranging from "cite-and-fine" actions, to full-on criminal prosecutions.

Physician supervision standards are no longer part of AB 2398. The determination of appropriate physician supervision remains the legal charge of the MBC

01/10/2008 09:20 FAX 0100132010 ASSEMBLY CLERK OFF TO 003/003

**Medi-Spa Practices in California Warrant Legislative Action**

A "commodity" mentality has developed in California regarding the performance of medical procedures that happen to be cosmetic. Most alarming to me as a physician is the plainly uninformed comments I've received from a number of physicians who hold that mindset to the point of disregarding basic patient assessment and determination of appropriateness for treatment because medical procedures that are cosmetic in nature are asserted to be "minor" or "noninvasive," or regarded as the less-than-serious rendering of medical care.

Public guidance from the MBC in its January 2008 on-line article, *Medical Spas – What You Need to Know*, accurately summarizes the problems addressed by AB 2398:

**"Medical spas are marketing vehicles for medical procedures. If they are offering medical procedures, they must be owned by physicians. The use of the term 'medical spa' is for advertising purposes to make the procedures seem more appealing. In reality, however, it is the practice of medicine.**

The Medical Board, however, is concerned when medicine is being marketed like a pedicure, and consumers are led to believe that being injected, lasered, and resurfaced requires no more thought than changing hair color.

Medical treatments should be performed by medical professionals only. There is risk to any procedure, however minor, and consumers should be aware of those risks. While it is illegal for unlicensed personnel to provide these types of treatments, consumers should be aware that some persons and firms are operating illegally. Cosmetologists, while licensed professionals and highly qualified in superficial treatments such as facials and microdermabrasion, may never inject the skin, use lasers, or perform medical-level dermabrasion or skin peels. Those types of treatments must be performed by qualified medical personnel. In California, that means a physician, or a registered nurse or physician assistant under the supervision of a physician." (Emphases added.)

In that vein, I write to respectfully request that the Medical Board become a full advocacy partner in this effort, and vote to support AB 2398.

Sincerely,



ALAN NAKANISHI, M.D.  
Assemblyman, 10<sup>th</sup> District

cc: Ms. Linda Whitney, Chief of Legislation  
Medical Board of California

Ms. Barbara Johnston, Executive Officer  
Medical Board of California

AMENDED IN SENATE JUNE 30, 2008

AMENDED IN ASSEMBLY MAY 1, 2008

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2398**

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**Introduced by Assembly Member Nakanishi**

February 21, 2008

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An act to amend Section 2417 of 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.

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

This bill would authorize the revocation of the license of a physician and surgeon who practices medicine with, or serves or is employed as the medical director of, a business organization that provides outpatient elective cosmetic medical procedures or treatments, as defined, knowing that 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 provides outpatient elective cosmetic medical procedures or treatments, that is owned and operated in violation of the prohibition, and that contracts with or employs a physician and surgeon to facilitate the offer or provision of those procedures or treatments that may only be provided by a licensed physician and surgeon, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

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

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

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

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

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

1     *SECTION 1. The Legislature finds and declares that the*  
2     *Medical Practice Act restricts the employment of physicians and*  
3     *surgeons by a corporation or other artificial legal entity, as*  
4     *described in Article 18 (commencing with Section 2400) of Chapter*  
5     *5 of Division 2 of the Business and Professions Code, and that the*  
6     *prohibited conduct described in subdivisions (c) and (d) of Section*  
7     *2417 of the Business and Professions Code, as amended by this*  
8     *act, is declaratory of existing law.*

9     ~~SECTION 1.~~

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

12    2417. (a) If the Department of Insurance has evidence that a  
13    business is being operated in violation of this chapter, Part 4

1 (commencing with Section 13400) of Division 3 of the  
2 Corporations Code, or Chapter 1 (commencing with Section 1200)  
3 of Division 2 of the Health and Safety Code, and that the business  
4 may be in violation of Section 1871.4 of the Insurance Code or  
5 Section 549 or 550 of the Penal Code, then the department shall  
6 report the business, and any physician and surgeon suspected of  
7 knowingly providing medical services for that business relative to  
8 a violation of Section 1871.4 of the Insurance Code or Section 549  
9 or 550 of the Penal Code, to the appropriate regulatory agency.  
10 Upon receiving a report from the Department of Insurance of a  
11 suspected violation, the regulatory agency shall conduct an  
12 investigation. The requirement in subdivision (a) of Section  
13 1872.95 of the Insurance Code for investigations to be conducted  
14 within existing resources does not apply to investigations required  
15 by this ~~section~~ *subdivision*. The Department of Insurance may  
16 consult with the appropriate regulatory department or agency prior  
17 to making its report to that department or agency, and this  
18 consultation shall not be deemed to require the department or  
19 agency to conduct an investigation.

20 (b) A physician and surgeon who practices medicine with a  
21 business organization knowing that it is owned or operated in  
22 violation of Section 1871.4 of the Insurance Code, Section 14107  
23 or 14107.2 of the Welfare and Institutions Code, or Section 549  
24 or 550 of the Penal Code shall have his or her license to practice  
25 permanently revoked.

26 (c) A physician and surgeon who practices medicine with a  
27 business organization that offers to provide, or provides, outpatient  
28 elective cosmetic medical procedures or treatments, knowing that  
29 it is owned or operated in violation of Section 2400, may have his  
30 or her license to practice revoked. A physician and surgeon who  
31 contracts to serve as, or otherwise allows himself or herself to be  
32 employed as, the medical director of a business organization that  
33 he or she does not own and that offers to provide or provides  
34 outpatient elective cosmetic medical procedures or treatments that  
35 may only be provided by the holder of a valid physician's and  
36 surgeon's certificate under this chapter shall be deemed to have  
37 knowledge that the business organization is in violation of Section  
38 2400.

39 (d) A business organization that offers to provide, or provides,  
40 outpatient elective cosmetic medical procedures or treatments, that

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

8 (e) For purposes of this section, "outpatient elective cosmetic  
9 medical procedures or treatments" means a medical procedure or  
10 treatment that is performed to alter or reshape normal structures  
11 of the body solely in order to improve appearance.

12 ~~SEC. 2.~~

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

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2439  
**Author:** De La Torre  
**Bill Date:** June 30, 2008, amended  
**Subject:** Loan Repayment Program: Mandatory Fees  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would require the Medical Board (Board) to assess an additional \$25 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 debt. 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 Humboldt.

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 \$25 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 or where the primary service is to patients 65 years or older. This is to encourage physicians to work in those settings and to address the shortages of geriatric physicians.

This bill was amended from a mandatory fee of \$50 down to \$25 pursuant to the Board's request.

**FISCAL:** Minor and absorbable to MBC

**POSITION:** Oppose unless amended to reduce the \$50 fee to \$25 (taken) and to remove the requirement for the Program to direct 15% of the money collected pursuant to this bill to loan repayment applicants working in geriatric settings.

**Recommendation: Support if amended to match language in AB 2543 (Berg) to include criteria to give priority consideration to applicants who agree to work in geriatric settings.**

July 17, 2008



AMENDED IN SENATE JUNE 30, 2008

AMENDED IN SENATE JUNE 19, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

AMENDED IN ASSEMBLY MARCH 28, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2439**

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

February 21, 2008

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An act to amend ~~Sections 2023 and 2445~~ *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.

~~(1) Existing~~

*Existing* law establishes the Steven M. Thompson Physician Corps Loan Repayment Program in the California Physician Corps Program within the Health 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 change the fee to \$25 and make payment of the 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.

~~(2) Under existing law, all moneys paid to, and received by, the Medical Board of California are paid into the State Treasury and credited to the Contingent Fund of the Medical Board of California.~~

~~This bill would require the board, on an annual basis, to transfer all excess reserve funds in the contingent fund that amount to more than 2 months' operating expenditures to the Medically Underserved Account for Physicians.~~

~~(3) Because~~

~~Because~~ this 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:*

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

3 2023. (a) The board, in conjunction with the Health Professions  
4 Education Foundation, shall study the issue of its providing medical  
5 malpractice insurance to physicians and surgeons who provide  
6 voluntary, unpaid services as described in subdivision (b) of  
7 Section 2083, and report its findings to the Legislature on or before  
8 January 1, 2008.

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

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

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

1 (3) Whether the licensure surcharge fee assessed under Section  
2 2436.5 is sufficient to fund the provision of medical malpractice  
3 insurance for the physicians and surgeons.

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

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

10 2436.5. (a) In addition to the fees charged for the initial  
11 issuance or biennial renewal of a physician and surgeon's certificate  
12 pursuant to Section 2435, and at the time those fees are charged,  
13 the board shall charge each applicant or renewing licensee an  
14 additional twenty-five dollar (\$25) fee for the purposes of this  
15 section.

16 (b) This twenty-five dollar (\$25) fee shall be paid at the time  
17 of application for initial licensure or biennial renewal. The  
18 twenty-five dollar (\$25) fee shall be due and payable along with  
19 the fee for the initial certificate or biennial renewal.

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

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

33 ~~SEC. 3. Section 2445 of the Business and Professions Code is~~  
34 ~~amended to read:~~

35 ~~2445. (a) All moneys paid to and received by the board shall~~  
36 ~~be paid into the State Treasury and shall be credited to the~~  
37 ~~Contingent Fund of the Medical Board of California. Those moneys~~  
38 ~~shall be reported at the beginning of each month, for the month~~  
39 ~~preceding, to the Controller.~~

1 ~~(b) The contingent fund shall be for the use of the board and~~  
2 ~~from it shall be paid all salaries and all other expenses necessarily~~  
3 ~~incurred in carrying into effect the provisions of this chapter.~~

4 ~~(c) If there is any surplus in these receipts after the board's~~  
5 ~~salaries and expenses are paid, that surplus shall be applied solely~~  
6 ~~to expenses incurred under the provisions of this chapter. No~~  
7 ~~surplus in these receipts shall be deposited in or transferred to the~~  
8 ~~General Fund.~~

9 ~~(d) Notwithstanding subdivision (c), on an annual basis, the~~  
10 ~~board shall transfer all excess reserve funds in the contingent fund~~  
11 ~~that amount to more than two months' operating expenditures~~  
12 ~~under this chapter to the Medically Underserved Account for~~  
13 ~~Physicians created by Section 128555 of the Health and Safety~~  
14 ~~Code for the Steven M. Thompson Physician Corps Loan~~  
15 ~~Repayment Program.~~

16 ~~SEC. 4.~~

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

19 128553. (a) Program applicants shall possess a current valid  
20 license to practice medicine in this state issued pursuant to Section  
21 2050 of the Business and Professions Code.

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

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

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

31 (A) Speak a Medi-Cal threshold language.

32 (B) Come from an economically disadvantaged background.

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

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

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

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

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

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

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

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

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

18 (d) (1) The foundation may appoint a selection committee that  
19 provides policy direction and guidance over the program and that  
20 complies with the requirements of subdivision (l) of Section  
21 128552.

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

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

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

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

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

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

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

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

O

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2442  
**Author:** Nakanishi  
**Bill Date:** June 16, 2008, amended  
**Subject:** MBC: Peer Review Proceedings  
**Sponsor:** Medical Board of California  
**Board Position:** Sponsor/Support

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee on suspense.

**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.

This bill was amended to include a transfer of \$500,000 from the Contingent Fund of the Board to the Medically Underserved Account for Physicians within the Health Professions Education Foundation (HPEF), a continuously appropriated account, thereby making an appropriation.

**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 sunset of the diversion program on June 30, 2008 those reporting requirements are 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.

This bill was amended to include a transfer of \$500,000 from the Contingent Fund of the Board to the Medically Underserved Account for Physicians, a continuously appropriated account, thereby making an appropriation.

Under existing law, the Medically Underserved Account for Physicians is established within the Health Professions Education Fund for purposes of providing funding for the ongoing operations of the Steven M. Thompson Physician Corps Loan Repayment Program. Funds placed in the account are continuously appropriated for the repayment of loans. The Board voted to seek legislation to transfer those funds at its November 2008 meeting.

**FISCAL:**                      \$500,000

**POSITION:**                Sponsor/Support

July 17, 2008



AMENDED IN SENATE JUNE 16, 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 repeal Sections 821.5 and 821.6 of the Business and Professions Code, relating to healing arts, *making an appropriation therefor*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

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

**Existing**

(1) *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 *on* 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.

This bill would delete these provisions.

(2) *Under the Medical Practice Act, the Medical Board of California regulates physicians and surgeons and provides for their licensure. All moneys paid to, and received by, the board are paid into the State*

*Treasury and credited to the Contingent Fund of the Medical Board of California.*

*Under existing law, the Medically Underserved Account for Physicians is established within the Health Professions Education Fund for purposes of providing funding for the ongoing operations of the Steven M. Thompson Physician Corps Loan Repayment Program, as specified. Funds placed in the account are continuously appropriated for the repayment of loans.*

*This bill would transfer \$500,000 from the Contingent Fund of the Medical Board of California to the Medically Underserved Account for Physicians, a continuously appropriated account, thereby making an appropriation.*

~~This~~

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

Vote:  $\frac{2}{3}$ . Appropriation: ~~no~~-yes. Fiscal committee: yes.  
State-mandated local program: no.

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

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

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

5 SEC. 3. *Notwithstanding Section 2445 of the Business and*  
6 *Professions Code, the amount of five hundred thousand dollars*  
7 *(\$500,000) shall be transferred, one time only, from the Contingent*  
8 *Fund of the Medical Board of California to the Medically*  
9 *Underserved Account for Physicians created by Section 128555*  
10 *of the Health and Safety Code for the Steven M. Thompson*  
11 *Physician Corps Loan Repayment Program.*

12 ~~SEC. 3.~~

13 SEC. 4. This act is an urgency statute necessary for the  
14 immediate preservation of the public peace, health, or safety within  
15 the meaning of Article IV of the Constitution and shall go into  
16 immediate effect. The facts constituting the necessity are:

17 In order to ensure that reporting requirements administered by  
18 the diversion program of the Medical Board of California are  
19 deleted when that program becomes inoperative, *and that the*  
20 *Medically Underserved Account for Physicians receives funding*

1 *at the earliest possible time*, it is necessary that this act take effect  
2 immediately.

O

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2443  
**Author:** Nakanishi  
**Bill Date:** June 16, 2008, amended  
**Subject:** MBC: Physician Well-Being  
**Sponsor:** Medical Board of California  
**Position:** Sponsor/Support

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee.

**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. The bill would require that the program be developed within existing resources.

**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.

This bill was amended to require the program to be developed within existing resources. Additional amendments to this bill added some general parameters to the program, which includes an examination and evaluation of existing wellness education programs, a series of relevant articles published in the Board's Newsletter, an examination of incentives to encourage physicians to become knowledgeable regarding the issues concerning their well-being, and an outreach effort to promote physician wellness.

**FISCAL:**               None

**POSITION:**           Sponsor/Support

July 15, 2008



DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ [WWW.DGF.CA.GOV](http://WWW.DGF.CA.GOV)

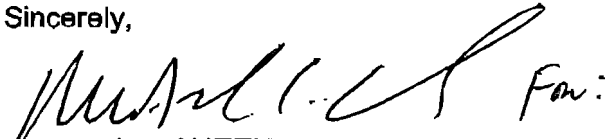
JUL - 8 2008

Honorable Alan Nakanishi  
Member of the Assembly  
State Capitol, Room 5175  
Sacramento, CA 95814

Dear Assemblyman Nakanishi:

Our office has reviewed AB 2443, and on the basis of our attached analysis of available information, we regret that we must oppose your legislation. If you feel that we may have overlooked factors that may be important in evaluating your legislation, please call me at 445-8610 and we will arrange any assistance necessary.

Sincerely,

 For:

THOMAS L. SHEEHY  
Deputy Director

Attachment

## DEPARTMENT OF FINANCE BILL ANALYSIS

**AMENDMENT DATE:** June 16, 2008  
**POSITION:** Oppose  
**SPONSOR:** Medical Board of California

**BILL NUMBER:** AB 2443  
**AUTHOR:** A. Nakanishi

**BILL SUMMARY**

This bill would require the Medical Board of California (Board) to establish a program to promote the well being of physicians and surgeons, as specified.

**FISCAL SUMMARY**

The Board has indicated that there would be no fiscal impact as the bill requires the program to be developed within existing resources. The Department of Finance estimates one-time costs of \$100,000 to \$200,000 to conduct a review of the wellness and education programs provided to medical students, post graduate trainees, and licensed physician and surgeons and to develop the required program. To the extent these costs cannot be absorbed within existing resources, the Board has a sufficient fund balance for this increase in costs. Any request for additional resources will be evaluated as part of the annual budget process.

**COMMENTS**

Finance is opposed to this bill as the program would be more appropriate for a professional association, like the American Medical Association who advocates on behalf of physicians and surgeons, rather than a function of state government.

**Existing law:**

- Establishes the Board for the purpose of licensing and regulating physicians.
- Establishes various qualification, standards, and requirements for licensed physicians and authorizes the Board to take disciplinary action against a licensee for a violation.
- Requires the Board to have, as its highest priority, the protection of the public, and specifies that when the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public is paramount.

This bill would require the Board to establish a program to promote issues concerning physician and surgeon well-being. The program is to include: an examination and evaluation of existing wellness education, publication of a series of relevant articles, consolidation of resources that promote wellness; and an outreach effort. This bill would require the program to be developed within existing resources unless authorized in the annual Budget Act.

Analyst/Principal (0240) K. Shelton	Date	Program Budget Manager Todd Jerue	Date 7/7/08
Original Signed By Mike Genest		JUL 8 2008	
Governor's Office:	By:	Date: JUL 10 2008	Position Approved <input checked="" type="checkbox"/> Position Disapproved
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

(2)

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**

Form DF-43

**AUTHOR**

**AMENDMENT DATE**

**BILL NUMBER**

**A: Nakanishi**

**June 16, 2008**

**AB 2443**

		(Fiscal Impact by Fiscal Year)							
		SO							
Code/Department	LA	(Dollars in Thousands)							
Agency or Revenue	CO	PROP							Fund
Type	RV	98	FC	2007-2008	FC	2008-2009	FC	2009-2010	Code
1110/ConAfr-ReqBd	SO	No	C	\$0	C	\$50 - 100	C	\$50 - 100	0758
<u>Fund Code</u>	<u>Title</u>								
0758	Contingent Fd of the Medical Board of CA								



AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**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 amended, 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 *issues concerning physician and surgeon well-being* ~~of physicians and surgeons~~ and would require the program to include, ~~but not be limited to~~ *among other things*, an examination *and evaluation* of existing wellness education for medical students, postgraduate trainees, and licensed physicians and surgeons *and an outreach effort to promote physician and surgeon wellness*. The bill would require the program to be developed within existing resources unless otherwise authorized in the annual Budget Act.

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

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

1 SECTION 1. Section 2005 is added to the Business and  
2 Professions Code, to read:

3 2005. (a) The board shall establish a program to promote the  
4 ~~well-being of physicians and surgeons~~ *issues concerning physician*  
5 *and surgeon well-being*. This program shall include, but not be  
6 limited to, ~~an examination of all of the following:~~

7 (1) *An examination and evaluation of existing wellness education*  
8 *for medical students, postgraduate trainees, and licensed physicians*  
9 *and surgeons. This program*

10 (2) *A series of relevant articles published in the board's*  
11 *newsletter.*

12 (3) *A consolidation of resources that promote physician and*  
13 *surgeon wellness.*

14 (4) *An examination of incentives to encourage physicians and*  
15 *surgeons to become knowledgeable regarding the issues*  
16 *concerning their well-being.*

17 (5) *An outreach effort to promote physician and surgeon*  
18 *wellness.*

19 (b) *The program described in subdivision (a) shall be developed*  
20 *within existing resources unless otherwise authorized in the annual*  
21 *Budget Act.*

O

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2444  
**Author:** Nakanishi  
**Bill Date:** July 1, 2008, amended  
**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 Senate 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 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 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

July 15, 2008

AMENDED IN SENATE JULY 1, 2008

AMENDED IN SENATE JUNE 17, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**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 amended, Nakanishi. Medical Board of California: disciplinary actions.

Existing law, the Medical Practice Act, provides for the licensure and regulation of ~~physician~~ *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 a requirement for specified training or education in a public letter of reprimand.

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

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

- 1 SECTION 1. Section 2233 of the Business and Professions
- 2 Code is amended to read:

1     2233. (a) The board may, by stipulation or settlement with the  
2 affected physician and surgeon, issue a public letter of reprimand  
3 after it has conducted an investigation or inspection as provided  
4 in this article, rather than filing or prosecuting a formal accusation.  
5 *The public letter of reprimand may, at the discretion of the board,*  
6 *include a requirement for specified training or education.* The  
7 affected physician and surgeon shall indicate agreement or  
8 nonagreement in writing within 30 days of formal notification by  
9 the board of its intention to issue the letter. The board, at its option,  
10 may extend the response time. Use of a public reprimand shall be  
11 limited to minor violations and shall be issued under guidelines  
12 established by regulations of the board. A public letter of reprimand  
13 issued pursuant to this section may be disclosed to an inquiring  
14 member of the public.

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

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2445  
**Author:** Nakanishi  
**Bill Date:** July 4, 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 Senate 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.

This bill was amended to require the Board to publish all public letters of reprimand on the Board's Internet Web site.

**FISCAL:** None

**POSITION:** Sponsor/Support

July 15, 2008

AMENDED IN SENATE JUNE 4, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2445**

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**Introduced by Assembly Member Nakanishi**

February 21, 2008

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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~~ *minor* violations, as specified, and to concurrently issue a public letter of reprimand, which would be purged 3 years from the date of issuance. *The bill would require that the public letter of reprimand be disclosed to an inquiring member of the public and be posted on the board's Internet Web site.*

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:*

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

3 2221. (a) The board may deny a physician's and surgeon's  
4 certificate to an applicant guilty of unprofessional conduct or of  
5 any cause that would subject a licensee to revocation or suspension  
6 of his or her license; or, the board in its sole discretion, may issue  
7 a probationary physician's and surgeon's certificate to an applicant  
8 subject to terms and conditions, including, but not limited to, any  
9 of the following conditions of probation:

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

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

15 (3) Continuing medical or psychiatric treatment.

16 (4) Ongoing participation in a specified rehabilitation program.

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

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

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

22 (8) Compliance with all provisions of this chapter.

23 (9) Payment of the cost of probation monitoring.

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

27 (c) Enforcement and monitoring of the probationary conditions  
28 shall be under the jurisdiction of the board in conjunction with the  
29 administrative hearing procedures established pursuant to Sections  
30 11371, 11372, 11373, and 11529 of the Government Code, and  
31 the review procedures set forth in Section 2335.



1 (d) The board shall deny a physician's and surgeon's certificate  
2 to an applicant who is required to register pursuant to Section 290  
3 of the Penal Code. This subdivision does not apply to an applicant  
4 who is required to register as a sex offender pursuant to Section  
5 290 of the Penal Code solely because of a misdemeanor conviction  
6 under Section 314 of the Penal Code.

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

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

16 2221.05. (a) Notwithstanding subdivision (a) of Section 2221,  
17 the board may issue a physician's and surgeon's certificate to an  
18 applicant who has committed ~~lesser~~ *minor* violations that the board  
19 deems, in its discretion, do not merit the denial of a certificate or  
20 require probationary status under Section 2221, and may  
21 concurrently issue a public letter of reprimand.

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

25 (c) A public letter of reprimand issued pursuant to this section  
26 ~~may~~ *shall* be disclosed to an inquiring member of the public *and*  
27 *shall be posted on the board's Internet Web site.*

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

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2482 (Chapter #76)  
**Author:** Maze  
**Bill Date:** February 21, 2008, Introduced  
**Subject:** Physician Assistants: continuing education  
**Sponsor:** Author  
**Board Position:** Support

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill permits 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 also gives 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.

**IMPLEMENTATION:**

- Newsletter Article
- Notify Board staff

July 15, 2008

**Assembly Bill No. 2482**

**CHAPTER 76**

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

[Approved by Governor July 8, 2008. Filed with Secretary  
of State July 8, 2008.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2482, 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.

*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.

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2543  
**Author:** Berg  
**Bill Date:** June 17, 2008, amended  
**Subject:** Loan Repayment Program: geriatric workforce  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee and has been set for hearing on August 4, 2008.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would enact the Geriatric and Gerontology Workforce Expansion Act, to provide loan repayment assistance to licensed and associate clinical social workers, marriage and family therapists, and registered marriage and family therapy interns who work in a geriatric care setting provide geriatric services, and marriage and family therapists who work in a geriatric care setting.

This bill would require the Steven M. Thompson Loan Repayment Program to provide priority consideration to applicants who agree to practice in a geriatric care setting and are trained in geriatrics, and who can meet the cultural and linguistic needs and demands of a diverse population of older Californians.

**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. This act would set up loan repayment assistance for physicians, social workers, and marriage and family therapists.

This bill was amended to remove the requirement that the Steven M. Thompson Physician Corps Loan Repayment Program under the Health and Professions Education Foundation fill 15% of the available positions within the program with applicants who

agree to practice in a geriatric care setting. Instead, the bill now requires the program to give priority consideration to applicants who agree to practice in a geriatric care setting and are trained in geriatrics, and who can meet the cultural and linguistic needs and demands of a diverse population of older Californians.

**FISCAL:**               None to the Board.

**POSITION:**           Oppose

**Recommendation: Support the provisions related to the  
Steven M. Thompson Loan Repayment Program.**

July 17, 2008

AMENDED IN SENATE JUNE 17, 2008  
AMENDED IN ASSEMBLY MAY 23, 2008  
AMENDED IN ASSEMBLY APRIL 23, 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**

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**Introduced by Assembly Member Berg  
(Coauthors: Assembly Members De La Torre and Dymally)**

February 22, 2008

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An act to add Sections ~~2815.2, 4984.76, 4984.76~~ and 4996.66 to the Business and Professions Code, and to amend Sections ~~128552 128454, 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~~ and to add Section 128459 to, 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 or registration and regulation of ~~nurses~~, licensed and associate clinical social workers, marriage and family therapists, and marriage and family therapy interns

by ~~specified boards~~ the Board of Behavioral Sciences. Existing law requires those persons to pay licensing and renewal fees for licensure, as specified.

*Existing law provides for the Licensed Mental Health Service Provider Education Program within the Health Professions Education Foundation, which provides grants for the repayment of loans to licensed mental health service providers serving in mental health professional shortage areas. The program is developed and operated by the foundation, which makes recommendations to the Director of Statewide Health Planning and Development for purposes of loan repayment contracts.*

This bill would ~~establish~~ *enact* the Geriatric and Gerontology Workforce Expansion Act, ~~which would be administered by the Office of Statewide Health Planning and Development to provide grants for loan repayment assistance, on or after January 1, 2010, to nurses, licensed and associate clinical social workers, marriage and family therapists, and registered marriage and family therapy interns who work in a geriatric care setting provide geriatric services, as specified defined.~~ 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~~ *Geriatric Social Workers and Marriage and Family Therapists Account, which would be established in the Mental Health Practitioner Education Fund as a continuously appropriated account within the fund, thereby making an appropriation. The bill would also require the foundation to make specified recommendations to the director concerning guidelines for the selection of applicants to the loan repayment program.*

~~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, licensed or associate clinical social workers, marriage and family therapists, or licensed marriage and family therapy interns 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 appropriate policy and fiscal committees of 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 Professions Education Foundation, which provides financial incentives, as specified, to a physician and surgeon for practicing in a medically underserved community. Existing law ~~authorizes requires~~ the foundation to ~~appoint a selection committee to provide policy direction and guidance over the program~~ *use guidelines developed by the Medical Board of California for selection and placement of program applicants until the Office of Statewide Health Planning and Development adopts other guidelines by regulation.*

~~This bill would require that selection committee those guidelines to fill 15% of the available positions with include criteria that would give priority consideration to program applicants that who 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:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Geriatric and Gerontology Workforce Expansion Act.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) The population of California is aging at an exponential rate
- 5 with Californians who are 65 years of age or over reaching 6.5
- 6 million by 2010, which is over 14 percent of the total population,
- 7 and reaching over 9 million by 2020.
- 8 (b) The greatest growth within the aging population will be
- 9 those who are 85 years of age or older who will, by 2030, comprise
- 10 one in five of California's older residents.
- 11 (c) As California ages, it will become more racially and
- 12 ethnically diverse, with African Americans, Latinos, and Asian
- 13 Americans exceeding 40 percent of the older adult population,
- 14 many of whom were born outside the United States; meaning,
- 15 therefore, that there is a greater need for those providing services
- 16 to older adults to be bilingual or multilingual.
- 17 (d) It is the policy of the Mello-Granlund Older Californians
- 18 Act (Division 8.5 (commencing with Section 9000) of the Welfare
- 19 and Institutions Code) that older adults and those with disabilities
- 20 live as independent from institutions as much as possible and as
- 21 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 save 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~~

1 ~~Geriatric Registered Nurses Account, as provided in Section~~  
2 ~~128305.4 of the Health and Safety Code.~~

3 ~~SEC. 4.~~

4 ~~SEC. 3.~~ Section 4984.76 is added to the Business and  
5 Professions Code, to read:

6 4984.76. In addition to the fees charged for initial issuance or  
7 biennial renewal of a license pursuant to Section 4984.7, and at  
8 the time those fees are charged, the board shall charge each  
9 applicant or licensee an additional fee of ten dollars (\$10) for the  
10 ~~purposes of the California Geriatric Social Workers and Marriage~~  
11 ~~and Family Therapists Loan Assistance Program of 2008 (Article~~  
12 ~~6 (commencing with Section 128310) of Chapter 4 of Part 3 of~~  
13 ~~Division 107 of the Health and Safety Code). Payment of this~~  
14 ~~purposes of loan repayment under subdivision (d) of Section~~  
15 ~~128454 of the Health and Safety Code. Payment of this~~ ten-dollar  
16 (\$10) fee shall be made at the time of application for initial  
17 licensure or biennial renewal. All fees collected pursuant to this  
18 section shall be deposited in the Geriatric Social Workers and  
19 Marriage and Family Therapists Account, as provided in Section  
20 ~~128310.4~~ 128459 of the Health and Safety Code.

21 ~~SEC. 5.~~

22 ~~SEC. 4.~~ Section 4996.66 is added to the Business and  
23 Professions Code, to read:

24 4996.66. In addition to the fees charged for initial issuance or  
25 biennial renewal of a license pursuant to Section 4996.3, and at  
26 the time those fees are charged, the board shall charge each  
27 applicant or licensee an additional fee of ten dollars (\$10) for the  
28 ~~purposes of the California Geriatric Social Workers and Marriage~~  
29 ~~and Family Therapists Loan Assistance Program of 2008 (Article~~  
30 ~~6 (commencing with Section 128310) of Chapter 4 of Part 3 of~~  
31 ~~Division 107 of the Health and Safety Code). Payment of this~~  
32 ~~purposes of loan repayment under subdivision (d) of Section~~  
33 ~~128454 of the Health and Safety Code. Payment of this~~ ten-dollar  
34 (\$10) fee shall be made at the time of application for initial  
35 licensure or biennial renewal. All fees collected pursuant to this  
36 section shall be deposited in the Geriatric Social Workers and  
37 Marriage and Family Therapists Account, as provided in Section  
38 ~~128310.4~~ 128459 of the Health and Safety Code.

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

4  
5             ~~Article 5. California Geriatric Registered Nurses Loan~~  
6             ~~Assistance Program of 2008~~  
7

8     ~~128305. There is hereby established in the Office of Statewide~~  
9 ~~Health Planning and Development, the California Geriatric~~  
10 ~~Registered Nurses Loan Assistance Program of 2008.~~

11     ~~128305.1. It is the intent of this article that the office, in~~  
12 ~~consultation with the board, the medical community, including~~  
13 ~~representatives of ethnic minority groups, medical schools, health~~  
14 ~~advocates, primary care clinics, public hospitals and health care~~  
15 ~~systems, statewide agencies administering state and federally~~  
16 ~~funded health programs targeting communities of older~~  
17 ~~Californians, and members of the public with health care issue area~~  
18 ~~expertise, shall develop and implement the California Geriatric~~  
19 ~~Registered Nurses Loan Assistance Program of 2008.~~

20     ~~128305.2. For purposes of this article, the following terms have~~  
21 ~~the following meanings:~~

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

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

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

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

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

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

33     ~~128305.3. (a) Program applicants shall possess a current valid~~  
34 ~~license to practice registered nursing in this state issued by the~~  
35 ~~board pursuant to Section 2742 of the Business and Professions~~  
36 ~~Code.~~

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

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

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

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

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

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

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

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

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

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

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

36 ~~128305.4. (a) The Geriatric Registered Nurses Account is~~  
37 ~~hereby created in the fund.~~

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

1 ~~(e) Funds placed into the account shall be used by the office to~~  
2 ~~repay the loans of program participants pursuant to agreements~~  
3 ~~made under the program.~~

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

6 ~~(2) Loan repayments shall not exceed thirty thousand dollars~~  
7 ~~(\$30,000) per program participant.~~

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

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

15 ~~(e) The amount of loan repayment provided annually shall not~~  
16 ~~exceed the funding made available pursuant to the increase in~~  
17 ~~licensing fees described in subdivision (b) and pursuant to private~~  
18 ~~donations, if any.~~

19 ~~128305.5. The terms of loan repayment granted under this~~  
20 ~~article shall be as follows:~~

21 ~~(a) After a program participant has completed one year of~~  
22 ~~providing services as a registered nurse in a geriatric setting, the~~  
23 ~~office shall provide up to seven thousand five hundred dollars~~  
24 ~~(\$7,500) for loan repayment.~~

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

30 ~~(c) After a program participant has completed three consecutive~~  
31 ~~years of providing services as a registered nurse in a geriatric~~  
32 ~~setting, the office shall provide up to a maximum of an additional~~  
33 ~~twelve thousand five hundred dollars (\$12,500) of loan repayment,~~  
34 ~~for a total loan repayment of up to thirty thousand dollars~~  
35 ~~(\$30,000).~~

36 ~~128305.6. (a) On and after January 1, 2010, applications from~~  
37 ~~registered nurses for program participation may be submitted.~~

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

1 ~~(e) The office may promulgate emergency regulations to~~  
2 ~~implement the program. The initial adoption of emergency~~  
3 ~~regulations and one readoption of the initial regulations shall be~~  
4 ~~deemed to be an emergency and necessary for the immediate~~  
5 ~~preservation of the public peace, health and safety, and general~~  
6 ~~welfare. Subsequent regulations shall meet the requirements of~~  
7 ~~the Administrative Procedure Act (Chapter 3.5 (commencing with~~  
8 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~  
9 ~~Code).~~

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

13  
14 ~~Article 6. California Geriatric Social Workers and Marriage~~  
15 ~~and Family Therapists Loan Assistance Program of 2008~~  
16

17 ~~128310. There is hereby established in the Office of Statewide~~  
18 ~~Health Planning and Development, the California Geriatric Social~~  
19 ~~Workers and Marriage and Family Therapists Loan Assistance~~  
20 ~~Program of 2008.~~

21 ~~128310.1. It is the intent of this article that the office, in~~  
22 ~~consultation with the board, the medical community, including~~  
23 ~~representatives of ethnic minority groups, schools of social work,~~  
24 ~~marriage and family counseling programs of study, health~~  
25 ~~advocates, primary care clinics, public hospitals and health care~~  
26 ~~systems, statewide agencies administering state and federally~~  
27 ~~funded health programs targeting communities of older~~  
28 ~~Californians, and members of the public with health care issue-area~~  
29 ~~expertise, shall develop and implement the California Geriatric~~  
30 ~~Social Workers and Marriage and Family Therapists Loan~~  
31 ~~Assistance Program of 2008.~~

32 ~~128310.2. For purposes of this article, the following terms have~~  
33 ~~the following meanings:~~

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

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

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

38 ~~(d) "Geriatrics" means the practice of social work or marriage~~  
39 ~~and family therapy, with training in, and application to, older adults~~  
40 ~~who are 65 years of age or older or those with disabilities.~~

1 (e) “Office” means the Office of Statewide Health Planning and  
2 Development.

3 (f) “Program” means the California Geriatric Social Workers  
4 and Marriage and Family Therapists Loan Assistance Program of  
5 2008.

6 128310.3. (a) Program applicants shall be registered associate  
7 clinical social workers or registered marriage and family therapy  
8 interns receiving supervision or shall possess a current valid license  
9 to practice social work or marriage and family therapy in this state  
10 issued by the board pursuant to Section 4980.30 or 4996.1 of the  
11 Business and Professions Code.

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

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

19 (2) Provide priority consideration to applicants who have  
20 recently obtained their license to practice marriage and family  
21 therapy or clinical social work or are a registered associate clinical  
22 social worker or registered marriage and family therapy intern  
23 receiving supervision.

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

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

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

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

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

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

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

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

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

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

13 128310.4. (a) The Geriatric Social Workers and Marriage and  
14 Family Therapists Account is hereby created in the fund.

15 (b) Funding for the account shall be from fees paid at the time  
16 of initial licensure or renewal pursuant to Sections 4984.76 and  
17 4996.66 of the Business and Professions Code.

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

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

23 (2) Loan repayments shall not exceed thirty thousand dollars  
24 (\$30,000) per program participant.

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

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

32 (e) The amount of loan repayment provided annually shall not  
33 exceed the funding made available pursuant to the increase in  
34 licensing fees described in subdivision (b) and pursuant to private  
35 donations, if any.

36 128310.5. The terms of loan repayment granted under this  
37 article shall be as follows:

38 (a) After a program participant has completed one year of  
39 providing services as a licensed marriage and family therapist or  
40 a registered marriage and family therapy intern, or a licensed or



1 ~~associate clinical social worker in a geriatric setting, the office~~  
2 ~~shall provide up to seven thousand five hundred dollars (\$7,500)~~  
3 ~~for loan repayment.~~

4 ~~(b) After a program participant has completed two consecutive~~  
5 ~~years of providing services as a licensed marriage and family~~  
6 ~~therapist or a registered marriage and family therapy intern, or a~~  
7 ~~licensed or associate clinical social worker in a geriatric setting,~~  
8 ~~the office shall provide up to an additional ten thousand dollars~~  
9 ~~(\$10,000) of loan repayment, for a total loan repayment of up to~~  
10 ~~seventeen thousand five hundred dollars (\$17,500).~~

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

18 ~~128310.6. (a) On and after January 1, 2010, applications from~~  
19 ~~marriage and family therapists, registered marriage and family~~  
20 ~~therapy interns, registered associate social workers, and licensed~~  
21 ~~social workers for program participation may be submitted.~~

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

25 ~~(c) The office may promulgate emergency regulations to~~  
26 ~~implement the program. The initial adoption of emergency~~  
27 ~~regulations and one readoption of the initial regulations shall be~~  
28 ~~deemed to be an emergency and necessary for the immediate~~  
29 ~~preservation of the public peace, health and safety, and general~~  
30 ~~welfare. Subsequent regulations shall meet the requirements of~~  
31 ~~the Administrative Procedure Act (Chapter 3.5 (commencing with~~  
32 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~  
33 ~~Code).~~

34 *SEC. 5. Section 128454 of the Health and Safety Code is*  
35 *amended to read:*

36 128454. (a) There is hereby created the Licensed Mental Health  
37 Service Provider Education Program within the Health Professions  
38 Education Foundation.

39 (b) For purposes of this article, the following definitions shall  
40 apply:

1     (1) *“Geriatric service provider” means a registered associate*  
2 *clinical social worker or registered marriage and family therapy*  
3 *intern receiving supervision or a clinical social worker or marriage*  
4 *and family therapist who possesses a current valid license issued*  
5 *by the Board of Behavioral Sciences and provides geriatric*  
6 *services.*

7     (2) *“Geriatric services” means the practice of social work or*  
8 *marriage and family therapy with training in, and application to,*  
9 *adults who are 65 years of age or older or those with disabilities.*

10     ~~(1)~~

11     (3) *“Licensed mental health service provider” means a*  
12 *psychologist licensed by the Board of Psychology, registered*  
13 *psychologist, postdoctoral psychological assistant, postdoctoral*  
14 *psychology trainee employed in an exempt setting pursuant to*  
15 *Section 2910 of the Business and Professions Code, or employed*  
16 *pursuant to a State Department of Mental Health waiver pursuant*  
17 *to Section 5751.2 of the Welfare and Institutions Code, marriage*  
18 *and family therapist, marriage and family therapist intern, licensed*  
19 *clinical social worker, and associate clinical social worker.*

20     ~~(2)~~

21     (4) *“Mental health professional shortage area” means an area*  
22 *designated as such by the Health Resources and Services*  
23 *Administration (HRSA) of the United States Department of Health*  
24 *and Human Services.*

25     (c) Commencing January 1, 2005, any licensed mental health  
26 service provider, including a mental health service provider who  
27 is employed at a publicly funded mental health facility or a public  
28 or nonprofit private mental health facility that contracts with a  
29 county mental health entity or facility to provide mental health  
30 services, who provides direct patient care in a publicly funded  
31 facility or a mental health professional shortage area may apply  
32 for grants under the program to reimburse his or her educational  
33 loans related to a career as a licensed mental health service  
34 provider.

35     (d) *On and after January 1, 2010, any geriatric service provider*  
36 *may apply for grants under the program to reimburse his or her*  
37 *educational loans related to a career as a licensed marriage and*  
38 *family therapist or intern or licensed clinical social worker.*

39     (e) *The Health Professions Education Foundation shall make*  
40 *recommendations to the director of the office concerning the*

1 guidelines for the selection of applicants who meet the  
2 requirements of subdivision (d). The guidelines shall do all of the  
3 following:

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

8 (2) Provide priority consideration to applicants who have  
9 recently obtained a license to practice marriage and family therapy  
10 or clinical social work or are registered as an associate clinical  
11 social worker or registered marriage and family therapy intern  
12 receiving supervision.

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

15 (4) Seek to place the most qualified applicants under subdivision  
16 (d) in the areas with the greatest need.

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

19 ~~(d)~~

20 (f) The Health Professions Education Foundation shall make  
21 recommendations to the director of the office concerning all of the  
22 following:

23 (1) A standard contractual agreement to be signed by the director  
24 and any licensed mental health service provider *or geriatric service*  
25 *provider* who is serving in a publicly funded facility or a mental  
26 health professional shortage area that would require the licensed  
27 mental health service provider *or geriatric service provider* who  
28 receives a grant under the program to work in the publicly funded  
29 facility or a mental health professional shortage area for at least  
30 one year.

31 (2) The maximum allowable total grant amount per individual  
32 licensed mental health service provider *or geriatric service*  
33 *provider*.

34 (3) The maximum allowable annual grant amount per individual  
35 licensed mental health service provider *or geriatric service*  
36 *provider*.

37 ~~(e)~~

38 (g) The Health Professions Education Foundation shall develop  
39 the program, which shall comply with all of the following  
40 requirements:

(1) The total amount of grants under the program per individual licensed mental health service provider *or geriatric service provider* shall not exceed the amount of educational loans related to a career as a licensed mental health service provider *or geriatric service provider* incurred by that provider.

(2) The program shall keep the fees from the different licensed providers separate to ensure that all grants are funded by those fees collected from the corresponding licensed provider groups.

(3) A loan forgiveness grant may be provided in installments proportionate to the amount of the service obligation that has been completed.

(4) The number of persons who may be considered for the program shall be limited by the funds made available pursuant to Section 128458.

*SEC. 6. Section 128459 is added to the Health and Safety Code, to read:*

*128459. There is hereby established in the Mental Health Practitioner Education Fund the Geriatric Social Workers and Marriage and Family Therapists Account. Notwithstanding Section 13340 of the Government Code, the moneys in the account shall be continuously appropriated for expenditure by the Office of Statewide Health Planning and Development for purposes of this article and pursuant to requirements described in paragraph (2) of subdivision (g) of Section 128454.*

~~SEC. 8.~~

*SEC. 7. 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

1 beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal  
2 beneficiaries residing in two contiguous ZIP Codes.

3 (e) “Medically underserved area” means an area defined as a  
4 health professional shortage area in Part 5 of Subchapter A of  
5 Chapter 1 of Title 42 of the Code of Federal Regulations or an  
6 area of the state where unmet priority needs for physicians exist  
7 as determined by the California Healthcare Workforce Policy  
8 Commission pursuant to Section 128225.

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

11 (g) “Office” means the Office of Statewide Health Planning and  
12 Development (OSHPD).

13 (h) “Physician Volunteer Program” means the Physician  
14 Volunteer Registry Program established by the Medical Board of  
15 California.

16 (i) “Practice setting” means either of the following:

17 (1) A community clinic as defined in subdivision (a) of Section  
18 1204 and subdivision (c) of Section 1206, a clinic owned or  
19 operated by a public hospital and health system, or a clinic owned  
20 and operated by a hospital that maintains the primary contract with  
21 a county government to fulfill the county’s role pursuant to Section  
22 17000 of the Welfare and Institutions Code, which is located in a  
23 medically underserved area and at least 50 percent of whose  
24 patients are from a medically underserved population.

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

28 (j) “Primary specialty” means family practice, internal medicine,  
29 pediatrics, geriatrics, or obstetrics/gynecology.

30 (k) “Program” means the Steven M. Thompson Physician Corps  
31 Loan Repayment Program.

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

35 ~~SEC. 9.~~

36 *SEC. 8.* Section 128553 of the Health and Safety Code is  
37 amended to read:

38 128553. (a) Program applicants shall possess a current valid  
39 license to practice medicine in this state issued pursuant to Section  
40 2050 of the Business and Professions Code.

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

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

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

10 (A) Speak a Medi-Cal threshold language.

11 (B) Come from an economically disadvantaged background.

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

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

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

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

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

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

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

27 (6) *Provide priority consideration to applicants who agree to*  
28 *practice in a geriatric care setting and are trained in geriatrics,*  
29 *and who can meet the cultural and linguistic needs and demands*  
30 *of a diverse population of older Californians.*

31 (d) (1) The foundation may appoint a selection committee that  
32 provides policy direction and guidance over the program and that  
33 complies with the requirements of subdivision (l) of Section  
34 128552.

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

38 ~~(3) The selection committee shall fill 15 percent of the available~~  
39 ~~positions with program applicants that agree to practice in a~~  
40 ~~geriatric care setting. Priority consideration shall be given to~~

1 ~~applicants who are trained in, and practice, geriatrics, and who can~~  
2 ~~meet the cultural and linguistic needs and demands of diverse~~  
3 ~~populations of older Californians.~~

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

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

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

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

19 (f) The office shall adopt a process to reconcile the loan should  
20 a physician be unable to complete his or her three-year obligation.

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

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

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

31  
32 ~~CHAPTER 6. CALIFORNIA GERIATRIC AND GERONTOLOGY~~  
33 ~~STUDENT LOAN ASSISTANCE PROGRAM OF 2008~~  
34

35 ~~128559. This chapter shall be known and may be cited as the~~  
36 ~~California Geriatric and Gerontology Student Loan Assistance~~  
37 ~~Program of 2008.~~

38 ~~128559.1. It is the intent of this chapter that the Office of~~  
39 ~~Statewide Health Planning and Development, in consultation with~~  
40 ~~the Medical Board of California, state allied health professional~~

1 and behavioral sciences licensing boards, postsecondary schools  
2 of health sciences and social work, health advocates representing  
3 diverse ethnic communities, primary care clinics, public hospitals  
4 and health care systems, statewide agencies administering state  
5 and federally funded programs targeting treatment and services  
6 for older adults, and members of the public with health care  
7 issue-area expertise, shall develop and implement the program.

8 ~~128559.2. (a) There is hereby established in the Office of~~  
9 ~~Statewide Health Planning and Development, the California~~  
10 ~~Geriatric and Gerontology Student Loan Assistance Program of~~  
11 ~~2008.~~

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

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

21 ~~(2) Strategic collaboration with California postsecondary schools~~  
22 ~~of health sciences and social work, and marriage and family therapy~~  
23 ~~programs of study, to better prepare health care professionals and~~  
24 ~~social workers to meet the distinctive cultural and medical needs~~  
25 ~~of California's older adult populations.~~

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

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

34 ~~128559.3. For purposes of this chapter:~~

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

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

39 ~~128559.4. (a) The office shall administer the program. Any~~  
40 ~~individual enrolled in an institution of postsecondary education~~



1 participating in the programs set forth in this chapter may be  
2 eligible to receive a conditional warrant for loan repayment, to be  
3 redeemed upon becoming employed as a licensed health  
4 professional, marriage and family therapist or registered marriage  
5 and family therapy intern, or social worker or registered associate  
6 social worker in a setting serving primarily older adult populations.  
7 In order to be eligible to receive a conditional loan repayment  
8 warrant, an applicant shall satisfy all of the following conditions:

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

12 (A) Grade point average.

13 (B) Test scores.

14 (C) Faculty evaluations.

15 (D) Interviews.

16 (E) Other recommendations.

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

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

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

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

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

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

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

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

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

7 ~~(d) The office shall adopt rules and regulations regarding the~~  
8 ~~reallocation of warrants if a participating institution is unable to~~  
9 ~~utilize its allocated warrants or is unable to distribute them within~~  
10 ~~a reasonable time period.~~

11 ~~128559.5. (a) The office shall develop the process to redeem~~  
12 ~~an applicant's warrant and commence loan repayment.~~

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

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

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

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

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

33 ~~(3) The National Health Service Corps.~~

34 ~~128559.6. (a) The office shall administer the program and~~  
35 ~~shall adopt rules and regulations for that purpose. The rules and~~  
36 ~~regulations shall include, but not be limited to, provisions regarding~~  
37 ~~the period of time for which a warrant shall remain valid, the~~  
38 ~~reallocation of warrants that are not utilized, and the development~~  
39 ~~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 appropriate policy and fiscal committees of 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.~~

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2637  
**Author:** Eng  
**Bill Date:** June 17, 2008, amended  
**Subject:** Dental Auxiliaries  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Senate Appropriations Committee and is scheduled for hearing on August 4, 2008.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would allow the Dental Board to issue a dental sedation assistant permit to dental assistants authorizing them to monitor patient sedation and evaluate the condition of patients during procedures and treatment. Dental assistants would be performing these duties under the direct supervision of a supervising licensed dentist.

**ANALYSIS:**

This bill would allow the Dental Board to issue a dental sedation assistant permit to a person who has completed at least 12 months of work experience as a dental assistant and satisfies all other requirements including attending Board approved courses, Basic Life Support, and a written examination. A dental sedation assistant permit would allow (page 11, line 20 of bill) the holder to monitor patients undergoing conscious sedation or general anesthesia utilizing data from noninvasive instrumentation such as pulse oximeters and electrocardiograms, capnography, blood pressure, pulse, and respiration rate monitoring devices. Evaluation of the condition of a sedated patient shall remain the responsibility of the dentist or other licensed health care professional authorized to administer conscious sedation or general anesthesia, who shall be at the patient's chairside while conscious sedation or general anesthesia is being administered.

Dental assistants holding a dental sedation assistant permit would also be allowed to add drugs, medications, and fluids to intravenous lines using a syringe, provided that a supervising licensed dentist is present.

**FISCAL:** None

**POSITION:** Recommendation: Neutral

July 16, 2008

AMENDED IN SENATE JUNE 17, 2008

AMENDED IN ASSEMBLY MAY 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2637**

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**Introduced by Assembly Member Eng**

February 22, 2008

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An act to amend Sections 1725, 1750, 1750.1, ~~and 1752.1~~ 1752.1, 1765, 1771, and 1777 of, to amend and renumber Sections 1753.1, 1754, and 1770 of, to amend, renumber ~~and add~~, *add*, and *repeal* Sections 1756 and 1757 of, to add Sections 1750.5, 1752.3, 1752.4, ~~1753.4, and 1753.4~~, *to add and repeal Sections* 1754.5, 1755, 1756.1, 1756.2, ~~1757.1, and 1758~~ *to and 1758 of*, to repeal Sections 1751, 1751.1, 1752, 1752.2, 1752.5, and 1753.5 of, and to repeal and add Sections 1750.2, 1750.3, 1750.4, 1752.6, and 1753 of, the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

AB 2637, as amended, Eng. Dental auxiliaries.

Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California and dental auxiliaries by the Committee on Dental Auxiliaries. Existing law, on and after, January 1, 2010, authorizes an unlicensed dental assistant to perform basic supportive dental procedures, as defined, subject to a determination by the supervising licensed dentist that the dental assistant is competent to perform those procedures. Existing law, until January 1, 2011, requires the board to license as a registered dental assistant a person who files an application prior to September 1, 2009, and submits specified written evidence of either graduation from a specified

educational program or specified work experience that is satisfactory to the board. Existing law, on and after January 1, 2010, requires the board to license as a registered dental assistant in extended functions a person who submits specified evidence of current licensure as a registered dental assistant or completion of the requirements for licensure, successful completion of a specified extended functions postsecondary program, and board-approved courses in radiation safety, infection control, California dental law, and basic life support, and satisfactory performance on a specified written examination and a clinical or practical examination. Existing law, on and after January 1, 2010, also requires the board to license a person who meets specified requirements as a registered orthodontic assistant, registered surgery assistant, registered restorative assistant, or registered restorative assistant in extended functions.

This bill would repeal those provisions governing registered orthodontic assistants, registered surgery assistants, registered restorative assistants, and registered restorative assistants in extended functions.

The bill would, on and after January 1, 2010, specify the duties that a dental assistant is authorized to perform under the general ~~and~~ or direct supervision of a supervising licensed dentist.

The bill would revise and recast the registered dental assistant provisions and would ~~require~~ *authorize* the board to license a person as a registered dental assistant if he or she files an application and submits written evidence ~~that is~~, satisfactory to the board, of either (1) graduation from a board-approved educational program in registered dental assisting, or (2) for individuals applying prior to January 1, 2010, satisfactory work experience, as defined, of at least 12 months or, for individuals applying on and after January 1, 2010, satisfactory work experience of at least 15 months and satisfactory performance on a written and practical examination administered by the committee. The bill would also require that those individuals applying on or after January 1, 2010, to pass a written examination in law and ethics and complete board-approved courses in the act, infection control, and basic life support. The bill would, on and after January 1, 2010, impose specific content requirements for the written and practical examinations and would require the committee to appoint a registered dental assistant examination subcommittee to assign specific procedures for the practical examination. The bill would, commencing January 1, 2010, specify the duties a registered dental assistant is authorized to perform. The bill

would specify that the fee for the written examination in law and ethics shall not exceed the actual cost of the examination.

The bill would, on and after January 1, 2010, modify the requirements for a license as a registered dental assistant in extended functions to include, among other things, completion of a board-approved course in the application of pit and fissure sealants and passage of a written examination and a clinical or practical examination. The bill would specify the duties and procedures a registered dental assistant in extended functions, licensed on or after January 1, 2010, is authorized to perform, as well as those additional procedures that may be performed under the direct supervision of a licensed dentist. The bill would, commencing January 1, 2010, also require applicants for a registered dental assistant in extended functions license to complete a specified examination regarding certain procedures.

The bill would, commencing January 1, 2010, ~~require~~ *authorize* the board to issue an orthodontic assistant permit or a dental sedation assistant permit to a person who files a completed application, including a fee, and provides proof of certain eligibility requirements. The bill would authorize a dental assistant, a registered dental assistant, or a registered dental assistant in extended functions to apply for and maintain an orthodontic assistant permit or a dental sedation assistant permit. The bill would also, commencing January 1, 2010, specify the duties that may be performed by an orthodontic assistant permitholder or a dental sedation assistant permitholder under the direct supervision of a licensed dentist. The bill would subject these permitholders to board established continuing education and renewal requirements. The bill would specify that the fee for these permits shall not exceed \$50 and that the fee for the written examination for these permits shall not exceed the actual cost of the examination.

The bill would require a dental assisting program or course, a permit program or course, a registered dental assistant program, a registered dental assistant in extended function program, an orthodontic assistant permit course, a dental sedation assistant permit course, *and* an infection control course, ~~and an instructional methodology course~~ to meet various requirements, relating to, among other things, administration, facilities, supervision, curriculum, instruction, equipment, and examinations in order to secure and maintain approval by the board.

*Existing law provides that it is a misdemeanor for any person who does not have a license issued by the board to hold himself or herself out as licensed by the board in specified categories of dental practice.*

*This bill would revise these provisions to make it a misdemeanor for a person to, without a license or permit issued by the board, hold himself or herself out as, among other things, a registered dental assistant, orthodontic assistant permitholder, or dental sedation assistant permitholder. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.*

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

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

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

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

1 SECTION 1. Section 1725 of the Business and Professions  
2 Code is amended to read:

3 1725. The amount of the fees prescribed by this chapter that  
4 relate to the licensing *and permitting* of dental auxiliaries shall be  
5 established by board resolution and subject to the following  
6 limitations:

7 (a) The application fee for an original license shall not exceed  
8 twenty dollars (\$20). On and after January 1, 2010, the application  
9 fee for an original license shall not exceed fifty dollars (\$50).

10 (b) The fee for examination for licensure as a registered dental  
11 assistant shall not exceed fifty dollars (\$50) for the written  
12 examination and shall not exceed sixty dollars (\$60) for the  
13 practical examination.

14 (c) ~~On and after January 1, 2010, the~~ The fee for application  
15 and for the issuance of an orthodontic assistant permit or a dental  
16 sedation assistant permit shall not exceed fifty dollars (\$50).

17 (d) The fee for the written examination for an orthodontic  
18 assistant permit or a dental sedation assistant permit shall not  
19 exceed the actual cost of the examination.

20 (e) The fee for the written examination in law and ethics for a  
21 registered dental assistant shall not exceed the actual cost of the  
22 examination.



1 (f) The fee for examination for licensure as a registered dental  
2 assistant in extended functions shall not exceed the actual cost of  
3 the examination.

4 (g) The fee for examination for licensure as a registered dental  
5 hygienist shall not exceed the actual cost of the examination.

6 (h) For third- and fourth-year dental students, the fee for  
7 examination for licensure as a registered dental hygienist shall not  
8 exceed the actual cost of the examination.

9 (i) The fee for examination for licensure as a registered dental  
10 hygienist in extended functions shall not exceed the actual cost of  
11 the examination.

12 (j) The board shall establish the fee at an amount not to exceed  
13 the actual cost for licensure as a registered dental hygienist in  
14 alternative practice.

15 (k) The biennial renewal fee for a dental auxiliary whose license  
16 expires on or after January 1, 1991, shall not exceed sixty dollars  
17 (\$60). On or after January 1, 1992, the board may set the renewal  
18 fee *for a dental auxiliary license or permit* in an amount not to  
19 exceed eighty dollars (\$80).

20 (l) The delinquency fee shall not exceed twenty-five dollars  
21 (\$25) or one-half of the renewal fee, whichever is greater. Any  
22 delinquent license *or permit* may be restored only upon payment  
23 of all fees, including the delinquency fee.

24 (m) The fee for issuance of a duplicate registration, license,  
25 permit, or certificate to replace one that is lost or destroyed, or in  
26 the event of a name change, shall not exceed twenty-five dollars  
27 (\$25).

28 (n) The fee for each curriculum review and site evaluation for  
29 educational programs for registered dental assistants that are not  
30 accredited by a board-approved agency, or the Chancellor's office  
31 of the California Community Colleges shall not exceed one  
32 thousand four hundred dollars (\$1,400).

33 (o) The fee for review of each approval application for a course  
34 that is not accredited by a board-approved agency, or the  
35 Chancellor's office of the California Community Colleges shall  
36 not exceed three hundred dollars (\$300).

37 (p) No fees or charges other than those listed in subdivisions  
38 (a) to ~~(n)~~ (o), inclusive, above shall be levied by the board in  
39 connection with the licensure *or permitting* of dental auxiliaries,  
40 registered dental ~~assistants~~ *assistant* educational program site

1 evaluations and ~~radiation safety~~ course evaluations pursuant to  
2 this chapter.

3 (q) Fees fixed by the board pursuant to this section shall not be  
4 subject to the approval of the Office of Administrative Law.

5 (r) Fees collected pursuant to this section shall be deposited in  
6 the State Dental Auxiliary Fund.

7 SEC. 2. Section 1750 of the Business and Professions Code,  
8 as amended by Section 6 of Chapter 588 of the Statutes of 2007,  
9 is amended to read:

10 1750. (a) A dental assistant is a person who may perform basic  
11 supportive dental procedures as authorized by this article under  
12 the supervision of a licensed dentist and who may perform basic  
13 supportive procedures as authorized pursuant to subdivision (b)  
14 of Section 1751 under the supervision of a registered dental  
15 hygienist in alternative practice.

16 (b) The supervising licensed dentist shall be responsible for  
17 determining the competency of the dental assistant to perform  
18 allowable functions.

19 (c) This section shall remain in effect only until January 1, 2010,  
20 and as of that date is repealed, unless a later enacted statute, that  
21 is enacted before January 1, 2010, deletes or extends that date.

22 SEC. 3. Section 1750 of the Business and Professions Code,  
23 as amended by Section 7 of Chapter 588 of the Statutes of 2007,  
24 is amended to read:

25 1750. (a) A dental assistant is an individual who, without a  
26 license, may perform basic supportive dental procedures, as  
27 authorized by Section 1750.1 and by regulations adopted by the  
28 board, under the supervision of a licensed dentist. "Basic supportive  
29 dental procedures" are those procedures that have technically  
30 elementary characteristics, are completely reversible, and are  
31 unlikely to precipitate potentially hazardous conditions for the  
32 patient being treated.

33 (b) The supervising licensed dentist shall be responsible for  
34 determining the competency of the dental assistant to perform the  
35 basic supportive dental procedures, as authorized by Section  
36 1750.1.

37 (c) ~~The supervising licensed dentist~~ *employer of a dental*  
38 *assistant* shall be responsible for ensuring that ~~each~~ *the* dental  
39 ~~assistant who is in his or her continuous employ for who has been~~  
40 *in continuous employment for 120 days or more, has already*

1 successfully completed, *or successfully completes*, all of the  
2 following within a year of the date of employment:

3 (1) A board-approved course in the Dental Practice Act.

4 (2) A board-approved ~~eight-hour~~ course in infection control ~~that~~  
5 ~~meets the requirements of Section 1756.~~

6 (3) A course in basic life support offered by an instructor  
7 approved by the American Red Cross or the American Heart  
8 Association.

9 (d) ~~The supervising licensed dentist shall ensure~~ *employer of a*  
10 *dental assistant shall be responsible for ensuring* that the dental  
11 assistant maintains certification in basic life support.

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

13 SEC. 4. Section 1750.1 of the Business and Professions Code  
14 is amended to read:

15 1750.1. (a) A dental assistant may perform the following duties  
16 under the general supervision of a supervising licensed dentist:

17 (1) Extra-oral duties or procedures specified by the supervising  
18 licensed dentist, provided that these duties or procedures meet the  
19 definition of a basic supportive procedure specified in Section  
20 1750.

21 (2) Operate dental radiography equipment for the purpose of  
22 oral radiography if the dental assistant has complied with the  
23 requirements of Section 1656.

24 (3) Perform intraoral and extraoral photography.

25 (b) A dental assistant may perform the following duties under  
26 the direct supervision of a supervising licensed dentist:

27 (1) Apply nonaerosol and noncaustic topical agents.

28 (2) Apply topical fluoride.

29 (3) Take intraoral impressions for all nonprosthodontic  
30 appliances.

31 (4) Take facebow transfers and bite registrations.

32 (5) Place and remove rubber dams or other isolation devices.

33 (6) Place, wedge, and remove matrices for restorative  
34 procedures.

35 (7) Remove post-extraction dressings after inspection of the  
36 surgical site by the supervising licensed dentist.

37 (8) Perform measurements for the purposes of orthodontic  
38 treatment.

39 (9) Cure restorative or orthodontic materials in operative site  
40 with a light-curing device.

- 1 (10) Examine orthodontic appliances.
- 2 (11) Place and remove orthodontic separators.
- 3 (12) Remove ligature ties and archwires.
- 4 (13) After adjustment by the dentist, examine and seat removable
- 5 orthodontic appliances and deliver care instructions to the patient.
- 6 (14) Remove periodontal dressings.
- 7 (15) Remove sutures after inspection of the site by the dentist.
- 8 (16) Place patient monitoring sensors.
- 9 (17) Monitor patient sedation, limited to reading and transmitting
- 10 information from the monitor display during the intraoperative
- 11 phase of surgery for electrocardiogram waveform, carbon dioxide
- 12 and end tidal carbon dioxide concentrations, respiratory cycle data,
- 13 continuous noninvasive blood pressure data, or pulse arterial
- 14 oxygen saturation measurements, for the purpose of interpretation
- 15 and evaluation by a supervising licensed dentist who shall be at
- 16 the patient's chairside during this procedure.
- 17 (18) Assist in the administration of nitrous oxide when used for
- 18 analgesia or sedation. A dental assistant shall not start the
- 19 administration of the gases and shall not adjust the flow of the
- 20 gases unless instructed to do so by the supervising licensed dentist
- 21 who shall be present ~~during~~ at the patient's chairside during the
- 22 implementation of these instructions. This paragraph shall not be
- 23 construed to prevent any person from taking appropriate action in
- 24 the event of a medical emergency.
- 25 (c) Under the supervision of a registered dental hygienist in
- 26 alternative practice, a dental assistant may perform intraoral
- 27 retraction and suctioning.
- 28 (d) The board may specify additional allowable duties by
- 29 regulation.
- 30 (e) The duties of ~~an unlicensed~~ a dental assistant or a dental
- 31 assistant holding a permit in orthodontic assisting or in dental
- 32 sedation do not include any of the following procedures unless
- 33 specifically allowed by law:
- 34 (1) Diagnosis and comprehensive treatment planning.
- 35 (2) Placing, finishing, or removing permanent restorations.
- 36 (3) Surgery or cutting on hard and soft tissue including, but not
- 37 limited to, the removal of teeth and the cutting and suturing of soft
- 38 tissue.
- 39 (4) Prescribing medication.

(5) Starting or adjusting local or general anesthesia or oral or parenteral conscious sedation, except for the administration of nitrous oxide and oxygen, whether administered alone or in combination with each other and except as otherwise provided by law.

(f) The duties of ~~an unlicensed dental assistant~~ *a dental assistant are defined in subdivision (a) of Section 1750 and* do not include any duty or procedure that *only* an orthodontic assistant permitholder, ~~a dental sedation assistant permitholder, registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or a registered dental hygienist in alternative practice is allowed to perform.~~

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

SEC. 5. Section 1750.2 of the Business and Professions Code is repealed.

SEC. 6. Section 1750.2 is added to the Business and Professions Code, to read:

1750.2. (a) On and after January 1, 2010, the board ~~shall~~ *may* issue an orthodontic assistant permit to a person who files a completed application including a fee and provides evidence, satisfactory to the board, of all of the following eligibility requirements:

(1) Completion of at least 12 months of work experience as a dental assistant.

(2) Successful completion of a board-approved course in the Dental Practice Act and a board-approved, ~~eight-hour~~ course in infection control ~~that meets the requirements of Section 1756.~~

(3) Successful completion of a course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association.

(4) Successful completion of a board-approved ~~course in all of the duties specified in Section 1750.3~~ *orthodontic assistant course*, which may commence after the completion of six months of work experience as a dental ~~assistant. The course shall be a minimum of 84 hours in length.~~ *assistant.*

(5) Passage of a written examination administered by the committee after completion of all of the other requirements of this subdivision. The written examination shall encompass the knowledge, skills, and abilities necessary to competently perform the duties specified in Section 1750.3.

(b) A person who holds an orthodontic assistant permit pursuant to this section shall be subject to ~~all the same~~ continuing education requirements *for registered dental assistants as* established by the board pursuant to Section 1645 and the renewal requirements of Article 6 (commencing with Section 1715).

SEC. 7. Section 1750.3 of the Business and Professions Code is repealed.

SEC. 8. Section 1750.3 is added to the Business and Professions Code, to read:

1750.3. A person holding an orthodontic assistant permit pursuant to Section 1750.2 may perform the following duties under the direct supervision of a supervising licensed dentist:

(a) All duties that ~~an unlicensed~~ a dental assistant is allowed to perform.

(b) Prepare teeth for bonding, and select, preposition, and cure orthodontic brackets after their position has been approved by the supervising licensed dentist.

(c) Remove only orthodontic brackets and attachments with removal of the bonding material by the supervising licensed dentist.

(d) Size, fit, and cement orthodontic bands.

(e) Remove orthodontic bands and remove excess cement from supragingival surfaces of teeth with a hand instrument.

(f) Place and ligate archwires.

(g) Remove excess cement with an ultrasonic scaler from supragingival surfaces of teeth undergoing orthodontic treatment.

SEC. 9. Section 1750.4 of the Business and Professions Code is repealed.

SEC. 10. Section 1750.4 is added to the Business and Professions Code, to read:

1750.4. (a) On and after January 1, 2010, the board ~~shall~~ may issue a dental sedation assistant permit to a person who files a completed application including a fee and provides evidence, satisfactory to the board, of all of the following eligibility requirements:

(1) Completion of at least 12 months of work experience as a dental assistant.

(2) Successful completion of a board-approved course in the Dental Practice Act and a board-approved, ~~eight-hour~~ course in infection control ~~that meets the requirements of Section 1756.~~

1 (3) Successful completion of a course in basic life support  
2 offered by an instructor approved by the American Red Cross or  
3 the American Heart Association.

4 (4) Successful completion of a board-approved course in all of  
5 ~~the duties specified in Section 1750.5 dental sedation assistant~~  
6 ~~course~~, which may commence after the completion of six months  
7 of work experience as a dental assistant. ~~The course shall be a~~  
8 ~~minimum of 110 hours in length. assistant.~~

9 (5) Passage of a written examination administered by the  
10 committee after completion of all of the other requirements of this  
11 subdivision. The written examination shall encompass the  
12 knowledge, skills, and abilities necessary to competently perform  
13 the duties specified in Section 1750.5.

14 (b) A person who holds a permit pursuant to this section shall  
15 be subject to the continuing education requirements established  
16 by the board pursuant to Section 1645 and the renewal requirements  
17 of Article 6 (commencing with Section 1715).

18 SEC. 11. Section 1750.5 is added to the Business and  
19 Professions Code, to read:

20 1750.5. A person holding a dental sedation assistant permit  
21 pursuant to Section 1750.4 may perform the following duties under  
22 the direct supervision of a supervising licensed dentist:

23 (a) All duties that ~~an unlicensed~~ a dental assistant is allowed to  
24 perform.

25 ~~(b) Monitor patients during the preoperative, intraoperative, and~~  
26 ~~postoperative phases, using noninvasive instrumentation such as~~  
27 ~~pulse oximeters, electrocardiograms, and capnography, limited to~~  
28 ~~selection and validation of monitoring sensors, selecting menus~~  
29 ~~and default settings and analysis for electrocardiogram, pulse~~  
30 ~~oximeter and capnograph, continuous blood pressure, pulse, and~~  
31 ~~respiration rates; interpretation of data from noninvasive patient~~  
32 ~~monitors, including readings from continuous blood pressure and~~  
33 ~~information from the monitor display for electrocardiogram~~  
34 ~~waveform, carbon dioxide and end tidal carbon dioxide~~  
35 ~~concentration, respiratory cycle data, continuous noninvasive blood~~  
36 ~~pressure data, and pulse arterial oxygen saturation measurements;~~  
37 ~~for the purpose of evaluating the condition of the patient during~~  
38 ~~preoperative, intraoperative, and postoperative treatment.~~

39 (b) Monitor patients undergoing conscious sedation or general  
40 anesthesia utilizing data from noninvasive instrumentation such

1 *as pulse oximeters, electrocardiograms, capnography, blood*  
2 *pressure, pulse, and respiration rate monitoring devices.*  
3 *Evaluation the condition of a sedated patient shall remain the*  
4 *responsibility of the dentist or other licensed health care*  
5 *professional authorized to administer conscious sedation or*  
6 *general anesthesia, who shall be at the patient's chairside while*  
7 *conscious sedation or general anesthesia is being administered.*

8 (c) Drug identification and draw, limited to identification of  
9 appropriate medications, ampule and vial preparation, and  
10 withdrawing drugs of correct amount as verified by the supervising  
11 licensed dentist.

12 (d) Add drugs, medications, and fluids to intravenous lines using  
13 a syringe, provided that a supervising licensed dentist is present  
14 at the patient's chairside, limited to determining patency of  
15 intravenous line, selection of injection port, syringe insertion into  
16 injection port, occlusion of intravenous line and blood aspiration,  
17 line release and injection of drugs for appropriate time interval.

18 (e) Removal of intravenous lines.

19 SEC. 12. Section 1751 of the Business and Professions Code,  
20 as amended by Section 13 of Chapter 588 of the Statutes of 2007,  
21 is repealed.

22 SEC. 13. Section 1751.1 of the Business and Professions Code  
23 is repealed.

24 SEC. 14. Section 1752 of the Business and Professions Code,  
25 as amended by Section 14 of Chapter 588 of the Statutes of 2007,  
26 is repealed.

27 SEC. 15. Section 1752 of the Business and Professions Code,  
28 as amended by Section 15 of Chapter 588 of the Statutes of 2007,  
29 is repealed.

30 SEC. 16. Section 1752.1 of the Business and Professions Code  
31 is amended to read:

32 1752.1. (a) The board ~~shall~~ *may* license as a registered dental  
33 assistant a person who files an application and submits written  
34 evidence, satisfactory to the board, of one of the following  
35 eligibility requirements:

36 (1) Graduation from an educational program in registered dental  
37 assisting approved by the board, and satisfactory performance on  
38 a written and practical examination administered by the committee.

39 (2) For individuals applying prior to January 1, 2010, evidence  
40 of completion of satisfactory work experience of at least 12 months



1 as a dental assistant in California or another state and satisfactory  
2 performance on a written and practical examination administered  
3 by the committee.

4 (3) For individuals applying on or after January 1, 2010,  
5 evidence of completion of satisfactory work experience of at least  
6 15 months as a dental assistant in California or another state and  
7 satisfactory performance on a written and practical examination  
8 administered by the committee.

9 (b) For purposes of this section, "satisfactory work experience"  
10 means performance of the duties specified in Section 1750.1 in a  
11 competent manner as determined by the employing dentist, who  
12 shall certify to such satisfactory work experience in the application.

13 (c) The board shall give credit toward the work experience  
14 referred to in this section to persons who have graduated from a  
15 dental assisting program in a postsecondary institution approved  
16 by the Department of Education or in a secondary institution,  
17 regional occupational center, or regional occupational program,  
18 that are not, however, approved by the board pursuant to  
19 subdivision (a). The credit shall equal the total weeks spent in  
20 classroom training and internship on a week-for-week basis. The  
21 board, in cooperation with the Superintendent of Public Instruction,  
22 shall establish the minimum criteria for the curriculum of  
23 nonboard-approved programs. Additionally, the board shall notify  
24 those programs only if the program's curriculum does not meet  
25 established minimum criteria, as established for board-approved  
26 registered dental assistant programs, except any requirement that  
27 the program be given in a postsecondary institution. Graduates of  
28 programs not meeting established minimum criteria shall not  
29 qualify for satisfactory work experience as defined by this section.

30 (d) In addition to the requirements specified in subdivision (a),  
31 each applicant for registered dental assistant licensure on or after  
32 July 1, 2002, shall provide evidence of having successfully  
33 completed board-approved courses in radiation safety and coronal  
34 polishing as a condition of licensure. The length and content of  
35 the courses shall be governed by applicable board regulations.

36 (e) In addition to the ~~requirement~~ *requirements* specified in  
37 subdivisions (a) and (d), individuals applying for registered dental  
38 assistant licensure on or after January 1, 2010, shall demonstrate  
39 satisfactory performance on a written examination in law and ethics  
40 administered by the committee and shall provide written evidence

1 of successful completion within five years prior to application of  
2 all of the following:

3 (1) A board-approved course in the Dental Practice Act.

4 (2) A board-approved ~~eight-hour~~ course in infection control ~~that~~  
5 ~~meets the requirements of Section 1756.~~

6 (3) A course in basic life support offered by an instructor  
7 approved by the American Red Cross or the American Heart  
8 Association.

9 (f) A registered dental assistant may apply for ~~and maintain~~ an  
10 orthodontic assistant permit or a dental sedation assistant permit,  
11 or both, by ~~adhering to~~ *submitting written evidence of* the  
12 following:

13 (1) Successful completion of a board-approved ~~course pursuant~~  
14 ~~to Section 1756.1 or 1756.2~~ *orthodontic assistant or dental*  
15 *sedation assistant course*, as applicable.

16 (2) Passage of a written examination administered by the  
17 committee that shall encompass the knowledge, skills, and abilities  
18 necessary to competently perform the duties of the particular  
19 permit.

20 (g) A registered dental assistant with permits in either  
21 orthodontic assisting or dental sedation assisting shall be referred  
22 to as an “RDA with orthodontic assistant permit,” or “RDA with  
23 dental sedation assistant permit,” as applicable. *These terms shall*  
24 *be used for reference purposes only and do not create additional*  
25 *categories of licensure.*

26 (h) ~~The Completion of the~~ continuing education requirements  
27 ~~for a registered dental assistant shall be deemed to satisfy the~~  
28 ~~continuing education requirements for renewal of a permit in~~  
29 ~~orthodontic assisting or dental sedation assisting, or both.~~  
30 *established by the board pursuant to Section 1645 by a registered*  
31 *dental assistant who also holds a permit as an orthodontic assistant*  
32 *or dental sedation assistant shall fulfill the continuing education*  
33 *requirements for the permit or permits.*

34 SEC. 17. Section 1752.2 of the Business and Professions Code  
35 is repealed.

36 SEC. 18. Section 1752.3 is added to the Business and  
37 Professions Code, to read:

38 1752.3. (a) On and after January 1, 2010, the written  
39 examination for registered dental assistant licensure required by  
40 Section 1752.1 shall comply with Section 139.

(b) On and after January 1, 2010, the practical examination for registered dental assistant licensure required by Section 1752.1 shall consist of ~~any of the three~~ *three of the* procedures described in paragraphs (1) to ~~(5)~~ (4), inclusive. The specific procedures shall be assigned by a registered dental assistant examination subcommittee appointed by the committee and shall be graded by examiners appointed by the committee. The procedures shall be performed on a fully articulated maxillary and mandibular typodont secured with a bench clamp. Each applicant shall furnish the required materials necessary to complete the examination.

(1) Place a base *or liner*.

~~(2) Place a liner.~~

~~(3)~~

(2) Place, adjust, and finish a direct provisional restoration.

~~(4)~~

(3) Fabricate and adjust an indirect provisional restoration.

~~(5)~~

(4) Cement an indirect provisional restoration.

SEC. 19. Section 1752.4 is added to the Business and Professions Code, to read:

1752.4. (a) A registered dental assistant may perform all of the following duties:

(1) All duties that ~~an unlicensed~~ a dental assistant is allowed to perform.

(2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.

(3) Apply and activate bleaching agents using a nonlaser light-curing device.

(4) Use of automated caries detection devices and materials to gather information for diagnosis by the dentist.

(5) Obtain intraoral images for computer-aided design (CAD), milled restorations.

(6) Pulp vitality testing and recording of findings.

(7) Place bases, liners, and bonding agents.

(8) Chemically prepare teeth for bonding.

(9) Place, adjust, and finish direct provisional restorations.

(10) Fabricate, adjust, cement, and remove indirect provisional restorations, including stainless steel crowns when used as a provisional restoration.

- 1 (11) Place ~~postextraction~~ *post-extraction* dressings after
- 2 inspection of the surgical site by the supervising licensed dentist.
- 3 (12) Place periodontal dressings.
- 4 (13) Dry endodontically treated canals using absorbent paper
- 5 points.
- 6 (14) Adjust dentures extra-orally.
- 7 (15) Remove excess cement from surfaces of teeth with a hand
- 8 instrument.
- 9 (16) Polish coronal surfaces of the teeth.
- 10 (17) Place ligature ties and archwires.
- 11 (18) Remove orthodontic bands.
- 12 (19) All duties that the board may prescribe by regulation.
- 13 (b) A registered dental assistant may only perform the following
- 14 additional duties if he or she has completed a board-approved
- 15 registered dental assistant educational program in those duties, or
- 16 if he or she has provided evidence, satisfactory to the committee,
- 17 of having completed a board-approved course in those duties.
- 18 (1) Remove excess cement with an ultrasonic scaler from
- 19 supragingival surfaces of teeth undergoing orthodontic treatment.
- 20 (2) The allowable duties of an orthodontic assistant permitholder
- 21 as specified in Section 1750.3. A registered dental assistant shall
- 22 not be required to complete further instruction in the duties of
- 23 placing ligature ties and archwires, removing orthodontic bands,
- 24 and removing excess cement from tooth surfaces with a hand
- 25 instrument.
- 26 (3) The allowable duties of a dental sedation assistant
- 27 permitholder as specified in Section 1750.5.
- 28 (4) The application of pit and fissure sealants.
- 29 (c) Except as provided in Section 1777, the supervising licensed
- 30 dentist shall be responsible for determining whether each
- 31 authorized procedure performed by a registered dental assistant
- 32 should be performed under general or direct supervision.
- 33 (d) This section shall become operative on January 1, 2010.
- 34 SEC. 20. Section 1752.5 of the Business and Professions Code
- 35 is repealed.
- 36 SEC. 21. Section 1752.6 of the Business and Professions Code
- 37 is repealed.
- 38 SEC. 22. Section 1752.6 is added to the Business and
- 39 Professions Code, to read:

1 1752.6. A registered dental assistant licensed on and after  
2 January 1, 2010, shall provide evidence of successful completion  
3 of a board-approved course in the application of pit and fissure  
4 sealants prior to the first expiration of his or her license that  
5 requires the completion of continuing education as a condition of  
6 renewal. The license of a registered dental assistant who does not  
7 provide evidence of successful completion of that course shall not  
8 be renewed until evidence of course completion is provided.

9 SEC. 23. Section 1753 of the Business and Professions Code  
10 is repealed.

11 SEC. 24. Section 1753 is added to the Business and Professions  
12 Code, to read:

13 1753. (a) On and after January 1, 2010, the board ~~shall~~ *may*  
14 license as a registered dental assistant in extended functions a  
15 person who submits written evidence, satisfactory to the board, of  
16 all of the following eligibility requirements:

17 (1) Current licensure as a registered dental assistant or  
18 completion of the requirements for licensure as a registered dental  
19 assistant.

20 (2) Successful completion of a board-approved course in the  
21 application of pit and fissure sealants.

22 (3) Successful completion of either of the following:

23 (A) An extended functions postsecondary program approved  
24 by the board in all of the procedures specified in Section 1753.5.

25 (B) An extended functions postsecondary program approved  
26 by the board to teach the duties that registered dental assistants in  
27 extended functions were allowed to perform pursuant to board  
28 regulations prior to January 1, 2010, and a course approved by the  
29 board in the procedures specified in paragraphs (1), (2), (5), and  
30 (7) to (11), inclusive, of subdivision (b) of Section 1753.5.

31 (4) Passage of a written examination and a clinical or practical  
32 examination administered by the committee. The board shall  
33 designate whether the written examination shall be administered  
34 by the committee or by the board-approved extended functions  
35 program.

36 (b) A registered dental assistant in extended functions may apply  
37 for ~~and maintain~~ an orthodontic assistant permit or a dental sedation  
38 assistant permit, or both, by ~~meeting all of the following~~  
39 ~~requirements~~; *providing written evidence of the following:*

1 (1) Successful completion of a board-approved course pursuant  
2 to Section 1756.1 or 1756.2 orthodontic assistant or dental  
3 sedation assistant course, as applicable.

4 (2) Passage of a written examination administered by the  
5 committee that shall encompass the knowledge, skills, and abilities  
6 necessary to competently perform the duties of the particular  
7 permit.

8 (c) A registered dental assistant in extended functions with  
9 permits in either orthodontic assisting or dental sedation assisting  
10 shall be referred to as an “RDAEF with orthodontic assistant  
11 permit,” or “RDAEF with dental sedation assistant permit,” as  
12 applicable. *These terms shall be used for reference purposes only  
13 and do not create additional categories of licensure.*

14 ~~(d) The continuing education requirements for a registered dental  
15 assistant in extended functions shall be deemed to satisfy the  
16 continuing education requirements for renewal of a permit in  
17 orthodontic assisting or dental sedation assisting, or both.~~

18 *(d) Completion of the continuing education requirements  
19 established by the board pursuant to Section 1645 by a registered  
20 dental assistant in extended functions who also holds a permit as  
21 an orthodontic assistant or dental sedation assistant shall fulfill  
22 the continuing education requirement for such permit or permits.*

23 SEC. 25. Section 1753.1 of the Business and Professions Code  
24 is amended and renumbered to read:

25 1753.5. (a) A registered dental assistant in extended functions  
26 licensed on or after January 1, 2010, is authorized to perform all  
27 duties and procedures that a registered dental assistant is authorized  
28 to perform as specified in and limited by Section 1752.4, and those  
29 duties that the board may prescribe by regulation.

30 (b) A registered dental assistant in extended functions licensed  
31 on or after January 1, 2010, is authorized to perform the following  
32 additional procedures under direct supervision and pursuant to the  
33 order, control, and full professional responsibility of a licensed  
34 dentist:

35 (1) Conduct preliminary evaluation of the patient’s oral health,  
36 including, but not limited to, charting, intraoral and extra-oral  
37 evaluation of soft tissue, classifying occlusion, and myofunctional  
38 evaluation.

39 (2) Perform oral health assessments in school-based, community  
40 health project settings under the direction of a dentist, registered

1 dental hygienist, or registered dental hygienist in alternative  
2 practice.

3 (3) Cord retraction of ~~gingivae~~ *gingiva* for impression  
4 procedures.

5 (4) Size and fit endodontic master points and accessory points.

6 (5) Cement endodontic master points and accessory points.

7 (6) Take final impressions for permanent indirect restorations.

8 (7) Take final impressions for tooth-borne removable prosthesis.

9 (8) Polish and contour existing amalgam restorations.

10 (9) Place, contour, finish, and adjust all direct restorations.

11 (10) Adjust and cement permanent indirect restorations.

12 (11) Other procedures authorized by regulations adopted by the  
13 board.

14 (c) All procedures required to be performed under direct  
15 supervision shall be checked and approved by the supervising  
16 licensed dentist prior to the patient's dismissal from the office.

17 SEC. 26. Section 1753.4 is added to the Business and  
18 Professions Code, to read:

19 1753.4. On and after January 1, 2010, each applicant for  
20 licensure as a registered dental assistant in extended functions shall  
21 successfully complete ~~a practical~~ *an* examination consisting of the  
22 procedures described in subdivisions (a) and (b). On and after  
23 January 1, 2010, each person who holds a current and active  
24 registered dental assistant in extended functions license issued  
25 prior to January 1, 2010, who wishes to perform the duties specified  
26 in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision  
27 (b) of Section 1753.5, shall successfully complete ~~a practical~~ *an*  
28 examination consisting of the procedures described in subdivision  
29 (b). The specific procedures shall be assigned by a registered dental  
30 assistant in extended functions examination subcommittee  
31 appointed by the committee and shall be graded by examiners  
32 appointed by the committee. Each applicant shall furnish the  
33 required materials necessary to complete the examination.

34 (a) Successful completion of the following two procedures on  
35 a patient provided by the applicant. The prepared tooth, prior to  
36 preparation, shall have had mesial and distal contact. The  
37 preparation performed shall have margins at or below the free  
38 gingival crest and shall be one of the following:  $\frac{7}{8}$  crown,  $\frac{3}{4}$   
39 crown, or full crown, including porcelain fused to metal. Alginate  
40 impression materials alone shall not be acceptable:

1 (1) Cord retraction of ~~gingivae~~ *gingiva* for impression  
2 procedures.

3 (2) Take a final impression for a permanent indirect restoration.

4 (b) Successful completion of two of the following procedures  
5 on a simulated patient head mounted in appropriate position and  
6 accommodating an articulated typodont in an enclosed intraoral  
7 environment, or mounted on a dental chair in a dental operatory:

8 (1) Place, condense, and carve an amalgam restoration.

9 (2) Place and contour a nonmetallic direct restoration.

10 (3) Polish and contour an existing amalgam restoration.

11 SEC. 27. Section 1753.5 of the Business and Professions Code  
12 is repealed.

13 SEC. 28. Section 1754 of the Business and Professions Code  
14 is amended and renumbered to read:

15 1752.4. (a) By September 15, 1993, the board, upon  
16 recommendation of the committee and consistent with this article,  
17 standards of good dental practice, and the health and welfare of  
18 patients, shall adopt regulations relating to the functions that may  
19 be performed by registered dental assistants under direct or general  
20 supervision, and the settings within which registered dental  
21 assistants may work. At least once every seven years thereafter,  
22 the board shall review the ~~list of functions performable by~~  
23 *allowable duties* of registered dental assistants, the supervision  
24 level, and settings under which they may be performed, and shall  
25 update the regulations as needed to keep them current with the  
26 state of the practice.

27 (b) A registered dental assistant may apply pit and fissure  
28 sealants under the general supervision of a licensed dentist, after  
29 providing evidence to the board of having completed a  
30 board-approved course in that procedure.

31 (c) This section shall remain in effect only until January 1, 2010,  
32 and as of that date is repealed, unless a later enacted statute, that  
33 is enacted before January 1, 2010, deletes or extends that date.

34 SEC. 29. Section 1754.5 is added to the Business and  
35 Professions Code, to read:

36 1754.5. As used in this article, the following definitions shall  
37 apply:

38 (a) "Didactic instruction" means lectures, demonstrations, and  
39 other instruction without active participation by students. The  
40 approved provider or its designee may provide didactic instruction



1 via electronic media, home study materials, or live lecture  
2 methodology if the provider has submitted that content for  
3 approval.

4 (b) "Laboratory instruction" means instruction in which students  
5 receive supervised experience performing procedures using study  
6 models, mannequins, or other simulation methods. There shall be  
7 at least one instructor for every 14 students who are simultaneously  
8 engaged in laboratory instruction.

9 (c) "Preclinical instruction" means instruction in which students  
10 receive supervised experience performing procedures on students,  
11 faculty, or staff members. There shall be at least one instructor for  
12 every six students who are simultaneously engaged in preclinical  
13 instruction.

14 (d) "Clinical instruction" means instruction in which students  
15 receive supervised experience in performing procedures in a  
16 clinical setting on patients. Clinical instruction shall only be  
17 performed upon successful demonstration and evaluation of  
18 preclinical skills. There shall be at least one instructor for every  
19 six students who are simultaneously engaged in clinical instruction.

20 *(E) This section shall remain in effect only until January 1,*  
21 *2011, and as of that date is repealed, unless a later enacted statute,*  
22 *that is enacted before January 1, 2011, deletes or extends that*  
23 *date.*

24 SEC. 30. Section 1755 is added to the Business and Professions  
25 Code, to read:

26 1755. (a) (1) The criteria in subdivisions (b) to (h), inclusive,  
27 shall be met by a dental assisting program or course and all  
28 orthodontic assisting and dental sedation assisting permit programs  
29 or courses to secure and maintain approval by the board as provided  
30 in this article.

31 (2) The board may approve, provisionally approve, or deny  
32 approval of any program or course.

33 (3) Program and course records shall be subject to inspection  
34 by the board at any time.

35 (4) The board may withdraw approval at any time that it  
36 determines that a program or course does not meet the requirements  
37 established in this section or any other requirements of law.

38 (5) All programs and courses shall be established at the  
39 postsecondary educational level or deemed equivalent thereto by  
40 the board.

1 (b) The program or course director ~~and each faculty member~~  
2 shall possess a valid, active, and current license issued by the  
3 ~~board. Each faculty member shall have been licensed for a~~  
4 ~~minimum of two years and possess experience in the subject matter~~  
5 ~~he or she is teaching. No faculty member shall instruct in any~~  
6 ~~procedure that he or she is not licensed to perform. The program~~  
7 ~~board. The program~~ or course director shall actively participate  
8 in and be responsible for the day-to-day administration of the  
9 program or course, including ~~both of the following~~ *the following*  
10 *requirements:*

11 (1) Maintaining for a period of not less than five years copies  
12 of curricula, program outlines, objectives, and grading criteria,  
13 and copies of faculty credentials, licenses, and certifications, and  
14 individual student records, including those necessary to establish  
15 satisfactory completion of the program or course.

16 (2) Informing the committee of any major change to the program  
17 or course content, physical facilities, or faculty, within 10 days of  
18 the change.

19 (3) *Ensuring that all staff and faculty involved in clinical*  
20 *instruction meet the requirements set forth in this article.*

21 (c) *No faculty member shall instruct in any procedure that he*  
22 *or she is not licensed or permitted to perform. Each faculty member*  
23 *shall have been licensed or permitted for a minimum of two years*  
24 *and possess experience in the subject matter he or she is teaching.*

25 ~~(e)~~

26 (d) A certificate or other evidence of completion shall be issued  
27 to each student who successfully completes the program or course  
28 and shall include the student's name, *the* name of the program or  
29 course, the total number of program or course hours, the date of  
30 completion, and the signature of the program or course director or  
31 his or her designee.

32 ~~(d)~~

33 (e) Facilities and class scheduling shall provide each student  
34 with sufficient opportunity, with instructor supervision, to develop  
35 minimum competency in all duties for which the program or course  
36 is approved to instruct.

37 (1) The location and number of general use equipment and  
38 armamentaria shall ensure that each student has the access  
39 necessary to develop minimum competency in all of the duties for  
40 which the program or course is approved to instruct. The program

1 or course provider may either provide the specified equipment and  
2 supplies or require that the student provide them. Nothing in this  
3 section shall preclude a dental office that contains the equipment  
4 required by this section from serving as a location for laboratory  
5 instruction.

6 (2) The minimum requirement for armamentaria includes  
7 infection control materials specified by the Division of  
8 Occupational Safety and Health and the regulations of the board,  
9 protective eyewear, mask, and gloves for each student and faculty  
10 member, and appropriate eye protection for each piece of  
11 equipment.

12 (3) Clinical instruction shall be of sufficient duration to allow  
13 the procedures to be performed to clinical proficiency. Operatories  
14 shall be sufficient in number to allow a ratio of at least one  
15 operatory for every five students who are simultaneously engaged  
16 in clinical instruction.

17 (A) Each operatory shall contain functional equipment, including  
18 a power-operated chair for treating patients in a supine position,  
19 operator and assistant stools, air-water syringe, adjustable light,  
20 oral evacuation equipment, work surface, and adjacent  
21 hand-washing sink.

22 (B) Each operatory shall be of sufficient size to simultaneously  
23 accommodate one student, one instructor, and one patient.

24 ~~(e)~~

25 (f) The program or course shall establish written clinical and  
26 laboratory protocols to ensure adequate asepsis, infection, and  
27 hazard control and disposal of hazardous wastes, that comply with  
28 the board's regulations and other federal, state, and local  
29 requirements. The program or course shall provide these protocols  
30 to all students, faculty, and appropriate staff to ensure compliance  
31 with these protocols. Adequate space shall be provided for  
32 preparing and sterilizing all armamentarium. All reusable  
33 armamentarium shall be sterilized and nonreusable items properly  
34 disposed.

35 ~~(f)~~

36 (g) A written policy on managing emergency situations shall  
37 be made available to all students, faculty, and staff. All faculty  
38 and staff involved in the direct provision of patient care shall be  
39 certified in basic life support procedures, including  
40 cardiopulmonary resuscitation. Recertification intervals may not

1 exceed two years. The program or course director shall ensure and  
2 document compliance by faculty and staff. A program or course  
3 shall not be required to ensure that students complete instruction  
4 in basic life support prior to performing procedures on patients.

5 ~~(g)~~

6 *(h)* A detailed program or course outline shall clearly state  
7 curriculum subject matter and specific instruction hours in the  
8 individual areas of didactic, laboratory, and clinical instruction.  
9 General program or course objectives and specific instructional  
10 unit objectives shall be stated in writing, and shall include  
11 theoretical aspects of each subject as well as practical application.  
12 Objective evaluation criteria shall be used for measuring student  
13 progress toward attainment of specific program or course  
14 objectives. Students shall be provided with all of the following:

15 (1) Specific unit objectives and the evaluation criteria that will  
16 be used for all aspects of the curriculum including written,  
17 practical, and clinical examinations.

18 (2) Standards of performance that state the minimum number  
19 of satisfactory performances that are required for each procedure.

20 (3) Standards of performance for laboratory, preclinical, and  
21 clinical functions, those steps that constitute a critical error and  
22 would cause the student to fail the procedure, and a description of  
23 each of the grades that may be assessed for each procedure.

24 ~~(h)~~

25 *(i)* (1) If an extramural clinical facility is utilized, students shall,  
26 as part of an extramural organized program of instruction, be  
27 provided with planned, supervised clinical instruction. Laboratory  
28 and preclinical instruction shall be performed under the direct  
29 supervision of program or course faculty and shall not be provided  
30 in extramural facilities.

31 (2) The program or course director, or a designated faculty  
32 member, shall be responsible for selecting extramural clinical sites  
33 and evaluating student competence in performing procedures both  
34 before and after the clinical assignment.

35 (3) The program or course director, or a designated faculty  
36 member, shall orient dentists who intend to provide extramural  
37 clinical facilities prior to the student assignment. Orientation shall  
38 include the objectives of the program or course, the student's  
39 preparation for the clinical assignment, and a review of procedures  
40 and criteria to be used by the dentist in evaluating the student

1 during the assignment. The program or course faculty and  
2 extramural clinic personnel shall use the same objective evaluation  
3 criteria.

4 (4) There shall be a written contract of affiliation with each  
5 extramural clinical facility, which shall describe the settings in  
6 which the clinical training will be received, and affirm that the  
7 dentist and clinic personnel acknowledge the legal scope of duties  
8 and infection control requirements, that the clinical facility has the  
9 necessary equipment and armamentaria appropriate for the  
10 procedures to be performed, and that the equipment and  
11 armamentaria are in safe operating condition.

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

15 SEC. 31. Section 1756 of the Business and Professions Code  
16 is amended and renumbered to read:

17 1753.1. (a) The board ~~shall~~ *may* license as a registered dental  
18 assistant in extended functions a person who satisfies all of the  
19 following eligibility requirements:

20 (1) Status as a registered dental assistant.

21 (2) Completion of clinical training approved by the board in a  
22 facility affiliated with a dental school under the direct supervision  
23 of the dental school faculty.

24 (3) Satisfactory performance on an examination required by the  
25 board.

26 (b) This section shall remain in effect only until January 1, 2010,  
27 and as of that date is repealed, unless a later enacted statute, that  
28 is enacted before January 1, 2010, deletes or extends that date.

29 SEC. 32. Section 1756 is added to the Business and Professions  
30 Code, to read:

31 1756. In addition to the requirements of Section 1755, the  
32 following criteria shall be met by a course in infection control, *as*  
33 *required in Sections 1750, 1750.2, 1750.4, and 1752.1*, to secure  
34 and maintain approval by the board:

35 (a) Adequate provisions for the supervision and operation of  
36 the course in infection control shall be made. Notwithstanding  
37 Section 1755, faculty shall not be required to be licensed by the  
38 board, but faculty shall have experience in the instruction of the  
39 infection control regulations and guidelines issued by the board  
40 and the Division of Occupational Safety and Health (Cal-DOSH).

1 In addition to the requirements of Section 1755, all faculty  
2 responsible for clinical evaluation shall have completed a two-hour  
3 methodology course in clinical evaluation.

4 (b) A course in infection control shall be of sufficient duration  
5 for the student to develop minimum competency in all aspects of  
6 infection control regulations and guidelines issued by the board  
7 and Cal-DOSH, but in no event less than eight hours, including at  
8 least four hours of didactic instruction, at least two hours of  
9 laboratory or preclinical instruction, and at least two hours of  
10 clinical instruction. Preclinical instruction shall utilize instruments,  
11 surfaces, and situations where contamination is simulated, without  
12 actual contamination, from bloodborne and other pathogens being  
13 present.

14 (c) The minimum requirements for equipment and armamentaria  
15 shall include personal protective equipment, FDA-approved  
16 sterilizer, ultrasonic unit or instrument processing device, sharps  
17 container, selection of instruments, equipment, and armamentaria  
18 that are necessary to instruct or demonstrate proper hazardous  
19 waste disposal, consistent with Cal-DOSH regulations, local, state,  
20 and federal mandates, and all other armamentaria required to  
21 instruct or properly demonstrate the subjects described in the course  
22 content.

23 (d) Areas of instruction shall include, at a minimum, the  
24 instruction specified in subdivisions (e) and (f).

25 (e) Didactic instruction shall include, at a minimum, the  
26 following as they relate to the infection control regulations of the  
27 board and of Cal-DOSH:

28 (1) Basic dental science and microbiology as they relate to  
29 infection control in dentistry.

30 (2) Legal and ethical aspects of infection control procedures.

31 (3) Terms and protocols specified in the regulations of the board  
32 regarding the minimum standards for infection control.

33 (4) Principles of modes of disease transmission and prevention.

34 (5) Principles, techniques, and protocols of hand hygiene,  
35 personal protective equipment, surface barriers and disinfection,  
36 sterilization, sanitation, and hazardous chemicals associated with  
37 infection control.

38 (6) Principles and protocols of sterilizer monitoring and the  
39 proper loading, unloading, storage, and transportation of  
40 instruments to work area.

- 1 (7) Principles and protocols associated with sharps management.
- 2 (8) Principles and protocols of infection control for laboratory
- 3 areas.
- 4 (9) Principles and protocols of waterline maintenance.
- 5 (10) Principles and protocols of regulated and nonregulated
- 6 waste management.
- 7 (11) Principles and protocols related to injury and illness
- 8 prevention, hazard communication, general office safety, *exposure*
- 9 *control*, *postexposure requirements*, and monitoring systems for
- 10 radiation safety and sterilization systems.
- 11 (f) Preclinical instruction shall include three experiences in the
- 12 following areas, with one used for a practical examination. Clinical
- 13 instruction shall include two experiences in the following areas,
- 14 with one used for a clinical examination:
- 15 (1) Apply hand cleansing products and perform hand cleansing
- 16 techniques and protocols.
- 17 (2) Apply, remove, and dispose of patient treatment gloves,
- 18 utility gloves, overgloves, protective eyewear, masks, and clinical
- 19 attire.
- 20 (3) Apply the appropriate techniques and protocols for the
- 21 preparation, sterilization, and storage of instruments including, at
- 22 a minimum, application of personal protective equipment,
- 23 precleaning, ultrasonic cleaning, rinsing, sterilization wrapping,
- 24 internal or external process indicators, labeling, sterilization,
- 25 drying, storage, and delivery to work area.
- 26 (4) Preclean and disinfect contaminated *operatory* surfaces and
- 27 devices, *and properly use, place, and remove surface barriers*.
- 28 (5) Maintain sterilizer including, at a minimum, proper
- 29 instrument loading and unloading, operation cycle, spore testing,
- 30 and handling and disposal of sterilization chemicals.
- 31 (6) Apply work practice controls as they relate to the following
- 32 classification of sharps: anesthetic needles or syringes, orthodontic
- 33 wires, and broken glass.
- 34 (7) Apply infection control protocol for the following laboratory
- 35 devices: impressions, bite registrations, and prosthetic appliances.
- 36 (8) Perform waterline maintenance, including use of water tests
- 37 and purging of waterlines.
- 38 (g) Each student shall pass a written examination that reflects
- 39 the curriculum content, which may be administered at intervals
- 40 throughout the course as determined by the course director.

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

4     SEC. 33. Section 1756.1 is added to the Business and  
5     Professions Code, to read:

6     1756.1. In addition to the requirements of Section 1755, the  
7     following criteria shall be met by a orthodontic assistant permit  
8     course to secure and maintain approval by the board. The board  
9     may approve orthodontic assistant permit courses prior to January  
10    1, 2010, and recognize the completion of orthodontic assistant  
11    permit courses by students prior to January 1, 2010, but the board  
12    may not issue an orthodontic assistant permit to students graduating  
13    from orthodontic assistant permit courses until on or after January  
14    1, 2010.

15    (a) The course shall be of sufficient duration for the student to  
16    develop minimum competence in all of the duties that orthodontic  
17    assistant permitholders are authorized to perform, but in no event  
18    less than 84 hours, including at least 24 hours of didactic  
19    instruction, at least 28 hours of laboratory instruction, and at least  
20    32 hours of clinical instruction.

21    (b) The minimum requirements for equipment and armamentaria  
22    shall include banded or bonded orthodontic typodonts *in the ratio*  
23    *of at least one for every four students*, bench mount or dental chair  
24    mounted mannequin head, curing light, regular typodont with full  
25    dentition ~~or~~ *and* soft gingiva in the ratio of at least one for every  
26    ~~three~~ *four* students, and a selection of orthodontic instruments and  
27    adjunct material for all of the procedures that orthodontic assistant  
28    permitholders are authorized to perform.

29    (c) All faculty responsible for clinical evaluation shall have  
30    completed a two-hour methodology course in clinical evaluation  
31    *prior to conducting clinical evaluations of students.*

32    (d) Areas of instruction shall include, at a minimum, the  
33    instruction specified in subdivisions (e) to (j), inclusive. In addition  
34    to the requirements of those subdivisions, instruction shall include  
35    basic background information on orthodontic practice, including  
36    orthodontic treatment review, charting, patient education, and legal  
37    and infection control requirements as they apply to orthodontic  
38    practice.

39    (e) The following requirements shall be met for sizing, fitting,  
40    cementing, and removing orthodontic bands:



- 1 (1) Didactic instruction shall include the following:
- 2 (A) Theory of band positioning and tooth movement.
- 3 (B) Characteristics of band material including malleability,
- 4 stiffness, ductility, and work hardening.
- 5 (C) Techniques for orthodontic banding and removal, including
- 6 all of the following:
- 7 (i) Armamentaria.
- 8 (ii) General principles of fitting and removing bands.
- 9 (iii) Normal placement requirements of brackets, tubes, lingual
- 10 sheaths, lingual cleats, and buttons onto bands.
- 11 (iv) Orthodontic cements and adhesive materials: classifications,
- 12 armamentaria, and mixing technique.
- 13 (v) Cementing bands: armamentaria, mixing technique, and
- 14 band cementation procedures.
- 15 (vi) Procedure for removal of bands after cementation.
- 16 (2) Laboratory instruction shall include typodont experience in
- 17 the sizing, fitting, cementing, and removal of four posterior first
- 18 molar bands a minimum of two times, with the cementing and
- 19 removal of two first molar bands used as a practical examination.
- 20 (3) Clinical instruction shall include the sizing, fitting,
- 21 cementing, and removal of four posterior first molar bands on at
- 22 least two patients.
- 23 (f) The following requirements shall be met for preparing teeth
- 24 for bonding:
- 25 (1) Didactic instruction shall include the following: chemistry
- 26 of etching materials and tooth surface preparation, application and
- 27 time factors, armamentaria, and techniques for tooth etching.
- 28 (2) Laboratory instruction shall include typodont experience
- 29 with etchant application in preparation for subsequent bracket
- 30 bonding on four anterior and four posterior teeth a minimum of
- 31 four times each, with one of each of the four times used for a
- 32 practical examination.
- 33 (3) Clinical instruction shall include etchant application in
- 34 preparation for bracket bonding on anterior and posterior teeth on
- 35 at least two patients.
- 36 (g) The following requirements shall be met for bracket
- 37 positioning, bond curing, and removal of orthodontic brackets.
- 38 (1) Didactic instruction shall include the following:
- 39 (A) Characteristics and methods of orthodontic bonding.
- 40 (B) Armamentaria.

- 1 (C) Types of bracket bonding surfaces.
- 2 (D) Bonding material characteristics, application techniques,
- 3 and curing time factors.
- 4 (E) Procedure for direct and indirect bracket bonding.
- 5 (F) Procedures for bracket or tube removal.
- 6 (2) Laboratory instruction shall include typodont experience
- 7 with selecting, prepositioning, tooth etching, positioning, curing
- 8 and removing of four anterior and four posterior brackets a
- 9 minimum of four times each, with one each of the four times used
- 10 for a practical examination.
- 11 (3) Clinical instruction shall include selecting, adjusting,
- 12 prepositioning, etching, curing and removal of anterior and
- 13 posterior brackets on at least two patients.
- 14 (h) The following requirements shall be met for archwire
- 15 placement and ligation:
  - 16 (1) Didactic instruction shall include the following:
  - 17 (A) Archwire characteristics.
  - 18 (B) Armamentaria.
  - 19 (C) Procedures for placement of archwire previously adjusted
  - 20 by the dentist.
  - 21 (D) Ligature systems, purpose and types, including elastic, wire,
  - 22 and self-ligating.
  - 23 (2) Laboratory instruction shall include typodont experience on
  - 24 the following:
    - 25 (A) The insertion of a preformed maxillary and mandibular
    - 26 archwire a minimum of four times per arch, with one of each of
    - 27 the four times used for a practical examination.
    - 28 (B) Ligation of maxillary and mandibular archwire using elastic
    - 29 or metal ligatures or self-ligating brackets a minimum of four times
    - 30 per arch, with one of each of the four times used for a practical
    - 31 examination.
    - 32 (3) Clinical instruction shall include the following:
      - 33 (A) Insertion of a preformed maxillary and mandibular archwire
      - 34 on at least two patients.
      - 35 (B) Ligating both preformed maxillary and mandibular archwires
      - 36 using a combination of elastic and metal ligatures or self-ligating
      - 37 brackets on at least two patients for each.
      - 38 (i) The following requirements shall be met for cement removal
      - 39 with a hand instrument:

1 (1) Didactic instruction shall include, armamentaria and  
2 techniques of cement removal using hand instruments and related  
3 materials.

4 (2) Laboratory instruction shall include typodont experience on  
5 the removal of excess cement supragingivally from an  
6 orthodontically banded typodont using a hand instrument four  
7 times, with one of the four times used for a practical examination.

8 (3) Clinical instruction shall include removal of excess cement  
9 supragingivally from orthodontic bands with a hand instrument  
10 on at least two patients.

11 (j) Instruction for cement removal with an ultrasonic scaler shall  
12 be in accordance with the regulations of the board governing  
13 courses in the removal of excess cement from teeth under  
14 orthodontic treatment with an ultrasonic scaler.

15 (k) Each student shall pass a written examination that reflects  
16 the curriculum content, which may be administered at intervals  
17 throughout the course as determined by the course director.

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

21 SEC. 34. Section 1756.2 is added to the Business and  
22 Professions Code, to read:

23 1756.2. In addition to the requirements of Section 1755, the  
24 following criteria shall be met by a dental sedation assistant permit  
25 course to secure and maintain approval by the board. The board  
26 may approve a dental sedation assistant permit course prior to  
27 January 1, 2010, and recognize the completion of these courses  
28 by students prior to January 1, 2010, but the board may not issue  
29 a dental sedation assistant permit to students graduating from dental  
30 sedation assistant permit courses until on or after January 1, 2010.  
31 As used in this section, "IV" means "intravenous."

32 (a) (1) The course director or faculty may, in lieu of a license  
33 issued by the board, possess a valid, active, and current license  
34 issued in California as a ~~registered nurse~~ *certified registered nurse*  
35 *anesthetist* or a physician and surgeon.

36 (2) All faculty responsible for clinical evaluation shall have  
37 completed a two-hour methodology course in clinical evaluation  
38 *prior to conducting clinical evaluations of students.*

39 (b) The course shall be of a sufficient duration for the student  
40 to develop minimum competence in all of the duties that dental

1 sedation assistant permitholders are authorized to perform, but in  
2 no event less than 110 hours, including at least 40 hours of didactic  
3 instruction, at least 32 hours of ~~laboratory~~ *combined laboratory*  
4 *and preclinical* instruction, and at least 38 hours of clinical  
5 instruction.

6 (c) (1) The following are minimum requirements for equipment  
7 and armamentaria: one pulse oximeter for each six students; one  
8 ~~automatic electronic defibrillator or defibrillator trainer; one~~  
9 *automated external defibrillator (AED) or AED trainer; one*  
10 capnograph or teaching device for monitoring of end tidal CO<sub>2</sub>;  
11 blood pressure cuff and stethoscope for each six students; one  
12 pretracheal stethoscope for each six students; one electrocardiogram  
13 machine, one automatic blood pressure/pulse measuring  
14 system/machine, and one oxygen delivery system including oxygen  
15 tank; one IV start kit for each student; one venous access device  
16 kit for each student; IV equipment and supplies for IV infusions  
17 including hanging device infusion containers and tubing for each  
18 six students; one sharps container for each six students; packaged  
19 syringes, needles, needleless devices, practice fluid ampules and  
20 vials for each student; stop watch or timer with second hand for  
21 each six students; one heart/lung sounds mannequin or teaching  
22 device; tonsillar or pharyngeal suction tip, endotracheal tube  
23 forceps, endotracheal tube and appropriate connectors, suction  
24 equipment for aspiration of oral and pharyngeal cavities, and  
25 laryngoscope in the ratio of at least one for each six students; any  
26 other monitoring or emergency equipment that the regulations of  
27 the board require for the administration of general anesthesia or  
28 conscious sedation; and a selection of instruments and supplemental  
29 armamentaria for all of the procedures that dental sedation assistant  
30 permitholders are authorized to perform.

31 (2) Each operatory *used for preclinical or clinical training* shall  
32 contain either a surgery table or a power-operated chair for treating  
33 patients in a supine position, an irrigation system or sterile water  
34 delivery system as they pertain to the specific practice, and all  
35 other equipment and armamentarium required to instruct in the  
36 duties that dental sedation assistant permitholders are authorized  
37 to perform.

38 (3) All students, faculty, and staff involved in the direct  
39 provision of patient care shall be certified in basic life support

1 procedures, including the use of an automatic electronic  
2 defibrillator.

3 (d) Areas of instruction shall include, at a minimum, the  
4 instruction specified in subdivisions (e) to (n), inclusive, as they  
5 relate to the duties that dental sedation assistant permitholders are  
6 authorized to perform.

7 (e) General didactic instruction shall include:

8 ~~(1) Characteristics of general body anatomy and systems~~  
9 ~~including the vascular system and nervous system and the~~  
10 ~~physiology of the cardiovascular and respiratory systems.~~

11 *(1) Patient evaluation and selection factors through review of*  
12 *medical history, physical assessment, and medical consultation.*

13 *(2) Characteristics of anatomy and physiology of the circulatory,*  
14 *cardiovascular, and respiratory systems, and the central and*  
15 *peripheral nervous system.*

16 ~~(2)~~

17 (3) Characteristics of anxiety management related to the surgical  
18 patient, relatives, and escorts, and characteristics of anxiety and  
19 pain reduction techniques.

20 ~~(3)~~

21 (4) Overview of the classification of drugs used by patients for  
22 cardiac disease, respiratory disease, hypertension, diabetes,  
23 neurological disorders, and infectious diseases.

24 ~~(4)~~

25 (5) Overview of *techniques* and specific drug groups utilized  
26 for sedation and general anesthesia.

27 ~~(5) Overview of specific drug groups utilized for medical~~  
28 ~~emergencies.~~

29 *(6) Definitions and characteristics of levels of sedation achieved*  
30 *with general anesthesia and sedative agents, including the*  
31 *distinctions between conscious sedation, deep sedation, and*  
32 *general anesthesia.*

33 *(7) Overview of patient monitoring during conscious sedation*  
34 *and general anesthesia.*

35 *(8) Prevention, recognition, and management of complications.*

36 *(9) Obtaining informed consent.*

37 (f) (1) ~~Didactic~~ *With respect to medical emergencies, didactic*  
38 *instruction shall also include an overview of medical emergencies,*  
39 *including, but not limited to, airway obstruction, bronchospasm*  
40 *or asthma, laryngospasm, allergic reactions, syncope, cardiac arrest,*

1 cardiac dysrhythmia, seizure disorders, hyperglycemia and  
2 hypoglycemia, drug overdose, hyperventilation, acute coronary  
3 syndrome including angina and myocardial infarction,  
4 *hypertension, hypotension, stroke, aspiration of vomitus*, and  
5 congestive heart failure.

6 (2) Laboratory instruction shall include the simulation and  
7 response to at least the following medical emergencies: airway  
8 obstruction, bronchospasm, emesis and aspiration of foreign  
9 material under anesthesia, angina pectoris, myocardial infarction,  
10 hypotension, hypertension, cardiac arrest, allergic reaction,  
11 convulsions, hypoglycemia, syncope, and respiratory depression.  
12 Both training mannequins and other students or staff may be used  
13 for simulation. Instruction shall include at least two experiences  
14 each, one of each of which shall be used for a practical  
15 examination.

16 ~~(g) Didactic instruction shall include the following with respect~~  
17 ~~to oral sedation and the pediatric patient:~~

18 *(g) With respect to sedation and the pediatric patient, didactic*  
19 *instruction shall include the following:*

20 (1) Psychological considerations.

21 (2) Patient evaluation and selection factors through review of  
22 medical history, physical assessment, and medical consultation.

23 (3) Definitions and characteristics of levels of sedation achieved  
24 with general anesthesia and sedative agents, with special emphasis  
25 on the distinctions between conscious sedation, deep sedation, and  
26 general anesthesia.

27 (4) Review of respiratory and circulatory physiology and related  
28 anatomy, with special emphasis on establishing and maintaining  
29 a patent airway.

30 (5) Overview of pharmacology agents used in contemporary  
31 sedation and general anesthesia.

32 (6) Patient monitoring.

33 (7) Obtaining informed consent.

34 (8) Prevention, recognition, and management of complications,  
35 including principles of basic life support.

36 (h) With respect to physically, mentally, and neurologically  
37 compromised patients, didactic instruction shall include the  
38 ~~following: characteristics of medical conditions including~~  
39 *following: an overview of characteristics of Alzheimer's disease,*  
40 *autism, cerebral palsy, Down syndrome, mental retardation,*

1 multiple sclerosis, muscular dystrophy, Parkinson's disease,  
2 schizophrenia, and stroke.

3 (i) With respect to health history and patient assessment, didactic  
4 instruction shall include, but not be limited to, the recording of the  
5 following:

6 (1) Age, sex, weight, physical status (American Society of  
7 Anesthesiologists Classification), medication use, general health,  
8 any known or suspected medically compromising conditions,  
9 rationale for anesthesia or sedation of the patient, visual  
10 examination of the airway, and auscultation of the heart and lungs  
11 as medically required.

12 (2) General anesthesia or conscious sedation records including  
13 a time-oriented record with preoperative, multiple ~~interoperative~~  
14 *intraoperative*, and postoperative pulse oximetry and blood  
15 pressure and pulse readings, amounts of time of drug  
16 administration, length of procedure, complications of anesthesia  
17 or sedation, and a statement of the patient's condition at time of  
18 discharge.

19 (j) ~~(H)~~ With respect to monitoring heart sounds with  
20 pretracheal/precordial stethoscope and ECG/EKG and use of  
21 ~~defibrillator~~, didactic AED:

22 (1) *Didactic* instruction shall include the following:

23 (A) Characteristics of pretracheal/precordial stethoscope.

24 (B) Review of anatomy and physiology of circulatory system:  
25 heart, blood vessels, and cardiac cycle as it relates to EKG.

26 (C) Characteristics of rhythm interpretation and waveform  
27 analysis basics.

28 (D) Characteristics of manual intermittent and automatic blood  
29 pressure and pulse assessment.

30 (E) Characteristics and use of ~~a defibrillator~~ *an AED*.

31 (F) Procedure for using a pretracheal/precordial stethoscope for  
32 monitoring of heart sounds.

33 (G) Procedure for use and monitoring of the heart with an  
34 ECG/EKG machine, including electrode placement, ~~the calibration~~  
35 *and the adjustment* of such equipment.

36 (H) Procedure for using manual and automatic blood  
37 pressure/pulse/respiration measuring system.

38 (2) Preclinical ~~and clinical~~ instruction shall include at least three  
39 experiences on another student or staff person for each of the  
40 following, one of each of which shall be used for *an examination*.

1 *Clinical instruction shall include at lease three experiences on a*  
2 *patient for each of the following, one of each of which shall be*  
3 *used for a clinical examination:*

4 (A) Assessment of blood pressure and pulse both manually and  
5 utilizing an automatic system. ~~Instruction shall include the~~  
6 ~~calibration of such equipment.~~

7 (B) Placement and assessment of an electrocardiogram  
8 (ECG/EKG). ~~Instruction shall include the calibration~~ *adjustment*  
9 *of such equipment.*

10 (C) Monitoring and assessment of heart sounds with a  
11 pretracheal/precordial stethoscope.

12 (D) Use of a defibrillator or defibrillator *an AED or AED trainer.*

13 (k) ~~(I)~~ With respect to monitoring lung/respiratory sounds with  
14 pretracheal/precordial stethoscope and monitoring oxygen  
15 saturation end tidal CO<sub>2</sub> with pulse oximeter and ~~capnograph,~~  
16 ~~didactic capnograph:~~

17 (1) *Didactic* instruction shall include the following:

18 (A) Characteristics of pretracheal/precordial stethoscope, pulse  
19 oximeter and capnograph for respiration monitoring.

20 (B) Review of anatomy and physiology of respiratory system  
21 to include the nose, mouth, pharynx, epiglottis, larynx, trachea,  
22 bronchi, bronchioles, and alveolus.

23 (C) Characteristics of respiratory monitoring/lung sounds:  
24 mechanism of respiration, composition of respiratory gases, oxygen  
25 saturation.

26 (D) Characteristics of manual and automatic respiration  
27 assessment.

28 (E) Procedure for using a pretracheal/precordial stethoscope for  
29 respiration monitoring.

30 (F) Procedure for using and ~~caring for~~ *maintaining* pulse  
31 oximeter for monitoring oxygen saturation.

32 (G) Procedure for use, ~~care, and maintenance for~~ *capnograph*  
33 ~~for monitoring end tidal CO<sub>2</sub> levels. and maintenance of~~  
34 *capnograph.*

35 (H) Characteristics for monitoring blood and skin color and  
36 other related factors.

37 (I) Procedures and use of an oxygen delivery system.

38 (J) Characteristics of airway management to include  
39 armamentaria and use.



1     ~~(2) Clinical and preclinical~~ *Preclinical and clinical* instruction  
2 shall include at least three experiences on a student or staff person  
3 for each of the following, one of each of which shall be used for  
4 *an examination. Clinical instruction shall include at least three*  
5 *experiences on a patient for each of the following, one of which*  
6 *shall be used for a clinical examination:*

7     (A) Assessment of respiration rates ~~both visually and utilizing~~  
8 ~~an automatic system. Instruction shall include the calibration of~~  
9 ~~such equipment.~~

10    (B) Monitoring and assessment of lung sounds and ventilation  
11 with a pretracheal/precordial stethoscope.

12    (C) Monitoring oxygen saturation with a pulse oximeter.

13    (D) Use of an oxygen delivery system.

14    ~~(I) (1) With respect to drug identification and draw, didactic~~  
15 ~~draw:~~

16     ~~(1) Didactic~~ instruction shall include:

17     (A) Characteristics of syringes and needles including use, types,  
18 gauges, lengths, and components.

19     (B) Characteristics of drug, medication, and fluid storage units,  
20 use, type, components, identification of label including generic  
21 and brand names, strength, potential adverse reactions, expiration  
22 date, and contraindications.

23     (C) Characteristics of drug draw including armamentaria, label  
24 verification, ampule and vial preparation, and drug withdrawal  
25 techniques.

26    (2) Laboratory instruction shall include at least three experiences  
27 in the withdrawal of fluids from a vial or ampule in the amount  
28 specified by faculty, one of which shall be for a practical  
29 examination.

30    (3) Clinical instruction shall include at least three experiences  
31 in the evaluation of vial or container labels for identification of  
32 content, dosage, and strength and in the withdrawal of fluids from  
33 a vial or ampule in the amount specified by faculty or the  
34 extramural facility dentist.

35    ~~(m) (1) With respect to adding drugs, medications, and fluids~~  
36 ~~to IV lines, didactic lines:~~

37     ~~(1) Didactic~~ instruction shall include:

38     (A) Characteristics of adding drugs, medications, and fluids to  
39 IV lines in the presence of a licensed dentist.

40     (B) Armamentaria.

1 (C) Procedures for adding drugs, medications, and fluids,  
2 including amount and time intervals.

3 (D) Procedures for adding drugs, medications, and fluids by IV  
4 bolus.

5 (E) Characteristics of patient observation for signs and  
6 symptoms of drug response.

7 (2) Laboratory instruction shall include at least three experiences  
8 of adding fluids to an existing IV line on a venipuncture training  
9 arm or in a simulated environment, one of which shall be used for  
10 a practical examination.

11 (3) Clinical instruction shall include at least three experiences  
12 adding fluids to existing IV lines on at least three patients in the  
13 presence of a licensed dentist.

14 (n) ~~(1)~~ With respect to the removal of IV lines, ~~didactic lines~~:

15 (1) *Didactic* instruction shall include overview and procedures  
16 for the removal of an IV line.

17 (2) Laboratory instruction shall include at least three experiences  
18 on a venipuncture training arm or in a simulated environment for  
19 IV removal, one of which shall be used for a practical examination.

20 (3) Clinical instruction shall include at least three experiences  
21 removing IV lines on at least three patients in the presence of a  
22 licensed dentist.

23 (o) Each student shall pass a written examination that reflects  
24 the curriculum content, which may be administered at intervals  
25 throughout the course as determined by the course director.

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

29 SEC. 35. Section 1757 of the Business and Professions Code  
30 is amended and renumbered to read:

31 1753.6. (a) Each person who holds a license as a registered  
32 dental assistant in extended functions on the operative date of this  
33 section may only perform those procedures that a registered dental  
34 assistant is allowed to perform as specified in and limited by  
35 Section 1752.4, and the procedures specified in paragraphs (1) to  
36 (6), inclusive, until he or she provides evidence of having  
37 completed a board-approved course in the additional procedures  
38 specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of  
39 subdivision (b) of Section 1753.5, and an examination as specified  
40 in Section 1753.4:

1 (1) Cord retraction of ~~gingivae~~ *gingiva* for impression  
2 procedures.

3 (2) Take final impressions for permanent indirect restorations.

4 (3) Formulate indirect patterns for endodontic post and core  
5 castings.

6 (4) Fit trial endodontic filling points.

7 (5) Apply pit and fissure sealants.

8 (6) Remove excess cement from subgingival tooth surfaces with  
9 a hand instrument.

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

11 SEC. 36. Section 1757 is added to the Business and Professions  
12 Code, to read:

13 1757. (a) A registered dental assistant program shall receive  
14 board approval prior to operation.

15 (1) In order for a registered dental assistant program to secure  
16 and maintain approval by the board, it shall meet the requirements  
17 of Section 1755 and the following requirements:

18 (A) Programs approved on or after January 1, 2009, shall meet  
19 all of the requirements of this section.

20 (B) Programs approved prior to January 1, 2009, shall meet all  
21 of the requirements of this section except as otherwise specified.  
22 *Such a program shall continue to be approved only if it has*  
23 *certified to the board no later than April 30, 2009, on a form*  
24 *specified by the board, that it shall, no later than July 1, 2009,*  
25 *comply with all of the requirements of this section in providing*  
26 *instruction in all duties that registered dental assistants will be*  
27 *allowed to perform on and after January 1, 2010. The certification*  
28 *to the board shall contain the date on which the program will*  
29 *begin teaching those duties.*

30 (2) A program shall notify the board in writing if it wishes to  
31 increase the maximum student enrollment for which it is approved  
32 and shall provide whatever additional documentation the board  
33 requires to reapprove the program for the increased enrollment  
34 prior to accepting additional students.

35 (3) The board may at any time conduct a thorough evaluation  
36 of an approved educational program's curriculum and facilities to  
37 determine whether the program meets the requirements for  
38 continued approval.

1 (4) The board may, in lieu of conducting its own investigation,  
2 accept the findings of any commission or accreditation agency  
3 approved by the board and adopt those findings as its own.

4 (b) Programs shall have an advisory committee consisting of  
5 an equal number of registered dental assistants and dentists,  
6 including at least two registered dental assistants and two dentists,  
7 all currently licensed by the board. The advisory committee shall  
8 meet at least once each academic year with the program director,  
9 faculty, and appropriate institutional personnel to monitor the  
10 ongoing quality and performance of the program. Programs that  
11 admit students at different phases shall meet at least twice each  
12 year.

13 (c) Adequate provision for the supervision and operation of the  
14 program shall be made. In addition to the requirements of Section  
15 1755, the following requirements shall be met:

16 (1) Each program faculty member shall have successfully  
17 completed a board-approved course in the application of pit and  
18 fissure sealants.

19 (2) By January 1, 2010, each faculty member shall have  
20 completed a board-approved course in instructional methodology  
21 of at least 30 hours, unless he or she holds any one of the following:  
22 a postgraduate degree in education, a Ryan Designated Subjects  
23 Vocational Education Teaching Credential, a Standard Designated  
24 Subjects Teaching Credential, or, a Community College Teaching  
25 Credential. Each faculty member employed on or after January 1,  
26 2010, shall complete a course in instructional methodology within  
27 six months of employment.

28 (3) The program director shall have teaching responsibilities  
29 that are less than those of a full-time faculty member. He or she  
30 shall actively participate in and be responsible for the day-to-day  
31 administration of the program including the following:

32 (A) Participating in budget preparation and fiscal administration,  
33 curriculum development and coordination, determination of  
34 teaching assignments, supervision and evaluation of faculty,  
35 establishment of mission criteria and procedures, design and  
36 operation of program facilities, and selection of extramural  
37 facilities and coordination of instruction in those facilities.

38 (B) Holding periodic faculty meetings to provide for subject  
39 matter correlation and curriculum evaluation, and coordinating  
40 activities of full-time, part-time, and volunteer faculty.

1 (C) Maintaining for not less than five ~~years~~ *years*' copies of  
2 minutes of all advisory committee meetings.

3 (4) The owner or school administrator shall be responsible for  
4 the compliance of the program director with the provisions of this  
5 section and Section 1755.

6 (d) The program shall have sufficient financial resources  
7 available to support the program and to comply with this section.  
8 If the program or school requires approval by any other  
9 governmental agency, that approval shall be obtained prior to  
10 application to the board for approval and shall be maintained at  
11 all times. The failure to maintain that approval shall result in the  
12 automatic withdrawal of board approval of the program.

13 (e) The program shall be of sufficient duration for the student  
14 to develop minimum competence in performing dental assistant  
15 and registered dental assistant duties, but in no event less than 800  
16 hours, including at least 275 hours of didactic instruction, at least  
17 260 hours of laboratory instruction, and at least 85 hours of  
18 preclinical and clinical instruction conducted in the program's  
19 facilities under the direct supervision of program faculty. No more  
20 ~~than 180 hours of clinical instruction may be conducted at an~~  
21 ~~externship site or extramural facility. A program approved prior~~  
22 ~~to January 1, 2009, shall comply with board regulations with regard~~  
23 ~~to required program hours until the earlier of July 1, 2010, or the~~  
24 ~~date on which the program certifies to the board that it will~~ *than*  
25 *20 hours shall be devoted to instruction in clerical, administrative,*  
26 *practice management, or similar duties. A program approved prior*  
27 *to January 1, 2009, shall comply with board regulations with*  
28 *regard to required program hours until the date specified in the*  
29 *written certification from the program to the board that it will*  
30 *begin teaching the duties that registered dental assistants will be*  
31 *authorized to perform on and after January 1, 2010.*

32 *(f) In addition to the requirements of Section 1755 with regard*  
33 *to extramural instruction, no more than 25 percent of the required*  
34 *clinical instruction shall take place in extramural clinical facilities,*  
35 *and no more than 25 percent of extramural clinical instruction*  
36 *shall take place in a speciality dental practice.*

37 ~~(f)~~

38 (g) Facilities and class scheduling shall provide each student  
39 with sufficient opportunity, with instructor supervision, to develop  
40 minimum competency in all duties that registered dental assistants

1 are authorized to perform. The following requirements are in  
2 addition to those contained in Section 1755:

3 (1) The following are minimum requirements for equipment  
4 and armamentaria: an X-ray unit and X-ray mannequin for every  
5 five students, an amalgamator, model trimmers in the ratio of at  
6 least one for every seven students, dental rotary equipment and  
7 vibrators in the ratio of at least one for every three students, one  
8 light curing device for every five students, one functional typodont  
9 and bench mount for every two students, one functional  
10 orthodontically banded or bonded typodont for every four students,  
11 two facebows, one automated blood pressure and respiration device  
12 for every seven students, one EKG machine, three pulse oximeters,  
13 one capnograph or simulated device, one set of hand instruments  
14 for each procedure for every two students, and all other equipment  
15 and armamentaria required to teach dental assistant and registered  
16 dental assistant duties.

17 (2) ~~One permanently preassembled tray for each procedure shall~~  
18 ~~be provided for reference purposes: armamentaria during~~  
19 ~~laboratory, preclinical, and clinical sessions as appropriate to~~  
20 ~~each type of session: amalgamator, model trimmers, dental rotary~~  
21 ~~equipment, vibrators, light curing devices, functional typodont~~  
22 ~~and bench mounts, functional orthodontically banded typodonts,~~  
23 ~~facebows, automated blood pressure device, EKG machine, pulse~~  
24 ~~oximeters, capnograph or simulated device, sets of hand~~  
25 ~~instruments for each procedure, respiration device, camera for~~  
26 ~~intraoral use, camera for extraoral use, CAD machine or simulated~~  
27 ~~device, caries detection device, and all other equipment and~~  
28 ~~armamentaria required to teach dental assistant and registered~~  
29 ~~dental assistant duties.~~

30 ~~(3)~~

31 (2) Provision shall be made for reasonable access to current and  
32 diverse dental and medical reference texts, current journals,  
33 audiovisual materials, and other necessary resources. Library  
34 holdings, which may include access through the Internet, shall  
35 ~~include materials on the following subjects: nutrition, oral health~~  
36 ~~education, preventive dentistry, dental materials, anesthesia and~~  
37 ~~pain control, oral anatomy, oral histology, oral physiology, oral~~  
38 ~~pathology, morphology, pharmacology, microbiology, chairside~~  
39 ~~assisting, legal and ethical aspects of dentistry, radiology and~~  
40 ~~radiation safety, sterilization and infection control, laboratory~~

1 ~~procedures, office emergency procedures, general dentistry, and~~  
2 ~~specialty dentistry including, but not limited to, endodontics, oral~~  
3 ~~and maxillofacial surgery, orthodontics, pediatric dentistry,~~  
4 ~~periodontics, and prosthodontics. include materials relating to all~~  
5 ~~subject areas of the program curriculum.~~

6 ~~(4)~~

7 (3) Emergency materials shall include, but not be limited to, an  
8 oxygen tank that is readily available and functional. Medical  
9 materials for treating patients with life-threatening conditions shall  
10 be available for instruction and accessible to the operatories.  
11 Facilities that do not treat patients shall maintain a working model  
12 of a kit of such emergency materials for instructional purposes.

13 ~~(g) The organization of the curriculum shall be balanced and~~  
14 ~~flexible, creating opportunities for adjustments to changes in the~~  
15 ~~practice of dentistry and registered dental assisting. Programs that~~  
16 ~~admit students at different phases shall provide students with an~~  
17 ~~orientation that shall be successfully completed prior to~~  
18 ~~participation in any other phase of the program and that shall~~  
19 ~~include tooth anatomy, tooth numbering, and universal precautions,~~  
20 ~~including instrument sterilization and infection control protocols~~  
21 ~~associated with patient treatment.~~

22 ~~(h) In addition to the requirements of Section 1755 with regard~~  
23 ~~to extramural instruction, no more than 180 hours of the required~~  
24 ~~clinical instruction shall take place in extramural clinical facilities,~~  
25 ~~and no more than 25 percent of extramural clinical instruction shall~~  
26 ~~take place in a specialty dental practice.~~

27 ~~(h) The curriculum shall be established, reviewed, and amended~~  
28 ~~as necessary to allow for changes in the practice of dentistry and~~  
29 ~~registered dental assisting. Programs that admit students in phases~~  
30 ~~shall provide students with basic instruction prior to participation~~  
31 ~~in any other portion of the program that shall, at a minimum,~~  
32 ~~include tooth anatomy, tooth numbering, general program~~  
33 ~~guidelines and safety precautions, and infection control and~~  
34 ~~sterilization protocols associated with and required for patient~~  
35 ~~treatment. All programs shall provide students with additional~~  
36 ~~instruction in the infection control regulations and guidelines of~~  
37 ~~the board and Cal-DOSH prior to the student's performance of~~  
38 ~~procedures on patients.~~

39 (i) (1) A program approved prior to January 1, 2009, shall  
40 comply with board regulations with regard to program content

1 until the date that it certifies to the board that it will begin teaching  
2 all of the duties that registered dental assistants will be allowed to  
3 perform beginning January 1, 2010 specified in the written  
4 certification from the program to the board, as specified in  
5 subparagraph (B) of paragraph (1) of subdivision (a), after which  
6 time the program content shall meet the requirements of paragraph  
7 (2).

8 (2) Programs receiving initial approval on or after January 1,  
9 2009, shall meet all the requirements of Section 1755, and  
10 subdivisions (j) and (k) of this section, and shall include the  
11 following additional content:

12 (A) A radiation safety course that meets all of the requirements  
13 of the regulations of the board.

14 (B) A coronal polishing course that meets all of the requirements  
15 of the regulations of the board.

16 (C) A pit and fissure sealant course that meets all of the  
17 requirements of the regulations of the board.

18 (D) A course in basic life support provided by an instructor  
19 approved by the American Red Cross or the American Heart  
20 Association.

21 (3) On and after January 1, 2009, a program that desires to  
22 provide instruction in the following areas shall apply separately  
23 for approval to provide the following courses:

24 (A) A course in the removal of excess cement with an ultrasonic  
25 scaler, which course shall meet the requirements of the regulations  
26 of the board.

27 (B) A orthodontic assistant-permit holder permit course that shall  
28 meet the requirements of Section 1756.1, except that a program  
29 shall not be required to obtain separate approval to teach the duties  
30 of placing ligature ties and archwires, removing orthodontic bands,  
31 and removing excess cement from surfaces of teeth with a hand  
32 instrument. *Notwithstanding Section 1756.1, an orthodontic*  
33 *assistant permit course provided by a registered dental assistant*  
34 *program, to the students enrolled in such program, shall be no*  
35 *less than 60 hours, including at least 12 hours of didactic*  
36 *instruction, at least 26 hours of preclinical instruction, and at least*  
37 *22 hours of clinical instruction.*

38 (C) A dental sedation assistant-permit holder permit course that  
39 shall meet the requirements of Section 1756.2.



(j) General didactic instruction shall include, at a minimum, the following:

(1) Principles of general anatomy, physiology, oral embryology, tooth histology, and head-neck anatomy.

(2) Principles of abnormal conditions related to and including oral pathology, orthodontics, periodontics, endodontics, ~~pedodontics~~ *pediatric dentistry*, oral surgery, prosthodontics, and esthetic dentistry.

(3) Legal requirements and ethics related to scope of practice, unprofessional conduct, and, patient records and confidentiality.

(4) Principles of infection control and hazardous communication requirements in compliance with the board's regulations and other federal, state, and local requirements.

(5) Principles and federal, state, and local requirements related to pharmacology.

(6) Principles of medical-dental emergencies and first aid management, including symptoms and treatment.

(7) Principles of the treatment planning process including medical health history data collection, patient and staff confidentiality, and charting.

(8) Principles of record classifications including management, storage, and retention protocol for all dental records.

(9) Principles and protocols of special needs patient management.

(10) Principles, protocols, and armamentaria associated with all dental assisting chairside procedures.

(11) Principles, protocols, manipulation, use, and armamentaria for dental materials.

(12) Principles and protocols for oral hygiene preventative methods including, plaque identification, toothbrushing and flossing techniques, and nutrition.

(13) Principles, protocols, armamentaria, and procedures associated with operative and specialty dentistry.

(14) Principles, protocols, armamentaria, and procedures for each duty that ~~unlicensed~~ dental assistants and registered dental assistants are allowed to perform.

(k) Laboratory and clinical instruction shall be of sufficient duration and content for each student to achieve minimum competence in the performance of each procedure that ~~an~~

1 ~~un~~licensed dental assistant and registered dental assistant is  
2 authorized to perform.

3 (I) Each student shall pass a written examination that reflects  
4 the curriculum content, which may be administered at intervals  
5 throughout the course as determined by the course director.

6 *(m) This section shall remain in effect only until January 1,*  
7 *2011, and as of that date is repealed, unless a later enacted statute,*  
8 *that is enacted before January 1, 2011, deletes or extends that*  
9 *date.*

10 ~~SEC. 37. Section 1757.1 is added to the Business and~~  
11 ~~Professions Code, to read:~~

12 ~~1757.1. Notwithstanding Section 1755, the following criteria~~  
13 ~~shall be met for a course in instructional methodology, as specified~~  
14 ~~in subdivision (c) of Section 1757, to secure and maintain approval~~  
15 ~~by the board:~~

16 ~~(a) The course shall be established at the postsecondary~~  
17 ~~educational level:~~

18 ~~(b) (1) The course director and each faculty member shall have~~  
19 ~~the education or teaching experience necessary to teach~~  
20 ~~instructional methodology. Possession of a teaching credential~~  
21 ~~shall satisfy this requirement:~~

22 ~~(2) The course director shall have the education, background,~~  
23 ~~and occupational experience necessary to understand and fulfill~~  
24 ~~the course goals. The course director shall actively participate in~~  
25 ~~and be responsible for the day-to-day administration of the course~~  
26 ~~including the following:~~

27 ~~(A) Conducting student assessments:~~

28 ~~(B) Maintaining for a period of not less than five years all of~~  
29 ~~the following:~~

30 ~~(1) Copies of curricula, course outlines, objectives, and grading~~  
31 ~~criteria:~~

32 ~~(2) Copies of faculty credentials, licenses, and certifications~~  
33 ~~where applicable:~~

34 ~~(3) Individual student records, including those necessary to~~  
35 ~~establish satisfactory completion of the course:~~

36 ~~(C) Informing the committee of any major change to the course~~  
37 ~~content or faculty within 10 days of the change:~~

38 ~~(c) The course shall be of sufficient duration for the student to~~  
39 ~~develop minimum competence in teaching methodology, but in~~  
40 ~~no event less than 30 hours:~~

1     ~~(d) A certificate or other evidence of completion shall be issued~~  
2     ~~to each student who successfully completes the course.~~

3     ~~(e) (1) Curriculum shall include content designed to prepare~~  
4     ~~the student to teach effectively in an approved program utilizing~~  
5     ~~a variety of teaching methodologies and learning styles.~~

6     ~~(2) A detailed course outline shall be provided to the committee~~  
7     ~~that clearly states curriculum subject matter and specific instruction~~  
8     ~~hours in the individual content areas and student assessment.~~

9     ~~(3) General program objectives and specific instructional unit~~  
10    ~~objectives shall be stated in writing and shall include the theoretical~~  
11    ~~and practical aspects of each subject. The theoretical aspects of~~  
12    ~~the course shall provide the content necessary for students to make~~  
13    ~~judgments regarding teaching methodology in vocational education.~~

14    ~~(4) Objective evaluation criteria shall be used for measuring~~  
15    ~~student progress toward attainment of specific course objectives.~~  
16    ~~Students shall be provided with specific unit objectives and~~  
17    ~~evaluation criteria to be used for all aspects of the curriculum.~~

18    ~~(f) Areas of instruction shall include at least the following as~~  
19    ~~they relate to teaching methodology strategies:~~

20    ~~(1) Introduction to the classroom environment: principles and~~  
21    ~~key concepts of effective communication, group dynamics, conflict~~  
22    ~~resolution, occupational safety, and cultural pluralism.~~

23    ~~(2) (A) Development of generalized program goals; objectives;~~  
24    ~~course outlines; specific instructional objectives to include,~~  
25    ~~cognitive, psychomotor, and affective; and a lesson plan~~  
26    ~~development.~~

27    ~~(B) Identification of teaching modes and teaching medias, to~~  
28    ~~include, at a minimum, lecture, small groups, demonstrations,~~  
29    ~~laboratory and clinical practice, computerized learning, and~~  
30    ~~individual teaching.~~

31    ~~(C) Development of written assessment and evaluation measures,~~  
32    ~~to include, at a minimum, multiple choice, true or false, matching,~~  
33    ~~completion, and essay testing writing.~~

34    ~~(D) Development of performance assessment and evaluation~~  
35    ~~measures, to include, at a minimum, criteria for process and product~~  
36    ~~evaluation, minimum number of satisfactory performances for~~  
37    ~~psychomotor skills, and process and product evaluation forms.~~

38    ~~(E) Development of student self-study assessment instruments.~~

1 ~~(g) Upon completion of the course, each student shall pass a~~  
2 ~~written examination that reflects the curriculum content either~~  
3 ~~through a comprehensive format or modular unit examination.~~

4 ~~SEC. 38.~~

5 SEC. 37. Section 1758 is added to the Business and Professions  
6 Code, to read:

7 1758. (a) In addition to the requirements of Section 1755, the  
8 following criteria shall be met by an educational program for  
9 registered dental assistants in extended functions (RDAEF) to  
10 secure and maintain approval by the board. *A program approved*  
11 *prior to January 1, 2009, shall comply with board regulations with*  
12 *regard to program content until the date specified in a written*  
13 *certification from the program to the board that it will begin*  
14 *teaching the duties that RDAEFs will be allowed to perform*  
15 *beginning January 1, 2010, which may include the instruction of*  
16 *existing RDAEFs in the additional duties specified in Section*  
17 *1753.6. The certification shall be filed with the board no later than*  
18 *July 1, 2009, and the date on which the program shall comply with*  
19 *the program content specified in this section shall be no later than*  
20 *January 1, 2010.*

21 (1) A program applying for approval to teach all of the duties  
22 specified in Section ~~1753~~ 1753.5 shall comply with all of the  
23 requirements of this section. The board may approve RDAEF  
24 programs ~~referred to in Section 1753~~ prior to January 1, 2010, and  
25 recognize the completion of these approved programs by students  
26 prior to January 1, 2010, but shall not issue a license to students  
27 graduating from such programs until on or after January 1, 2010.

28 (2) A program applying for approval to teach existing RDAEFs  
29 the additional duties specified in Section 1753.6 shall comply with  
30 all of the requirements of this section, except as follows:

31 (A) The program shall be no less than 288 hours, including at  
32 least 76 hours of didactic instruction, at least 180 hours of  
33 laboratory instruction, and at least 32 hours of clinical instruction.

34 (B) Students shall not be required to complete instruction related  
35 to the placement of gingival retraction cord, the taking of final  
36 impressions for permanent indirect restorations, or the fitting of  
37 master and accessory points.

38 (b) In order to be admitted to the program, each student shall  
39 possess a valid, active, and current license as a registered dental  
40 assistant issued by the board and shall provide evidence of

1 successful completion of a board-approved pit and fissure sealant  
2 course.

3 (c) Adequate provision for the supervision and operation of the  
4 program shall be made. Notwithstanding the requirements of  
5 Section 1755, the program director and each faculty member of  
6 an approved RDAEF program shall possess a valid, active, and  
7 current license as a dentist or an RDAEF. In addition to the  
8 requirements of Section 1755, all faculty members responsible for  
9 clinical evaluation shall have completed a six-hour teaching  
10 methodology course in clinical evaluation *prior to conducting*  
11 *clinical evaluations of students*.

12 (d) The program shall be of sufficient duration for the student  
13 to develop minimum competence in all of the duties that RDAEFs  
14 are authorized to perform, but in no event less than 380 hours,  
15 including at least 100 hours of didactic instruction, at least 200  
16 hours of laboratory instruction, and at least 80 hours of clinical  
17 instruction. All instruction shall be provided under the direct  
18 supervision of program staff.

19 (e) The following requirements are in addition to the  
20 requirements of Section 1755:

21 (1) The following are minimum requirements for equipment  
22 and armamentaria:

23 (A) Laboratory facilities with individual seating stations for  
24 each student and equipped with air, gas and air, or electric driven  
25 rotary instrumentation capability. Each station or operatory shall  
26 allow an articulated typodont to be mounted in a simulated head  
27 position.

28 (B) Clinical simulation facilities that provide simulated patient  
29 heads mounted in appropriate position and accommodating an  
30 articulated typodont in an enclosed intraoral environment, or  
31 mounted on a dental chair in a dental operatory. Clinical simulation  
32 spaces shall be sufficient to permit one simulation space for each  
33 two students at any one time.

34 (C) Articulated typodonts of both deciduous and permanent  
35 dentitions with flexible gingival tissues and with prepared teeth  
36 for each procedure to be performed in the laboratory and clinical  
37 simulation settings. One of each type of typodont is required for  
38 each student.

39 (D) A selection of restorative instruments and adjunct materials  
40 for all procedures that RDAEFs are authorized to perform.

1 (2) Notwithstanding Section 1755, there shall be at least one  
2 operator for every two students who are simultaneously engaged  
3 in clinical instruction.

4 (f) Areas of instruction shall include, at a minimum, the  
5 instruction specified in subdivisions (g) to (m), inclusive. In  
6 addition to the requirements of those subdivisions, didactic  
7 instruction shall include the following:

8 (1) The following instruction as it relates to each of the  
9 procedures that RDAEFs are authorized to perform: restorative  
10 and prosthetic treatment review; charting; patient education; legal  
11 requirements; indications and contraindications; problem solving  
12 techniques; laboratory, preclinical, and clinical criteria and  
13 evaluation; and infection control protocol implementation.

14 (2) Dental science, including dental and oral anatomy, histology,  
15 oral pathology, normal or abnormal anatomical and physiological  
16 tooth descriptions, tooth morphology, basic microbiology relating  
17 to infection control, and occlusion.

18 (3) Characteristics and manipulation of dental materials related  
19 to each procedure.

20 (4) Armamentaria for all procedures.

21 (5) Principles, techniques, criteria, and evaluation for performing  
22 each procedure, including implementation of infection control  
23 protocols.

24 (6) Occlusion: the review of articulation of maxillary and  
25 mandibular arches in maximum intercuspation.

26 (7) Tooth isolation and matrix methodology review.

27 (g) General laboratory instruction shall include:

28 (1) Rubber dam application for tooth isolation in both maxillary  
29 and mandibular arches and for deciduous and permanent dentitions.  
30 A minimum of four experiences per arch is required, with two  
31 anterior and two posterior applications, with one of the applications  
32 used for a practical examination.

33 (2) Matrix placement for amalgam, and nonmetallic restorative  
34 material restorations in both primary and permanent dentitions,  
35 with three experiences for each cavity classification and for each  
36 material.

37 (3) Base, liner, and etchant placement on three posterior teeth  
38 for each base, liner, or etchant, with one of the three teeth used for  
39 a practical examination.

- 1 (h) ~~Preliminary~~ *With respect to preliminary* evaluation of the  
2 patient's oral health, including, but not limited to, charting,  
3 intraoral and extraoral evaluation of soft tissue, classifying  
4 occlusion, and myofunctional evaluation:-  
5 (1) Didactic instruction shall include the following:  
6 (A) Normal anatomical structures: oral cavity proper, vestibule,  
7 and lips.  
8 (B) Deviations from normal to hard tissue abnormalities to soft  
9 tissue abnormalities.  
10 (C) Overview of classifications of occlusion and myofunction.  
11 (D) Sequence of oral inspection: armamentaria, general patient  
12 assessment, review of medical history form, review of dental  
13 history form, oral cavity mouth-mirror inspection, and charting  
14 existing conditions.  
15 (2) Preclinical instruction shall include performing an oral  
16 inspection on at least two other students.  
17 (3) Clinical instruction shall include performing an oral  
18 inspection on at least two patients, with one of the two patients  
19 used for a clinical examination.  
20 (i) ~~(+)~~ *With respect to sizing, fitting, and cementing endodontic*  
21 *master points and accessory points, didactic points:*  
22 (1) *Didactic* instruction shall include the following:  
23 (A) Review of objectives, canal preparation, filling of root canal  
24 space.  
25 (B) Description and goals of filling technique using lateral  
26 condensation techniques.  
27 (C) Principles and techniques of fitting, cementing master and  
28 accessory points using lateral condensation including,  
29 characteristics, manipulation, use of gutta percha and related  
30 materials, and criteria for an acceptable master and accessory points  
31 technique using lateral condensation.  
32 (2) Laboratory instruction shall include fitting master and  
33 cementing cones on extracted teeth or assimilated teeth with canals,  
34 with two experiences each on a posterior and anterior tooth.  
35 (j) With respect to gingival retraction, general instruction shall  
36 include:  
37 (1) Review of characteristics of tissue management as it relates  
38 to gingival retraction with cord and electrosurgery.  
39 (2) Description and goals of cord retraction.

1 (3) Principles of cord retraction, including characteristics and  
2 manipulation of epinephrine, chemical salts classification of cord,  
3 characteristics of single versus double cord technique, and  
4 techniques and criteria for an acceptable cord retraction technique.

5 (k) ~~(1)~~ With respect to final impressions for permanent indirect  
6 and tooth-borne restorations, ~~didactic~~ *restorations*:

7 (1) *Didactic* instruction shall include the following:

8 (A) Review of characteristics of impression material and custom.

9 (B) Description and goals of impression taking for permanent  
10 indirect restorations and tooth-borne prosthesis.

11 (C) Principles, techniques, criteria, and evaluation of impression  
12 taking for permanent indirect restorations and tooth-borne  
13 prosthesis.

14 (2) Laboratory instruction shall include the following:

15 (A) Cord retraction and final impressions for permanent indirect  
16 restorations, including impression taking of prepared teeth in  
17 maxillary and mandibular arches, one time per arch with  
18 elastomeric impression materials.

19 (B) Impressions for tooth-borne removable prostheses, including  
20 taking a total of four impressions on maxillary and mandibular  
21 arches with simulated edentulous sites and rest preparations on at  
22 least two supporting teeth in each arch.

23 (3) Clinical instruction shall include taking final impressions  
24 on five cord retraction patients, with one used for a clinical  
25 examination.

26 (l) ~~(1)~~ With respect to placing, contouring, finishing, and  
27 adjusting direct restorations, ~~didactic~~ *restorations*:

28 (1) *Didactic* instruction shall include the following:

29 (A) Review of cavity preparation factors and restorative  
30 material.

31 (B) Review of cavity liner, sedative, and insulating bases.

32 (C) Characteristics and manipulation of direct filling materials.

33 (D) Amalgam restoration placement, carving, adjusting and  
34 finishing, which includes principles, techniques, criteria and  
35 evaluation, and description and goals of amalgam placement,  
36 adjusting and finishing in children and adults.

37 (E) Glass-ionomer restoration placement, carving, adjusting,  
38 contouring and finishing, which includes, principles, techniques,  
39 criteria and evaluation, and description and goals of glass-ionomer  
40 placement and contouring in children and adults.



1 (F) Composite restoration placement, carving, adjusting,  
2 contouring and finishing in all cavity classifications, which  
3 includes, principles, techniques, criteria, and evaluation.

4 (2) Laboratory instruction shall include typondont experience  
5 on the following:

6 (A) Placement of Class I, II, and V amalgam restorations in  
7 eight prepared permanent teeth for each classification, and in four  
8 deciduous teeth for each classification.

9 (B) Placement of Class I, II, III, and V composite resin  
10 restorations in eight prepared permanent teeth for each  
11 classification, and in four deciduous teeth for each classification.

12 (C) Placement of Class I, II, III, and V glass-ionomer  
13 restorations in four prepared permanent teeth for each classification,  
14 and in four deciduous teeth for each classification.

15 (3) Clinical simulation and clinical instruction shall include  
16 experience with typodonts mounted in simulated heads on a dental  
17 chair or in a simulation laboratory as follows:

18 (A) Placement of Class I, II, and V amalgam restorations in four  
19 prepared permanent teeth for each classification, with one of each  
20 classification used for a clinical examination.

21 (B) Placement of Class I, II, III, and V composite resin  
22 restorations in four prepared permanent teeth for each classification,  
23 with one of each classification used for a clinical examination.

24 (C) Placement of Class I, II, III, and V glass-ionomer  
25 restorations in four prepared permanent teeth for each classification,  
26 with one of each classification used for a clinical examination.

27 (m) ~~(1)~~—With respect to adjusting and cementing permanent  
28 indirect restorations, ~~didactic~~ *restorations*:

29 (1) *Didactic* instruction shall include the following:

30 (A) Review of fixed prosthodontics related to classification and  
31 materials for permanent indirect restorations, general crown  
32 preparation for permanent indirect restorations, and laboratory  
33 fabrication of permanent indirect restorations.

34 (B) Interocclusal registrations for fixed prosthesis, including  
35 principles, techniques, criteria, and evaluation.

36 (C) Permanent indirect restoration placement, adjustment, and  
37 cementation, including principles, techniques, criteria, and  
38 evaluation.

39 (2) Laboratory instruction shall include:

1 (A) Interocclusal registrations using elastomeric and resin  
2 materials. Two experiences with each material are required.

3 (B) Fitting, adjustment, and cementation of permanent indirect  
4 restorations on one anterior and one posterior tooth for each of the  
5 following materials, with one of each type used for a practical  
6 examination: ceramic, ceramometal, and cast metallic.

7 (3) Clinical experience for interocclusal registrations shall be  
8 performed on four patients who are concurrently having final  
9 impressions recorded for permanent indirect restorations, with one  
10 experience used for a clinical examination.

11 (n) Each student shall pass a written examination that reflects  
12 the curriculum content, which may be administered at intervals  
13 throughout the course as determined by the course director.

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

17 SEC. 39. Section 1765 of the Business and Professions Code  
18 is amended to read:

19 1765. No person other than a licensed dental hygienist or a  
20 licensed dentist may engage in the practice of dental hygiene or  
21 perform dental hygiene procedures on patients, including, but not  
22 limited to, supragingival and subgingival scaling, dental hygiene  
23 assessment, and treatment planning, except for the following  
24 persons:

25 (a) A student enrolled in a dental or a dental hygiene school  
26 who is performing procedures as part of the regular curriculum of  
27 that program under the supervision of the faculty of that program.

28 (b) A dental assistant, *registered dental assistant, or registered*  
29 *dental assistant in extended functions* acting in accordance with  
30 ~~the rules of the board in performing the following procedures:~~  
31 ~~provisions of this chapter.~~

32 ~~(1) Applying nonaerosol and noncaustic topical agents.~~

33 ~~(2) Applying topical fluoride.~~

34 ~~(3) Taking impression for bleaching trays.~~

35 ~~(c) A registered dental assistant acting in accordance with the~~  
36 ~~rules of the board in performing the following procedures:~~

37 ~~(1) Polishing the coronal surfaces of teeth.~~

38 ~~(2) Applying bleaching agents.~~

39 ~~(3) Activating bleaching agents with a nonlaser light-curing~~  
40 ~~device.~~

1 ~~(d) A registered dental assistant in extended functions acting in~~  
2 ~~accordance with the rules of the board in applying pit and fissure~~  
3 ~~sealants.~~

4 ~~(e)~~

5 (c) A registered dental hygienist, *registered dental hygienist in*  
6 *alternative practice, or registered dental hygienist in extended*  
7 *functions* licensed in another jurisdiction performing a clinical  
8 demonstration for educational purposes.

9 ~~SEC. 39.~~

10 *SEC. 40.* Section 1770 of the Business and Professions Code,  
11 as amended by Section 25 of Chapter 588 of the Statutes of 2007,  
12 is amended and renumbered to read:

13 1753.7. (a) A licensed dentist may simultaneously utilize in  
14 his or her practice no more than two dental auxiliaries in extended  
15 functions licensed pursuant to Sections 1753.1 and 1768.

16 (b) This section shall remain in effect only until January 1, 2010,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2010, deletes or extends that date.

19 ~~SEC. 40.~~

20 *SEC. 41.* Section 1770 of the Business and Professions Code,  
21 as amended by Section 26 of Chapter 588 of the Statutes of 2007,  
22 is amended and renumbered to read:

23 1753.7. (a) A licensed dentist may simultaneously utilize in  
24 his or her practice no more than three registered dental assistants  
25 in extended functions licensed pursuant to Section 1753.

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

27 *SEC. 42. Section 1771 of the Business and Professions Code*  
28 *is amended to read:*

29 1771. Any person, other than a person who has been issued a  
30 license *or permit* by the board, who holds himself or herself out  
31 as a registered dental assistant, ~~registered dental assistant in~~  
32 ~~extended functions, registered dental hygienist, registered dental~~  
33 ~~hygienist in extended functions, or registered dental hygienist in~~  
34 ~~alternative practice~~ *orthodontic assistant permitholder, dental*  
35 *sedation assistant permitholder, or registered dental assistant in*  
36 *extended functions*, or uses any other term indicating or implying  
37 he or she is licensed *or permitted* by the board ~~in the~~  
38 ~~aforementioned categories~~ *as such*, is guilty of a misdemeanor.

39 *SEC. 43. Section 1777 of the Business and Professions Code*  
40 *is amended to read:*

1 1777. While employed by or practicing in a primary care clinic  
2 or specialty clinic licensed pursuant to Section 1204 of the Health  
3 and Safety Code, in a primary care clinic exempt from licensure  
4 pursuant to subdivision (c) of Section 1206 of the Health and Safety  
5 Code, or a clinic owned and operated by a hospital that maintains  
6 the primary contract with a county government to fill the county's  
7 role under Section 17000 of the Welfare and Institutions Code, ~~a~~  
8 *the following shall apply:*

9 (a) *A dental assistant, registered dental assistant, or registered*  
10 *dental assistant in extended functions may perform any extraoral*  
11 *duty under the direct supervision of a registered dental hygienist*  
12 *or registered dental hygienist in alternative practice.*

13 (b) *A registered dental assistant or a registered dental assistant*  
14 *in extended functions may perform the following procedures under*  
15 *the direct supervision of a registered dental hygienist or a registered*  
16 *dental hygienist in alternative practice, pursuant to subdivision (b)*  
17 *of Section 1763:*

18 ~~(a)~~

19 ~~(1) Coronal polishing, after providing evidence to the board of~~  
20 ~~having completed a board-approved course in that procedure.~~

21 ~~(b)~~

22 (2) Application of topical fluoride.

23 ~~(c)~~

24 (3) Application of sealants, after providing evidence to the board  
25 of having completed a board-approved course in that procedure.

26 SEC. 44. *No reimbursement is required by this act pursuant*  
27 *to Section 6 of Article XIII B of the California Constitution because*  
28 *the only costs that may be incurred by a local agency or school*  
29 *district will be incurred because this act creates a new crime or*  
30 *infraction, eliminates a crime or infraction, or changes the penalty*  
31 *for a crime or infraction, within the meaning of Section 17556 of*  
32 *the Government Code, or changes the definition of a crime within*  
33 *the meaning of Section 6 of Article XIII B of the California*  
34 *Constitution.*

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2649  
**Author:** Ma  
**Bill Date:** June 16, 2008, amended  
**Subject:** Medical Assistants: authorized services  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently on the Assembly Floor for concurrence.

**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:** Neutral

July 15, 2008

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN SENATE MAY 29, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2649**

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**Introduced by Assembly Member Ma**

February 22, 2008

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

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2649, as amended, Ma. 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. ~~The bill would also specify that these provisions do not authorize a medical assistant to perform a procedure that is not specifically prohibited.~~

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 and 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,

1 or group thereof, for a medical or podiatry corporation, for a  
2 physician assistant, a nurse practitioner, or a nurse-midwife as  
3 provided in subdivision (a), or for a health care service plan, who  
4 is at least 18 years of age, and who has had at least the minimum  
5 amount of hours of appropriate training pursuant to standards  
6 established by the Division of Licensing. The medical assistant  
7 shall be issued a certificate by the training institution or instructor  
8 indicating satisfactory completion of the required training. A copy  
9 of the certificate shall be retained as a record by each employer of  
10 the medical assistant.

11 (2) "Specific authorization" means a specific written order  
12 prepared by the supervising physician and surgeon or the  
13 supervising podiatrist, or the physician assistant, the nurse  
14 practitioner, or the nurse-midwife as provided in subdivision (a),  
15 authorizing the procedures to be performed on a patient, which  
16 shall be placed in the patient's medical record, or a standing order  
17 prepared by the supervising physician and surgeon or the  
18 supervising podiatrist, or the physician assistant, the nurse  
19 practitioner, or the nurse-midwife as provided in subdivision (a),  
20 authorizing the procedures to be performed, the duration of which  
21 shall be consistent with accepted medical practice. A notation of  
22 the standing order shall be placed on the patient's medical record.

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

28 (A) A licensed physician and surgeon.

29 (B) A licensed podiatrist.

30 (C) A physician assistant, nurse practitioner, or nurse-midwife  
31 as provided in subdivision (a).

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

38 (c) Nothing in this section shall be construed as authorizing the  
39 licensure of medical assistants. Nothing in this section shall be  
40 construed as authorizing the administration of local anesthetic



1 agents by a medical assistant. Nothing in this section shall be  
2 construed as authorizing the division to adopt any regulations that  
3 violate the prohibitions on diagnosis or treatment in Section 2052.

4 (d) Notwithstanding any other provision of law, a medical  
5 assistant may not be employed for inpatient care in a licensed  
6 general acute care hospital as defined in subdivision (a) of Section  
7 1250 of the Health and Safety Code.

8 (e) Nothing in this section shall be construed as authorizing a  
9 medical assistant to perform any clinical laboratory test or  
10 examination for which he or she is not authorized by Chapter 3  
11 (commencing with Section 1206.5). Nothing in this section shall  
12 be construed as authorizing a nurse practitioner, nurse-midwife,  
13 or physician assistant to be a laboratory director of a clinical  
14 laboratory, as those terms are defined in paragraph (7) of  
15 subdivision (a) of Section 1206 and subdivision (a) of Section  
16 1209.

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

22 ~~(g) Nothing in this section shall be construed as authorizing a~~  
23 ~~medical assistant to perform a procedure because the procedure is~~  
24 ~~not specifically prohibited by this section.~~

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2747  
**Author:** Berg  
**Bill Date:** July 2, 2008, amended  
**Subject:** End-of-Life Care  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently on the Senate Floor.

**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.

This bill was amended to specify that, in providing patients with opportunities to receive information, health care providers may utilize information from organizations specializing in end-of-life care that provide information on fact sheets and Internet Web sites. The bill was also amended to state that 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. These discussions may occur over a series of meetings with the

health care provider or others who may be providing the counseling based on the patient's needs.

**FISCAL:**               None

**POSITION:**           Neutral

July 15, 2008

AMENDED IN SENATE JULY 2, 2008  
AMENDED IN ASSEMBLY MAY 15, 2008  
AMENDED IN ASSEMBLY APRIL 24, 2008  
AMENDED IN ASSEMBLY APRIL 7, 2008  
AMENDED IN ASSEMBLY MARCH 25, 2008  
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2747**

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**Introduced by Assembly Members Berg and Levine  
(Coauthors: Assembly Members Bass, Jones, Mullin, Salas, Torrico,  
and Wolk)**

February 22, 2008

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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 a health care provider, as defined, 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, upon the patient's request, provide the patient with 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 health care provider does not wish to comply with the patient's ~~choice of~~ *request for information on* 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:*

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

3 (a) Palliative and hospice care are invaluable resources for  
4 terminally ill Californians in need of comfort and support at the  
5 end of life.

6 (b) Palliative care and conventional medical treatment *for*  
7 *terminally ill patients* should be thoroughly integrated rather than  
8 viewed as separate entities.

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

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

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

26 (f) Terminally ill and dying patients rely on their health care  
27 providers to give them timely and informative data. Research  
28 shows a lack of communication between health care providers and  
29 their terminally ill patients can cause problems, including poor  
30 availability of, and lack of clarity regarding, advance health care  
31 directives and patients' end-of-life care preferences. This lack of  
32 information and poor adherence to patient choices can result in

1 “bad deaths” that cause needless physical and psychological  
2 suffering to patients and their families.

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

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

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

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

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

21  
22 PART 1.8. END-OF-LIFE CARE

23  
24 442. For the purposes of this part, the following definitions  
25 shall apply:

26 (a) *“Actively dying” means the phase of terminal illness when*  
27 *death is imminent.*

28 ~~(a)~~

29 (b) “Curative treatment” means treatment intended to cure or  
30 alleviate symptoms of a given disease or condition.

31 ~~(b)~~

32 (c) “Health care provider” means an attending physician and  
33 ~~surgeon, nurse practitioner, surgeon. It also means a nurse~~  
34 ~~practitioner~~ or physician assistant in accordance with standardized  
35 procedures or protocols developed and approved by the supervising  
36 physician and surgeon and the nurse practitioner or physician  
37 assistant.

38 ~~(c)~~

39 (d) “Hospice” means a specialized form of interdisciplinary  
40 health care that is designed to provide palliative care, alleviate the

1 physical, emotional, social, and spiritual discomforts of an  
2 individual who is experiencing the last phases of life due to the  
3 existence of a terminal disease, and provide supportive care to the  
4 primary caregiver and the family of the hospice patient, and that  
5 meets all of the criteria specified in subdivision (b) of Section  
6 1746.

7 ~~(d)~~

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

15 ~~(e) “Palliative sedation” means the administration of sedative~~  
16 ~~medication to the point of unconsciousness in a terminally ill~~  
17 ~~patient. It is an intervention of last resort to reduce severe,~~  
18 ~~refractory pain or other distressing clinical symptoms that do not~~  
19 ~~respond to aggressive, symptom-specific palliation. Palliative~~  
20 ~~sedation is not intended to cause death or shorten life.~~

21 (f) “Refusal or withdrawal of life-sustaining treatment” means  
22 forgoing treatment or medical procedures that replace or support  
23 an essential bodily function, including, but not limited to,  
24 cardiopulmonary resuscitation, mechanical ventilation, artificial  
25 nutrition and hydration, dialysis, and any other treatment or  
26 discontinuing any or all of those treatments after they have been  
27 used for a reasonable time.

28 ~~(g) “Voluntary stopping of eating and drinking” or “VSED”~~  
29 ~~means the patient’s choice to voluntarily refuse to eat and drink~~  
30 ~~in order to alleviate his or her suffering, and includes the~~  
31 ~~withholding or withdrawal of life-sustaining treatment at the~~  
32 ~~request of the patient.~~

33 442.5. When a health care provider makes a diagnosis that a  
34 patient has a terminal illness ~~or makes a prognosis that a patient~~  
35 ~~has less than one year to live~~, the health care provider shall provide  
36 the patient with comprehensive information and counseling  
37 regarding legal end-of-life care options, upon the patient’s request  
38 and pursuant to this section. When a *terminally ill* patient is in a  
39 health facility, as defined in Section 1250, the health care provider,  
40 or medical director *of the health facility, if the patient’s health*

1 *care provider is not available*, may refer the patient to a hospice  
2 provider or private or public agencies and community-based  
3 organizations that specialize in end-of-life care case management  
4 and consultation to receive information and counseling regarding  
5 legal end-of-life care options.

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

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

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

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

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

16 (5) The patient's right to comprehensive pain and symptom  
17 management at the end of life, including, but not limited to,  
18 adequate pain medication, treatment of nausea, palliative  
19 chemotherapy, relief of shortness of breath and fatigue, ~~VSED,~~  
20 ~~and palliative sedation~~ and other clinical treatments useful when  
21 a patient is actively dying.

22 (6) *The patient's right to give individual health care instruction*  
23 *pursuant to Section 4670 of the Probate Code, which provides the*  
24 *means by which a patient may provide written health care*  
25 *instruction, such as an advance health care directive, and the*  
26 *patient's right to appoint a legally recognized health care*  
27 *decisionmaker.*

28 (b) The information described in subdivision (a) may, but is not  
29 required to be, in writing. Health care providers may utilize  
30 information from organizations specializing in end-of-life care  
31 that provide information on factsheets and Internet Web sites to  
32 convey the information described in subdivision (a).

33 (c) Counseling may include, but not be limited to, discussions  
34 about the outcomes for the patient and his or her family, based on  
35 the interest of the patient. Information and counseling as described  
36 in subdivision (a) may occur over a series of meetings with the  
37 health care provider or others who may be providing the  
38 information and counseling based on the patient's needs. *The health*  
39 *care provider may encourage the patient to include his or her*  
40 *family in the counseling described in this subdivision.*



1     (d) *The information and counseling sessions may include a*  
2     *discussion of benefits and burdens of treatment options in a manner*  
3     *that the patient and his or her family can easily understand. If the*  
4     *patient requests information on the costs of treatment options, the*  
5     *patient shall be referred to the appropriate entity for that*  
6     *information.*

7     442.7. If a health care provider does not wish to comply with  
8     his or her patient's ~~choice of~~ *request for information on end-of-life*  
9     options, the health care provider shall do both of the following:

10    (a) Refer or transfer a patient to another health care provider.

11    (b) Provide the patient with information on procedures to  
12    transfer to another health care provider.

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** AB 2968  
**Author:** Carter  
**Bill Date:** June 30, 2008, amended  
**Subject:** Cosmetic Surgery  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently on the Assembly Floor for concurrence.

**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.

This bill was amended to allow nurse practitioners and physician assistants to perform the required physical examinations.

**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 specified 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 the standard of care, 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, they were amended in to be authorized to perform a physical examination.

This bill was amended in June to allow nurse practitioners and physician assistants to perform the required physical examinations.

**FISCAL:**               None

**POSITION:**           Support

July 15, 2008

AMENDED IN SENATE JUNE 30, 2008

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY MAY 5, 2008

AMENDED IN ASSEMBLY APRIL 22, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2968**

---

**Introduced by Assembly Member Carter**

February 22, 2008

---

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2968, as amended, Carter. Cosmetic surgery.

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

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

This bill would enact the Donda West Law, which would prohibit the performance of an elective cosmetic surgery procedure on a patient unless, prior to surgery, the patient has received a physical examination by, and has received written clearance for the procedure from, the licensed physician and surgeon or dentist performing the cosmetic surgery or another licensed physician and surgeon, or *a certified nurse practitioner or a licensed physician assistant* as ~~otherwise~~ specified. The bill would require the physical examination to include the taking of a complete medical history. The bill would also provide that a violation of these provisions would not constitute a crime.

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

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

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

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

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

12 (1) A licensed physician and surgeon.

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

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

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

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

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

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

3 (2) Another licensed physician and surgeon.

4 (3) A certified nurse practitioner, *in accordance with a certified*  
5 *nurse practitioner's scope of practice, unless stated otherwise in*  
6 *standardized procedures and protocols or a delegation agreement.*

7 (4) A licensed physician assistant, *in accordance with a licensed*  
8 *physician assistant's scope of practice, unless stated otherwise in*  
9 *standardized procedures or protocols or a delegation agreement.*

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

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

16 (d) 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 Senate 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 licensed 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 by requiring all physicians performing these reviews to be licensed in this state.

**FISCAL:** None

**POSITION:** Support

July 15, 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:*

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

3     4610. (a) For purposes of this section, “utilization review”  
4 means utilization review or utilization management functions that  
5 prospectively, retrospectively, or concurrently review and approve,  
6 modify, delay, or deny, based in whole or in part on medical  
7 necessity to cure and relieve, treatment recommendations by  
8 physicians, as defined in Section 3209.3, prior to, retrospectively,  
9 or concurrent with the provision of medical treatment services  
10 pursuant to Section 4600.

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

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

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

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

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

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

15 (1) Developed with involvement from actively practicing  
16 physicians.

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

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

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

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

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

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

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

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

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

1 care provided during a concurrent review shall be care that is  
2 medically necessary to cure and relieve, and an insurer or  
3 self-insured employer shall only be liable for those services  
4 determined medically necessary to cure and relieve. If the insurer  
5 or self-insured employer disputes whether or not one or more  
6 services offered concurrently with a utilization review were  
7 medically necessary to cure and relieve, the dispute shall be  
8 resolved pursuant to Section 4062, except in cases involving  
9 recommendations for the performance of spinal surgery, which  
10 shall be governed by the provisions of subdivision (b) of Section  
11 4062. Any compromise between the parties that an insurer or  
12 self-insured employer believes may result in payment for services  
13 that were not medically necessary to cure and relieve shall be  
14 reported by the insurer or the self-insured employer to the licensing  
15 board of the provider or providers who received the payments, in  
16 a manner set forth by the respective board and in such a way as to  
17 minimize reporting costs both to the board and to the insurer or  
18 self-insured employer, for evaluation as to possible violations of  
19 the statutes governing appropriate professional practices. No fees  
20 shall be levied upon insurers or self-insured employers making  
21 reports required by this section.

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

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

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

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

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

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 797 (Chapter #33)  
**Author:** Ridley-Thomas  
**Bill Date:** April 24, 2008, amended  
**Subject:** VE/P Extension  
**Sponsor:** Author  
**Board Position:** Support MBC Provisions

**DESCRIPTION OF LEGISLATION:**

This bill carries our extension 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 (Board) and various other boards.

This bill specifies that an investigator is not under the supervision of the deputy attorney general who is simultaneously assigned to a complaint. The bill requires the 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 Health Quality Enforcement Section in the same offices. The bill requires the 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.

**IMPLEMENTATION:**

- Notify stakeholders
- Continue moving forward with Board approved BCP's
- Continue collecting statistics for July 1, 2009 report.
- Evaluate office leases as they come up for renewal/expiration to determine co-location opportunities.

**FISCAL:** Within existing resources.

**POSITION:** Support MBC provisions.

July 17, 2008

**Senate Bill No. 797**

**CHAPTER 33**

An act to amend Sections 490, 1616.5, 2006, 2531.75, 2847, 3041.3, 4982, 4989.54, 4990.32, 4992.3, 5552.5, 7028, 7303, 8005, 22258, and 22259 of and to add and repeal Sections 101.2 and 7303.5 of, the Business and Professions Code, and to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 23, 2008. Filed with  
Secretary of State June 23, 2008.]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 797, Ridley-Thomas. Professions and vocations.

(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 establishes the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians, and the Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law authorizes the Dental Board of California and the Speech-Language Pathology and Audiology Board to appoint executive officers, requires the Board of Vocational Nursing and Psychiatric Technicians to select an executive officer, and requires the Board of Barbering and Cosmetology to appoint an executive officer, as specified. Under existing law, the provisions establishing these boards and their authority to appoint or select executive officers will become inoperative on July 1, 2008, and be repealed on January 1, 2009.

This bill would extend the inoperative and repeal dates for the provisions relating to the boards' appointment of executive officers to January 1, 2012. The bill would delete the requirement that the Board of Vocational Nursing and Psychiatric Technicians and the Board of Barbering and Cosmetology appoint or select executive officers, and would instead authorize those boards to do so. The bill, until January 1, 2009, would provide that, if any of these boards becomes inoperative or is repealed, the Governor shall succeed to the authority of that board to appoint an executive officer and the executive

officer of that board shall have the same administrative duties with regard to the bureau replacing the board as it had with regard to the board, and would authorize the Department of Consumer Affairs to create an advisory committee with specified members to advise and direct the executive officer.

(3) 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.

(4) 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 optometrist's education or training for certification, as specified.

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

(5) 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 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 apply specified penalty provisions to a person named on a revoked license and held responsible for the act or omission resulting in the revocation.

(6) 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. 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, and would apply this provision to acts that occurred prior to the effective date of the bill. 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.

(7) 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 for these provisions, making the provisions inoperative and repealing them on January 1, 2012. 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, and would extend the operation of existing crimes provisions, it would impose a state-mandated local program.

(8) 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 and repealing them on January 1, 2012.

(9) 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.

(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.

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

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

SECTION 1. Section 101.2 is added to the Business and Professions Code, to read:

101.2. (a) Notwithstanding paragraph (3) of subdivision (b) of Section 101.1, if the Dental Board of California, the Speech-Language Pathology and Audiology Board, the Board of Vocational Nursing and Psychiatric Technicians, or the Board of Barbering and Cosmetology becomes inoperative or is repealed, both of the following shall apply:

(1) The executive officer of the board shall have the same administrative duties with regard to any bureau replacing the board as he or she had with regard to the board, and shall operate under the direction of the Department of Consumer Affairs.

(2) The Governor shall succeed to the authority of the board to appoint an executive officer pursuant to Section 1616.5, 2531.75, 2847, or 7303.5, respectively.

(b) The Department of Consumer Affairs may create an advisory committee for each bureau described in subdivision (a) to advise and direct the bureau's executive officer. An advisory committee created under this subdivision shall consist of the prior members of the board, and the committee shall be subject to the per diem provisions related to the prior board and to all procedural requirements governing the actions of the prior board.

(c) An advisory committee created pursuant to subdivision (b) shall meet as often as is necessary, as determined by that committee.

(d) This section 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.

SEC. 2. Section 490 of the Business and Professions Code is amended to read:

490. (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.

(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 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. 3. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, 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 remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date..

SEC. 4. 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 directed by employees of the Department of Justice.

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

SEC. 5. 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 remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

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

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

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

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

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

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

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

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

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

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

(2) Completes a preceptorship of no less than 65 hours, during a period of not less than two months nor more than one year, in either an ophthalmologist's office or an optometric clinic. The training received during the preceptorship shall be on the diagnosis, treatment, and management of ocular, systemic disease. The preceptor shall certify completion of the preceptorship. Authorization for the ophthalmologist to serve as a preceptor shall be provided by an accredited school of optometry in California, or by a recognized residency review committee in ophthalmology, and the preceptor shall be licensed as an ophthalmologist in California, board-certified in ophthalmology, and in good standing with the Medical Board of California. The individual serving as the preceptor

shall schedule no more than three optometrist applicants for each of the required 65 hours of the preceptorship program. This paragraph shall not be construed to limit the total number of optometrist applicants for whom an individual may serve as a preceptor, and is intended only to ensure the quality of the preceptorship by requiring that the ophthalmologist preceptor schedule the training so that each applicant optometrist completes each of the 65 hours of the preceptorship while scheduled with no more than two other optometrist applicants.

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

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

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

(6) When any or all of the requirements contained in paragraph (1), (4), or (5) have been satisfied on or after July 1, 1992, and before January 1, 1996, an optometrist shall not be required to fulfill the satisfied requirements in order to obtain certification to use therapeutic pharmaceutical agents. In order for this paragraph to apply to the requirement contained in paragraph (5), the didactic examination that the applicant successfully completed shall meet equivalency standards, as determined by the board.

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

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

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

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

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

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

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

optometrist licensed in California to be certified to use therapeutic pharmaceutical agents.

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

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

(3) The State Board of Optometry shall decide all issues relating to the equivalency of an optometrist's education or training under this subdivision.

SEC. 8. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may deny a license or registration or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

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

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

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

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

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

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

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

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

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

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

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

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with

a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

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

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

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

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

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

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

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

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

(t) Permitting a trainee or registered intern under one's supervision or control to perform, or permitting the trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the trainee's or registered intern's level of education, training, or experience.

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

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

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

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



(y) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(z) Failure to comply with Section 2290.5.

(aa) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 9. Section 4989.54 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic

beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

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

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

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 10. Section 4990.32 of the Business and Professions Code is amended to read:

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

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

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

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

(e) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.

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

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

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

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

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

SEC. 11. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(w) Failure to comply with Section 2290.5.

(x) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

SEC. 12. Section 5552.5 of the Business and Professions Code is amended to read:

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

SEC. 13. Section 7028 of the Business and Professions Code is amended to read:

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

(b) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (c) are applicable, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$4,500), whichever is greater, and, unless the sentence prescribed in subdivision (c) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(c) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than four thousand five hundred dollars (\$4,500) nor more than the greater amount of either ten thousand dollars (\$10,000) or 20 percent of the contract price under which the unlicensed person performed contracting work or by imprisonment in a county jail for not more than one year or less than 90 days, or by both that

fine and imprisonment. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

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

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

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

SEC. 14. Section 7303 of the Business and Professions Code is amended to read:

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

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

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

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

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

SEC. 15. Section 7303.5 is added to the Business and Professions Code, to read:



7303.5. (a) The board may appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director.

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

(c) This section shall become operative on July 1, 2008.

(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 16. Section 8005 of the Business and Professions Code is amended to read:

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

This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 17. Section 22258 of the Business and Professions Code is amended to read:

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

(1) A person with a current and valid license issued by the California Board of Accountancy.

(2) A person who is an active member of the State Bar of California.

(3) Any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code.

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

(5) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations.

(6) Any employee of any person described in paragraph (1), (2), (3), (4), or (5), while functioning within the scope of that employment.

(7) Any employee of any corporation, partnership, association, or any entity described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 22251.

(b) (1) Except for employees of entities described in paragraph (3) or (4) of subdivision (a), paragraph (6) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by a person described in paragraph (1), (2), or (5) of subdivision (a).

(2) Paragraph (7) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by the person 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).

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

SEC. 18. 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 remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 19. Section 12529 of the Government Code, as amended by Section 90 of Chapter 588 of the Statutes of 2007, 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, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board.

(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, with the intent that the expenses be proportionally shared as to services rendered.

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

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

SEC. 20. Section 12529 of the Government Code, as amended by Section 91 of Chapter 588 of the Statutes of 2007, 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, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California or a division of the board, 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, with the intent that the expenses be proportionally shared as to services rendered.

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

SEC. 21. Section 12529.5 of the Government Code, as amended by Section 92 of Chapter 588 of the Statutes of 2007, 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 committees in designing and providing initial and in-service training programs for staff of the division, boards, or 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, boards, or committees as appropriate in consultation with the senior assistant.

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

SEC. 22. Section 12529.5 of the Government Code, as amended by Section 93 of Chapter 588 of the Statutes of 2007, 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 committees in designing and providing initial and in-service training programs for staff of the division, boards, or 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, boards, or committees as appropriate in consultation with the senior assistant.

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

SEC. 23. 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.

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

SEC. 24. Section 12529.7 of the Government Code is amended to read:

12529.7. By July 1, 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. 25. 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.

SEC. 26. 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:

To ensure that individuals engaging in certain professions and vocations are adequately regulated in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 963  
**Author:** Ridley-Thomas  
**Bill Date:** July 1, 2008, amended  
**Subject:** Regulatory Boards: operations  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill makes various changes to the process of Sunset Review and oversight for all boards under the Department of Consumer Affairs and imposes new requirements regarding report posting.

**ANALYSIS:**

This bill enacts several changes to the administrative and operations structure of the Department of Consumer Affairs (DCA). The changes affecting the Medical Board (Board) are as follows:

- Section 2 of the bill (page 4) requires the Board to annually post on the Internet Web site the number of reports received for criminal convictions; judgments, settlements, or arbitration awards; and claims paid by a professional liability insurer caused by the licensee's negligence, error, or omission. These totals can be easily posted by category and this will not affect the Board.
- Section 3 of the bill (page 4) authorizes the Board to adopt regulations that provide an incentive to licensees for providing services within the scope of his or her license on a pro bono basis. The Board already offers those physicians who choose to work as volunteers a waived renewal fee. Additionally, most physicians volunteer their services in some manner. It is a permissive provision thus the Board is not mandated to pursue this concept.
- Section 4 of the bill (page 5) allows the Board to adopt regulations that establish requirements for the number of staff required to adequately investigate and bring disciplinary actions against a licensee. These regulations must be adopted before

June 30, 2009. This provision is permissive and the Board is not mandated to pursue this concept.

- Section 5 of the bill (page 5) requires every member of the Board to disclose all ex parte communications at the Board's next public meeting and those ex parte communications must be recorded in the Board's minutes. The bill defines "Ex parte" communication as any oral or written communication concerning matters, other than purely procedural, under the board's jurisdiction that are subject to a vote by the Board, that occurred between the member and a person, other than another board member or an employee of the board or the department, who intends to influence the decision of the member. This would present a significant burden on the members whose colleagues at the hospital or society meetings wish to discuss a pending decision (such as the sunset of diversion). It would require members to keep thorough records of all conversations with colleagues and acquaintances that are of policy impact since every "person" must be recorded.
- Section 7 of the bill (page 6) states that, in the event the Board (members) sunsets, a successor board (members) will be appointed in its place. The successor board will have the same number of members and the same composition as the previous board. This replaces the previous process for the sunset of the Board, in which it would become a Bureau. This is a preferred alternative.
- Section 8 of the bill (page 7) requires all appointments of an executive officer by the Board to be subject to BOTH the approval of the director of DCA and confirmation by the Senate. This provision adds two layers of oversight to the Board's ability to appoint and hire an executive officer.
- Section 9 of the bill (page 8) states that DCA shall develop a common procedure for maintaining and publicly posting meeting minutes for all boards. Each board must use the method developed by DCA and must post the minutes of its meetings on its Internet Web site within 10 days of their approval (approval language to be amended into the bill). This is already the process for the Board. Issue that was raised at a meeting on the bill was the content/structure of the minutes. This continues to be an item for discussion.
- Section 10 of the bill (page 9) adds section 127.5 to the Business and Professions Code, requiring DCA to report to the Legislature and the Governor when a board has been unable to convene a meeting of the board due to a lack of a quorum caused by the absence of its members or by a vacancy in its membership. This is a good provision.
- Section 11 of the bill (page 10) does not apply to the Board.
- Section 12 of the bill (page 10) establishes a sunset date for the Board of January 1, 2011.



- Section 13 of the bill (page 12) specifies the requirement for a report to the Legislature to reconstitute the Board. This means that by March 1, 2009 a comprehensive report would need to be made to the Legislature as outlined. If this bill passes and is signed, the Board would have approximately six months to complete this report.
- Section 14 of the bill (page 12) sets the timing for the hearing on the Board's report, during the interim recess preceeding the date upon the Board's membership reconstitution. This is not enough time to have a bill to change the reconstitution date, thus the bill needs to clarify it is the interim recess at least twelve months prior to reconstitution.
- Sections 15 through 17 have to do with the review of the report, public hearings, and standing committees of the Legislature.

**FISCAL:**               None

**POSITION:**           Recommendation: Oppose unless amended.

July 17, 2008

AMENDED IN ASSEMBLY JULY 1, 2008  
AMENDED IN ASSEMBLY JUNE 25, 2007  
AMENDED IN SENATE APRIL 16, 2007

**SENATE BILL**

**No. 963**

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**Introduced by Senator Ridley-Thomas**

February 23, 2007

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~~An act to amend Sections 22, 102.3, 107, 108, 312, 313.1, 321, 1601.1, 1632.5, 1634.2, 1638.1, 1638.7, 1742, 1751, 2001, 2460, 2531, 2570.19, 2602, 2701, 2841, 2920, 3010.5, 3502.1, 3504, 3685, 3710, 4001, 4003, 4200.1, 4200.3, 4501, 4800, 4928, 4990, 5000, 5510, 5621, 5810, 5811, 6510, 6511, 6710, 7000.5, 7200, 7303, 7810, 8000, 8520, 8710, 9882, 18602, 18602.5, 18824, and 18882 of, to add Sections 27.5, 36, 37, 38, 101.5, 117, 117.5, 127.5, 156.7, and 450.1 to, to add Chapter 4.5 (commencing with Section 360) to Division 1 of, to add Division 1.3 (commencing with Section 474.20) to, to repeal Sections 2569, 4989, 4990.24, 7304, and 22259 of, to repeal Division 1.2 (commencing with Section 473) of, and to repeal and add Section 101.1 of, the Business and Professions Code, and to amend Sections 9148.8 and 9148.51 of, and to repeal Section 9148.52 of, the Government Code, relating to regulatory entities, and making an appropriation therefor. An act to amend Sections 22, 107, 108, 473.1, 473.2, 473.3, 473.4, and 473.5 of, to add Sections 27.5, 36, 37, 38, 127.5, 473.12, and 473.7 to, and to repeal and add Section 101.1 of, the Business and Professions Code, relating to regulatory boards.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 963, as amended, Ridley-Thomas. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs ~~and makes their funds separate accounts within the Professions and Vocations Fund. Under existing law, the revenue in certain of these accounts is continuously appropriated to the board, other than fine and penalty revenues, with board members serving specified terms of office. Existing law authorizes each board to appoint a person, exempt from Civil Service, who shall be designated as an executive officer.~~

Existing law generally makes the regulatory boards inoperative ~~and repealed on a specified date dates~~, unless ~~that date is~~ *those dates are* deleted or extended by subsequent legislation, and subjects these boards ~~that are scheduled to become inoperative and repealed~~ as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified.

~~This bill would delete those provisions making the boards inoperative on a specified date and subjecting boards to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make each of those boards subject to review by a standing policy committee of the Legislature upon request by a Member of the Legislature or the chief of the Office of the Consumer Advocate, which the bill would create in the Department of Consumer Affairs. The bill would, upon the committee's determination that a board is deficient, as specified, provide for the removal of all incumbent board members without a hearing and the appointment of a successor board, as specified. The bill would require the Office of the Consumer Advocate to serve as an independent monitor for a board that is found deficient. The bill would authorize the office to appear at meetings and to participate in disciplinary proceedings by a board within the department if required to promote or protect the interests of consumers, as defined, and would require the office to perform other specified duties. The bill would require the office to charge each board a fee to support the office's functions and would thereby make an appropriation by expanding the expenditure purposes of a continuously appropriated fund. The bill would create the Consumer Advocate Fund where these fees would be deposited and would be available to the office upon appropriation by the Legislature. The bill would require the director to~~

~~report annually to the Governor and the Legislature, as specified, on the office's operations.~~

~~The bill would require boards within the department to enter into an agreement with the department for the performance of administrative and ministerial functions and would require the Director of Consumer Affairs, prior to January 1, 2010, to replace the existing technology system serving the department and its component boards and to charge each board its pro rata share of the cost to replace the system.~~

*This bill would, notwithstanding any other provision of law, terminate the term of office of each board member of certain boards within the department on specified and unspecified dates. The bill would subject boards that are scheduled to have their board membership so reconstituted to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would also require the appropriate standing policy committee of the Legislature to investigate board deficiencies and to hold specified public hearings.*

~~The bill would also require each board within the department to adopt performance measures, as specified, and report quarterly to the director and the chief of the Office of Consumer Advocate relating to those measures. The bill would also require boards to post the information on their Internet Web site and to report the information to the Legislative Analyst's Office, the Legislature, and the Department of Finance. The bill would require the Office of the Consumer Advocate to report to the Legislature if a board failed to meet its performance measures. The bill would also require those boards to post annually on their *its* Internet Web-sites *Site* the number of reports in specified categories that it received that year for its licensees.~~

~~The bill would allow a person to serve as the public member of more than one of these boards and would require all members of these boards, as well as bureau chiefs, to report annually to their appointing authority on their goals and objectives and success in achieving them, which would be posted on the board's Internet Web-site *executive officer or registrar of more than one board and would make all appointments of an executive officer or registrar subject to approval by the Director of Consumer Affairs and confirmation by the Senate.* The bill would require the department to report to the Legislature and Governor if a board was unable to meet because of a lack of a quorum or vacancy. The bill would require members of these boards and other state boards to report ex parte communications, as defined, in the board's minutes *and would require the department to develop a common method of making boards'*~~

*minutes available to the public.* The bill would ~~require~~ *authorize* boards within the department, the State Bar, the Office of Real Estate Appraisers, and other state boards that license professions or businesses to adopt regulations to provide incentives to licensees to provide services on a pro bono basis and to adopt regulations prior to June 30, 2009, establishing regulatory board staffing requirements.

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

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

1 SECTION 1. Section 22 of the Business and Professions Code  
2 is amended to read:

3 22. "Board," as used in any provision of this code, refers to  
4 the board in which the administration of the provision is vested,  
5 and unless otherwise expressly provided, shall include "bureau,"  
6 "commission," "committee," "department," "division," "examining  
7 committee," "program," and "agency."

8 SEC. 2. Section 27.5 is added to the Business and Professions  
9 Code, to read:

10 27.5. A board within the department shall annually post on its  
11 Internet Web site the number of reports it received that year for  
12 its licensees in each of the following categories:

- 13 (a) Criminal convictions.
- 14 (b) Judgments, settlements, or arbitration awards.
- 15 (c) Claims paid by a professional liability insurer caused by the  
16 licensee's negligence, error, or omission.

17 SEC. 3. Section 36 is added to the Business and Professions  
18 Code, to read:

19 36. A board within the department, the State Bar, the Office  
20 of Real Estate Appraisers, and any other state board that issues a  
21 license, certificate, or registration authorizing a person to engage  
22 in a business or profession may adopt regulations that provide an  
23 incentive to the holder to provide services within the scope of his  
24 or her license, certificate, or registration on a pro bono basis. The  
25 regulations may reduce the amount of the renewal fee for a  
26 licensee, certificate holder, or registrant who demonstrates  
27 compliance with the pro bono requirements set forth in the  
28 regulations.

1 SEC. 4. Section 37 is added to the Business and Professions  
2 Code, to read:

3 37. A board within the department and any other state board  
4 that issues a license, certificate, or registration authorizing a person  
5 to engage in a business or profession ~~shall~~ *may* adopt regulations  
6 prior to June 30, 2009, that establish requirements for the number  
7 of staff required to adequately investigate and, if appropriate, bring  
8 a disciplinary action against a licensee, certificate holder, or  
9 registrant regulated by the board. The staff level requirements  
10 shall, at a minimum, be the number of staff required per 1,000  
11 persons regulated by the board and include the appropriate number  
12 of staff to complete all investigatory and disciplinary functions.

13 SEC. 5. Section 38 is added to the Business and Professions  
14 Code, to read:

15 38. A member of a board within the department and a member  
16 of a state board, as defined in Section 9148.2 of the Government  
17 Code, shall disclose all of his or her ex parte communications at  
18 the board's next public meeting, and the ex parte communications  
19 shall be recorded in the board's minutes. "Ex parte communication"  
20 means any oral or written communication concerning matters,  
21 other than purely procedural matters, under the board's jurisdiction  
22 that are subject to a vote by the board that occurred between the  
23 member and a person, other than another board member or an  
24 employee of the board or the department of which the board is a  
25 part, who intends to influence the decision of the member.

26 SEC. 6. Section 101.1 of the Business and Professions Code  
27 is repealed.

28 SEC. 7. Section 101.1 is added to the Business and Professions  
29 Code, to read:

30 ~~101.1. (a) It is the intent of the Legislature that all existing~~  
31 ~~and proposed consumer-related boards or categories of licensed~~  
32 ~~professionals be subject to ongoing and continuous review as well~~  
33 ~~as a periodic thorough review when issues arise requiring that level~~  
34 ~~of review and such a review is requested by a Member of the~~  
35 ~~Legislature or the chief of the Office of the Consumer Advocate~~  
36 ~~as provided in Division 1.3 (commencing with Section 474.20).~~  
37 ~~The review of a board shall evaluate and determine whether its~~  
38 ~~operations are effectively protecting the public and that protection~~  
39 ~~of the public is the highest priority of the board.~~

1 ~~(b) Notwithstanding any other provision of law, if a board is~~  
2 ~~deemed deficient and its members removed, as described in Section~~  
3 ~~474.21~~

4 *101.1. Notwithstanding any other provision of law, if the terms*  
5 *of office of the members of a board are terminated in accordance*  
6 *with the act that added this section or by subsequent acts, a*  
7 *successor board shall be appointed that shall succeed to, and be*  
8 *vested with, all the duties, powers, purposes, responsibilities, and*  
9 *jurisdiction not otherwise repealed or made inoperative of the*  
10 *board that it is succeeding. The successor board shall have the*  
11 *same number of members and composition as the board that it is*  
12 *succeeding, and those members shall be appointed by the same*  
13 *appointing authorities, for the same term, and with the same*  
14 *membership requirements as the members of the board it is*  
15 *succeeding. The successor board shall have the same authority to*  
16 *appoint an executive officer as the board that it is succeeding as*  
17 *of the date that board was found deficient. The successor board*  
18 *members shall be appointed within 10 business days of receipt by*  
19 *the Joint Committee on Rules of the deficiency report, as described*  
20 *in Section 474.21.*

21 SEC. 8. Section 101.5 is added to the Business and Professions  
22 Code, to read:

23 101.5. (a) Each board within the department shall enter into  
24 an agreement with the department for the department to provide  
25 administrative and ministerial functions and services, including,  
26 but not limited to, personnel services, information technology, the  
27 administration of call centers, and the administration of  
28 examinations. The Legislature intends that these agreements shall  
29 achieve cost savings resulting from economies of scale and a more  
30 consistent delivery of services to California consumers and  
31 licensees.

32 (b) A board shall not enter into an agreement described in  
33 subdivision (a) if it would reduce the board's ability to comply  
34 with its duties prescribed by law.

35 SEC. 9. Section 102.3 of the Business and Professions Code  
36 is amended to read:

37 102.3. (a) The director may enter into an interagency  
38 agreement with an appropriate entity within the Department of  
39 Consumer Affairs as provided for in Section 101 to delegate the  
40 duties, powers, purposes, responsibilities, and jurisdiction that

1 have been succeeded and vested with the department, of a board  
2 that became inoperative and was repealed in accordance with  
3 Chapter 908 of the Statutes of 1994.

4 (b) (1) If, pursuant to subdivision (a), an interagency agreement  
5 is entered into between the director and that entity, the entity  
6 receiving the delegation of authority may establish a technical  
7 committee to regulate, as directed by the entity, the profession  
8 subject to the authority that has been delegated. The entity may  
9 delegate to the technical committee only those powers that it  
10 received pursuant to the interagency agreement with the director.  
11 The technical committee shall have only those powers that have  
12 been delegated to it by the entity.

13 (2) If the entity delegates its authority to adopt, amend, or repeal  
14 regulations to the technical committee, all regulations adopted,  
15 amended, or repealed by the technical committee shall be subject  
16 to the review and approval of the entity.

17 (3) The entity shall not delegate to a technical committee its  
18 authority to discipline a licensee who has violated the provisions  
19 of the applicable chapter of the Business and Professions Code  
20 that is subject to the director's delegation of authority to the entity.

21 (c) An interagency agreement entered into, pursuant to  
22 subdivision (a), shall continue until the licensing program  
23 administered by the technical committee has undergone a review  
24 by the Office of the Consumer Advocate to evaluate and determine  
25 whether the highest priority of the licensing program is the  
26 protection of the public. Thereafter, at the discretion of the chief  
27 of that office, the interagency agreement may be renewed.

28 ~~SEC. 10.~~

29 SEC. 8. Section 107 of the Business and Professions Code is  
30 amended to read:

31 107. (a) Pursuant to subdivision (e) of Section 4 of Article VII  
32 of the California Constitution, each board may appoint a person  
33 exempt from civil service and may fix his or her salary, with the  
34 approval of the Department of Personnel Administration pursuant  
35 to Section 19825 of the Government Code, who shall be designated  
36 as an executive officer unless the licensing act of the particular  
37 board designates the person as a registrar. A person may be  
38 appointed as an executive officer or registrar for more than one  
39 board if approved by each of those boards and may serve in those



1 capacities at the same time if practical and consistent with law and  
2 the respective board functions and duties.

3 (b) Notwithstanding any other provision of law, all appointments  
4 of an executive officer or registrar shall be subject to the approval  
5 of the director and confirmation by the Senate.

6 ~~SEC. 11.~~

7 *SEC. 9.* Section 108 of the Business and Professions Code is  
8 amended to read:

9 108. (a) Each of the boards comprising the department exists  
10 as a separate unit, and has the functions of setting standards,  
11 holding meetings, and setting dates thereof, preparing and  
12 conducting examinations, passing upon applicants, conducting  
13 investigations of violations of laws under its jurisdiction, issuing  
14 citations and holding hearings for the revocation of licenses, and  
15 the imposing of penalties following those hearings, insofar as these  
16 powers are given by statute to each respective board.

17 (b) The department shall develop a common method of  
18 maintaining, posting, and making available to the public minutes  
19 of the meetings of the boards comprising the department. Each of  
20 those boards shall use that method and shall post the minutes of  
21 its meetings on its Internet Web site within 10 days of the date of  
22 the meeting.

23 ~~SEC. 12.~~ Section 117 is added to the Business and Professions  
24 Code, to read:

25 ~~117. (a) Each board within the department shall adopt~~  
26 ~~meaningful, measurable, and manageable performance measures.~~  
27 ~~Performance measures include, but are not limited to, the following~~  
28 ~~information:~~

29 ~~(1) A comprehensive statement of the board's mission, goals,~~  
30 ~~objectives, and legal jurisdiction in protecting the health, safety,~~  
31 ~~and welfare of the public.~~

32 ~~(2) The board's enforcement priorities, complaint and~~  
33 ~~enforcement data, budget expenditures with average and median~~  
34 ~~costs per case, and case aging data specific to post and~~  
35 ~~preaccusation cases at the Attorney General's office.~~

36 ~~(3) The board's fund conditions, sources of revenues, and~~  
37 ~~expenditure categories for the last four fiscal years by program~~  
38 ~~component.~~

39 ~~(4) The board's description of its licensing process including~~  
40 ~~the time and costs required to implement and administer its~~

1 ~~licensing examination, ownership of the license examination,~~  
2 ~~relevancy and validity of the licensing examination, and passage~~  
3 ~~rate and areas of examination.~~

4 ~~(5) The board's initiation of legislative efforts, budget change~~  
5 ~~proposals, and other initiatives it has taken to improve its legislative~~  
6 ~~mandate.~~

7 ~~(b) Each board within the department shall report to the director~~  
8 ~~and the chief of the Office of the Consumer Advocate its~~  
9 ~~performance measures and data relating to those measures on a~~  
10 ~~quarterly basis. Each board shall post quarterly on its Internet Web~~  
11 ~~site the information it reported pursuant to this subdivision and~~  
12 ~~provide the information annually to the Department of Finance,~~  
13 ~~the Legislative Analyst's Office, and the Legislature.~~

14 ~~(e) The chief of the Office of the Consumer Advocate, in~~  
15 ~~consultation with the Legislative Analyst's Office, shall annually~~  
16 ~~review the information reported by boards pursuant to subdivision~~  
17 ~~(b) and report to the Legislature if it determines that a board has~~  
18 ~~failed to meet its performance measures.~~

19 ~~(d) The department may adopt regulations pertaining to the~~  
20 ~~requirements described in subdivision (a).~~

21 ~~SEC. 13. Section 117.5 is added to the Business and Professions~~  
22 ~~Code, to read:~~

23 ~~117.5. (a) Each member of a board within the department and~~  
24 ~~the chief of any bureau within the board shall annually report, on~~  
25 ~~or before December 31 of each year, to the authority that appointed~~  
26 ~~him or her the extent to which the member or chief achieved his~~  
27 ~~or her goals and objectives that year and shall also report the goals~~  
28 ~~and objectives he or she expects to achieve during the following~~  
29 ~~calendar year.~~

30 ~~(b) The board or bureau shall post the reports described in~~  
31 ~~subdivision (a) submitted by its members chief on its Internet Web~~  
32 ~~site within 30 days of their submission date.~~

33 ~~SEC. 14.~~

34 ~~SEC. 10. Section 127.5 is added to the Business and Professions~~  
35 ~~Code, to read:~~

36 ~~127.5. The department shall report to the Legislature and the~~  
37 ~~Governor when a board within the department has been unable to~~  
38 ~~schedule or convene a meeting of the board because of a lack of~~  
39 ~~a quorum caused by the absence of its members or by a vacancy~~  
40 ~~in its membership.~~

1     ~~SEC. 15. Section 156.7 is added to the Business and Professions~~  
2     ~~Code, to read:~~

3     ~~156.7. (a) Prior to January 1, 2010, the director, in consultation~~  
4     ~~with the State Chief Information Officer, shall replace the~~  
5     ~~department's existing information technology system with a system~~  
6     ~~that meets the requirements of the department and of the boards~~  
7     ~~within the department.~~

8     ~~(b) The director shall charge each of the boards on a pro rata~~  
9     ~~share basis for the costs of replacing the information technology~~  
10    ~~system. The charge shall be an administrative expense that may~~  
11    ~~be levied in advance against the funds of any of the boards pursuant~~  
12    ~~to Section 201.~~

13    ~~(c) Notwithstanding any other provision of this section, the~~  
14    ~~procurement of the information technology system shall be made~~  
15    ~~in accordance with Chapter 3 (commencing with Section 12100)~~  
16    ~~of Part 2 of Division 2 of the Public Contract Code.~~

17    ~~SEC. 11. Section 473.1 of the Business and Professions Code~~  
18    ~~is amended to read:~~

19    ~~473.1. This chapter shall apply to all of the following:~~

20    ~~(a) Every board, as defined in Section 22, that is scheduled to~~  
21    ~~become inoperative and to be repealed have its membership~~  
22    ~~reconstituted on a specified date as provided by the specific act~~  
23    ~~relating to the board Section 473.12.~~

24    ~~(b) The Bureau for Postsecondary and Vocational Education.~~  
25    ~~For purposes of this chapter, "board" includes the bureau.~~

26    ~~(c) The Cemetery and Funeral Bureau.~~

27    ~~SEC. 12. Section 473.12 is added to the Business and~~  
28    ~~Professions Code, to read:~~

29    ~~473.12. Notwithstanding any other provision of law, the term~~  
30    ~~of office of each member of the following boards in the department~~  
31    ~~shall terminate on the date listed:~~

32    ~~(a) The Dental Board of California: January 1, 2012.~~

33    ~~(b) The Medical Board of California: January 1, 2011.~~

34    ~~(c) The State Board of Optometry: January 1, 2011.~~

35    ~~(d) The California State Board of Pharmacy: January 1, 2011.~~

36    ~~(e) The Veterinary Medical Board: January 1, 2012.~~

37    ~~(f) The California Board of Accountancy: January 1, 2012.~~

38    ~~(g) The California Architects Board: January 1, 2012.~~

39    ~~(h) The State Board of Barbering and Cosmetology: January~~  
40    ~~1, 2012.~~

- 1     (i) *The Board for Professional Engineers and Land Surveyors:*  
2     *January 1, 2012.*  
3     (j) *The Contractors' State License Board: January 1, 2010.*  
4     (k) *The Bureau for Private Postsecondary Education: \_\_\_\_.*  
5     (l) *The Structural Pest Control Board: January 1, 2012.*  
6     (m) *The Bureau of Home Furnishings and Thermal Insulation:*  
7     \_\_\_\_.  
8     (n) *The Board of Registered Nursing: January 1, 2011.*  
9     (o) *The Board of Behavioral Sciences: January 1, 2010.*  
10    (p) *The State Athletic Commission: January 1, 2010.*  
11    (q) *The Cemetery and Funeral Bureau: \_\_\_\_.*  
12    (r) *The State Board of Guide Dogs for the Blind: January 1,*  
13    *2012.*  
14    (s) *The Bureau of Security and Investigative Services: \_\_\_\_.*  
15    (t) *The Court Reporters Board of California: January 1, 2010.*  
16    (u) *The Board of Vocational Nursing and Psychiatric*  
17    *Technicians: January 1, 2012.*  
18    (v) *The Landscape Architects Technical Committee: January*  
19    *1, 2012.*  
20    (w) *The Bureau of Electronic and Appliance Repair: \_\_\_\_.*  
21    (x) *The Division of Investigation, Department of Consumer*  
22    *Affairs: \_\_\_\_.*  
23    (y) *The Bureau of Automotive Repair: \_\_\_\_.*  
24    (z) *The Board for Geologists and Geophysicists: January 1,*  
25    *2010.*  
26    (aa) *The Respiratory Care Board of California: January 1,*  
27    *2011.*  
28    (ab) *The Acupuncture Board: January 1, 2010.*  
29    (ac) *The Board of Psychology: January 1, 2010.*  
30    (ad) *The California Board of Podiatric Medicine: January 1,*  
31    *2011.*  
32    (ae) *The Physical Therapy Board of California: January 1,*  
33    *2014.*  
34    (af) *The Arbitration Review Program: \_\_\_\_.*  
35    (ag) *The Dental Hygiene Committee of California: \_\_\_\_.*  
36    (ah) *The Hearing Aid Dispensers Bureau: \_\_\_\_.*  
37    (ai) *The Physician Assistant Committee, Medical Board of*  
38    *California: January 1, 2012.*  
39    (aj) *The Speech-Language Pathology and Audiology Board:*  
40    *January 1, 2012.*

1 (ak) *The California Board of Occupational Therapy: January*  
2 *1, 2014.*

3 (al) *The Osteopathic Medical Board of California: \_\_\_\_.*

4 (am) *The Bureau of Naturopathic Medicine: \_\_\_\_.*

5 SEC. 13. *Section 473.2 of the Business and Professions Code*  
6 *is amended to read:*

7 473.2. All boards to which this chapter applies shall, with the  
8 assistance of the Department of Consumer Affairs, prepare an  
9 analysis and submit a report to the Joint Committee on Boards,  
10 Commissions, and Consumer Protection no later than 22 months  
11 before that ~~board shall become inoperative~~ *board's membership*  
12 *shall be reconstituted pursuant to Section 473.12.* The analysis  
13 and report shall include, at a minimum, all of the following:

14 (a) A comprehensive statement of the board's mission, goals,  
15 objectives and legal jurisdiction in protecting the health, safety,  
16 and welfare of the public.

17 (b) The board's enforcement priorities, complaint and  
18 enforcement data, budget expenditures with average- and  
19 median-costs per case, and case aging data specific to post and  
20 preaccusation cases at the Attorney General's office.

21 (c) The board's fund conditions, sources of revenues, and  
22 expenditure categories for the last four fiscal years by program  
23 component.

24 (d) The board's description of its licensing process including  
25 the time and costs required to implement and administer its  
26 licensing examination, ownership of the license examination,  
27 relevancy and validity of the licensing examination, and passage  
28 rate and areas of examination.

29 (e) The board's initiation of legislative efforts, budget change  
30 proposals, and other initiatives it has taken to improve its legislative  
31 mandate.

32 SEC. 14. *Section 473.3 of the Business and Professions Code*  
33 *is amended to read:*

34 473.3. (a) Prior to the ~~termination, continuation, or~~  
35 ~~reestablishment of any board or any of the board's functions~~  
36 *reconstitution of the membership of any board described in Section*  
37 *473.12,* the Joint Committee on Boards, Commissions, and  
38 Consumer Protection shall, during the interim recess preceding  
39 the date upon which a ~~board becomes inoperative~~ *board's*  
40 *membership is to be reconstituted,* hold public hearings to receive

1 testimony from the Director of Consumer Affairs, the board  
2 involved, and the public and regulated industry. In that hearing,  
3 each board shall have the burden of demonstrating a compelling  
4 public need for the continued existence of the ~~board~~ or regulatory  
5 program, and that its licensing function is the least restrictive  
6 regulation consistent with the public health, safety, and welfare.

7 (b) In addition to subdivision (a), in 2002 and every four years  
8 thereafter, the committee, in cooperation with the California  
9 Postsecondary Education Commission, shall hold a public hearing  
10 to receive testimony from the Director of Consumer Affairs, the  
11 Bureau for Private Postsecondary and Vocational Education,  
12 private postsecondary educational institutions regulated by the  
13 bureau, and students of those institutions. In those hearings, the  
14 bureau shall have the burden of demonstrating a compelling public  
15 need for the continued existence of the bureau and its regulatory  
16 program, and that its function is the least restrictive regulation  
17 consistent with the public health, safety, and welfare.

18 (c) The committee, in cooperation with the California  
19 Postsecondary Education Commission, shall evaluate and review  
20 the effectiveness and efficiency of the Bureau for Private  
21 Postsecondary and Vocational Education, based on factors and  
22 minimum standards of performance that are specified in Section  
23 473.4. The committee shall report its findings and  
24 recommendations as specified in Section 473.5. The bureau shall  
25 prepare an analysis and submit a report to the committee as  
26 specified in Section 473.2.

27 (d) In addition to subdivision (a), in 2003 and every four years  
28 thereafter, the committee shall hold a public hearing to receive  
29 testimony from the Director of Consumer Affairs and the Bureau  
30 of Automotive Repair. In those hearings, the bureau shall have the  
31 burden of demonstrating a compelling public need for the continued  
32 existence of the bureau and its regulatory program, and that its  
33 function is the least restrictive regulation consistent with the public  
34 health, safety, and welfare.

35 (e) The committee shall evaluate and review the effectiveness  
36 and efficiency of the Bureau of Automotive Repair based on factors  
37 and minimum standards of performance that are specified in  
38 Section 473.4. The committee shall report its findings and  
39 recommendations as specified in Section 473.5. The bureau shall

1 prepare an analysis and submit a report to the committee as  
2 specified in Section 473.2.

3 *SEC. 15. Section 473.4 of the Business and Professions Code*  
4 *is amended to read:*

5 473.4. (a) The Joint Committee on Boards, Commissions, and  
6 Consumer Protection shall evaluate and determine whether a board  
7 or regulatory program has demonstrated a public need for the  
8 continued existence of the ~~board~~ or regulatory program and for  
9 the degree of regulation the board or regulatory program  
10 implements based on the following factors and minimum standards  
11 of performance:

12 (1) Whether regulation by the board is necessary to protect the  
13 public health, safety, and welfare.

14 (2) Whether the basis or facts that necessitated the initial  
15 licensing or regulation of a practice or profession have changed.

16 (3) Whether other conditions have arisen that would warrant  
17 increased, decreased, or the same degree of regulation.

18 (4) If regulation of the profession or practice is necessary,  
19 whether existing statutes and regulations establish the least  
20 restrictive form of regulation consistent with the public interest,  
21 considering other available regulatory mechanisms, and whether  
22 the board rules enhance the public interest and are within the scope  
23 of legislative intent.

24 (5) Whether the board operates and enforces its regulatory  
25 responsibilities in the public interest and whether its regulatory  
26 mission is impeded or enhanced by existing statutes, regulations,  
27 policies, practices, or any other circumstances, including budgetary,  
28 resource, and personnel matters.

29 (6) Whether an analysis of board operations indicates that the  
30 board performs its statutory duties efficiently and effectively.

31 (7) Whether the composition of the board adequately represents  
32 the public interest and whether the board encourages public  
33 participation in its decisions rather than participation only by the  
34 industry and individuals it regulates.

35 (8) Whether the board and its laws or regulations stimulate or  
36 restrict competition, and the extent of the economic impact the  
37 board's regulatory practices have on the state's business and  
38 technological growth.

39 (9) Whether complaint, investigation, powers to intervene, and  
40 disciplinary procedures adequately protect the public and whether

1 final dispositions of complaints, investigations, restraining orders,  
2 and disciplinary actions are in the public interest; or if it is, instead,  
3 self-serving to the profession, industry or individuals being  
4 regulated by the board.

5 (10) Whether the scope of practice of the regulated profession  
6 or occupation contributes to the highest utilization of personnel  
7 and whether entry requirements encourage affirmative action.

8 (11) Whether administrative and statutory changes are necessary  
9 to improve board operations to enhance the public interest.

10 (b) The Joint Committee on Boards, Commissions, and  
11 Consumer Protection shall consider alternatives to placing  
12 responsibilities and jurisdiction of the board under the Department  
13 of Consumer Affairs.

14 (c) Nothing in this section precludes any board from submitting  
15 other appropriate information to the Joint Committee on Boards,  
16 Commissions, and Consumer Protection.

17 *SEC. 16. Section 473.5 of the Business and Professions Code*  
18 *is amended to read:*

19 473.5. The Joint Committee on Boards, Commissions, and  
20 Consumer Protection shall report its findings and preliminary  
21 recommendations to the department for its review, and, within 90  
22 days of receiving the report, the department shall report its findings  
23 and recommendations to the Joint Committee on Boards,  
24 Commissions, and Consumer Protection during the next year of  
25 the regular session that follows the hearings described in Section  
26 473.3. The committee shall then meet to vote on final  
27 recommendations. A final report shall be completed by the  
28 committee and made available to the public and the Legislature.  
29 The report shall include final recommendations of the department  
30 and the committee and whether each board or function scheduled  
31 ~~for repeal shall be terminated, continued, or reestablished, the~~  
32 *board's membership should be reconstituted* and whether its  
33 functions should be revised. If the committee or the department  
34 deems it advisable, the report may include proposed bills to carry  
35 out its recommendations.

36 *SEC. 17. Section 473.7 is added to the Business and Professions*  
37 *Code, to read:*

38 473.7. *The appropriate standing policy committee of the*  
39 *Legislature shall, through its oversight function, investigate the*  
40 *perceived deficiencies in the operation of a board to which this*



1 *chapter applies and hold public hearings on any matter subject to*  
2 *public hearing under Section 473.3.*

3 SEC. 16. ~~Section 312 of the Business and Professions Code is~~  
4 ~~amended to read:~~

5 ~~312. (a) The director shall submit to the Governor and the~~  
6 ~~Legislature on or before January 1, 2003, and annually thereafter,~~  
7 ~~a report of programmatic and statistical information regarding the~~  
8 ~~activities of the department and its constituent entities. The report~~  
9 ~~shall include information concerning the director's activities~~  
10 ~~pursuant to Section 326, including the number and general patterns~~  
11 ~~of consumer complaints and the action taken on those complaints.~~

12 ~~(b) On or before January 1 of each year, beginning in 2009, the~~  
13 ~~director shall submit to the chairperson of the fiscal committee of~~  
14 ~~each house of the Legislature and to the Joint Legislative Budget~~  
15 ~~Committee all of the following information:~~

16 ~~(1) The number of personnel years assigned to the Office of the~~  
17 ~~Consumer Advocate.~~

18 ~~(2) The total dollars expended by the Office of the Consumer~~  
19 ~~Advocate in the prior year, the estimated total dollars expended~~  
20 ~~in the current year, and the total dollars proposed for appropriation~~  
21 ~~in the following budget year.~~

22 ~~(3) Workload standards and measures for the Office of the~~  
23 ~~Consumer Advocate.~~

24 SEC. 17. ~~Section 313.1 of the Business and Professions Code~~  
25 ~~is amended to read:~~

26 ~~313.1. (a) Notwithstanding any other provision of law to the~~  
27 ~~contrary, no rule or regulation, except those relating to~~  
28 ~~examinations and qualifications for licensure, and no fee change~~  
29 ~~proposed or promulgated by any of the boards, commissions, or~~  
30 ~~committees within the department, shall take effect pending~~  
31 ~~compliance with this section.~~

32 ~~(b) The director and the chief of the Office of the Consumer~~  
33 ~~Advocate shall be formally notified of and shall be provided a full~~  
34 ~~opportunity to review, in accordance with the requirements of~~  
35 ~~Article 5 (commencing with Section 11346) of Chapter 3.5 of Part~~  
36 ~~1 of Division 3 of Title 2 of the Government Code, and this section,~~  
37 ~~all of the following:~~

38 ~~(1) All notices of proposed action, any modifications and~~  
39 ~~supplements thereto, and the text of proposed regulations.~~

1 ~~(2) Any notices of sufficiently related changes to regulations~~  
2 ~~previously noticed to the public, and the text of proposed~~  
3 ~~regulations showing modifications to the text.~~

4 ~~(3) Final rulemaking records.~~

5 ~~(e) The submission of all notices and final rulemaking records~~  
6 ~~to the director and the chief of the Office of the Consumer~~  
7 ~~Advocate and the completion of their review, as authorized by this~~  
8 ~~section, shall be a precondition to the filing of any rule or~~  
9 ~~regulation with the Office of Administrative Law. The Office of~~  
10 ~~Administrative Law shall have no jurisdiction to review a rule or~~  
11 ~~regulation subject to this section until after the completion of the~~  
12 ~~director's review and only then if the director and the chief of the~~  
13 ~~Office of the Consumer Advocate have not disapproved it. The~~  
14 ~~filing of any document with the Office of Administrative Law shall~~  
15 ~~be accompanied by a certification that the board, commission, or~~  
16 ~~committee has complied with the requirements of this section.~~

17 ~~(d) Following the receipt of any final rulemaking record subject~~  
18 ~~to subdivision (a), the director and the chief of the Consumer~~  
19 ~~Advocate shall have the authority for a period of 30 days to~~  
20 ~~disapprove a proposed rule or regulation on the ground that it is~~  
21 ~~injurious to the public health, safety, or welfare.~~

22 ~~(e) Final rulemaking records shall be filed with the director and~~  
23 ~~the chief of the Office of the Consumer Advocate within the~~  
24 ~~one-year notice period specified in Section 11346.4 of the~~  
25 ~~Government Code. If necessary for compliance with this section,~~  
26 ~~the one-year notice period may be extended, as specified by this~~  
27 ~~subdivision.~~

28 ~~(1) If the one-year notice period lapses during the 30-day review~~  
29 ~~period, or within 60 days following the notice of disapproval, it~~  
30 ~~may be extended for a maximum of 90 days.~~

31 ~~(2) If the director and the chief approve the final rulemaking~~  
32 ~~record or declines to take action on it within 30 days, the board,~~  
33 ~~commission, or committee shall have five days from the receipt~~  
34 ~~of the record from the director and the chief within which to file~~  
35 ~~it with the Office of Administrative Law.~~

36 ~~(3) If the director or the chief disapproves a rule or regulation,~~  
37 ~~it shall have no force or effect unless, within 60 days of the notice~~  
38 ~~of disapproval, (A) the disapproval is overridden by a unanimous~~  
39 ~~vote of the members of the board, commission, or committee, and~~  
40 ~~(B) the board, commission, or committee files the final rulemaking~~

1 record with the Office of Administrative Law in compliance with  
2 this section and the procedures required by Chapter 3.5  
3 (commencing with Section 11340) of Part 1 of Division 3 of Title  
4 2 of the Government Code.

5 (f) Nothing in this section shall be construed to prohibit the  
6 director or the chief of the Office of the Consumer Advocate from  
7 affirmatively approving a proposed rule, regulation, or fee change  
8 at any time within the 30-day period after it has been submitted to  
9 him or her, in which event it shall become effective upon  
10 compliance with this section and the procedures required by  
11 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
12 3 of Title 2 of the Government Code.

13 SEC. 18. Section 321 of the Business and Professions Code is  
14 amended to read:

15 321. Whenever it appears to the director or the chief of the  
16 Office of Consumer Advocate that the interests of the consumers  
17 of this state are being damaged, or may be damaged, by any person  
18 who engaged in, or intends to engage in, any acts or practices in  
19 violation of any law of this state, or any federal law, the director  
20 or any officer or employee designated by the director, or the  
21 Attorney General, may commence legal proceedings in the  
22 appropriate forum to enjoin those acts or practices and may seek  
23 other appropriate relief on behalf of those consumers.

24 SEC. 19. Chapter 4.5 (commencing with Section 360) is added  
25 to Division 1 of the Business and Professions Code, to read:

26  
27 CHAPTER 4.5. OFFICE OF THE CONSUMER ADVOCATE

28  
29 Article 1. General Provisions

30  
31 360. This chapter shall be known and may be cited as the Office  
32 of the Consumer Advocate Act.

33 361. It is the intent of the Legislature and the purpose of this  
34 chapter to promote the efficiency of each of the boards that  
35 comprise the department by ensuring that each board properly  
36 discharges its regulatory and disciplinary functions to protect the  
37 interests of consumers.

38 362. The following definitions apply for purposes of this  
39 chapter:

40 (a) "Board" means any entity listed in Section 101.

1     ~~(b) “Chief” means the chief of the Office of the Consumer~~  
2     ~~Advocate.~~

3     ~~(c) “Interests of consumers” means the protection of the health,~~  
4     ~~welfare, and safety of consumers by a board.~~

5     ~~(d) “Office” means the Office of the Consumer Advocate.~~

6

7

Article 2. Administration

8

9     ~~370. The Office of the Consumer Advocate is hereby~~  
10    ~~established in the department.~~

11    ~~371. The office is under the supervision and control of a chief.~~  
12    ~~The chief shall be appointed by the Governor, subject to~~  
13    ~~confirmation by the Senate pursuant to Section 1322 of the~~  
14    ~~Government Code. The chief shall be appointed for a term of four~~  
15    ~~years. Upon expiration of the chief’s term, the chief shall continue~~  
16    ~~to serve in the position until a new chief is appointed by the~~  
17    ~~Governor. The director shall fix the amount of the chief’s~~  
18    ~~compensation in accordance with law. The Governor may remove~~  
19    ~~the chief for any cause specified in Section 106.~~

20    ~~372. The chief shall administer and enforce the provisions of~~  
21    ~~this chapter. Every power granted or duty imposed upon the chief~~  
22    ~~under this chapter may be exercised or performed in the name of~~  
23    ~~the chief by an employee of the office, subject to any conditions~~  
24    ~~and limitations the chief may prescribe.~~

25    ~~373. (a) The chief, in accordance with the State Civil Service~~  
26    ~~Act, shall appoint a chief counsel of the office and an adequate~~  
27    ~~number of attorneys, as determined by the chief counsel, to carry~~  
28    ~~out the provisions of this chapter.~~

29    ~~(b) The chief, in accordance with the State Civil Service Act,~~  
30    ~~may appoint and fix the compensation of clerical or other personnel~~  
31    ~~as may be necessary to carry out the provisions of this chapter.~~

32    ~~(c) All personnel appointed under this section shall perform~~  
33    ~~their duties under the supervision and direction of the chief.~~

34    ~~374. The chief may contract for the services of experts and~~  
35    ~~consultants if necessary to carry out the provisions of this chapter~~  
36    ~~and may provide compensation and reimbursement of expenses~~  
37    ~~for those experts and consultants in accordance with state law.~~

## Article 3. Powers and Duties

380. ~~(a) The office shall serve as an independent monitor pursuant to Section 474.22.~~

~~(b) The office shall review interagency agreements pursuant to Section 102.3.~~

381. ~~The chief may establish through regulations a Consumer Participation Program to allow the office to award reasonable advocacy and witness fees to any person or organization that has made a substantial contribution on behalf of the interests of consumers either through the adoption of a regulation by a board or through an order or decision issued by a board in a disciplinary proceeding.~~

382. ~~The office may appear at a meeting of a board and shall be permitted to participate as an amicus curiae in disciplinary proceedings by the board whenever the chief determines that the appearance or participation is required to promote or protect the interests of consumers. The office shall conform with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) in discharging these duties.~~

383. ~~The chief shall have the following powers and it shall be his or her duty to take the following actions:~~

~~(a) Recommend and propose the enactment of legislation that is necessary to protect and promote the interests of consumers.~~

~~(b) Represent the interests of consumers before federal and state legislative and regulatory hearings.~~

~~(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.~~

~~(d) Study, investigate, research, and analyze matters affecting the interests of consumers.~~

~~(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon state agencies for information.~~

~~(f) Propose and assist in the creation and development of consumer education programs.~~

~~(g) Promote ethical standards of conduct for business, professions, and consumers related to the interest of consumers.~~

1 ~~(h) Advise the Governor and Legislature on all matters affecting~~  
2 ~~the interests of consumers.~~

3 ~~(i) Exercise and perform other functions, powers, and duties as~~  
4 ~~may be deemed appropriate to protect and promote the interests~~  
5 ~~of consumers as directed by the Governor or the Legislature.~~

6 ~~(j) Maintain contact and liaison with consumer groups in~~  
7 ~~California and nationally.~~

8 ~~384. The chief shall report annually to the Governor and appear~~  
9 ~~annually before the appropriate policy committees of the~~  
10 ~~Legislature to report on the office's activities.~~

11  
12 ~~Article 4. Revenue~~  
13

14 ~~390. The office shall annually charge each board on a pro rata~~  
15 ~~share basis an amount that is sufficient, as determined by the chief,~~  
16 ~~to carry out the provisions of this chapter. The total amount of~~  
17 ~~charges made pursuant to this section shall not exceed \_\_\_\_ million~~  
18 ~~dollars (\$ \_\_\_\_ ) annually.~~

19 ~~391. All moneys collected pursuant to this article shall be~~  
20 ~~deposited into the Consumer Advocate Fund, which is hereby~~  
21 ~~created in the State Treasury. The revenue in this fund shall be~~  
22 ~~expended solely for purposes of this chapter upon appropriation~~  
23 ~~by the Legislature in the annual Budget Act.~~

24 ~~SEC. 20. Section 450.1 is added to the Business and Professions~~  
25 ~~Code, to read:~~

26 ~~450.1. A person may serve as a public member of more than~~  
27 ~~one board at the same time if not prohibited by any other law.~~

28 ~~SEC. 21. Division 1.2 (commencing with Section 473) of the~~  
29 ~~Business and Professions Code is repealed.~~

30 ~~SEC. 22. Division 1.3 (commencing with Section 474.20) is~~  
31 ~~added to the Business and Professions Code, to read:~~

32  
33 ~~DIVISION 1.3. LEGISLATIVE REVIEW OF STATE~~  
34 ~~BOARDS AND BOARDS WITHIN THE DEPARTMENT OF~~  
35 ~~CONSUMER AFFAIRS~~  
36

37 ~~474.20. (a) A Member of the Legislature or the chief of the~~  
38 ~~Office of the Consumer Advocate may submit a written request~~  
39 ~~to the appropriate standing policy committee of the Legislature to~~  
40 ~~conduct an analysis to evaluate any of the following entities:~~

1     ~~(1) A board, as defined in Section 22.~~

2     ~~(2) A state board, as defined in Section 9148.2 of the~~  
3     ~~Government Code.~~

4     ~~(b) The request made pursuant to subdivision (a) shall describe~~  
5     ~~any perceived deficiencies in the operation of the board and the~~  
6     ~~detailed reasons an analysis of its operation is requested that may~~  
7     ~~include, but not be limited to, the issues subject to investigation~~  
8     ~~under subdivision (c) of Section 474.21.~~

9     ~~474.21. (a) (1) The appropriate standing policy committee of~~  
10    ~~the Legislature shall, through its oversight function, investigate~~  
11    ~~the perceived deficiencies described in the request submitted~~  
12    ~~pursuant to Section 474.20 and hold public hearings on the matter.~~  
13    ~~The committee may request the Office of the Consumer Advocate~~  
14    ~~to assist in the investigation. The committee shall complete these~~  
15    ~~functions within a 60-day period during the regular legislative~~  
16    ~~session, with the period commencing on the date of the committee's~~  
17    ~~receipt of the request.~~

18    ~~(2) Notwithstanding paragraph (1), if, in the two-year period~~  
19    ~~prior to the committee's receipt of the request, public hearings~~  
20    ~~relating to the same board named in the request were held by a~~  
21    ~~standing policy committee of the Legislature that determined no~~  
22    ~~deficiencies exist, the committee may refuse to conduct additional~~  
23    ~~hearings and investigation of the board.~~

24    ~~(b) The committee may find, on the basis of the information it~~  
25    ~~obtained during its investigation, whether a question exists as to~~  
26    ~~the highest priority of the operations of the board being the~~  
27    ~~protection of the public when exercising its licensing, regulatory,~~  
28    ~~and disciplinary functions, and whether the board is effectively~~  
29    ~~protecting the public.~~

30    ~~(c) In determining whether a question exists under subdivision~~  
31    ~~(b), the committee shall review the information and allegations~~  
32    ~~made in the request submitted pursuant to Section 474.20 and any~~  
33    ~~related information and allegations. The committee may review~~  
34    ~~issues such as the following:~~

35    ~~(1) Whether regulation by the board is necessary to protect the~~  
36    ~~public health, safety, and welfare.~~

37    ~~(2) Whether the initial reasons for licensing or regulating a~~  
38    ~~practice or profession have changed.~~

1     ~~(3) Whether other conditions have occurred that would warrant~~  
2 ~~increased, decreased, or the same amount of regulation by the~~  
3 ~~board.~~

4     ~~(4) If regulation of the profession or practice is necessary,~~  
5 ~~whether existing statutes and regulations establish the least~~  
6 ~~restrictive form of regulation consistent with the public interest,~~  
7 ~~considering other available regulatory mechanisms, and whether~~  
8 ~~the board's rules promote the public interest and are within the~~  
9 ~~scope of legislative intent.~~

10    ~~(5) Whether the board operates and enforces its regulatory~~  
11 ~~responsibilities in the public interest and whether its regulatory~~  
12 ~~mission is impeded or enhanced by existing statutes, regulations,~~  
13 ~~policies, practices, or any other circumstances, including budgetary,~~  
14 ~~resources, and personnel matters.~~

15    ~~(6) Whether an analysis of the board's operations indicates that~~  
16 ~~the entity performs its statutory duties efficiently and effectively.~~

17    ~~(7) Whether the composition of the board adequately represents~~  
18 ~~the public interest and whether the board encourages public~~  
19 ~~participation in its decisions rather than participation only by the~~  
20 ~~profession or vocation and the individuals it regulates.~~

21    ~~(8) Whether the board and its laws or regulations stimulate or~~  
22 ~~restrict competition and the extent of the economic impact the~~  
23 ~~board's regulatory practices have on the state's business and~~  
24 ~~technological growth.~~

25    ~~(9) Whether complaint investigation, intervention, and~~  
26 ~~disciplinary procedures adequately protect the public and whether~~  
27 ~~the final disposition of complaints, investigations, restraining~~  
28 ~~orders, and disciplinary actions are in the public interest or these~~  
29 ~~procedures are, instead, self-serving to the profession, vocation,~~  
30 ~~or individuals being regulated by the board.~~

31    ~~(10) Whether the scope of practice of the regulated profession~~  
32 ~~or vocation contributes to the highest utilization of personnel and~~  
33 ~~whether the entry requirements for the profession or vocation~~  
34 ~~encourage affirmative action.~~

35    ~~(11) Whether administrative and statutory changes are necessary~~  
36 ~~to improve the board's operations to promote the public interest.~~

37    ~~(d) The standing policy committee shall determine if a board is~~  
38 ~~deficient. The committee shall report its deficiency determination~~  
39 ~~to the Joint Committee on Rules. Notwithstanding any other~~  
40 ~~provision of law, if a board is found deficient, each incumbent~~



1 member of the board shall be removed from office without a  
2 hearing within 10 business days of receipt of the committee's  
3 deficiency report by the Joint Committee on Rules, and successor  
4 board members shall be appointed within that timeframe pursuant  
5 to Section 101.1.

6 474.22. (a) Within 10 business days of the date the Joint  
7 Committee on Rules receives the deficiency report described in  
8 Section 474.21, the Office of the Consumer Advocate shall assume  
9 the duties of an independent monitor for the board.

10 (b) Within one year of the date it assumes the duties of an  
11 independent monitor, the Office of the Consumer Advocate shall  
12 report its findings to the Governor, and the Legislature may make  
13 recommendations for required reforms of the board.

14 SEC. 23. Section 1601.1 of the Business and Professions Code  
15 is amended to read:

16 1601.1. (a) There shall be in the Department of Consumer  
17 Affairs the Dental Board of California in which the administration  
18 of this chapter is vested. The board shall consist of eight practicing  
19 dentists, one registered dental hygienist, one registered dental  
20 assistant, and four public members. Of the eight practicing dentists,  
21 one shall be a member of a faculty of any California dental college  
22 and one shall be a dentist practicing in a nonprofit community  
23 clinic. The appointing powers, described in Section 1603, may  
24 appoint to the board a person who was a member of the prior board.  
25 The board shall be organized into standing committees dealing  
26 with examinations, enforcement, and other subjects as the board  
27 deems appropriate.

28 (b) For purposes of this chapter, any reference in this chapter  
29 to the Board of Dental Examiners shall be deemed to refer to the  
30 Dental Board of California.

31 (c) The board shall have all authority previously vested in the  
32 existing board under this chapter. The board may enforce all  
33 disciplinary actions undertaken by the previous board.

34 SEC. 24. Section 1632.5 of the Business and Professions Code  
35 is amended to read:

36 1632.5. (a) Prior to implementation of paragraph (2) of  
37 subdivision (c) of Section 1632, the department's Office of  
38 Examination Resources shall review the Western Regional  
39 Examining Board examination to assure compliance with the  
40 requirements of Section 139 and to certify that the examination

1 ~~process meets those standards. If the department determines that~~  
2 ~~the examination process fails to meet those standards, paragraph~~  
3 ~~(2) of subdivision (c) of Section 1632 shall not be implemented.~~  
4 ~~The review of the Western Regional Examining Board examination~~  
5 ~~shall be conducted during or after the Dental Board of California's~~  
6 ~~occupational analysis scheduled for the 2004-05 fiscal year, but~~  
7 ~~not later than September 30, 2005. However, an applicant who~~  
8 ~~successfully completes the Western Regional Examining Board~~  
9 ~~examination on or after January 1, 2005, shall be deemed to have~~  
10 ~~met the requirements of subdivision (c) of Section 1632 if the~~  
11 ~~department certifies that the Western Regional Examining Board~~  
12 ~~examination meets the standards set forth in this subdivision.~~

13 ~~(b) The Western Regional Examining Board examination~~  
14 ~~process shall be regularly reviewed by the department pursuant to~~  
15 ~~Section 139.~~

16 ~~(c) The Western Regional Examining Board examination shall~~  
17 ~~meet the mandates of subdivision (a) of Section 12944 of the~~  
18 ~~Government Code.~~

19 ~~(d) The Dental Board of California shall report on or before~~  
20 ~~July 1, 2008, to the department and the Office of the Consumer~~  
21 ~~Advocate on the pass rates of applicants who sat for the Western~~  
22 ~~Regional Examining Board examination, compared with the pass~~  
23 ~~rates of applicants who sat for the state clinical and written~~  
24 ~~examination administered by the Dental Board of California. This~~  
25 ~~report shall be a component of the evaluation of the examination~~  
26 ~~process that is based on psychometrically sound principles for~~  
27 ~~establishing minimum qualifications and levels of competency.~~

28 ~~SEC. 25. Section 1634.2 of the Business and Professions Code~~  
29 ~~is amended to read:~~

30 ~~1634.2. (a) An advanced education program's compliance~~  
31 ~~with subdivision (c) of Section 1634.1 shall be regularly reviewed~~  
32 ~~by the department pursuant to Section 139.~~

33 ~~(b) An advanced education program described in subdivision~~  
34 ~~(c) of Section 1634.1 shall meet the requirements of subdivision~~  
35 ~~(a) of Section 12944 of the Government Code.~~

36 ~~(c) The clinical residency program completion certification~~  
37 ~~required by subdivision (c) of Section 1634.1 shall include a list~~  
38 ~~of core competencies commensurate to those found in the board's~~  
39 ~~examinations. The board, together with the department's Office~~  
40 ~~of Examination Resources, shall ensure the alignment of the~~

1 competencies stated in the clinical residency program completion  
2 certification with the board's current occupational analysis. The  
3 board shall implement use of the clinical residency program  
4 completion certification form and use of the core competency list  
5 through the adoption of emergency regulations by January 1, 2008.

6 (d) The board shall report to the department and the Office of  
7 the Consumer Advocate on or before January 1, 2010, the number  
8 of complaints received for those dentists who have obtained  
9 licensure by passing the state clinical examination and for those  
10 dentists who have obtained licensure through an advanced  
11 education program. The report shall also contain tracking  
12 information on these complaints and their disposition. This report  
13 shall be a component of the evaluation of the examination process  
14 that is based on psychometrically sound principles for establishing  
15 minimum qualifications and levels of competency.

16 SEC. 26. Section 1638.1 of the Business and Professions Code  
17 is amended to read:

18 1638.1. (a) (1) A person licensed pursuant to Section 1634  
19 who wishes to perform elective facial cosmetic surgery shall first  
20 apply for and receive a permit to perform elective facial cosmetic  
21 surgery from the board.

22 (2) A permit issued pursuant to this section shall be valid for a  
23 period of two years and must be renewed by the permitholder at  
24 the time his or her license is renewed. Every six years, prior to  
25 renewal of the permitholder's license and permit, the permitholder  
26 shall submit evidence acceptable to the credentialing committee  
27 that he or she has maintained continued competence to perform  
28 the procedures authorized by the permit. The credentialing  
29 committee may limit a permit consistent with paragraph (1) of  
30 subdivision (e) if it is not satisfied that the permitholder has  
31 established continued competence.

32 (b) The board may adopt regulations for the issuance of the  
33 permit that it deems necessary to protect the health, safety, and  
34 welfare of the public.

35 (c) A licensee may obtain a permit to perform elective facial  
36 cosmetic surgery by furnishing all of the following information  
37 on an application form approved by the board:

38 (1) Proof of successful completion of an oral and maxillofacial  
39 surgery residency program accredited by the Commission on Dental  
40 Accreditation of the American Dental Association.

1     ~~(2) Proof that the applicant has satisfied the criteria specified~~  
2 ~~in either subparagraph (A) or (B):~~

3     ~~(A) (i) Is certified, or is a candidate for certification, by the~~  
4 ~~American Board of Oral and Maxillofacial Surgery.~~

5     ~~(ii) Submits to the board a letter from the program director of~~  
6 ~~the accredited residency program, or from the director of a~~  
7 ~~postresidency fellowship program accredited by the Commission~~  
8 ~~on Dental Accreditation of the American Dental Association,~~  
9 ~~stating that the licensee has the education, training, and competence~~  
10 ~~necessary to perform the surgical procedures that the licensee has~~  
11 ~~notified the board he or she intends to perform.~~

12     ~~(iii) Submits documentation to the board of at least 10 operative~~  
13 ~~reports from residency training or proctored procedures that are~~  
14 ~~representative of procedures that the licensee intends to perform~~  
15 ~~from both of the following categories:~~

16     ~~(I) Cosmetic contouring of the osteocartilaginous facial structure,~~  
17 ~~which may include, but is not limited to, rhinoplasty and otoplasty.~~

18     ~~(II) Cosmetic soft tissue contouring or rejuvenation, which may~~  
19 ~~include, but is not limited to, facelift, blepharoplasty, facial skin~~  
20 ~~resurfacing, or lip augmentation.~~

21     ~~(iv) Submits documentation to the board showing the surgical~~  
22 ~~privileges the applicant possesses at any licensed general acute~~  
23 ~~care hospital and any licensed outpatient surgical facility in this~~  
24 ~~state.~~

25     ~~(B) (i) Has been granted privileges by the medical staff at a~~  
26 ~~licensed general acute care hospital to perform the surgical~~  
27 ~~procedures set forth in paragraph (A) at that hospital.~~

28     ~~(ii) Submits to the board the documentation described in clause~~  
29 ~~(iii) of subparagraph (A).~~

30     ~~(3) Proof that the applicant is on active status on the staff of a~~  
31 ~~general acute care hospital and maintains the necessary privileges~~  
32 ~~based on the bylaws of the hospital to maintain that status.~~

33     ~~(d) The application shall be accompanied by an application fee~~  
34 ~~of five hundred dollars (\$500) for an initial permit. The fee to~~  
35 ~~renew a permit shall be two hundred dollars (\$200).~~

36     ~~(e) (1) The board shall appoint a credentialing committee to~~  
37 ~~review the qualifications of each applicant for a permit. Upon~~  
38 ~~completion of the review of an applicant, the committee shall make~~  
39 ~~a recommendation to the board on whether to issue or not issue a~~  
40 ~~permit to the applicant. The permit may be unqualified, entitling~~

1 the permit holder to perform any facial cosmetic surgical procedure  
2 authorized by this section, or it may contain limitations if the  
3 credentialing committee is not satisfied that the applicant has the  
4 training or competence to perform certain classes of procedures,  
5 or if the applicant has not requested to be permitted for all  
6 procedures authorized by this section.

7 (2) The credentialing committee shall be comprised of five  
8 members, as follows:

9 (A) A physician and surgeon with a specialty in plastic and  
10 reconstructive surgery who maintains active status on the staff of  
11 a licensed general acute care hospital in this state.

12 (B) A physician and surgeon with a specialty in otolaryngology  
13 who maintains active status on the staff of a licensed general acute  
14 care hospital in this state.

15 (C) Three oral and maxillofacial surgeons licensed by the board  
16 who are board certified by the American Board of Oral and  
17 Maxillofacial Surgeons, and who maintain active status on the  
18 staff of a licensed general acute care hospital in this state, at least  
19 one of whom shall be licensed as a physician and surgeon in this  
20 state. Two years after the effective date of this section, any oral  
21 and maxillofacial surgeon appointed to the committee who is not  
22 licensed as a physician and surgeon shall hold a permit pursuant  
23 to this section.

24 (3) The board shall solicit from the following organizations  
25 input and recommendations regarding members to be appointed  
26 to the credentialing committee:

27 (A) The Medical Board of California.

28 (B) The California Dental Association.

29 (C) The California Association of Oral and Maxillofacial  
30 Surgeons.

31 (D) The California Medical Association.

32 (E) The California Society of Plastic Surgeons.

33 (F) Any other source that the board deems appropriate.

34 (4) The credentialing committee shall meet at a time and place  
35 directed by the board to evaluate applicants for permits. A quorum  
36 of three members shall be required for the committee to consider  
37 applicants and make recommendations to the board.

38 (f) A licensee may not perform any elective, facial cosmetic  
39 surgical procedure except at a general acute care hospital, a licensed  
40 outpatient surgical facility, or an outpatient surgical facility

1 accredited by the Joint Commission on Accreditation of Healthcare  
2 Organizations (JCAHO), the American Association for Ambulatory  
3 Health Care (AAAHC), the Medicare program, or an accreditation  
4 agency approved by the Medical Board of California pursuant to  
5 subdivision (g) of Section 1248.1 of the Health and Safety Code.

6 ~~(g) For purposes of this section, the following terms shall have~~  
7 ~~the following meanings:~~

8 ~~(1) "Elective cosmetic surgery" means any procedure defined~~  
9 ~~as cosmetic surgery in subdivision (d) of Section 1367.63 of the~~  
10 ~~Health and Safety Code, and excludes any procedure that~~  
11 ~~constitutes reconstructive surgery, as defined in subdivision (c) of~~  
12 ~~Section 1367.63 of the Health and Safety Code.~~

13 ~~(2) "Facial" means those regions of the human body described~~  
14 ~~in Section 1625 and in any regulations adopted pursuant to that~~  
15 ~~section by the board.~~

16 ~~(h) A holder of a permit issued pursuant to this section shall not~~  
17 ~~perform elective facial cosmetic surgical procedures unless he or~~  
18 ~~she has malpractice insurance or other financial security protection~~  
19 ~~that would satisfy the requirements of Section 2216.2 and any~~  
20 ~~regulations adopted thereunder.~~

21 ~~(i) A holder of a permit shall comply with the requirements of~~  
22 ~~subparagraph (D) of paragraph (2) of subdivision (a) of Section~~  
23 ~~1248.15 of the Health and Safety Code, and the reporting~~  
24 ~~requirements specified in Section 2240, with respect to any surgical~~  
25 ~~procedure authorized by this section, in the same manner as a~~  
26 ~~physician and surgeon.~~

27 ~~(j) Any violation of this section constitutes unprofessional~~  
28 ~~conduct and is grounds for the revocation or suspension of the~~  
29 ~~person's permit, license, or both, or the person may be reprimanded~~  
30 ~~or placed on probation. Proceedings initiated by the board under~~  
31 ~~this section shall be conducted in accordance with Chapter 5~~  
32 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~  
33 ~~2 of the Government Code, and the board shall have all the powers~~  
34 ~~granted therein.~~

35 ~~(k) On or before January 1, 2009, and every four years thereafter,~~  
36 ~~the board shall report to the Legislature and the Office of the~~  
37 ~~Consumer Advocate on all of the following:~~

38 ~~(1) The number of persons licensed pursuant to Section 1634~~  
39 ~~who apply to receive a permit to perform elective facial cosmetic~~  
40 ~~surgery from the board pursuant to subdivision (a).~~

- 1     ~~(2) The recommendations of the credentialing committee to the~~  
2     ~~board.~~
- 3     ~~(3) The board's action on recommendations received by the~~  
4     ~~credentialing committee.~~
- 5     ~~(4) The number of persons receiving a permit from the board~~  
6     ~~to perform elective facial cosmetic surgery.~~
- 7     ~~(5) The number of complaints filed by or on behalf of patients~~  
8     ~~who have received elective facial cosmetic surgery by persons~~  
9     ~~who have received a permit from the board to perform elective~~  
10    ~~facial cosmetic surgery.~~
- 11    ~~(6) Action taken by the board resulting from complaints filed~~  
12    ~~by or on behalf of patients who have received elective facial~~  
13    ~~cosmetic surgery by persons who have received a permit from the~~  
14    ~~board to perform elective facial cosmetic surgery.~~
- 15    ~~SEC. 27. Section 1638.7 of the Business and Professions Code~~  
16    ~~is amended to read:~~
- 17    ~~1638.7. The next occupational analysis of dental licensees and~~  
18    ~~oral and maxillofacial facial surgeons pursuant to Section 139 shall~~  
19    ~~include a survey of the training and practices of oral and~~  
20    ~~maxillofacial surgeons and, upon completion of that analysis, a~~  
21    ~~report shall be made to the Legislature and the Office of the~~  
22    ~~Consumer Advocate regarding the findings.~~
- 23    ~~SEC. 28. Section 1742 of the Business and Professions Code~~  
24    ~~is amended to read:~~
- 25    ~~1742. (a) There is within the jurisdiction of the board a~~  
26    ~~Committee on Dental Auxiliaries.~~
- 27    ~~(b) The Committee on Dental Auxiliaries shall have the~~  
28    ~~following areas of responsibility and duties:~~
- 29    ~~(1) The committee shall have the following duties and authority~~  
30    ~~related to education programs and curriculum:~~
- 31    ~~(A) Shall evaluate all dental auxiliary programs applying for~~  
32    ~~board approval in accordance with board rules governing the~~  
33    ~~programs.~~
- 34    ~~(B) May appoint board members to any evaluation committee.~~  
35    ~~Board members so appointed shall not make a final decision on~~  
36    ~~the issue of program or course approval.~~
- 37    ~~(C) Shall report and make recommendations to the board as to~~  
38    ~~whether a program or course qualifies for approval. The board~~  
39    ~~retains the final authority to grant or deny approval to a program~~  
40    ~~or course.~~

1     ~~(D) Shall review and document any alleged deficiencies that~~  
2 ~~might warrant board action to withdraw or revoke approval of a~~  
3 ~~program or course, at the request of the board.~~

4     ~~(E) May review and document any alleged deficiencies that~~  
5 ~~might warrant board action to withdraw or revoke approval of a~~  
6 ~~program or course, at its own initiation.~~

7     ~~(2) The committee shall have the following duties and authority~~  
8 ~~related to applications:~~

9     ~~(A) Shall review and evaluate all applications for licensure in~~  
10 ~~the various dental auxiliary categories to ascertain whether a~~  
11 ~~candidate meets the appropriate licensing requirements specified~~  
12 ~~by statute and board regulations.~~

13     ~~(B) Shall maintain application records, cashier application fees,~~  
14 ~~and perform any other ministerial tasks as are incidental to the~~  
15 ~~application process.~~

16     ~~(C) May delegate any or all of the functions in this paragraph~~  
17 ~~to its staff.~~

18     ~~(D) Shall issue auxiliary licenses in all cases, except where there~~  
19 ~~is a question as to a licensing requirement. The board retains final~~  
20 ~~authority to interpret any licensing requirement. If a question arises~~  
21 ~~in the area of interpreting any licensing requirement, it shall be~~  
22 ~~presented by the committee to the board for resolution.~~

23     ~~(3) The committee shall have the following duties and authority~~  
24 ~~regarding examinations:~~

25     ~~(A) Shall advise the board as to the type of license examination~~  
26 ~~it deems appropriate for the various dental auxiliary license~~  
27 ~~categories.~~

28     ~~(B) Shall, at the direction of the board, develop or cause to be~~  
29 ~~developed, administer, or both, examinations in accordance with~~  
30 ~~the board's instructions and periodically report to the board on the~~  
31 ~~progress of those examinations. The following shall apply to the~~  
32 ~~examination procedure:~~

33     ~~(i) The examination shall be submitted to the board for its~~  
34 ~~approval prior to its initial administration.~~

35     ~~(ii) Once an examination has been approved by the board, no~~  
36 ~~further approval is required unless a major modification is made~~  
37 ~~to the examination.~~

38     ~~(iii) The committee shall report to the board on the results of~~  
39 ~~each examination and shall, where appropriate, recommend pass~~  
40 ~~points.~~



1     ~~(iv) The board shall set pass points for all dental auxiliary~~  
2     ~~licensing examinations.~~

3     ~~(C) May appoint board members to any examination committee~~  
4     ~~established pursuant to subparagraph (B).~~

5     ~~(4) The committee shall periodically report and make~~  
6     ~~recommendations to the board concerning the level of fees for~~  
7     ~~dental auxiliaries and the need for any legislative fee increase.~~  
8     ~~However, the board retains final authority to set all fees.~~

9     ~~(5) The committee shall be responsible for all aspects of the~~  
10    ~~license renewal process, which shall be accomplished in accordance~~  
11    ~~with this chapter and board regulations. The committee may~~  
12    ~~delegate any or all of its functions under this paragraph to its staff.~~

13    ~~(6) The committee shall have no authority with respect to the~~  
14    ~~approval of continuing education providers and the board retains~~  
15    ~~all of this authority.~~

16    ~~(7) The committee shall advise the board as to appropriate~~  
17    ~~standards of conduct for auxiliaries, the proper ordering of~~  
18    ~~enforcement priorities, and any other enforcement-related matters~~  
19    ~~that the board may, in the future, delegate to the committee. The~~  
20    ~~board shall retain all authority with respect to the enforcement~~  
21    ~~actions, including, but not limited to, complaint resolution,~~  
22    ~~investigation, and disciplinary action against auxiliaries.~~

23    ~~(8) The committee shall have the following duties regarding~~  
24    ~~regulations:~~

25    ~~(A) To review and evaluate all suggestions or requests for~~  
26    ~~regulatory changes related to dental auxiliaries.~~

27    ~~(B) To report and make recommendations to the board, after~~  
28    ~~consultation with departmental legal counsel and the board's~~  
29    ~~executive officer.~~

30    ~~(C) To include in any report regarding a proposed regulatory~~  
31    ~~change, at a minimum, the specific language of the proposed~~  
32    ~~changes and the reasons for and facts supporting the need for the~~  
33    ~~change. The board has the final rulemaking authority.~~

34    ~~SEC. 29. Section 1751 of the Business and Professions Code,~~  
35    ~~as amended by Section 8 of Chapter 621 of the Statutes of 2005,~~  
36    ~~is amended to read:~~

37    ~~1751. (a) The board, upon recommendation of the committee,~~  
38    ~~shall adopt regulations governing the procedures that dental~~  
39    ~~assistants, registered orthodontic assistants, registered surgery~~  
40    ~~assistants, registered restorative assistants, registered dental~~

1 assistants, registered restorative assistants in extended functions;  
2 and registered dental assistants in extended functions are authorized  
3 to perform consistent with and necessary to implement the  
4 provisions of this article, and the settings within which each may  
5 practice.

6 (b) The board shall conduct an initial review of the procedures,  
7 supervision level, settings under which they may be performed,  
8 and utilization of extended functions dental auxiliaries by January  
9 1, 2012. The board shall submit the results of its review to the  
10 Legislature and the Office of the Consumer Advocate. After the  
11 initial review, a review shall be conducted at least once every five  
12 to seven years thereafter, and the board shall update regulations  
13 as necessary to keep them current with the state of dental practice.

14 (c) This section shall become operative on January 1, 2008.

15 SEC. 30. Section 2001 of the Business and Professions Code  
16 is amended to read:

17 2001. There is in the Department of Consumer Affairs a  
18 Medical Board of California that consists of 21 members, nine of  
19 whom shall be public members.

20 The Governor shall appoint 19 members to the board, subject  
21 to confirmation by the Senate, seven of whom shall be public  
22 members. The Senate Rules Committee and the Speaker of the  
23 Assembly shall each appoint a public member, and their initial  
24 appointment shall be made to fill, respectively, the first and second  
25 public member vacancies that occur on or after January 1, 1983.

26 SEC. 31. Section 2460 of the Business and Professions Code  
27 is amended to read:

28 2460. There is created within the jurisdiction of the Medical  
29 Board of California and its divisions the California Board of  
30 Podiatric Medicine.

31 SEC. 32. Section 2531 of the Business and Professions Code  
32 is amended to read:

33 2531. There is in the Department of Consumer Affairs a  
34 Speech-Language Pathology and Audiology Board in which the  
35 enforcement and administration of this chapter is vested. The  
36 Speech-Language Pathology and Audiology Board shall consist  
37 of nine members, three of whom shall be public members.

38 SEC. 33. Section 2569 of the Business and Professions Code  
39 is repealed.

1     ~~SEC. 34. Section 2570.19 of the Business and Professions~~  
2     ~~Code is amended to read:~~  
3     ~~2570.19. (a) There is hereby created a California Board of~~  
4     ~~Occupational Therapy, hereafter referred to as the board. The board~~  
5     ~~shall enforce and administer this chapter.~~  
6     ~~(b) The members of the board shall consist of the following:~~  
7     ~~(1) Three occupational therapists who shall have practiced~~  
8     ~~occupational therapy for five years.~~  
9     ~~(2) One occupational therapy assistant who shall have assisted~~  
10    ~~in the practice of occupational therapy for five years.~~  
11    ~~(3) Three public members who shall not be licentiates of the~~  
12    ~~board or of any board referred to in Section 1000 or 3600.~~  
13    ~~(c) The Governor shall appoint the three occupational therapists~~  
14    ~~and one occupational therapy assistant to be members of the board.~~  
15    ~~The Governor, the Senate Rules Committee, and the Speaker of~~  
16    ~~the Assembly shall each appoint a public member. Not more than~~  
17    ~~one member of the board shall be appointed from the full-time~~  
18    ~~faculty of any university, college, or other educational institution.~~  
19    ~~(d) All members shall be residents of California at the time of~~  
20    ~~their appointment. The occupational therapist and occupational~~  
21    ~~therapy assistant members shall have been engaged in rendering~~  
22    ~~occupational therapy services to the public, teaching, or research~~  
23    ~~in occupational therapy for at least five years preceding their~~  
24    ~~appointments.~~  
25    ~~(e) The public members may not be or have ever been~~  
26    ~~occupational therapists or occupational therapy assistants or in~~  
27    ~~training to become occupational therapists or occupational therapy~~  
28    ~~assistants. The public members may not be related to, or have a~~  
29    ~~household member who is, an occupational therapist or an~~  
30    ~~occupational therapy assistant, and may not have had, within two~~  
31    ~~years of the appointment, a substantial financial interest in a person~~  
32    ~~regulated by the board.~~  
33    ~~(f) The Governor shall appoint two board members for a term~~  
34    ~~of one year, two board members for a term of two years, and one~~  
35    ~~board member for a term of three years. Appointments made~~  
36    ~~thereafter shall be for four-year terms, but no person shall be~~  
37    ~~appointed to serve more than two consecutive terms. Terms shall~~  
38    ~~begin on the first day of the calendar year and end on the last day~~  
39    ~~of the calendar year or until successors are appointed, except for~~  
40    ~~the first appointed members who shall serve through the last~~

1 calendar day of the year in which they are appointed, before  
2 commencing the terms prescribed by this section. Vacancies shall  
3 be filled by appointment for the unexpired term. The board shall  
4 annually elect one of its members as president.

5 (g) The board shall meet and hold at least one regular meeting  
6 annually in the Cities of Sacramento, Los Angeles, and San  
7 Francisco. The board may convene from time to time until its  
8 business is concluded. Special meetings of the board may be held  
9 at any time and place designated by the board.

10 (h) Notice of each meeting of the board shall be given in  
11 accordance with the Bagley-Keene Open Meeting Act (Article 9  
12 commencing with Section 11120) of Chapter 1 of Part 1 of  
13 Division 3 of Title 2 of the Government Code).

14 (i) Members of the board shall receive no compensation for  
15 their services, but shall be entitled to reasonable travel and other  
16 expenses incurred in the execution of their powers and duties in  
17 accordance with Section 103.

18 (j) The appointing power shall have the power to remove any  
19 member of the board from office for neglect of any duty imposed  
20 by state law, for incompetency, or for unprofessional or  
21 dishonorable conduct.

22 (k) A loan is hereby authorized from the General Fund to the  
23 Occupational Therapy Fund on or after July 1, 2000, in an amount  
24 of up to one million dollars (\$1,000,000) to fund operating,  
25 personnel, and other startup costs of the board. Six hundred ten  
26 thousand dollars (\$610,000) of this loan amount is hereby  
27 appropriated to the board to use in the 2000-01 fiscal year for the  
28 purposes described in this subdivision. In subsequent years, funds  
29 from the Occupational Therapy Fund shall be available to the board  
30 upon appropriation by the Legislature in the annual Budget Act.  
31 The loan shall be repaid to the General Fund over a period of up  
32 to five years, and the amount paid shall also include interest at the  
33 rate accruing to moneys in the Pooled Money Investment Account.  
34 The loan amount and repayment period shall be minimized to the  
35 extent possible based upon actual board financing requirements  
36 as determined by the Department of Finance.

37 SEC. 35. Section 2602 of the Business and Professions Code  
38 is amended to read:

39 2602. The Physical Therapy Board of California, hereafter  
40 referred to as the board, shall enforce and administer this chapter.

1 SEC. 36. ~~Section 2701 of the Business and Professions Code~~  
2 ~~is amended to read:~~

3 ~~2701. There is in the Department of Consumer Affairs the~~  
4 ~~Board of Registered Nursing consisting of nine members.~~

5 ~~Within the meaning of this chapter, board, or the board, refers~~  
6 ~~to the Board of Registered Nursing. Any reference in state law to~~  
7 ~~the Board of Nurse Examiners of the State of California or~~  
8 ~~California Board of Nursing Education and Nurse Registration~~  
9 ~~shall be construed to refer to the Board of Registered Nursing.~~

10 SEC. 37. ~~Section 2841 of the Business and Professions Code~~  
11 ~~is amended to read:~~

12 ~~2841. There is in the Department of Consumer Affairs a Board~~  
13 ~~of Vocational Nursing and Psychiatric Technicians of the State of~~  
14 ~~California, consisting of 11 members.~~

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

18 SEC. 38. ~~Section 2920 of the Business and Professions Code~~  
19 ~~is amended to read:~~

20 ~~2920. The Board of Psychology shall enforce and administer~~  
21 ~~this chapter. The board shall consist of nine members, four of~~  
22 ~~whom shall be public members.~~

23 SEC. 39. ~~Section 3010.5 of the Business and Professions Code~~  
24 ~~is amended to read:~~

25 ~~3010.5. (a) There is in the Department of Consumer Affairs~~  
26 ~~a State Board of Optometry in which the enforcement of this~~  
27 ~~chapter is vested. The board consists of 11 members, five of whom~~  
28 ~~shall be public members.~~

29 ~~Six members of the board shall constitute a quorum.~~

30 ~~(b) The board shall, with respect to conducting investigations,~~  
31 ~~inquiries, and disciplinary actions and proceedings, have the~~  
32 ~~authority previously vested in the board as created pursuant to~~  
33 ~~Section 3010. The board may enforce any disciplinary actions~~  
34 ~~undertaken by that board.~~

35 SEC. 40. ~~Section 3502.1 of the Business and Professions Code~~  
36 ~~is amended to read:~~

37 ~~3502.1. (a) In addition to the services authorized in the~~  
38 ~~regulations adopted by the board, and except as prohibited by~~  
39 ~~Section 3502, while under the supervision of a licensed physician~~  
40 ~~and surgeon or physicians and surgeons authorized by law to~~

1 ~~supervise a physician assistant, a physician assistant may~~  
2 ~~administer or provide medication to a patient, or transmit orally,~~  
3 ~~or in writing on a patient's record or in a drug order, an order to a~~  
4 ~~person who may lawfully furnish the medication or medical device~~  
5 ~~pursuant to subdivisions (c) and (d).~~

6 (1) ~~A supervising physician and surgeon who delegates authority~~  
7 ~~to issue a drug order to a physician assistant may limit this authority~~  
8 ~~by specifying the manner in which the physician assistant may~~  
9 ~~issue delegated prescriptions.~~

10 (2) ~~Each supervising physician and surgeon who delegates the~~  
11 ~~authority to issue a drug order to a physician assistant shall first~~  
12 ~~prepare and adopt, or adopt, a written, practice-specific, formulary~~  
13 ~~and protocols that specify all criteria for the use of a particular~~  
14 ~~drug or device, and any contraindications for the selection. The~~  
15 ~~drugs listed shall constitute the formulary and shall include only~~  
16 ~~drugs that are appropriate for use in the type of practice engaged~~  
17 ~~in by the supervising physician and surgeon. When issuing a drug~~  
18 ~~order, the physician assistant is acting on behalf of and as an agent~~  
19 ~~for a supervising physician and surgeon.~~

20 (b) ~~"Drug order" for purposes of this section means an order~~  
21 ~~for medication which is dispensed to or for a patient, issued and~~  
22 ~~signed by a physician assistant acting as an individual practitioner~~  
23 ~~within the meaning of Section 1306.02 of Title 21 of the Code of~~  
24 ~~Federal Regulations. Notwithstanding any other provision of law,~~  
25 ~~(1) a drug order issued pursuant to this section shall be treated in~~  
26 ~~the same manner as a prescription or order of the supervising~~  
27 ~~physician, (2) all references to "prescription" in this code and the~~  
28 ~~Health and Safety Code shall include drug orders issued by~~  
29 ~~physician assistants pursuant to authority granted by their~~  
30 ~~supervising physicians, and (3) the signature of a physician~~  
31 ~~assistant on a drug order shall be deemed to be the signature of a~~  
32 ~~prescriber for purposes of this code and the Health and Safety~~  
33 ~~Code.~~

34 (c) ~~A drug order for any patient cared for by the physician~~  
35 ~~assistant that is issued by the physician assistant shall either be~~  
36 ~~based on the protocols described in subdivision (a) or shall be~~  
37 ~~approved by the supervising physician before it is filled or carried~~  
38 ~~out.~~

39 (1) ~~A physician assistant shall not administer or provide a drug~~  
40 ~~or issue a drug order for a drug other than for a drug listed in the~~

1 formulary without advance approval from a supervising physician  
2 and surgeon for the particular patient. At the direction and under  
3 the supervision of a physician and surgeon, a physician assistant  
4 may hand to a patient of the supervising physician and surgeon a  
5 properly labeled prescription drug prepackaged by a physician and  
6 surgeon, manufacturer as defined in the Pharmacy Law, or a  
7 pharmacist.

8 (2) A physician assistant may not administer, provide or issue  
9 a drug order for Schedule II through Schedule V controlled  
10 substances without advance approval by a supervising physician  
11 and surgeon for the particular patient.

12 (3) Any drug order issued by a physician assistant shall be  
13 subject to a reasonable quantitative limitation consistent with  
14 customary medical practice in the supervising physician and  
15 surgeon's practice.

16 (d) A written drug order issued pursuant to subdivision (a),  
17 except a written drug order in a patient's medical record in a health  
18 facility or medical practice, shall contain the printed name, address,  
19 and phone number of the supervising physician and surgeon, the  
20 printed or stamped name and license number of the physician  
21 assistant, and the signature of the physician assistant. Further, a  
22 written drug order for a controlled substance, except a written drug  
23 order in a patient's medical record in a health facility or a medical  
24 practice, shall include the federal controlled substances registration  
25 number of the physician assistant. The requirements of this  
26 subdivision may be met through stamping or otherwise imprinting  
27 on the supervising physician and surgeon's prescription blank to  
28 show the name, license number, and if applicable, the federal  
29 controlled substances number of the physician assistant, and shall  
30 be signed by the physician assistant. When using a drug order, the  
31 physician assistant is acting on behalf of and as the agent of a  
32 supervising physician and surgeon.

33 (e) The medical record of any patient cared for by a physician  
34 assistant for whom the supervising physician and surgeon's  
35 Schedule II drug order has been issued or carried out shall be  
36 reviewed and countersigned and dated by a supervising physician  
37 and surgeon within seven days.

38 (f) All physician assistants who are authorized by their  
39 supervising physicians to issue drug orders for controlled

1 substances shall register with the United States Drug Enforcement  
2 Administration (DEA).

3 ~~(g) The committee shall consult with the Medical Board of~~  
4 ~~California and report to the Legislature and the Office of the~~  
5 ~~Consumer Advocate periodically, as necessary, on the impacts of~~  
6 ~~exempting Schedule III and Schedule IV drug orders from the~~  
7 ~~requirement for a physician and surgeon to review and countersign~~  
8 ~~the affected medical record of a patient.~~

9 SEC. 41. ~~Section 3504 of the Business and Professions Code~~  
10 ~~is amended to read:~~

11 ~~3504. There is established a Physician Assistant Committee~~  
12 ~~of the Medical Board of California. The committee consists of~~  
13 ~~nine members.~~

14 SEC. 42. ~~Section 3685 of the Business and Professions Code~~  
15 ~~is amended to read:~~

16 ~~3685. The provisions of Article 8 (commencing with Section~~  
17 ~~3680) shall become operative on January 1, 2004, but the remaining~~  
18 ~~provisions of this chapter shall become operative on July 1, 2004.~~  
19 ~~It is the intent of the Legislature that the initial implementation of~~  
20 ~~this chapter be administered by fees collected in advance from~~  
21 ~~applicants. Therefore, the bureau shall have the power and authority~~  
22 ~~to establish fees and receive applications for licensure or intents~~  
23 ~~to file application statements on and after January 1, 2004. The~~  
24 ~~department shall certify that sufficient funds are available prior to~~  
25 ~~implementing this chapter. Funds from the General Fund may not~~  
26 ~~be used for the purpose of implementing this chapter.~~

27 SEC. 43. ~~Section 3710 of the Business and Professions Code~~  
28 ~~is amended to read:~~

29 ~~3710. The Respiratory Care Board of California, hereafter~~  
30 ~~referred to as the board, shall enforce and administer this chapter.~~

31 SEC. 44. ~~Section 4001 of the Business and Professions Code~~  
32 ~~is amended to read:~~

33 ~~4001. (a) There is in the Department of Consumer Affairs a~~  
34 ~~California State Board of Pharmacy in which the administration~~  
35 ~~and enforcement of this chapter is vested. The board consists of~~  
36 ~~13 members.~~

37 ~~(b) The Governor shall appoint seven competent pharmacists~~  
38 ~~who reside in different parts of the state to serve as members of~~  
39 ~~the board. The Governor shall appoint four public members, and~~  
40 ~~the Senate Committee on Rules and the Speaker of the Assembly~~



1 shall each appoint a public member who shall not be a licensee of  
2 the board, any other board under this division, or any board referred  
3 to in Section 1000 or 3600.

4 (c) ~~At least five of the seven pharmacist appointees to the board~~  
5 ~~shall be pharmacists who are actively engaged in the practice of~~  
6 ~~pharmacy. Additionally, the membership of the board shall include~~  
7 ~~at least one pharmacist representative from each of the following~~  
8 ~~practice settings: an acute care hospital, an independent community~~  
9 ~~pharmacy, a chain community pharmacy, and a long-term health~~  
10 ~~care or skilled nursing facility. The pharmacist appointees shall~~  
11 ~~also include a pharmacist who is a member of a labor union that~~  
12 ~~represents pharmacists. For the purposes of this subdivision, a~~  
13 ~~“chain community pharmacy” means a chain of 75 or more stores~~  
14 ~~in California under the same ownership, and an “independent~~  
15 ~~community pharmacy” means a pharmacy owned by a person or~~  
16 ~~entity who owns no more than four pharmacies in California.~~

17 (d) ~~Members of the board shall be appointed for a term of four~~  
18 ~~years. No person shall serve as a member of the board for more~~  
19 ~~than two consecutive terms. Each member shall hold office until~~  
20 ~~the appointment and qualification of his or her successor or until~~  
21 ~~one year shall have elapsed since the expiration of the term for~~  
22 ~~which the member was appointed, whichever first occurs.~~  
23 ~~Vacancies occurring shall be filled by appointment for the~~  
24 ~~unexpired term.~~

25 (e) ~~Each member of the board shall receive a per diem and~~  
26 ~~expenses as provided in Section 103.~~

27 SEC. 45. ~~Section 4003 of the Business and Professions Code~~  
28 ~~is amended to read:~~

29 4003. (a) ~~The board may appoint a person exempt from civil~~  
30 ~~service who shall be designated as an executive officer and who~~  
31 ~~shall exercise the powers and perform the duties delegated by the~~  
32 ~~board and vested in him or her by this chapter. The executive~~  
33 ~~officer may or may not be a member of the board as the board may~~  
34 ~~determine.~~

35 (b) ~~The executive officer shall receive the compensation as~~  
36 ~~established by the board with the approval of the Director of~~  
37 ~~Finance. The executive officer shall also be entitled to travel and~~  
38 ~~other expenses necessary in the performance of his or her duties.~~

1     ~~(c) The executive officer shall maintain and update in a timely~~  
2     ~~fashion records containing the names, titles, qualifications, and~~  
3     ~~places of business of all persons subject to this chapter.~~

4     ~~(d) The executive officer shall give receipts for all money~~  
5     ~~received by him or her and pay it to the Department of Consumer~~  
6     ~~Affairs, taking its receipt therefor. Besides the duties required by~~  
7     ~~this chapter, the executive officer shall perform other duties~~  
8     ~~pertaining to the office as may be required of him or her by the~~  
9     ~~board.~~

10    ~~SEC. 46. Section 4200.1 of the Business and Professions Code~~  
11    ~~is amended to read:~~

12    ~~4200.1. (a) Notwithstanding Section 135, an applicant may~~  
13    ~~take the North American Pharmacist Licensure Examination four~~  
14    ~~times, and may take the Multi-State Pharmacy Jurisprudence~~  
15    ~~Examination for California four times.~~

16    ~~(b) Notwithstanding Section 135, an applicant may take the~~  
17    ~~North American Pharmacist Licensure Examination and the~~  
18    ~~Multi-State Pharmacy Jurisprudence Examination for California~~  
19    ~~four additional times each if he or she successfully completes, at~~  
20    ~~minimum, 16 additional semester units of education in pharmacy~~  
21    ~~as approved by the board.~~

22    ~~(c) The applicant shall comply with the requirements of Section~~  
23    ~~4200 for each application for reexamination made pursuant to~~  
24    ~~subdivision (b).~~

25    ~~(d) An applicant may use the same coursework to satisfy the~~  
26    ~~additional educational requirement for each examination under~~  
27    ~~subdivision (b), if the coursework was completed within 12 months~~  
28    ~~of the date of his or her application for reexamination.~~

29    ~~(e) For purposes of this section, the board shall treat each failing~~  
30    ~~score on the pharmacist licensure examination administered by~~  
31    ~~the board prior to January 1, 2004, as a failing score on both the~~  
32    ~~North American Pharmacist Licensure Examination and the~~  
33    ~~Multi-State Pharmacy Jurisprudence Examination for California.~~

34    ~~(f) From January 1, 2004, to July 1, 2008, inclusive, the board~~  
35    ~~shall collect data on the applicants who are admitted to, and take,~~  
36    ~~the licensure examinations required by Section 4200. The board~~  
37    ~~shall report to the Legislature and the Office of the Consumer~~  
38    ~~Advocate before September 1, 2008, regarding the impact on those~~  
39    ~~applicants of the examination limitations imposed by this section.~~

1 The report shall include, but not be limited to, the following  
2 information:

3 (1) The number of applicants taking the examination and the  
4 number who fail the examination for the fourth time.

5 (2) The number of applicants who, after failing the examination  
6 for the fourth time, complete a pharmacy studies program in  
7 California or another state to satisfy the requirements of this section  
8 and who apply to take the licensure examination required by  
9 Section 4200.

10 (3) To the extent possible, the school from which the applicant  
11 graduated and the school's location and the pass/fail rates on the  
12 examination for each school.

13 (g) This section shall remain in effect only until January 1, 2010,  
14 and as of that date is repealed, unless a later enacted statute, that  
15 is enacted before January 1, 2010, deletes or extends that date.

16 SEC. 47. Section 4200.3 of the Business and Professions Code  
17 is amended to read:

18 4200.3. (a) The examination process shall be regularly  
19 reviewed pursuant to Section 139.

20 (b) The examination process shall meet the standards and  
21 guidelines set forth in the Standards for Educational and  
22 Psychological Testing and the Federal Uniform Guidelines for  
23 Employee Selection Procedures. The board shall work with the  
24 Office of Examination Resources of the department or with an  
25 equivalent organization who shall certify at minimum once every  
26 five years that the examination process meets these national testing  
27 standards. If the department determines that the examination  
28 process fails to meet these standards, the board shall terminate its  
29 use of the North American Pharmacy Licensure Examination and  
30 shall use only the written and practical examination developed by  
31 the board.

32 (c) The examination shall meet the mandates of subdivision (a)  
33 of Section 12944 of the Government Code.

34 (d) The board shall work with the Office of Examination  
35 Resources or with an equivalent organization to develop the state  
36 jurisprudence examination to ensure that applicants for licensure  
37 are evaluated on their knowledge of applicable state laws and  
38 regulations.

39 (e) The board shall annually publish the pass and fail rates for  
40 the pharmacist's licensure examination administered pursuant to

1 ~~Section 4200, including a comparison of historical pass and fail~~  
2 ~~rates before utilization of the North American Pharmacist Licensure~~  
3 ~~Examination.~~

4 ~~(f) The board shall annually report to the Legislature, the Office~~  
5 ~~of the Consumer Advocate, and the department, the pass rates of~~  
6 ~~applicants who sat for the national examination compared with~~  
7 ~~the pass rates of applicants who sat for the prior state examination.~~  
8 ~~This report shall be a component of the evaluation of the~~  
9 ~~examination process that is based on psychometrically sound~~  
10 ~~principles for establishing minimum qualifications and levels of~~  
11 ~~competency.~~

12 ~~SEC. 48. Section 4501 of the Business and Professions Code~~  
13 ~~is amended to read:~~

14 ~~4501. "Board," as used in this chapter, means the Board of~~  
15 ~~Vocational Nursing and Psychiatric Technicians.~~

16 ~~SEC. 49. Section 4800 of the Business and Professions Code~~  
17 ~~is amended to read:~~

18 ~~4800. There is in the Department of Consumer Affairs a~~  
19 ~~Veterinary Medical Board in which the administration of this~~  
20 ~~chapter is vested. The board consists of seven members, three of~~  
21 ~~whom shall be public members.~~

22 ~~SEC. 50. Section 4928 of the Business and Professions Code~~  
23 ~~is amended to read:~~

24 ~~4928. The Acupuncture Board, which consists of seven~~  
25 ~~members, shall enforce and administer this chapter. The appointing~~  
26 ~~powers, as described in Section 4929, may appoint to the board a~~  
27 ~~person who was a member of the prior board prior to the repeal of~~  
28 ~~that board on January 1, 2006.~~

29 ~~SEC. 51. Section 4989 of the Business and Professions Code~~  
30 ~~is repealed.~~

31 ~~SEC. 52. Section 4990 of the Business and Professions Code~~  
32 ~~is amended to read:~~

33 ~~4990. (a) There is in the Department of Consumer Affairs, a~~  
34 ~~Board of Behavioral Sciences that consists of 11 members~~  
35 ~~composed as follows:~~

36 ~~(1) Two state licensed clinical social workers.~~

37 ~~(2) One state licensed educational psychologist.~~

38 ~~(3) Two state licensed marriage and family therapists.~~

39 ~~(4) Six public members.~~

1 ~~(b) Each member, except the six public members, shall have at~~  
2 ~~least two years of experience in his or her profession.~~

3 ~~(c) Each member shall reside in the State of California.~~

4 ~~(d) The Governor shall appoint four of the public members and~~  
5 ~~the five licensed members with the advice and consent of the~~  
6 ~~Senate. The Senate Committee on Rules and the Speaker of the~~  
7 ~~Assembly shall each appoint a public member.~~

8 ~~(e) Each member of the board shall be appointed for a term of~~  
9 ~~four years. A member appointed by the Speaker of the Assembly~~  
10 ~~or the Senate Committee on Rules shall hold office until the~~  
11 ~~appointment and qualification of his or her successor or until one~~  
12 ~~year from the expiration date of the term for which he or she was~~  
13 ~~appointed, whichever first occurs. Pursuant to Section 1774 of the~~  
14 ~~Government Code, a member appointed by the Governor shall~~  
15 ~~hold office until the appointment and qualification of his or her~~  
16 ~~successor or until 60 days from the expiration date of the term for~~  
17 ~~which he or she was appointed, whichever first occurs.~~

18 ~~(f) A vacancy on the board shall be filled by appointment for~~  
19 ~~the unexpired term by the authority who appointed the member~~  
20 ~~whose membership was vacated.~~

21 ~~(g) Not later than the first of June of each calendar year, the~~  
22 ~~board shall elect a chairperson and a vice chairperson from its~~  
23 ~~membership.~~

24 ~~(h) Each member of the board shall receive a per diem and~~  
25 ~~reimbursement of expenses as provided in Section 103.~~

26 ~~SEC. 53. Section 4990.24 of the Business and Professions~~  
27 ~~Code is repealed.~~

28 ~~SEC. 54. Section 5000 of the Business and Professions Code~~  
29 ~~is amended to read:~~

30 ~~5000. There is in the Department of Consumer Affairs the~~  
31 ~~California Board of Accountancy, which consists of 15 members,~~  
32 ~~seven of whom shall be licensees, and eight of whom shall be~~  
33 ~~public members who shall not be licentiates of the board or~~  
34 ~~registered by the board. The board has the powers and duties~~  
35 ~~conferred by this chapter.~~

36 ~~The Governor shall appoint four of the public members, and the~~  
37 ~~seven licensee members as provided in this section. The Senate~~  
38 ~~Committee on Rules and the Speaker of the Assembly shall each~~  
39 ~~appoint two public members. In appointing the seven licensee~~  
40 ~~members, the Governor shall appoint members representing a cross~~

1 ~~section of the accounting profession with at least two members~~  
2 ~~representing a small public accounting firm. For the purposes of~~  
3 ~~this chapter, a small public accounting firm shall be defined as a~~  
4 ~~professional firm that employs a total of no more than four~~  
5 ~~licensees as partners, owners, or full-time employees in the practice~~  
6 ~~of public accountancy within the State of California.~~

7 ~~SEC. 55. Section 5510 of the Business and Professions Code~~  
8 ~~is amended to read:~~

9 ~~5510. There is in the Department of Consumer Affairs a~~  
10 ~~California Architects Board which consists of 10 members.~~

11 ~~Any reference in law to the California Board of Architectural~~  
12 ~~Examiners shall mean the California Architects Board.~~

13 ~~SEC. 56. Section 5621 of the Business and Professions Code~~  
14 ~~is amended to read:~~

15 ~~5621. (a) There is hereby created within the jurisdiction of the~~  
16 ~~board, a Landscape Architects Technical Committee, hereinafter~~  
17 ~~referred to in this chapter as the landscape architects committee.~~

18 ~~(b) The landscape architects committee shall consist of five~~  
19 ~~members who shall be licensed to practice landscape architecture~~  
20 ~~in this state. The Governor shall appoint three of the members.~~  
21 ~~The Senate Committee on Rules and the Speaker of the Assembly~~  
22 ~~shall appoint one member each.~~

23 ~~(c) The initial members to be appointed by the Governor are as~~  
24 ~~follows: one member for a term of one year; one member for a~~  
25 ~~term of two years; and one member for a term of three years. The~~  
26 ~~Senate Committee on Rules and the Speaker of the Assembly shall~~  
27 ~~initially each appoint one member for a term of four years.~~  
28 ~~Thereafter, appointments shall be made for four-year terms,~~  
29 ~~expiring on June 1 of the fourth year and until the appointment~~  
30 ~~and qualification of his or her successor or until one year shall~~  
31 ~~have elapsed whichever first occurs. Vacancies shall be filled for~~  
32 ~~the unexpired term.~~

33 ~~(d) No person shall serve as a member of the landscape~~  
34 ~~architects committee for more than two consecutive terms.~~

35 ~~SEC. 57. Section 5810 of the Business and Professions Code~~  
36 ~~is amended to read:~~

37 ~~5810. This chapter shall be subject to the process described in~~  
38 ~~Division 1.3 (commencing with Section 474.20).~~

39 ~~SEC. 58. Section 5811 of the Business and Professions Code~~  
40 ~~is amended to read:~~

1     ~~5811. An interior design organization issuing stamps under~~  
2     ~~Section 5801 shall provide to the Legislature and the Office of the~~  
3     ~~Consumer Advocate by September 1, 2008, a report that reviews~~  
4     ~~and assesses the costs and benefits associated with the California~~  
5     ~~Code and Regulations Examination and explores feasible~~  
6     ~~alternatives to that examination.~~

7     ~~SEC. 59. Section 6510 of the Business and Professions Code~~  
8     ~~is amended to read:~~

9     ~~6510. (a) There is within the jurisdiction of the department~~  
10    ~~the Professional Fiduciaries Bureau. The bureau is under the~~  
11    ~~supervision and control of the director. The duty of enforcing and~~  
12    ~~administering this chapter is vested in the chief of the bureau, who~~  
13    ~~is responsible to the director. Every power granted or duty imposed~~  
14    ~~upon the director under this chapter may be exercised or performed~~  
15    ~~in the name of the director by a deputy director or by the chief,~~  
16    ~~subject to conditions and limitations as the director may prescribe.~~

17    ~~(b) The Governor shall appoint, subject to confirmation by the~~  
18    ~~Senate, the chief of the bureau, at a salary to be fixed and~~  
19    ~~determined by the director with the approval of the Director of~~  
20    ~~Finance. The chief shall serve under the direction and supervision~~  
21    ~~of the director and at the pleasure of the Governor.~~

22    ~~SEC. 60. Section 6511 of the Business and Professions Code~~  
23    ~~is amended to read:~~

24    ~~6511. (a) There is within the bureau a Professional Fiduciaries~~  
25    ~~Advisory Committee. The committee shall consist of seven~~  
26    ~~members; three of whom shall be licensees actively engaged as~~  
27    ~~professional fiduciaries in this state, and four of whom shall be~~  
28    ~~public members. One of the public members shall be a member~~  
29    ~~of a nonprofit organization advocating on behalf of the elderly,~~  
30    ~~and one of the public members shall be a probate court investigator.~~

31    ~~(b) Each member of the committee shall be appointed for a term~~  
32    ~~of four years, and shall hold office until the appointment of his or~~  
33    ~~her successor or until one year shall have elapsed since the~~  
34    ~~expiration of the term for which he or she was appointed,~~  
35    ~~whichever first occurs.~~

36    ~~(c) Vacancies shall be filled by the appointing power for the~~  
37    ~~unexpired portion of the terms in which they occur. No person~~  
38    ~~shall serve as a member of the committee for more than two~~  
39    ~~consecutive terms.~~

1     ~~(d) The Governor shall appoint the member from a nonprofit~~  
2     ~~organization advocating on behalf of the elderly, the probate court~~  
3     ~~investigator, and the three licensees. The Senate Committee on~~  
4     ~~Rules and the Speaker of the Assembly shall each appoint a public~~  
5     ~~member.~~

6     ~~(e) Every member of the committee shall receive per diem and~~  
7     ~~expenses as provided in Sections 103 and 113.~~

8     ~~(f) The committee shall do all of the following:~~

9     ~~(1) Examine the functions and policies of the bureau and make~~  
10    ~~recommendations with respect to policies, practices, and~~  
11    ~~regulations as may be deemed important and necessary by the~~  
12    ~~director or the chief to promote the interests of consumers or that~~  
13    ~~otherwise promote the welfare of the public.~~

14    ~~(2) Consider and make appropriate recommendations to the~~  
15    ~~bureau in any matter relating to professional fiduciaries in this~~  
16    ~~state.~~

17    ~~(3) Provide assistance as may be requested by the bureau in the~~  
18    ~~exercise of its powers or duties.~~

19    ~~(4) Meet at least once each quarter. All meetings of the~~  
20    ~~committee shall be public meetings.~~

21    ~~(g) The bureau shall meet and consult with the committee~~  
22    ~~regarding general policy issues related to professional fiduciaries.~~

23    ~~SEC. 61. Section 6710 of the Business and Professions Code~~  
24    ~~is amended to read:~~

25    ~~6710. (a) There is in the Department of Consumer Affairs a~~  
26    ~~Board for Professional Engineers and Land Surveyors, which~~  
27    ~~consists of 13 members.~~

28    ~~(b) Any reference in any law or regulation to the Board of~~  
29    ~~Registration for Professional Engineers and Land Surveyors is~~  
30    ~~deemed to refer to the Board for Professional Engineers and Land~~  
31    ~~Surveyors.~~

32    ~~SEC. 62. Section 7000.5 of the Business and Professions Code~~  
33    ~~is amended to read:~~

34    ~~7000.5. There is in the Department of Consumer Affairs a~~  
35    ~~Contractors' State License Board, which consists of 15 members.~~

36    ~~SEC. 63. Section 7200 of the Business and Professions Code~~  
37    ~~is amended to read:~~

38    ~~7200. There is in the Department of Consumer Affairs a State~~  
39    ~~Board of Guide Dogs for the Blind in whom enforcement of this~~  
40    ~~chapter is vested. The board shall consist of seven members~~



1 appointed by the Governor. One member shall be the Director of  
2 Rehabilitation or his or her designated representative. The  
3 remaining members shall be persons who have shown a particular  
4 interest in dealing with the problems of the blind, and at least two  
5 of them shall be blind persons who use guide dogs.

6 SEC. 64. ~~Section 7303 of the Business and Professions Code~~  
7 ~~is amended to read:~~

8 7303. (a) ~~Notwithstanding Article 8 (commencing with Section~~  
9 ~~9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the~~  
10 ~~Government Code, there is in the Department of Consumer Affairs~~  
11 ~~the State Board of Barbering and Cosmetology in which the~~  
12 ~~administration of this chapter is vested.~~

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

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

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

35 SEC. 65. ~~Section 7304 of the Business and Professions Code~~  
36 ~~is repealed.~~

37 SEC. 66. ~~Section 7810 of the Business and Professions Code~~  
38 ~~is amended to read:~~

39 7810. ~~The Board for Geologists and Geophysicists is within~~  
40 ~~the department and is subject to the jurisdiction of the department.~~

1 Except as provided in this section, the board shall consist of eight  
2 members, five of whom shall be public members, two of whom  
3 shall be geologists, and one of whom shall be a geophysicist.

4 Each member shall hold office until the appointment and  
5 qualification of the member's successor or until one year has  
6 elapsed from the expiration of the term for which the member was  
7 appointed, whichever occurs first. Vacancies occurring prior to  
8 the expiration of the term shall be filled by appointment for the  
9 remainder of the unexpired term.

10 Each appointment shall be for a four-year term expiring June 1  
11 of the fourth year following the year in which the previous term  
12 expired. No person shall serve as a member of the board for more  
13 than two consecutive terms.

14 The Governor shall appoint three of the public members and the  
15 three members qualified as provided in Section 7811. The Senate  
16 Committee on Rules and the Speaker of the Assembly shall each  
17 appoint a public member, and their initial appointment shall be  
18 made to fill, respectively, the first and second public member  
19 vacancies that occurred on or after January 1, 1983.

20 At the time the first vacancy is created by the expiration of the  
21 term of a public member appointed by the Governor, the board  
22 shall be reduced to consist of seven members, four of whom shall  
23 be public members, two of whom shall be geologists, and one of  
24 whom shall be a geophysicist. Notwithstanding any other provision  
25 of law, the term of that member shall not be extended for any  
26 reason, except as provided in this section.

27 SEC. 67. Section 8000 of the Business and Professions Code  
28 is amended to read:

29 8000. There is in the Department of Consumer Affairs a Court  
30 Reporters Board of California, which consists of five members,  
31 three of whom shall be public members and two of whom shall be  
32 holders of certificates issued under this chapter who have been  
33 actively engaged as shorthand reporters within this state for at least  
34 five years immediately preceding their appointment.

35 SEC. 68. Section 8520 of the Business and Professions Code  
36 is amended to read:

37 8520. (a) There is in the Department of Consumer Affairs a  
38 Structural Pest Control Board, which consists of seven members.

39 (b) Subject to the jurisdiction conferred upon the director by  
40 Division 1 (commencing with Section 100) of this code, the board

1 is vested with the power to and shall administer the provisions of  
2 this chapter.

3 (c) It is the intent of the Legislature that consumer protection  
4 is the primary mission of the board.

5 SEC. 69. Section 8710 of the Business and Professions Code  
6 is amended to read:

7 8710. (a) The Board for Professional Engineers and Land  
8 Surveyors is vested with power to administer the provisions and  
9 requirements of this chapter, and may make and enforce rules and  
10 regulations that are reasonably necessary to carry out its provisions.

11 (b) The board may adopt rules and regulations of professional  
12 conduct that are not inconsistent with state and federal law. The  
13 rules and regulations may include definitions of incompetence and  
14 negligence. Every person who holds a license or certificate issued  
15 by the board pursuant to this chapter, or a license or certificate  
16 issued to a civil engineer pursuant to Chapter 7 (commencing with  
17 Section 6700), shall be governed by these rules and regulations.

18 SEC. 70. Section 9882 of the Business and Professions Code  
19 is amended to read:

20 9882. There is in the Department of Consumer Affairs a Bureau  
21 of Automotive Repair under the supervision and control of the  
22 director. The duty of enforcing and administering this chapter is  
23 vested in the chief who is responsible to the director. The director  
24 may adopt and enforce those rules and regulations that he or she  
25 determines are reasonably necessary to carry out the purposes of  
26 this chapter and declaring the policy of the bureau, including a  
27 system for the issuance of citations for violations of this chapter  
28 as specified in Section 125.9. These rules and regulations shall be  
29 adopted pursuant to Chapter 3.5 (commencing with Section 11340)  
30 of Part 1 of Division 3 of Title 2 of the Government Code.

31 SEC. 71. Section 18602 of the Business and Professions Code  
32 is amended to read:

33 18602. (a) Except as provided in this section, there is in the  
34 Department of Consumer Affairs the State Athletic Commission,  
35 which consists of seven members. Five members shall be appointed  
36 by the Governor, one member shall be appointed by the Senate  
37 Committee on Rules, and one member shall be appointed by the  
38 Speaker of the Assembly.

1 The members of the commission appointed by the Governor are  
2 subject to confirmation by the Senate pursuant to Section 1322 of  
3 the Government Code.

4 No person who is currently licensed, or who was licensed within  
5 the last two years, under this chapter may be appointed or  
6 reappointed to, or serve on, the commission.

7 (b) In appointing commissioners under this section, the  
8 Governor, the Senate Committee on Rules, and the Speaker of the  
9 Assembly shall make every effort to ensure that at least four of  
10 the members of the commission shall have experience and  
11 demonstrate expertise in one of the following areas:

12 (1) A licensed physician or surgeon having expertise or  
13 specializing in neurology, neurosurgery, head trauma, or sports  
14 medicine. Sports medicine includes, but is not limited to,  
15 physiology, kinesiology, or other aspects of sports medicine.

16 (2) Financial management.

17 (3) Public safety.

18 (4) Past experience in the activity regulated by this chapter,  
19 either as a contestant, a referee or official, a promoter, or a venue  
20 operator.

21 (c) Each member of the commission shall be appointed for a  
22 term of four years. All terms shall end on January 1. Vacancies  
23 occurring prior to the expiration of the term shall be filled by  
24 appointment for the unexpired term. No commission member may  
25 serve more than two consecutive terms.

26 (d) Notwithstanding any other provision of this chapter,  
27 members first appointed shall be subject to the following terms:

28 (1) The Governor shall appoint two members for two years, two  
29 members for three years, and one member for four years.

30 (2) The Senate Committee on Rules shall appoint one member  
31 for four years.

32 (3) The Speaker of the Assembly shall appoint one member for  
33 four years.

34 (4) The appointing powers, as described in subdivision (a), may  
35 appoint to the commission a person who was a member of the prior  
36 commission prior to the repeal of that commission on July 1, 2006.

37 SEC. 72. Section 18602.5 of the Business and Professions  
38 Code is amended to read:

39 18602.5. (a) The commission shall adopt and submit a strategic  
40 plan to the Governor and the Legislature on or before September

30, 2008. The commission shall also submit a report to the Governor and the Legislature on the status of the adoption of the strategic plan on or before March 1, 2008. The strategic plan shall include, but shall not be limited to, efforts to resolve prior State Athletic Commission deficiencies in the following areas:

(1) Regulation of the profession, what fees should be paid for this regulation, and the structure and equity of the fees charged.

(2) The effect and appropriateness of contracts made pursuant to Section 18828.

(3) Costs to train ringside physicians, referees, timekeepers, and judges.

(4) Steps that need to be taken to ensure sufficient sources of revenue and funding.

(5) Necessity for review and modification of organizational procedures, the licensing process, and the complaint process.

(6) Outdated information technology.

(7) Unorganized and improper accounting.

(8) Miscalculations at events, a lack of technology to record proper calculations, and funding issues.

(9) The health and safety of the participants and the public in attendance at events regulated under this chapter, including costs of examinations under Section 18711.

(b) The commission shall solicit input from the public, the State Auditor, the Little Hoover Commission, the Center for Public Interest Law, and others as necessary in preparing and adopting the strategic plan.

(c) The commission shall report on progress in implementing the strategic plan to the Director of Consumer Affairs, the Governor, and the Legislature on or before September 30, 2009.

SEC. 73. Section 18824 of the Business and Professions Code is amended to read:

18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within five working days after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission the following:

(1) A written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts, not to exceed two million dollars (\$2,000,000), and the gross price for the contest or wrestling exhibition charged directly or indirectly

1 and no matter by whom received, for the sale, lease, or other  
2 exploitation of broadcasting and television rights of the contest or  
3 wrestling exhibition, and without any deductions, except for  
4 expenses incurred for one broadcast announcer, telephone line  
5 connection, and transmission mobile equipment facility, which  
6 may be deducted from the gross taxable base when those expenses  
7 are approved by the commission.

8 (2) A fee of 5 percent, exclusive of any federal taxes paid  
9 thereon, of the amount paid for admission to the contest or  
10 wrestling exhibition, except that for any one contest, the fee shall  
11 not exceed the amount of one hundred thousand dollars (\$100,000).  
12 The commission shall report to the Legislature and the Office of  
13 the Consumer Advocate on the fiscal impact of the one hundred  
14 thousand dollar (\$100,000) limit on fees collected by the  
15 commission for admissions revenues.

16 (A) The amount of the gross receipts upon which the fee  
17 provided for in paragraph (2) is calculated shall not include any  
18 assessments levied by the commission under Section 18711.

19 (B) (i) If the fee for any one boxing contest exceeds seventy  
20 thousand dollars (\$70,000), the amount in excess of seventy  
21 thousand dollars (\$70,000) shall be paid one-half to the commission  
22 and one-half to the Boxers' Pension Fund.

23 (ii) If the report required by subdivision (b) of Section 18618  
24 recommends that the Boxers' Pension Fund shall be expanded to  
25 include all athletes licensed under this chapter, the commission,  
26 by regulation, shall require, for all contests where the fee exceeds  
27 seventy thousand dollars (\$70,000), the amount in excess of  
28 seventy thousand dollars (\$70,000) shall be paid one-half to the  
29 commission and one-half to the Boxers' Pension Fund only if all  
30 athletes licensed under this chapter are made eligible for the  
31 Boxers' Pension Fund.

32 (C) The fee shall apply to the amount actually paid for admission  
33 and not to the regular established price.

34 (D) No fee is due in the case of a person admitted free of charge.  
35 However, if the total number of persons admitted free of charge  
36 to a boxing, kickboxing, or martial arts contest, or wrestling  
37 exhibition exceeds 33 percent of the total number of spectators,  
38 then a fee of one dollar (\$1) per complimentary ticket or pass used  
39 to gain admission to the contest shall be paid to the commission

1 for each complimentary ticket or pass that exceeds the numerical  
2 total of 33 percent of the total number of spectators.

3 (E) The minimum fee for an amateur contest or exhibition shall  
4 not be less than five hundred dollars (\$500).

5 (3) A fee of up to 5 percent, to be established by the commission  
6 through regulations to become operative on or before July 1, 2008,  
7 and updated periodically as needed, of the gross price, exclusive  
8 of any federal taxes paid thereon, for the sale, lease, or other  
9 exploitation of broadcasting or television rights thereof, except  
10 that in no case shall the fee be less than one thousand dollars  
11 (\$1,000) or more than twenty-five thousand dollars (\$25,000).

12 (b) As used in this section, "person" includes a promoter, club,  
13 individual, corporation, partnership, association, or other  
14 organization, and "wrestling exhibition" means a performance of  
15 wrestling skills and techniques by two or more individuals, to  
16 which admission is charged or which is broadcast or televised, in  
17 which the participating individuals are not required to use their  
18 best efforts in order to win, and for which the winner may have  
19 been selected before the performance commences.

20 SEC. 74. Section 18882 of the Business and Professions Code  
21 is amended to read:

22 18882. (a) At the time of payment of the fee required by  
23 Section 18824, a promoter shall pay to the commission all amounts  
24 scheduled for contribution to the pension plan. If the commission,  
25 in its discretion, requires pursuant to Section 18881, that  
26 contributions to the pension plan be made by the boxer and his or  
27 her manager, those contributions shall be made at the time and in  
28 the manner prescribed by the commission.

29 (b) All contributions to finance the pension plan shall be  
30 deposited in the State Treasury and credited to the Boxers' Pension  
31 Fund, which is hereby created. Notwithstanding the provisions of  
32 Section 13340 of the Government Code, all moneys in the Boxers'  
33 Pension Fund are hereby continuously appropriated to be used  
34 exclusively for the purposes and administration of the pension  
35 plan.

36 (c) The Boxers' Pension Fund is a retirement fund, and no  
37 moneys within it shall be deposited or transferred to the General  
38 Fund.

39 (d) The commission has exclusive control of all funds in the  
40 Boxers' Pension Fund. No transfer or disbursement in any amount

1 from this fund shall be made except upon the authorization of the  
2 commission and for the purpose and administration of the pension  
3 plan.

4 ~~(c) Except as otherwise provided in this subdivision, the~~  
5 ~~commission or its designee shall invest the money contained in~~  
6 ~~the Boxers' Pension Fund according to the same standard of care~~  
7 ~~as provided in Section 16040 of the Probate Code. The commission~~  
8 ~~has exclusive control over the investment of all moneys in the~~  
9 ~~Boxers' Pension Fund. Except as otherwise prohibited or restricted~~  
10 ~~by law, the commission may invest the moneys in the fund through~~  
11 ~~the purchase, holding, or sale of any investment, financial~~  
12 ~~instrument, or financial transaction that the commission in its~~  
13 ~~informed opinion determines is prudent.~~

14 ~~(f) The administrative costs associated with investing, managing,~~  
15 ~~and distributing the Boxers' Pension Fund shall be limited to no~~  
16 ~~more than 20 percent of the average annual contribution made to~~  
17 ~~the fund in the previous two years, not including any investment~~  
18 ~~income derived from the corpus of the fund. Diligence shall be~~  
19 ~~exercised by administrators in order to lower the fund's expense~~  
20 ~~ratio as far below 20 percent as feasible and appropriate. The~~  
21 ~~commission shall report to the Legislature and the Office of the~~  
22 ~~Consumer Advocate on the impact of this provision on or before~~  
23 ~~March 1, 2008.~~

24 ~~SEC. 75. Section 22259 of the Business and Professions Code~~  
25 ~~is repealed.~~

26 ~~SEC. 76. Section 9148.8 of the Government Code is amended~~  
27 ~~to read:~~

28 ~~9148.8. (a) The Office of the Consumer Advocate, acting~~  
29 ~~pursuant to a request from the chairperson of the appropriate policy~~  
30 ~~committee, shall evaluate a plan prepared pursuant to Section~~  
31 ~~9148.4 or 9148.6.~~

32 ~~(b) Evaluations prepared by the Office of the Consumer~~  
33 ~~Advocate pursuant to this section shall be provided to the respective~~  
34 ~~policy and fiscal committees of the Legislature pursuant to rules~~  
35 ~~adopted by each committee for this purpose.~~

36 ~~SEC. 77. Section 9148.51 of the Government Code is amended~~  
37 ~~to read:~~

38 ~~9148.51. (a) It is the intent of the Legislature that all existing~~  
39 ~~and proposed state boards be subject to review upon request by a~~  
40 ~~Member of the Legislature or the chief of the Office of the~~



1 ~~Consumer Advocate, as provided in Division 1.3 (commencing~~  
2 ~~with Section 474.20) of the Business and Professions Code, to~~  
3 ~~evaluate and determine whether the highest priority of each board~~  
4 ~~is the protection of the public.~~

5 ~~(b) If any state board is determined to be defieient pursuant to~~  
6 ~~Section 474.21 of the Business and Professions Code, the~~  
7 ~~incumbent members of the board shall be removed from office~~  
8 ~~without a hearing as described in Section 474.21 of the Business~~  
9 ~~and Professions Code, and a successor board shall be appointed~~  
10 ~~pursuant to Section 101.1 of the Business and Professions Code.~~

11 ~~SEC. 78. Section 9148.52 of the Government Code is repealed.~~

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1294  
**Author:** Ducheny  
**Bill Date:** July 1, 2008, amended  
**Subject:** Employed Physicians: pilot project  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill makes minor changes to the Board's current pilot program, which allows for the direct employment of physicians and surgeons by qualified district hospitals.

**ANALYSIS:**

Current law (commonly referred to 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.

Pursuant to Senate Bill 376, Chesbro (Chapter 411, Statutes of 2003), the Board established a pilot project to provide for the direct employment of physicians by qualified district hospitals. The pilot project is set to expire on January 1, 2011.

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 this 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.

Under current law, this program is designated as a pilot program set to expire in 2011. However, while this bill would allow the pilot program to continue until 2016, an evaluation has not been concluded yet. 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 were requested by April 15, 2008, and the report is being prepared; current law requires the report to be submitted to the Legislature no later than October 1, 2008 and this bill would require a subsequent report to the Legislature in 2013.

Under current law, the program provides for the direct employment of a total of 20 physicians in California by qualified district hospitals and limits the total number of physicians employed by a qualified district hospital to no more than two at a time. This bill as originally introduced would allow an unlimited number of physicians to be directly employed throughout California and would increase the maximum employed by each hospital to five physicians. 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.

Under current law, the pilot program applies to "qualified district hospitals," which are defined as hospitals that meet all of the following requirements:

1. Is a district hospital organized and governed pursuant to the Local Health Care District Law?
2. Does it provide a percentage of care to Medicare, Medi-Cal, and uninsured patients that exceeds 50 percent of patient days?
3. Is it located in a county with a total population of less than 750,000? (According to the 2000 Census, the following counties have a population over 750,000; therefore, hospitals in these counties are not eligible to participate in the pilot program: Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara, and Ventura counties.)
4. Does it have net losses from operations in fiscal year 2000-01, as reported to the Office of Statewide Health Planning and Development?

The bill as introduced made significant changes to the Board's pilot program. However, following discussion in the Senate Health Committee, the author recognized that changes to the program might be premature, considering the Board has not conducted an analysis of the program's outcomes.

Thus, the bill was amended to closely reflect existing law. The only remaining changes in the bill are:

1. Instead of requiring the hospital to be located in a county with a total population of less than 750,000, participating hospitals must be located within a medically underserved population, medically underserved area, or health professions shortage area.
2. Allow the hospitals to employ more than two physicians if deemed appropriate by the Board.
3. The participating hospital must have net losses from operations *in the previous fiscal year*.
4. The board must submit a supplemental report to the Legislature in 2014.
5. The pilot program is extended until 2017.

This bill was amended May 23, 2008, to extend the pilot project until 2017.

**FISCAL:**

Minor and absorbable to: monitor, develop process to approve/deny more than two physicians per hospital, and to write report.

**POSITION:**

Neutral

July 17, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN SENATE MAY 23, 2008

AMENDED IN SENATE APRIL 23, 2008

**SENATE BILL**

**No. 1294**

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**Introduced by Senator Ducheny**

February 19, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1294, as amended, Ducheny. Healing arts.

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 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 certain requirements. Existing law defines a qualified district hospital for purposes of the pilot project as a hospital that, among other things, is located in a county with a population of less than 750,000 and had net losses in fiscal year 2001–02. Existing law requires the Medical Board of California to report to the Legislature not later than October 8, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to allow the employment of more than 20 physicians and surgeons, subject to statewide demand and at the discretion of the board, and to allow the total number of licensees employed by a qualified district hospital to exceed 2, if deemed appropriate by the board on a case-by-case basis. The bill would revise the definition of a qualified district hospital; to a hospital that, among other things, is located in a medically underserved area or a rural hospital and had net losses in the most recent fiscal year. The bill would extend the pilot project until January 1, ~~2016~~ 2017, would require the board to provide a supplemental report to the Legislature not later than October 1, ~~2013~~ 2014, on the evaluation of the effectiveness of the pilot project, and would make conforming changes.

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

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

1 SECTION 1. Section 2401.1 of the Business and Professions  
2 Code is amended to read:  
3 2401.1. (a) The Legislature finds and declares as follows:  
4 (1) Due to the large number of uninsured and underinsured  
5 Californians, a number of California communities are having great  
6 difficulty recruiting and retaining physicians and surgeons.  
7 (2) In order to recruit physicians and surgeons to provide  
8 medically necessary services in rural and medically underserved  
9 communities, many district hospitals have no viable alternative  
10 but to directly employ physicians and surgeons in order to provide  
11 economic security adequate for a physician and surgeon to relocate  
12 and reside in their communities.  
13 (3) The Legislature intends that a district hospital meeting the  
14 conditions set forth in this section be able to employ physicians  
15 and surgeons directly, and to charge for their professional services.  
16 (4) *The purpose of the pilot project established by this section*  
17 *is to improve recruitment and retention of physicians and surgeons*  
18 *in rural or other medically underserved areas throughout*  
19 *California.*  
20 ~~(4)~~  
21 (5) The Legislature reaffirms that Section 2400 provides an  
22 increasingly important protection for patients and physicians and  
23 surgeons from inappropriate intrusions into the practice of

1 medicine, and further intends that a district hospital not interfere  
2 with, control, or otherwise direct a physician and surgeon's  
3 professional judgment.

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

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

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

14 (2) Provides a percentage of care to Medicare, Medi-Cal, and  
15 uninsured patients that exceeds 50 percent of patient days,  
16 excluding patient days devoted to contracts with the Department  
17 of Corrections and Rehabilitation.

18 (3) Is located within a medically underserved population,  
19 medically underserved area, or health professions shortage area,  
20 so designated by the federal government pursuant to Section 254b,  
21 254c-14, or 254e of Title 42 of the United States Code, or is a rural  
22 hospital as defined in Section 124840 of the Health and Safety  
23 Code.

24 (4) Has net losses from operations in the most recent fiscal year  
25 prior to executing an employment contract, as reported to the Office  
26 of Statewide Health Planning and Development.

27 (d) In addition to the requirements of subdivision (c), and in  
28 addition to other applicable laws, a qualified district hospital may  
29 directly employ a licensee pursuant to subdivision (b) if all of the  
30 following conditions are satisfied:

31 (1) The total number of physicians and surgeons employed by  
32 all qualified district hospitals under this section does not exceed  
33 20. If statewide demand exceeds the statewide cap, additional  
34 physicians and surgeons may be employed under this section at  
35 the discretion of the board.

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

1 (3) The licensee enters into or renews a written employment  
2 contract with the qualified district hospital prior to December 31,  
3 ~~2011~~ 2012, for a term not in excess of four years. The contract  
4 shall provide for mandatory dispute resolution under the auspices  
5 of the board for disputes directly relating to the licensee's clinical  
6 practice.

7 (4) The total number of licensees employed by the qualified  
8 district hospital does not exceed two at any time, unless the  
9 employment of additional physicians and surgeons is deemed  
10 appropriate by the board on a case-by-case basis.

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

18 (e) The board shall report to the Legislature not later than  
19 October 1, 2008, and shall provide a supplemental report not later  
20 than October 1, ~~2013~~ 2014, on the evaluation of the effectiveness  
21 of the pilot project in improving access to health care in rural and  
22 medically underserved areas and the project's impact on consumer  
23 protection as it relates to intrusions into the practice of medicine.

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

27 (g) This section shall remain in effect only until January 1, ~~2016~~  
28 2017, and as of that date is repealed, unless a later enacted statute  
29 that is enacted before January 1, ~~2016~~ 2017, deletes or extends  
30 that date.



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 in the Assembly Appropriations Committee on suspense.

**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 have been 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:** Support

July 15, 2008

**Introduced by Senator Ducheny**

February 21, 2008

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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:*

1 SECTION 1. Section 1341.45 is added to the Health and Safety  
2 Code, to read:

3 1341.45. The fines and administrative penalties authorized  
4 pursuant to this chapter shall be paid to the Medically Underserved  
5 Account for Physicians within the Health Professions Education  
6 Fund and shall, upon appropriation by the Legislature, be used for  
7 the purposes of the Steven M. Thompson Physician Corps Loan  
8 Repayment Program, as specified in Article 5 (commencing with  
9 Section 128550) of Chapter 5 of Part 3 of Division 107 and,  
10 notwithstanding Section 128555, shall not be used to provide  
11 funding for the Physician Volunteer Program. Notwithstanding  
12 Section 1356.1, these fines and penalties shall not be used to reduce  
13 the assessments imposed on health care service plans pursuant to  
14 Section 1356.

15 SEC. 2. Section 1367.01 of the Health and Safety Code is  
16 amended to read:

17 1367.01. (a) A health care service plan and any entity with  
18 which it contracts for services that include utilization review or  
19 utilization management functions, that prospectively,  
20 retrospectively, or concurrently reviews and approves, modifies,  
21 delays, or denies, based in whole or in part on medical necessity,  
22 requests by providers prior to, retrospectively, or concurrent with  
23 the provision of health care services to enrollees, or that delegates  
24 these functions to medical groups or independent practice

1 associations or to other contracting providers, shall comply with  
2 this section.

3 (b) A health care service plan that is subject to this section shall  
4 have written policies and procedures establishing the process by  
5 which the plan prospectively, retrospectively, or concurrently  
6 reviews and approves, modifies, delays, or denies, based in whole  
7 or in part on medical necessity, requests by providers of health  
8 care services for plan enrollees. These policies and procedures  
9 shall ensure that decisions based on the medical necessity of  
10 proposed health care services are consistent with criteria or  
11 guidelines that are supported by clinical principles and processes.  
12 These criteria and guidelines shall be developed pursuant to Section  
13 1363.5. These policies and procedures, and a description of the  
14 process by which the plan reviews and approves, modifies, delays,  
15 or denies requests by providers prior to, retrospectively, or  
16 concurrent with the provision of health care services to enrollees,  
17 shall be filed with the director for review and approval, and shall  
18 be disclosed by the plan to providers and enrollees upon request,  
19 and by the plan to the public upon request.

20 (c) A health care service plan subject to this section, except a  
21 plan that meets the requirements of Section 1351.2, shall employ  
22 or designate a medical director who holds an unrestricted license  
23 to practice medicine in this state issued pursuant to Section 2050  
24 of the Business and Professions Code or pursuant to the  
25 Osteopathic Act, or, if the plan is a specialized health care service  
26 plan, a clinical director with California licensure in a clinical area  
27 appropriate to the type of care provided by the specialized health  
28 care service plan. The medical director or clinical director shall  
29 ensure that the process by which the plan reviews and approves,  
30 modifies, or denies, based in whole or in part on medical necessity,  
31 requests by providers prior to, retrospectively, or concurrent with  
32 the provision of health care services to enrollees, complies with  
33 the requirements of this section.

34 (d) If health plan personnel, or individuals under contract to the  
35 plan to review requests by providers, approve the provider's  
36 request, pursuant to subdivision (b), the decision shall be  
37 communicated to the provider pursuant to subdivision (h).

38 (e) No individual, other than a licensed physician or a licensed  
39 health care professional who is competent to evaluate the specific  
40 clinical issues involved in the health care services requested by

1 the provider, may deny or modify requests for authorization of  
2 health care services for an enrollee for reasons of medical necessity.  
3 The decision of the physician or other health care professional  
4 shall be communicated to the provider and the enrollee pursuant  
5 to subdivision (h).

6 (f) The criteria or guidelines used by the health care service  
7 plan to determine whether to approve, modify, or deny requests  
8 by providers prior to, retrospectively, or concurrent with, the  
9 provision of health care services to enrollees shall be consistent  
10 with clinical principles and processes. These criteria and guidelines  
11 shall be developed pursuant to the requirements of Section 1363.5.

12 (g) If the health care service plan requests medical information  
13 from providers in order to determine whether to approve, modify,  
14 or deny requests for authorization, the plan shall request only the  
15 information reasonably necessary to make the determination.

16 (h) In determining whether to approve, modify, or deny requests  
17 by providers prior to, retrospectively, or concurrent with the  
18 provision of health care services to enrollees, based in whole or  
19 in part on medical necessity, a health care service plan subject to  
20 this section shall meet the following requirements:

21 (1) Decisions to approve, modify, or deny, based on medical  
22 necessity, requests by providers prior to, or concurrent with the  
23 provision of health care services to enrollees that do not meet the  
24 requirements for the 72-hour review required by paragraph (2),  
25 shall be made in a timely fashion appropriate for the nature of the  
26 enrollee's condition, not to exceed five business days from the  
27 plan's receipt of the information reasonably necessary and  
28 requested by the plan to make the determination. In cases where  
29 the review is retrospective, the decision shall be communicated to  
30 the individual who received services, or to the individual's  
31 designee, within 30 days of the receipt of information that is  
32 reasonably necessary to make this determination, and shall be  
33 communicated to the provider in a manner that is consistent with  
34 current law. For purposes of this section, retrospective reviews  
35 shall be for care rendered on or after January 1, 2000.

36 (2) When the enrollee's condition is such that the enrollee faces  
37 an imminent and serious threat to his or her health, including, but  
38 not limited to, the potential loss of life, limb, or other major bodily  
39 function, or the normal timeframe for the decisionmaking process,  
40 as described in paragraph (1), would be detrimental to the enrollee's

1 life or health or could jeopardize the enrollee's ability to regain  
2 maximum function, decisions to approve, modify, or deny requests  
3 by providers prior to, or concurrent with, the provision of health  
4 care services to enrollees, shall be made in a timely fashion  
5 appropriate for the nature of the enrollee's condition, not to exceed  
6 72 hours after the plan's receipt of the information reasonably  
7 necessary and requested by the plan to make the determination.  
8 Nothing in this section shall be construed to alter the requirements  
9 of subdivision (b) of Section 1371.4. Notwithstanding Section  
10 1371.4, the requirements of this division shall be applicable to all  
11 health plans and other entities conducting utilization review or  
12 utilization management.

13 (3) Decisions to approve, modify, or deny requests by providers  
14 for authorization prior to, or concurrent with, the provision of  
15 health care services to enrollees shall be communicated to the  
16 requesting provider within 24 hours of the decision. Except for  
17 concurrent review decisions pertaining to care that is underway,  
18 which shall be communicated to the enrollee's treating provider  
19 within 24 hours, decisions resulting in denial, delay, or  
20 modification of all or part of the requested health care service shall  
21 be communicated to the enrollee in writing within two business  
22 days of the decision. In the case of concurrent review, care shall  
23 not be discontinued until the enrollee's treating provider has been  
24 notified of the plan's decision and a care plan has been agreed  
25 upon by the treating provider that is appropriate for the medical  
26 needs of that patient.

27 (4) Communications regarding decisions to approve requests  
28 by providers prior to, retrospectively, or concurrent with the  
29 provision of health care services to enrollees shall specify the  
30 specific health care service approved. Responses regarding  
31 decisions to deny, delay, or modify health care services requested  
32 by providers prior to, retrospectively, or concurrent with the  
33 provision of health care services to enrollees shall be  
34 communicated to the enrollee in writing, and to providers initially  
35 by telephone or facsimile, except with regard to decisions rendered  
36 retrospectively, and then in writing, and shall include a clear and  
37 concise explanation of the reasons for the plan's decision, a  
38 description of the criteria or guidelines used, and the clinical  
39 reasons for the decisions regarding medical necessity. Any written  
40 communication to a physician or other health care provider of a

1 denial, delay, or modification of a request shall include the name  
2 and telephone number of the health care professional responsible  
3 for the denial, delay, or modification. The telephone number  
4 provided shall be a direct number or an extension, to allow the  
5 physician or health care provider easily to contact the professional  
6 responsible for the denial, delay, or modification. Responses shall  
7 also include information as to how the enrollee may file a grievance  
8 with the plan pursuant to Section 1368, and in the case of Medi-Cal  
9 enrollees, shall explain how to request an administrative hearing  
10 and aid paid pending under Sections 51014.1 and 51014.2 of Title  
11 22 of the California Code of Regulations.

12 (5) If the health care service plan cannot make a decision to  
13 approve, modify, or deny the request for authorization within the  
14 timeframes specified in paragraph (1) or (2) because the plan is  
15 not in receipt of all of the information reasonably necessary and  
16 requested, or because the plan requires consultation by an expert  
17 reviewer, or because the plan has asked that an additional  
18 examination or test be performed upon the enrollee, provided the  
19 examination or test is reasonable and consistent with good medical  
20 practice, the plan shall, immediately upon the expiration of the  
21 timeframe specified in paragraph (1) or (2) or as soon as the plan  
22 becomes aware that it will not meet the timeframe, whichever  
23 occurs first, notify the provider and the enrollee, in writing, that  
24 the plan cannot make a decision to approve, modify, or deny the  
25 request for authorization within the required timeframe, and specify  
26 the information requested but not received, or the expert reviewer  
27 to be consulted, or the additional examinations or tests required.  
28 The plan shall also notify the provider and enrollee of the  
29 anticipated date on which a decision may be rendered. Upon receipt  
30 of all information reasonably necessary and requested by the plan,  
31 the plan shall approve, modify, or deny the request for authorization  
32 within the timeframes specified in paragraph (1) or (2), whichever  
33 applies.

34 (6) If the director determines that a health care service plan has  
35 failed to meet any of the timeframes in this section, or has failed  
36 to meet any other requirement of this section, the director may  
37 assess, by order, administrative penalties for each failure. A  
38 proceeding for the issuance of an order assessing administrative  
39 penalties shall be subject to appropriate notice to, and an  
40 opportunity for a hearing with regard to, the person affected, in

1 accordance with subdivision (a) of Section 1397. The  
2 administrative penalties shall not be deemed an exclusive remedy  
3 for the director. ~~These penalties shall be paid to the State Managed~~  
4 ~~Care Fund.~~

5 (i) A health care service plan subject to this section shall  
6 maintain telephone access for providers to request authorization  
7 for health care services.

8 (j) A health care service plan subject to this section that reviews  
9 requests by providers prior to, retrospectively, or concurrent with,  
10 the provision of health care services to enrollees shall establish,  
11 as part of the quality assurance program required by Section 1370,  
12 a process by which the plan's compliance with this section is  
13 assessed and evaluated. The process shall include provisions for  
14 evaluation of complaints, assessment of trends, implementation  
15 of actions to correct identified problems, mechanisms to  
16 communicate actions and results to the appropriate health plan  
17 employees and contracting providers, and provisions for evaluation  
18 of any corrective action plan and measurements of performance.

19 (k) The director shall review a health care service plan's  
20 compliance with this section as part of its periodic onsite medical  
21 survey of each plan undertaken pursuant to Section 1380, and shall  
22 include a discussion of compliance with this section as part of its  
23 report issued pursuant to that section.

24 (l) This section shall not apply to decisions made for the care  
25 or treatment of the sick who depend upon prayer or spiritual means  
26 for healing in the practice of religion as set forth in subdivision  
27 (a) of Section 1270.

28 (m) Nothing in this section shall cause a health care service plan  
29 to be defined as a health care provider for purposes of any provision  
30 of law, including, but not limited to, Section 6146 of the Business  
31 and Professions Code, Sections 3333.1 and 3333.2 of the Civil  
32 Code, and Sections 340.5, 364, 425.13, 667.7, and 1295 of the  
33 Code of Civil Procedure.

34 SEC. 3. Section 1367.03 of the Health and Safety Code is  
35 amended to read:

36 1367.03. (a) Not later than January 1, 2004, the department  
37 shall develop and adopt regulations to ensure that enrollees have  
38 access to needed health care services in a timely manner. In  
39 developing these regulations, the department shall develop



1 indicators of timeliness of access to care and, in so doing, shall  
2 consider the following as indicators of timeliness of access to care:

3 (1) Waiting times for appointments with physicians, including  
4 primary care and specialty physicians.

5 (2) Timeliness of care in an episode of illness, including the  
6 timeliness of referrals and obtaining other services, if needed.

7 (3) Waiting time to speak to a physician, registered nurse, or  
8 other qualified health professional acting within his or her scope  
9 of practice who is trained to screen or triage an enrollee who may  
10 need care.

11 (b) In developing these standards for timeliness of access, the  
12 department shall consider the following:

13 (1) Clinical appropriateness.

14 (2) The nature of the specialty.

15 (3) The urgency of care.

16 (4) The requirements of other provisions of law, including  
17 Section 1367.01 governing utilization review, that may affect  
18 timeliness of access.

19 (c) The department may adopt standards other than the time  
20 elapsed between the time an enrollee seeks health care and obtains  
21 care. If the department chooses a standard other than the time  
22 elapsed between the time an enrollee first seeks health care and  
23 obtains it, the department shall demonstrate why that standard is  
24 more appropriate. In developing these standards, the department  
25 shall consider the nature of the plan network.

26 (d) The department shall review and adopt standards, as needed,  
27 concerning the availability of primary care physicians, specialty  
28 physicians, hospital care, and other health care, so that consumers  
29 have timely access to care. In so doing, the department shall  
30 consider the nature of physician practices, including individual  
31 and group practices as well as the nature of the plan network. The  
32 department shall also consider various circumstances affecting the  
33 delivery of care, including urgent care, care provided on the same  
34 day, and requests for specific providers. If the department finds  
35 that health care service plans and health care providers have  
36 difficulty meeting these standards, the department may make  
37 recommendations to the Assembly Committee on Health and the  
38 Senate Committee on Insurance of the Legislature pursuant to  
39 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.

1 (3) The director may, after appropriate notice and opportunity  
2 for hearing in accordance with Section 1397, by order, assess  
3 administrative penalties if the director determines that a health  
4 care service plan has knowingly committed, or has performed with  
5 a frequency that indicates a general business practice, either of the  
6 following:

7 (A) Repeated failure to act promptly and reasonably to assure  
8 timely access to care consistent with this chapter.

9 (B) Repeated failure to act promptly and reasonably to require  
10 contracting providers to assure timely access that the plan is  
11 required to perform under this chapter and that have been delegated  
12 by the plan to the contracting provider when the obligation of the  
13 plan to the enrollee or subscriber is reasonably clear.

14 (C) The administrative penalties available to the director  
15 pursuant to this section are not exclusive, and may be sought and  
16 employed in any combination with civil, criminal, and other  
17 administrative remedies deemed warranted by the director to  
18 enforce this chapter.

19 ~~(4) The administrative penalties authorized pursuant to this~~  
20 ~~section shall be paid to the State Managed Care Fund.~~

21 (h) The department shall work with the patient advocate to  
22 assure that the quality of care report card incorporates information  
23 provided pursuant to subdivision (f) regarding the degree to which  
24 health care service plans and health care providers comply with  
25 the requirements for timely access to care.

26 (i) The department shall report to the Assembly Committee on  
27 Health and the Senate Committee on Insurance of the Legislature  
28 on March 1, 2003, and on March 1, 2004, regarding the progress  
29 toward the implementation of this section.

30 (j) Every three years, the department shall review information  
31 regarding compliance with the standards developed under this  
32 section and shall make recommendations for changes that further  
33 protect enrollees.

34 SEC. 4. Section 1368 of the Health and Safety Code is amended  
35 to read:

36 1368. (a) Every plan shall do all of the following:

37 (1) Establish and maintain a grievance system approved by the  
38 department under which enrollees may submit their grievances to  
39 the plan. Each system shall provide reasonable procedures in  
40 accordance with department regulations that shall ensure adequate

1 consideration of enrollee grievances and rectification when  
2 appropriate.

3 (2) Inform its subscribers and enrollees upon enrollment in the  
4 plan and annually thereafter of the procedure for processing and  
5 resolving grievances. The information shall include the location  
6 and telephone number where grievances may be submitted.

7 (3) Provide forms for grievances to be given to subscribers and  
8 enrollees who wish to register written grievances. The forms used  
9 by plans licensed pursuant to Section 1353 shall be approved by  
10 the director in advance as to format.

11 (4) (A) Provide for a written acknowledgment within five  
12 calendar days of the receipt of a grievance, except as noted in  
13 subparagraph (B). The acknowledgment shall advise the  
14 complainant of the following:

15 (i) That the grievance has been received.

16 (ii) The date of receipt.

17 (iii) The name of the plan representative and the telephone  
18 number and address of the plan representative who may be  
19 contacted about the grievance.

20 (B) Grievances received by telephone, by facsimile, by e-mail,  
21 or online through the plan's Web site pursuant to Section 1368.015,  
22 that are not coverage disputes, disputed health care services  
23 involving medical necessity, or experimental or investigational  
24 treatment and that are resolved by the next business day following  
25 receipt are exempt from the requirements of subparagraph (A) and  
26 paragraph (5). The plan shall maintain a log of all these grievances.  
27 The log shall be periodically reviewed by the plan and shall include  
28 the following information for each complaint:

29 (i) The date of the call.

30 (ii) The name of the complainant.

31 (iii) The complainant's member identification number.

32 (iv) The nature of the grievance.

33 (v) The nature of the resolution.

34 (vi) The name of the plan representative who took the call and  
35 resolved the grievance.

36 (5) Provide subscribers and enrollees with written responses to  
37 grievances, with a clear and concise explanation of the reasons for  
38 the plan's response. For grievances involving the delay, denial, or  
39 modification of health care services, the plan response shall  
40 describe the criteria used and the clinical reasons for its decision,

1 including all criteria and clinical reasons related to medical  
2 necessity. If a plan, or one of its contracting providers, issues a  
3 decision delaying, denying, or modifying health care services based  
4 in whole or in part on a finding that the proposed health care  
5 services are not a covered benefit under the contract that applies  
6 to the enrollee, the decision shall clearly specify the provisions in  
7 the contract that exclude that coverage.

8 (6) Keep in its files all copies of grievances, and the responses  
9 thereto, for a period of five years.

10 (b) (1) (A) After either completing the grievance process  
11 described in subdivision (a), or participating in the process for at  
12 least 30 days, a subscriber or enrollee may submit the grievance  
13 to the department for review. In any case determined by the  
14 department to be a case involving an imminent and serious threat  
15 to the health of the patient, including, but not limited to, severe  
16 pain, the potential loss of life, limb, or major bodily function, or  
17 in any other case where the department determines that an earlier  
18 review is warranted, a subscriber or enrollee shall not be required  
19 to complete the grievance process or to participate in the process  
20 for at least 30 days before submitting a grievance to the department  
21 for review.

22 (B) A grievance may be submitted to the department for review  
23 and resolution prior to any arbitration.

24 (C) Notwithstanding subparagraphs (A) and (B), the department  
25 may refer any grievance that does not pertain to compliance with  
26 this chapter to the State Department of Health Services, the  
27 California Department of Aging, the federal Health Care Financing  
28 Administration, or any other appropriate governmental entity for  
29 investigation and resolution.

30 (2) If the subscriber or enrollee is a minor, or is incompetent or  
31 incapacitated, the parent, guardian, conservator, relative, or other  
32 designee of the subscriber or enrollee, as appropriate, may submit  
33 the grievance to the department as the agent of the subscriber or  
34 enrollee. Further, a provider may join with, or otherwise assist, a  
35 subscriber or enrollee, or the agent, to submit the grievance to the  
36 department. In addition, following submission of the grievance to  
37 the department, the subscriber or enrollee, or the agent, may  
38 authorize the provider to assist, including advocating on behalf of  
39 the subscriber or enrollee. For purposes of this section, a "relative"  
40 includes the parent, stepparent, spouse, adult son or daughter,

1 grandparent, brother, sister, uncle, or aunt of the subscriber or  
2 enrollee.

3 (3) The department shall review the written documents submitted  
4 with the subscriber's or the enrollee's request for review, or  
5 submitted by the agent on behalf of the subscriber or enrollee. The  
6 department may ask for additional information, and may hold an  
7 informal meeting with the involved parties, including providers  
8 who have joined in submitting the grievance or who are otherwise  
9 assisting or advocating on behalf of the subscriber or enrollee. If  
10 after reviewing the record, the department concludes that the  
11 grievance, in whole or in part, is eligible for review under the  
12 independent medical review system established pursuant to Article  
13 5.55 (commencing with Section 1374.30), the department shall  
14 immediately notify the subscriber or enrollee, or agent, of that  
15 option and shall, if requested orally or in writing, assist the  
16 subscriber or enrollee in participating in the independent medical  
17 review system.

18 (4) If after reviewing the record of a grievance, the department  
19 concludes that a health care service eligible for coverage and  
20 payment under a health care service plan contract has been delayed,  
21 denied, or modified by a plan, or by one of its contracting  
22 providers, in whole or in part due to a determination that the service  
23 is not medically necessary, and that determination was not  
24 communicated to the enrollee in writing along with a notice of the  
25 enrollee's potential right to participate in the independent medical  
26 review system, as required by this chapter, the director shall, by  
27 order, assess administrative penalties. A proceeding for the issuance  
28 of an order assessing administrative penalties shall be subject to  
29 appropriate notice of, and the opportunity for, a hearing with regard  
30 to the person affected in accordance with Section 1397. The  
31 administrative penalties shall not be deemed an exclusive remedy  
32 available to the director. ~~These penalties shall be paid to the State~~  
33 ~~Managed Care Fund.~~

34 (5) The department shall send a written notice of the final  
35 disposition of the grievance, and the reasons therefor, to the  
36 subscriber or enrollee, the agent, to any provider that has joined  
37 with or is otherwise assisting the subscriber or enrollee, and to the  
38 plan, within 30 calendar days of receipt of the request for review  
39 unless the director, in his or her discretion, determines that  
40 additional time is reasonably necessary to fully and fairly evaluate

1 the relevant grievance. In any case not eligible for the independent  
2 medical review system established pursuant to Article 5.55  
3 (commencing with Section 1374.30), the department's written  
4 notice shall include, at a minimum, the following:

5 (A) A summary of its findings and the reasons why the  
6 department found the plan to be, or not to be, in compliance with  
7 any applicable laws, regulations, or orders of the director.

8 (B) A discussion of the department's contact with any medical  
9 provider, or any other independent expert relied on by the  
10 department, along with a summary of the views and qualifications  
11 of that provider or expert.

12 (C) If the enrollee's grievance is sustained in whole or part,  
13 information about any corrective action taken.

14 (6) In any department review of a grievance involving a disputed  
15 health care service, as defined in subdivision (b) of Section  
16 1374.30, that is not eligible for the independent medical review  
17 system established pursuant to Article 5.55 (commencing with  
18 Section 1374.30), in which the department finds that the plan has  
19 delayed, denied, or modified health care services that are medically  
20 necessary, based on the specific medical circumstances of the  
21 enrollee, and those services are a covered benefit under the terms  
22 and conditions of the health care service plan contract, the  
23 department's written notice shall do either of the following:

24 (A) Order the plan to promptly offer and provide those health  
25 care services to the enrollee.

26 (B) Order the plan to promptly reimburse the enrollee for any  
27 reasonable costs associated with urgent care or emergency services,  
28 or other extraordinary and compelling health care services, when  
29 the department finds that the enrollee's decision to secure those  
30 services outside of the plan network was reasonable under the  
31 circumstances.

32 The department's order shall be binding on the plan.

33 (7) Distribution of the written notice shall not be deemed a  
34 waiver of any exemption or privilege under existing law, including,  
35 but not limited to, Section 6254.5 of the Government Code, for  
36 any information in connection with and including the written  
37 notice, nor shall any person employed or in any way retained by  
38 the department be required to testify as to that information or  
39 notice.

1 (8) The director shall establish and maintain a system of aging  
2 of grievances that are pending and unresolved for 30 days or more  
3 that shall include a brief explanation of the reasons each grievance  
4 is pending and unresolved for 30 days or more.

5 (9) A subscriber or enrollee, or the agent acting on behalf of a  
6 subscriber or enrollee, may also request voluntary mediation with  
7 the plan prior to exercising the right to submit a grievance to the  
8 department. The use of mediation services shall not preclude the  
9 right to submit a grievance to the department upon completion of  
10 mediation. In order to initiate mediation, the subscriber or enrollee,  
11 or the agent acting on behalf of the subscriber or enrollee, and the  
12 plan shall voluntarily agree to mediation. Expenses for mediation  
13 shall be borne equally by both sides. The department shall have  
14 no administrative or enforcement responsibilities in connection  
15 with the voluntary mediation process authorized by this paragraph.

16 (c) The plan's grievance system shall include a system of aging  
17 of grievances that are pending and unresolved for 30 days or more.  
18 The plan shall provide a quarterly report to the director of  
19 grievances pending and unresolved for 30 or more days with  
20 separate categories of grievances for Medicare enrollees and  
21 Medi-Cal enrollees. The plan shall include with the report a brief  
22 explanation of the reasons each grievance is pending and  
23 unresolved for 30 days or more. The plan may include the  
24 following statement in the quarterly report that is made available  
25 to the public by the director:

26 "Under Medicare and Medi-Cal law, Medicare enrollees and  
27 Medi-Cal enrollees each have separate avenues of appeal that  
28 are not available to other enrollees. Therefore, grievances  
29 pending and unresolved may reflect enrollees pursuing their  
30 Medicare or Medi-Cal appeal rights."

31 If requested by a plan, the director shall include this statement in  
32 a written report made available to the public and prepared by the  
33 director that describes or compares grievances that are pending  
34 and unresolved with the plan for 30 days or more. Additionally,  
35 the director shall, if requested by a plan, append to that written  
36 report a brief explanation, provided in writing by the plan, of the  
37 reasons why grievances described in that written report are pending  
38 and unresolved for 30 days or more. The director shall not be  
39 required to include a statement or append a brief explanation to a



1 written report that the director is required to prepare under this  
2 chapter, including Sections 1380 and 1397.5.

3 (d) Subject to subparagraph (C) of paragraph (1) of subdivision  
4 (b), the grievance or resolution procedures authorized by this  
5 section shall be in addition to any other procedures that may be  
6 available to any person, and failure to pursue, exhaust, or engage  
7 in the procedures described in this section shall not preclude the  
8 use of any other remedy provided by law.

9 (e) Nothing in this section shall be construed to allow the  
10 submission to the department of any provider grievance under this  
11 section. However, as part of a provider's duty to advocate for  
12 medically appropriate health care for his or her patients pursuant  
13 to Sections 510 and 2056 of the Business and Professions Code,  
14 nothing in this subdivision shall be construed to prohibit a provider  
15 from contacting and informing the department about any concerns  
16 he or she has regarding compliance with or enforcement of this  
17 chapter.

18 SEC. 5. Section 1368.04 of the Health and Safety Code is  
19 amended to read:

20 1368.04. (a) The director shall investigate and take  
21 enforcement action against plans regarding grievances reviewed  
22 and found by the department to involve noncompliance with the  
23 requirements of this chapter, including grievances that have been  
24 reviewed pursuant to the independent medical review system  
25 established pursuant to Article 5.55 (commencing with Section  
26 1374.30). Where substantial harm to an enrollee has occurred as  
27 a result of plan noncompliance, the director shall, by order, assess  
28 administrative penalties subject to appropriate notice of, and the  
29 opportunity for, a hearing with regard to the person affected in  
30 accordance with Section 1397. The administrative penalties shall  
31 not be deemed an exclusive remedy available to the director. ~~These~~  
32 ~~penalties shall be paid to the State Managed Care Fund.~~ The  
33 director shall periodically evaluate grievances to determine if any  
34 audit, investigative, or enforcement actions should be undertaken  
35 by the department.

36 (b) The director may, after appropriate notice and opportunity  
37 for hearing in accordance with Section 1397, by order, assess  
38 administrative penalties if the director determines that a health  
39 care service plan has knowingly committed, or has performed with

1 a frequency that indicates a general business practice, either of the  
2 following:

3 (1) Repeated failure to act promptly and reasonably to  
4 investigate and resolve grievances in accordance with Section  
5 1368.01.

6 (2) Repeated failure to act promptly and reasonably to resolve  
7 grievances when the obligation of the plan to the enrollee or  
8 subscriber is reasonably clear.

9 (c) The administrative penalties available to the director pursuant  
10 to this section are not exclusive, and may be sought and employed  
11 in any combination with civil, criminal, and other administrative  
12 remedies deemed warranted by the director to enforce this chapter.

13 ~~(d) The administrative penalties authorized pursuant to this~~  
14 ~~section shall be paid to the State Managed Care Fund.~~

15 SEC. 6. Section 1374.9 of the Health and Safety Code is  
16 amended to read:

17 1374.9. For violations of Section 1374.7, the director may,  
18 after appropriate notice and opportunity for hearing, by order, levy  
19 administrative penalties as follows:

20 (a) Any health care service plan that violates Section 1374.7,  
21 or that violates any rule or order adopted or issued pursuant to this  
22 section, is liable for administrative penalties of not less than two  
23 thousand five hundred dollars (\$2,500) for each first violation, and  
24 of not less than five thousand dollars (\$5,000) nor more than ten  
25 thousand dollars (\$10,000) for each second violation, and of not  
26 less than fifteen thousand dollars (\$15,000) and not more than one  
27 hundred thousand dollars (\$100,000) for each subsequent violation.

28 ~~(b) The administrative penalties shall be paid to the Managed~~  
29 ~~Health Care Fund.~~

30 ~~(c)~~

31 (b) The administrative penalties available to the director pursuant  
32 to this section are not exclusive, and may be sought and employed  
33 in any combination with civil, criminal, and other administrative  
34 remedies deemed advisable by the director to enforce the provisions  
35 of this chapter.

36 SEC. 7. Section 1374.34 of the Health and Safety Code is  
37 amended to read:

38 1374.34. (a) Upon receiving the decision adopted by the  
39 director pursuant to Section 1374.33 that a disputed health care  
40 service is medically necessary, the plan shall promptly implement

1 the decision. In the case of reimbursement for services already  
2 rendered, the plan shall reimburse the provider or enrollee,  
3 whichever applies, within five working days. In the case of services  
4 not yet rendered, the plan shall authorize the services within five  
5 working days of receipt of the written decision from the director,  
6 or sooner if appropriate for the nature of the enrollee's medical  
7 condition, and shall inform the enrollee and provider of the  
8 authorization in accordance with the requirements of paragraph  
9 (3) of subdivision (h) of Section 1367.01.

10 (b) A plan shall not engage in any conduct that has the effect  
11 of prolonging the independent review process. The engaging in  
12 that conduct or the failure of the plan to promptly implement the  
13 decision is a violation of this chapter and, in addition to any other  
14 fines, penalties, and other remedies available to the director under  
15 this chapter, the plan shall be subject to an administrative penalty  
16 of not less than five thousand dollars (\$5,000) for each day that  
17 the decision is not implemented. ~~Administrative penalties shall be  
18 deposited in the State Managed Care Fund.~~

19 (c) The director shall require the plan to promptly reimburse  
20 the enrollee for any reasonable costs associated with those services  
21 when the director finds that the disputed health care services were  
22 a covered benefit under the terms and conditions of the health care  
23 service plan contract, and the services are found by the independent  
24 medical review organization to have been medically necessary  
25 pursuant to Section 1374.33, and either the enrollee's decision to  
26 secure the services outside of the plan provider network was  
27 reasonable under the emergency or urgent medical circumstances,  
28 or the health care service plan contract does not require or provide  
29 prior authorization before the health care services are provided to  
30 the enrollee.

31 (d) In addition to requiring plan compliance regarding  
32 subdivisions (a), (b), and (c) the director shall review individual  
33 cases submitted for independent medical review to determine  
34 whether any enforcement actions, including penalties, may be  
35 appropriate. In particular, where substantial harm, as defined in  
36 Section 3428 of the Civil Code, to an enrollee has already occurred  
37 because of the decision of a plan, or one of its contracting  
38 providers, to delay, deny, or modify covered health care services  
39 that an independent medical review determines to be medically

1 necessary pursuant to Section 1374.33, the director shall impose  
2 penalties.

3 (e) Pursuant to Section 1368.04, the director shall perform an  
4 annual audit of independent medical review cases for the dual  
5 purposes of education and the opportunity to determine if any  
6 investigative or enforcement actions should be undertaken by the  
7 department, particularly if a plan repeatedly fails to act promptly  
8 and reasonably to resolve grievances associated with a delay,  
9 denial, or modification of medically necessary health care services  
10 when the obligation of the plan to provide those health care services  
11 to enrollees or subscribers is reasonably clear.

12 SEC. 8. Section 1393.6 of the Health and Safety Code is  
13 amended to read:

14 1393.6. For violations of Article 3.1 (commencing with Section  
15 1357) and Article 3.15 (commencing with Section 1357.50), the  
16 director may, after appropriate notice and opportunity for hearing,  
17 by order levy administrative penalties as follows:

18 (a) Any person, solicitor, or solicitor firm, other than a health  
19 care service plan, who willfully violates any provision of this  
20 chapter, or who willfully violates any rule or order adopted or  
21 issued pursuant to this chapter, is liable for administrative penalties  
22 of not less than two hundred fifty dollars (\$250) for each first  
23 violation, and of not less than one thousand dollars (\$1,000) and  
24 not more than two thousand five hundred dollars (\$2,500) for each  
25 subsequent violation.

26 (b) Any health care service plan that willfully violates any  
27 provision of this chapter, or that willfully violates any rule or order  
28 adopted or issued pursuant to this chapter, is liable for  
29 administrative penalties of not less than two thousand five hundred  
30 dollars (\$2,500) for each first violation, and of not less than five  
31 thousand dollars (\$5,000) nor more than ten thousand dollars  
32 (\$10,000) for each second violation, and of not less than fifteen  
33 thousand dollars (\$15,000) and not more than one hundred  
34 thousand dollars (\$100,000) for each subsequent violation.

35 ~~(c) The administrative penalties shall be paid to the Managed~~  
36 ~~Health Care Fund.~~

37 ~~(d)~~

38 (c) The administrative penalties available to the director pursuant  
39 to this section are not exclusive, and may be sought and employed  
40 in any combination with civil, criminal, and other administrative

1 remedies deemed advisable by the director to enforce the provisions  
2 of this chapter.

3 SEC. 9. Section 128555 of the Health and Safety Code is  
4 amended to read:

5 128555. (a) The Medically Underserved Account for  
6 Physicians is hereby established within the Health Professions  
7 Education Fund. The primary purpose of this account is to provide  
8 funding for the ongoing operations of the Steven M. Thompson  
9 Physician Corps Loan Repayment Program provided for under  
10 this article. This account also may be used to provide funding for  
11 the Physician Volunteer Program provided for under this article.

12 (b) All moneys in the Medically Underserved Account contained  
13 within the Contingent Fund of the Medical Board of California  
14 shall be transferred to the Medically Underserved Account for  
15 Physicians on July 1, 2006.

16 (c) Funds in the account shall be used to repay loans as follows  
17 per agreements made with physicians:

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

20 (2) Loan repayments may not exceed one hundred five thousand  
21 dollars (\$105,000) per individual licensed physician.

22 (3) Loan repayments may not exceed the amount of the  
23 educational loans incurred by the physician participant.

24 (d) Notwithstanding Section 11105 of the Government Code,  
25 effective January 1, 2006, the foundation may seek and receive  
26 matching funds from foundations and private sources to be placed  
27 in the account. "Matching funds" shall not be construed to be  
28 limited to a dollar-for-dollar match of funds.

29 (e) Funds placed in the account for purposes of this article,  
30 including funds received pursuant to subdivision (d), are,  
31 notwithstanding Section 13340 of the Government Code,  
32 continuously appropriated for the repayment of loans. *This*  
33 *subdivision shall not apply to funds placed in the account pursuant*  
34 *to Section 1341.45.*

35 (f) The account shall also be used to pay for the cost of  
36 administering the program and for any other purpose authorized  
37 by this article. The costs for administration of the program may  
38 be up to 5 percent of the total state appropriation for the program  
39 and shall be subject to review and approval annually through the

- 1 state budget process. This limitation shall only apply to the state
- 2 appropriation for the program.
- 3 (g) The office and the foundation shall manage the account
- 4 established by this section prudently in accordance with the other
- 5 provisions of law.

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1394  
**Author:** Lowenthal  
**Bill Date:** July 2, 2008, amended  
**Subject:** Lapses of Consciousness: reports to DMV  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**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 specifies 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 January 1, 2010 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.

Amendments to this bill would require the DMV to give primary consideration to the evaluation and assessment provided by the reporting physician and would authorize the DMV to rely on other specified factors and other forms of examination, including a road examination under specified circumstances. Amendments also require the DMV to include on the reporting form a space for the reporting physician to state whether, in his or her opinion, the patient's medical condition may affect safe driving.

**FISCAL:**               None

**POSITION:**           Support



AMENDED IN ASSEMBLY JULY 2, 2008  
AMENDED IN ASSEMBLY JUNE 17, 2008  
AMENDED IN SENATE APRIL 29, 2008  
AMENDED IN SENATE APRIL 15, 2008  
AMENDED IN SENATE APRIL 3, 2008

**SENATE BILL**

**No. 1394**

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**Introduced by Senator Lowenthal**

February 21, 2008

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An act to amend and 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 repeal these provisions on January 1, 2010, 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 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 that person's license ~~based on the evaluation, reexamination, and assessment provided by the reporting physician.~~ *The bill, with regard to making that determination, would require the DMV to give primary consideration to the evaluation and assessment provided by the reporting physician and would authorize the DMV to rely on other specified factors and other forms of examination, including a road examination under specified circumstances.*

This bill would require the DMV, in consultation with appropriate professional medical organizations, to develop physician reporting forms on or before January 1, 2010, 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:*

1 SECTION 1. Section 103900 of the Health and Safety Code  
2 is amended to read:

3 103900. (a) Every physician and surgeon shall report  
4 immediately to the local health officer in writing, the name, date  
5 of birth, and address of every patient at least 14 years of age or  
6 older whom the physician and surgeon has diagnosed as having a  
7 case of a disorder characterized by lapses of consciousness.  
8 However, if a physician and surgeon reasonably and in good faith  
9 believes that the reporting of a patient will serve the public interest,  
10 he or she may report a patient's condition even if it may not be  
11 required under the department's definition of disorders  
12 characterized by lapses of consciousness pursuant to subdivision  
13 (d).

14 (b) The local health officer shall report in writing to the  
15 Department of Motor Vehicles the name, age, and address of every  
16 person reported to it as a case of a disorder characterized by lapses  
17 of consciousness.

18 (c) These reports shall be for the information of the Department  
19 of Motor Vehicles in enforcing the Vehicle Code, and shall be  
20 kept confidential and used solely for the purpose of determining  
21 the eligibility of any person to operate a motor vehicle on the  
22 highways of this state.

23 (d) The department, in cooperation with the Department of  
24 Motor Vehicles, shall define disorders characterized by lapses of  
25 consciousness based upon existing clinical standards for that  
26 definition for purposes of this section and shall include Alzheimer's  
27 disease and those related disorders that are severe enough to be  
28 likely to impair a person's ability to operate a motor vehicle in the  
29 definition. The department, in cooperation with the Department  
30 of Motor Vehicles, shall list those circumstances that shall not  
31 require reporting pursuant to subdivision (a) because the patient  
32 is unable to ever operate a motor vehicle or is otherwise unlikely  
33 to represent a danger that requires reporting. The department shall  
34 consult with professional medical organizations whose members  
35 have specific expertise in the diagnosis and treatment of those

1 disorders in the development of the definition of what constitutes  
2 a disorder characterized by lapses of consciousness as well as  
3 definitions of functional severity to guide reporting so that  
4 diagnosed cases reported pursuant to this section are only those  
5 where there is reason to believe that the patients' conditions are  
6 likely to impair their ability to operate a motor vehicle. The  
7 department shall complete the definition on or before January 1,  
8 1992.

9 (e) The Department of Motor Vehicles shall, in consultation  
10 with the professional medical organizations specified in subdivision  
11 (d), develop guidelines designed to enhance the monitoring of  
12 patients affected with disorders specified in this section in order  
13 to assist with the patients' compliance with restrictions imposed  
14 by the Department of Motor Vehicles on the patients' licenses to  
15 operate a motor vehicle. The guidelines shall be completed on or  
16 before January 1, 1992.

17 (f) A physician and surgeon who reports a patient diagnosed as  
18 a case of a disorder characterized by lapses of consciousness  
19 pursuant to this section shall not be civilly or criminally liable to  
20 any patient for making any report required or authorized by this  
21 section.

22 (g) This section shall remain in effect only until January 1, 2010,  
23 and as of that date is repealed, unless a later enacted statute, that  
24 is enacted before January 1, 2010, deletes or extends that date.

25 SEC. 2. Section 12818 of the Vehicle Code, as amended by  
26 Section 13 of Chapter 985 of the Statutes of 2000, is amended to  
27 read:

28 12818. (a) Upon receipt of a request for reexamination and  
29 presentation of a legible copy of a notice of reexamination by a  
30 person issued the notice pursuant to Section 21061, or upon receipt  
31 of a report from a local health officer issued pursuant to subdivision  
32 (b) of Section 103900 of the Health and Safety Code, the  
33 department shall reexamine the person's qualifications to operate  
34 a motor vehicle, including a demonstration of the person's ability  
35 to operate a motor vehicle as described in Section 12804.9.

36 (b) Based on the department's reexamination of the person's  
37 qualifications pursuant to subdivision (a), the department shall  
38 determine if either of the following actions should be taken:

1 (1) Suspend or revoke the driving privilege of that person if the  
2 department finds that any of the grounds exist which authorize the  
3 refusal to issue a license.

4 (2) Restrict, make subject to terms and conditions of probation,  
5 suspend, or revoke the driving privilege of that person based upon  
6 the records of the department as provided in Chapter 3  
7 (commencing with Section 13800).

8 (c) As an alternative to subdivision (a), the department may  
9 suspend or revoke the person's driving privilege as provided under  
10 Article 2 (commencing with Section 13950) of Chapter 3.

11 (d) Upon request, the department shall notify the law  
12 enforcement agency which employs the traffic officer who issued  
13 the notice of reexamination described in subdivision (a) of the  
14 results of the reexamination.

15 (e) This section shall remain in effect only until January 1, 2010,  
16 and as of that date is repealed, unless a later enacted statute, that  
17 is enacted before January 1, 2010, deletes or extends that date.

18 SEC. 3. Section 12818 of the Vehicle Code, as added by  
19 Section 14 of Chapter 985 of the Statutes of 2000, is amended to  
20 read:

21 12818. (a) Upon receipt of a request for reexamination and  
22 presentation of a legible copy of a notice of reexamination by a  
23 person issued the notice pursuant to Section 21061, the department  
24 shall reexamine the person's qualifications to operate a motor  
25 vehicle, including a demonstration of the person's ability to operate  
26 a motor vehicle as described in Section 12804.9.

27 (b) Based on the department's reexamination of the person's  
28 qualifications pursuant to subdivision (a), the department shall  
29 determine if either of the following actions should be taken:

30 (1) Suspend or revoke the driving privilege of that person if the  
31 department finds that any of the grounds exist which authorize the  
32 refusal to issue a license.

33 (2) Restrict, make subject to terms and conditions of probation,  
34 suspend, or revoke the driving privilege of that person based upon  
35 the records of the department as provided in Chapter 3  
36 (commencing with Section 13800).

37 (c) As an alternative to subdivision (a), the department may  
38 suspend or revoke the person's driving privilege as provided under  
39 Article 2 (commencing with Section 13950) of Chapter 3.

1 (d) Upon request, the department shall notify the law  
2 enforcement agency that employs the traffic officer who issued  
3 the notice of reexamination of the results of the reexamination.

4 (e) Upon receipt of a report made pursuant to Section 13010 or  
5 13011, the department shall reexamine the reported person's  
6 qualifications to operate a motor vehicle, including requiring a  
7 road examination pursuant to Section 12804.9. The department  
8 shall make a determination to restrict, make subject to terms and  
9 conditions of probation, revoke, or suspend a license ~~based upon~~  
10 *and, in making that determination, the department shall give*  
11 *primary consideration to the evaluation and assessment provided*  
12 *by the reporting physician and ~~surgeon~~, surgeon. The department*  
13 *may also rely on other forms of examination, including a road*  
14 *examination pursuant to Section 12804.9, when the particular*  
15 *health circumstances of the reported person warrant that*  
16 *examination, and the factors enumerated in Section 110.01 of Title*  
17 *13 of the California Code of Regulations in making that*  
18 *determination.*

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

20 SEC. 4. Article 6 (commencing with Section 13010) is added  
21 to Chapter 1 of Division 6 of the Vehicle Code, to read:

22  
23 Article 6. Physician and Surgeon Reporting of Medical  
24 Conditions  
25

26 13010. (a) A physician and surgeon shall report immediately  
27 to the department, in writing, the name, date of birth, and address  
28 of every patient at least 15 years of age, or 14 years of age if the  
29 patient has a junior permit, whom the physician and surgeon has  
30 diagnosed with Alzheimer's disease or another dementia disorder;  
31 or the physician and surgeon has diagnosed as suffering from a  
32 single lapse of consciousness within the previous six months, if  
33 the patient suffers from a disorder identified in Section 2806 of  
34 Title 17 of the California Code of Regulations, and the physician  
35 and surgeon believes, in his or her professional judgment, that the  
36 risk of recurrence is sufficient to pose a threat to public safety; or  
37 the physician and surgeon has diagnosed the patient as previously  
38 suffering multiple lapses of consciousness, and whose medical  
39 condition is identified in Section 2806 of Title 17 of the California  
40 Code of Regulations, if substantial medical evidence suggests a

1 recurrence of a lapse of consciousness or that the condition  
2 adversely affects the patient's ability to operate a motor vehicle.

3 (b) (1) Except as provided in paragraph (2), a physician and  
4 surgeon is not required to make a report pursuant to this section  
5 if any of the following occurs:

6 (A) Within the previous six months, the physician and surgeon  
7 previously made a report pursuant to this section for this patient,  
8 and the condition has not substantially changed.

9 (B) Within the previous six months, the patient's condition was  
10 initially diagnosed by another physician and surgeon, and the  
11 physician and surgeon has knowledge that the prior physician and  
12 surgeon either determined that a report was not required under this  
13 chapter, or made a report to the department, unless there is  
14 substantial medical evidence that the condition has substantially  
15 changed and may adversely affect the person's ability to drive.

16 (C) The physician and surgeon making the initial diagnosis,  
17 relying on substantial medical evidence, determines both of the  
18 following:

19 (i) That the disorder can and likely will be controlled and  
20 stabilized within 30 days of the initial diagnosis by medication,  
21 therapy, surgery, a restriction on activities, or devices, and the  
22 treatment has been prescribed, administered, or referred.

23 (ii) That the patient's condition during the 30-day period does  
24 not pose an undue risk to public safety while operating a motor  
25 vehicle.

26 (2) If, during the 30-day period described in subparagraph (C)  
27 of paragraph (1), the physician and surgeon determines that the  
28 patient poses an imminent risk to public safety while operating a  
29 motor vehicle or the patient's impairment or disorder has not been  
30 controlled and stabilized at the conclusion of the 30-day period  
31 described in subparagraph (C) of paragraph (1), the physician and  
32 surgeon shall report immediately to the department in accordance  
33 with subdivision (a).

34 (c) A physician and surgeon shall not be civilly or criminally  
35 liable to the reported patient for making any report required or  
36 authorized by this section.

37 (d) For purposes of this section, "disorders characterized by  
38 lapses of consciousness" means those disorders defined pursuant  
39 to paragraph (1) of subdivision (a) of Section 13012.

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

1 13011. (a) A physician and surgeon may report immediately  
2 to the Department of Motor Vehicles, in writing, the name, date  
3 of birth, and address of every patient at least 15 years of age or  
4 older, or 14 years of age if the person has a junior permit, whom  
5 the physician and surgeon has diagnosed as having a disorder  
6 characterized by lapses of consciousness, if a physician and surgeon  
7 reasonably and in good faith believes that reporting the patient  
8 will serve the public interest. The physician and surgeon may report  
9 a patient's condition even if it may not be required under the  
10 department's definition of disorders characterized by lapses of  
11 consciousness pursuant to this article.

12 (b) A physician and surgeon who reports a patient pursuant to  
13 this article shall contemporaneously complete and transmit to the  
14 department the form prepared by the department for this purpose,  
15 and shall address each of the factors specified in Section 110.01  
16 of Title 13 of the California Code of Regulations of which the  
17 physician and surgeon has knowledge.

18 (c) The reports transmitted pursuant to this article shall be for  
19 use by the department only, and shall be kept confidential and used  
20 solely by the department for the purpose of determining the  
21 eligibility of any person to operate a motor vehicle on the highways  
22 of this state, or for the purpose of a bona fide research project, if  
23 the data is solely provided by the department in anonymous form.

24 (d) A physician and surgeon shall not be civilly or criminally  
25 liable to the reported patient for making any report required or  
26 authorized by this section.

27 (e) For purposes of this section, "disorders characterized by  
28 lapses of consciousness" shall be those disorders defined pursuant  
29 to paragraph (1) of subdivision (a) of Section 13012.

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

31 13012. (a) The department, in cooperation with the State  
32 Department of Public Health, by January 1, 2010, shall adopt  
33 regulations that do all of the following:

34 (1) Define disorders characterized by recurrent lapses of  
35 consciousness for purposes of this article, based upon existing  
36 clinical standards for that definition, and include in that definition  
37 Alzheimer's disease and those related disorders that are severe  
38 enough to result in recurrent lapses of consciousness and are likely  
39 to impair a person's ability to operate a motor vehicle.



1 (2) List circumstances that shall not require reporting pursuant  
2 to Section 13011, because the patient is unable to ever operate a  
3 motor vehicle or is otherwise unlikely to represent a danger that  
4 requires reporting.

5 (3) List circumstances that do not require reporting pursuant to  
6 this section.

7 (b) The department shall consult with professional medical  
8 organizations whose members have specific expertise in treatment  
9 of those impairments, conditions, and disorders, including, but not  
10 limited to, those associations related to epilepsy, in the  
11 development of any required definitions and necessary reporting  
12 guidelines to ensure that cases reported pursuant to this section  
13 are limited to impairments, conditions, and disorders that are  
14 characterized by a recurrent lapse of consciousness and that  
15 compromise a patient's ability to safely operate a motor vehicle.

16 (c) On or before January 1, 2010, the department, in consultation  
17 with the professional medical organizations described in  
18 subdivision (b), shall develop a physician reporting form that  
19 incorporates the factors contained in Section 110.01 of Title 13 of  
20 the California Code of Regulations. *The form shall contain a space*  
21 *for the reporting physician and surgeon to state whether, in his*  
22 *or her opinion, the patient's medical condition may affect safe*  
23 *driving.* The form shall be made available on the department's  
24 official Internet Web site for use by all physicians and surgeons.

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1406  
**Author:** Correa  
**Bill Date:** July 1, 2008, amended  
**Subject:** Optometry  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would allow an optometrist to diagnosis and treat diseases of the eye, to prescribe lenses or devices that incorporate a medication or therapy, and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification.

**ANALYSIS:**

This bill would expand the scope of practice of optometrists, allowing those who are certified to use therapeutic pharmaceutical agents to treat glaucoma, to order any test or procedure necessary for the diagnosis of conditions or diseases of the eye or adnexa, to perform punctual occlusion by cautery, to prescribe lenses or devices that incorporate a medication or therapy that the optometrist is certified to prescribe or provide, to use sharp instruments within the central three millimeters of the cornea, to probe the nasal lacrimal tract in patients over 12 years of age, and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification.

The procedures necessary for the diagnosis or treatment of a condition of the eye or visual system may include biopsies not requiring sutures, corneal scraping with cultures, debridement, nonintraorbital injections, skin lesion removal, removal of skin tags, shaving of epidermal or dermal lesions, stromal micropuncture, suture removal, with prior consultation, treatment or removal of lymphatic or sebaceous cysts, ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, and urinalysis, and other tests or procedures.

The California Medical Association (CMA) has an "oppose unless amended" position on this bill. CMA notes that this bill would allow optometrists to make medical diagnoses and perform procedures without the appropriate education, training, or oversight. The organization notes that in the interest of patient safety the independent decisions of patient treatment and surgical interventions should be practiced by those with the proven appropriate level of education and training. CMA's primary concern is that the regulatory authority ultimately be placed with the Medical Board (Board) because this legislation would allow optometrists to practice medicine. CMA notes that the structure should be similar to that established for dentists that are performing oral surgery.

The California Academy of Eye Physicians and Surgeons, in opposition to this bill, expresses concerns that this bill allows optometrists, who have not been to medical school, to independently diagnose and treat patients suffering from such chronic eye diseases as glaucoma, eye infections associated with AIDS, and diseased eyes in children. In addition, they note that this legislation allows optometrists to order any laboratory test or procedure and to perform any procedures (including surgical procedures) in order to diagnose and treat eye conditions. Finally, they are concerned that this bill allows optometrists to use a wide range of additional medications, including oral steroids and injectable drugs for the treatment of eye conditions.

Based on these concerns the author is working on amendments.

**FISCAL:**                      None

**POSITION:**                      Recommendation: Oppose unless amended to provide for a permit per the process designed for dentists performing cosmetic surgery.

July 16, 2008

AMENDED IN ASSEMBLY JULY 1, 2008  
AMENDED IN ASSEMBLY JUNE 19, 2008  
AMENDED IN SENATE MAY 27, 2008  
AMENDED IN SENATE MAY 23, 2008  
AMENDED IN SENATE APRIL 22, 2008

**SENATE BILL**

**No. 1406**

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**Introduced by Senators Correa and Aanestad**

February 21, 2008

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An act to amend Sections 3041 and 3152 of the Business and Professions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 1406, as amended, Correa. Optometry.

Existing law, the Optometry Practice Act, creates the State Board of Optometry, which licenses optometrists and regulates their practice. The act defines the practice of optometry as including the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system. The act also prescribes certain eye or eye appendage conditions which an optometrist who is certified to use therapeutic pharmaceutical agents may diagnose and treat, as specified and subject to certain limitations, and requires additional certification for the performance of primary open-angle glaucoma and lacrimal irrigation and dilation procedures, respectively.

This bill would revise and recast those provisions to further allow an optometrist who is certified to use therapeutic pharmaceutical agents to, among others, treat glaucoma, as defined, under specified

certification standards, order any test or procedure necessary for the diagnosis of conditions or diseases of the eye or adnexa, to perform ~~punctal~~ *punctal* occlusion by cautery, to prescribe lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide, to use sharp instruments within the central 3 millimeters of the cornea, ~~to probe the nasal lacrimal tract in patients over 12 years of age,~~ and to perform nonintraorbital injections. The bill would further allow an optometrist who graduated from an accredited school of optometry on or after May 1, 2000, to perform lacrimal irrigation and dilation procedures without additional certification. The bill would also make other changes with regard to the circumstances under which an ophthalmologist *or an appropriate physician and surgeon or other health care provider* is required to be consulted with, or patients referred to, and to certain age requirements related to treatment or diagnosis, as specified. The bill would further make a conforming change to a related provision, *and would make a statement of legislative intent, 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:*

- 1 SECTION 1. Section 3041 of the Business and Professions
- 2 Code is amended to read:
- 3 3041. (a) The practice of optometry includes the prevention
- 4 and diagnosis of disorders and dysfunctions of the visual system,
- 5 and the treatment and management of certain disorders and
- 6 dysfunctions of the visual system, as well as the provision of
- 7 rehabilitative optometric services, and is the doing of any or all of
- 8 the following:
- 9 (1) The examination of the human eye or eyes, or its or their
- 10 appendages, and the analysis of the human vision system, either
- 11 subjectively or objectively.
- 12 (2) The determination of the powers or range of human vision
- 13 and the accommodative and refractive states of the human eye or
- 14 eyes, including the scope of its or their functions and general
- 15 condition.
- 16 (3) The prescribing or directing the use of, or using, any optical
- 17 device in connection with ocular exercises, visual training, vision
- 18 training, or orthoptics.

1 (4) The prescribing of contact and spectacle lenses for, or the  
2 fitting or adaptation of contact and spectacle lenses to, the human  
3 eye, including lenses that may be classified as drugs or devices by  
4 any law of the United States or of this state.

5 (5) The use of *topical* pharmaceutical agents for the purpose of  
6 the examination of the human eye or eyes for any disease or  
7 pathological condition.

8 (b) (1) An optometrist who is certified to use therapeutic  
9 pharmaceutical agents, pursuant to Section 3041.3, may also  
10 diagnose and treat the human eye or eyes, or any of its appendages,  
11 for all of the following conditions:

12 (A) Through medical treatment, infections of the anterior  
13 segment and adnexa, excluding the lacrimal gland, the lacrimal  
14 drainage system and the sclera in patients under 12 years of age.

15 (B) Ocular allergies of the anterior segment and adnexa.

16 (C) Ocular inflammation, limited to inflammation resulting from  
17 traumatic iritis, peripheral corneal inflammatory keratitis,  
18 episcleritis, and unilateral nonrecurrent nongranulomatous  
19 idiopathic iritis in patients over 12 years of age. Unilateral  
20 nongranulomatous idiopathic iritis recurring within one year of  
21 the initial occurrence shall be referred to an ophthalmologist. An  
22 optometrist shall consult with an ophthalmologist or appropriate  
23 ~~health-care-provider~~ *physician and surgeon* if a patient has a  
24 recurrent case of episcleritis within one year of the initial  
25 occurrence. An optometrist shall consult with an ophthalmologist  
26 or appropriate ~~health-care-provider~~ *physician and surgeon* if a  
27 patient has a recurrent case of peripheral corneal inflammatory  
28 keratitis within one year of the initial occurrence.

29 (D) Traumatic or recurrent conjunctival or corneal abrasions  
30 and erosions.

31 (E) Corneal surface disease and dry eyes.

32 (F) Ocular pain associated with conditions optometrists are  
33 authorized to treat.

34 (G) Pursuant to subdivision (f), glaucoma in patients over 18  
35 years of age, as described in subdivision (j).

36 (2) For purposes of this section, “treat” means the use of  
37 therapeutic pharmaceutical agents, as described in subdivision (c),  
38 and the procedures described in subdivision (e).

39 (c) In diagnosing and treating the conditions listed in subdivision  
40 (b), an optometrist certified to use therapeutic pharmaceutical

1 agents pursuant to Section 3041.3, may use all of the following  
2 therapeutic pharmaceutical agents:

3 (1) Pharmaceutical agents as described in paragraph (5) of  
4 subdivision (a), as well as topical miotics.

5 (2) Topical lubricants.

6 (3) Antiallergy agents.

7 (4) Topical and oral antiinflammatories. In using steroid  
8 medication for:

9 (A) Unilateral nonrecurrent nongranulomatous idiopathic iritis  
10 or episcleritis, an optometrist shall consult with an ophthalmologist  
11 or other appropriate health care provider if the patient's condition  
12 worsens 72 hours after the diagnosis, or if the patient's condition  
13 has not resolved three weeks after diagnosis. If the patient is still  
14 receiving medication for these conditions six weeks after diagnosis,  
15 the optometrist shall refer the patient to an ophthalmologist or  
16 other appropriate health care provider.

17 (B) Peripheral corneal inflammatory keratitis, excluding  
18 Moorens and Terriens diseases, an optometrist shall consult with  
19 an ophthalmologist or other appropriate health care provider if the  
20 patient's condition worsens 72 hours after diagnosis.

21 (C) Traumatic iritis, an optometrist shall consult with an  
22 ophthalmologist ~~or other appropriate health care provider~~  
23 *appropriate physician and surgeon* if the patient's condition  
24 worsens 72 hours after diagnosis and shall refer the patient to an  
25 ophthalmologist ~~or other appropriate health care provider~~  
26 *appropriate physician and surgeon* if the patient's condition has  
27 not resolved one week after diagnosis.

28 (5) Topical antibiotic agents.

29 (6) Topical hyperosmotics.

30 (7) Topical and oral antiglaucoma agents pursuant to the  
31 certification process defined in subdivision (f).

32 (A) The optometrist shall ~~consult with, or refer the patient to,~~  
33 *refer the patient to* an ophthalmologist if requested by the patient  
34 or if angle closure glaucoma develops.

35 (B) If the glaucoma patient also has diabetes, the optometrist  
36 shall ~~inform, in writing,~~ *consult with* the physician treating the  
37 patient's diabetes in developing the glaucoma treatment plan and  
38 shall inform the physician in writing of any changes in the patient's  
39 glaucoma medication. ~~The physician shall provide written~~  
40 ~~confirmation of these consultations and notifications.~~

1 (8) Nonprescription medications used for the rational treatment  
2 of an ocular disorder.

3 (9) Oral antihistamines.

4 (10) Prescription oral nonsteroidal antiinflammatory agents.

5 (11) Oral antibiotics for medical treatment of ocular disease.

6 (A) If the patient has been diagnosed with a central corneal ulcer  
7 and the central corneal ulcer has not improved 72 hours after  
8 diagnosis, the optometrist shall refer the patient to an  
9 ophthalmologist.

10 (B) If the patient has been diagnosed with preseptal cellulitis  
11 or dacryocystitis and the condition has not improved 72 hours after  
12 diagnosis, the optometrist shall refer the patient to an  
13 ophthalmologist.

14 (12) Topical and oral antiviral medication for the medical  
15 treatment of the following: herpes simplex viral keratitis, herpes  
16 simplex viral conjunctivitis, and periocular herpes simplex viral  
17 dermatitis; and varicella zoster viral keratitis, varicella zoster viral  
18 conjunctivitis, and periocular varicella zoster viral dermatitis.

19 (A) If the patient has been diagnosed with herpes simplex  
20 keratitis or varicella zoster viral keratitis and the patient's condition  
21 has not improved seven days after diagnosis, the optometrist shall  
22 refer the patient to an ophthalmologist. If a patient's condition has  
23 not resolved three weeks after diagnosis, the optometrist shall refer  
24 the patient to an ophthalmologist.

25 (B) If the patient has been diagnosed with herpes simplex viral  
26 conjunctivitis, herpes simplex viral dermatitis, varicella zoster  
27 viral conjunctivitis, or varicella zoster viral dermatitis, and if the  
28 patient's condition worsens seven days after diagnosis, the  
29 optometrist shall consult with an ophthalmologist. If the patient's  
30 condition has not resolved three weeks after diagnosis, the  
31 optometrist shall refer the patient to an ophthalmologist.

32 (13) Oral analgesics that are not controlled substances.

33 (14) Codeine with compounds and hydrocodone with  
34 compounds as listed in the California Uniform Controlled  
35 Substances Act (Section 11000 of the Health and Safety Code et  
36 seq.) and the United States Uniform Controlled Substances Act  
37 (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be  
38 limited to three days, with a referral to an ophthalmologist if the  
39 pain persists.



(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Procedures necessary for the diagnosis or treatment of a condition of the eye or visual system, including, but not limited to:

- (A) Biopsies not requiring sutures.
- (B) Corneal scraping with cultures.
- (C) Debridement.
- (D) Epilation, including with cryo or electro cautery.
- (E) Nonintraorbital injections.
- ~~(F) Lacrimal probing, with or without dilation.~~
- ~~(G) Skin lesion removal.~~
- ~~(H)~~
- (F) Removal of skin tags.
- ~~(I)~~
- (G) Shaving of epidermal or dermal lesions.
- ~~(J)~~
- (H) Stromal micropuncture.
- ~~(K)~~
- (I) Suture removal, with prior consultation.
- ~~(L)~~
- (J) Treatment or removal of lymphatic or sebaceous cysts.

(2) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, and other tests or procedures necessary for the diagnosis of conditions or diseases of the eye or adnexa.

(3) Punctal occlusion by plugs and cautery, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

(4) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

1 (5) Removal of foreign bodies from the cornea, eyelid, and  
2 conjunctiva. Corneal foreign bodies shall be nonperforating, be  
3 no deeper than the midstroma, and require no surgical repair upon  
4 removal.

5 (6) For patients over 12 years of age, lacrimal irrigation and  
6 dilation, *excluding probing of the nasal lacrimal tract*. The board  
7 shall certify any optometrist who graduated from an accredited  
8 school of optometry before May 1, 2000, to perform this procedure  
9 after submitting proof of satisfactory completion of 10 procedures  
10 under the supervision of an ophthalmologist as confirmed by the  
11 ophthalmologist. Any optometrist who graduated from an  
12 accredited school of optometry on or after May 1, 2000, shall be  
13 exempt from the certification requirement contained in this  
14 paragraph.

15 (f) The board shall grant a certificate to an optometrist certified  
16 pursuant to Section 3041.3 for the treatment of glaucoma, as  
17 described in subdivision (j), in patients over 18 years of age after  
18 the optometrist meets the following applicable requirements:

19 (1) For licensees who graduated from an accredited school of  
20 optometry on or after May 1, 2008, submission of proof of  
21 graduation from that institution.

22 (2) For licensees who were certified to treat glaucoma under  
23 this chapter prior to January 1, 2009, submission of proof of  
24 completion of that certification program.

25 (3) For licensees who graduated from an accredited school of  
26 optometry on or after May 1, 2000, submission of proof of  
27 satisfactory completion of not less than 12 hours in case  
28 management of patients diagnosed with glaucoma.

29 (4) For licensees who have completed a didactic course of not  
30 less than 24 hours in the diagnosis, pharmacological, and other  
31 treatment and management of glaucoma developed by an accredited  
32 school of optometry, submission of proof of satisfactory completion  
33 of not less than 12 hours in case management of patients diagnosed  
34 with glaucoma.

35 (5) For licensees not described in the preceding paragraphs,  
36 submission of proof of satisfactory completion of a didactic course  
37 of not less than 24 hours in the diagnosis, pharmacological, and  
38 other treatment and management of glaucoma developed by an  
39 accredited school of optometry, and not less than 12 hours in case  
40 management of patients diagnosed with glaucoma.

1 (g) Any dispensing of a therapeutic pharmaceutical agent by an  
2 optometrist shall be without charge.

3 (h) The practice of optometry does not include performing  
4 surgery. "Surgery" means any procedure in which human tissue  
5 is cut, altered, or otherwise infiltrated by mechanical or laser means  
6 in a manner not specifically authorized by this chapter. Nothing  
7 in this section shall limit an optometrist's authority to utilize  
8 diagnostic and therapeutic laser and ultrasound technology within  
9 his or her scope of practice.

10 (i) An optometrist licensed under this chapter is subject to the  
11 provisions of Section 2290.5 for purposes of practicing  
12 telemedicine.

13 (j) For purposes of this chapter, "glaucoma" means either of the  
14 following:

15 (1) All primary ~~open-angle~~ *open-angle* glaucoma.

16 (2) All secondary ~~open-angle~~ *open-angle* glaucoma, excluding  
17 irido-corneal endothelial syndrome and neovascular glaucoma.

18 (k) For purposes of reversal or stabilization, an optometrist shall  
19 immediately refer any patient who has an acute attack of angle  
20 closure to an ophthalmologist.

21 SEC. 2. Section 3152 of the Business and Professions Code is  
22 amended to read:

23 3152. The amount of fees and penalties prescribed by this  
24 chapter shall be established by the board in amounts not greater  
25 than those specified in the following schedule:

26 (a) The fee for applicants applying for a license shall not exceed  
27 two hundred seventy-five dollars (\$275).

28 (b) The fee for renewal of an optometric license shall not exceed  
29 five hundred dollars (\$500).

30 (c) The annual fee for the renewal of a branch office license  
31 shall not exceed seventy-five dollars (\$75).

32 (d) The fee for a branch office license shall not exceed  
33 seventy-five dollars (\$75).

34 (e) The penalty for failure to pay the annual fee for renewal of  
35 a branch office license shall not exceed twenty-five dollars (\$25).

36 (f) The fee for issuance of a license or upon change of name  
37 authorized by law of a person holding a license under this chapter  
38 shall not exceed twenty-five dollars (\$25).

39 (g) The delinquency fee for renewal of an optometric license  
40 shall not exceed fifty dollars (\$50).

1 (h) The application fee for a certificate to treat lacrimal irrigation  
2 and dilation shall not exceed fifty dollars (\$50).

3 (i) The application fee for a certificate to treat glaucoma shall  
4 not exceed fifty dollars (\$50).

5 (j) The fee for approval of a continuing education course shall  
6 not exceed one hundred dollars (\$100).

7 (k) The fee for issuance of a statement of licensure shall not  
8 exceed forty dollars (\$40).

9 (l) The fee for biennial renewal of a statement of licensure shall  
10 not exceed forty dollars (\$40).

11 (m) The delinquency fee for renewal of a statement of licensure  
12 shall not exceed twenty dollars (\$20).

13 (n) The application fee for a fictitious name permit shall not  
14 exceed fifty dollars (\$50).

15 (o) The renewal fee for a fictitious name permit shall not exceed  
16 fifty dollars (\$50).

17 (p) The delinquency fee for renewal of a fictitious name permit  
18 shall not exceed twenty-five dollars (\$25).

19 *SEC. 3. (a) It is the intent of the Legislature that interested*  
20 *parties come to resolution on the following questions related to*  
21 *proposed amendments to existing law made by this act:*

22 *(1) In paragraph (5) of subdivision (a) of Section 3041 of the*  
23 *Business and Professions Code, whether it needs to be made clear*  
24 *that optometrists certified to use only diagnostic pharmaceutical*  
25 *agents may use only topical pharmaceutical agents for diagnostic*  
26 *purposes.*

27 *(2) In subparagraph (C) of paragraph (1) of subdivision (b) of*  
28 *Section 3041 of the Business and Professions Code, whether it*  
29 *needs to be made clear that treatment of postsurgical ocular*  
30 *inflammation in cases comanaged by the operating ophthalmologist*  
31 *and optometrist is permitted.*

32 *(3) In paragraph (7) of subdivision (c) of Section 3041 of the*  
33 *Business and Professions Code, whether it needs to be made clear*  
34 *that glaucoma-certified optometrists may use oral glaucoma*  
35 *therapeutic pharmaceutical agents only for the purpose of*  
36 *reversing or stabilizing angle-closure glaucoma prior to immediate*  
37 *referral, as specified in subdivision (k) of Section 3041 of the*  
38 *Business and Professions Code.*

39 *(4) In subparagraph (A) of paragraph (1) of subdivision (e) of*  
40 *Section 3041 of the Business and Professions Code, whether it*

1 *needs to be made clear that optometrists are authorized to perform*  
2 *biopsies not requiring sutures for testing purposes to confirm*  
3 *diagnoses.*  
4 *(5) As provided in subparagraph (J) of paragraph (1) of*  
5 *subdivision (e) of Section 3041 of the Business and Professions*  
6 *Code, whether optometrists should be authorized to treat or remove*  
7 *lymphatic or sebaceous cysts.*  
8 *(b) It is the intent of the Legislature that interested parties come*  
9 *to resolution on a collaborative process for certification of*  
10 *optometrists by the State Board of Optometry described in*  
11 *paragraphs (3), (4), and (5) as added to subdivision (f) of Section*  
12 *3041 of the Business and Professions Code by this act, that both*  
13 *ensures that the public will be protected and that qualified*  
14 *applicants will be certified on an appropriate and timely basis.*

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1415  
**Author:** Kuehl  
**Bill Date:** July 14, 2008, amended  
**Subject:** Patient Records: maintenance and storage  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently on the Assembly Floor.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would require physicians, at the time an initial patient record is created, to provide a statement to the patient that sets forth the patient's rights regarding his or her medical records and the intended retention period for the records. The physician must either have the patient sign an acknowledgment of having received the information or, if the patient refuses to sign, that the fact that he or she have refused to sign must be noted in the medical record. This bill also requires physicians who plan to destroy patient records earlier than the period originally specified in the statement to notify the patient no fewer than sixty days prior to the destruction.

**ANALYSIS:**

Current law establishes procedures for providing access to patient medical records and gives health care providers various responsibilities regarding providing access to these records. The existing laws are somewhat broad regarding the length of time that physicians are required to keep patient medical records.

Although physicians are required by law to reply to a patient's request for his or her records (at the patient's cost), physicians are under no obligations to inform patients prior to the destruction of the medical records. This has resulted in numerous records being destroyed without patients' knowledge or consent.

The California Medical Association (CMA) guidelines state that "before discarding old records, patients should be given an opportunity to claim the records or have them sent to another physician." CMA offers three recommended options for physicians to consider regarding retention of medical records:

- Maintain records indefinitely.

- Maintain records for 25 years.
- At a minimum, retain records for 10 years after the last date the patient is seen.

CMA also notes that although maintenance of patient medical records is important in terms of patient care, medical records are also invaluable to physicians who may face claims of malpractice.

This bill requires physicians, at the time an initial patient record is created, to provide a statement to the patient, or the patient's representative, that sets forth the patient's rights to inspect his or her medical records, to obtain copies of the records, and to provide a written addendum with respect to any statement in the patient's records that the patient believes to be incomplete or incorrect. The statement provided for patient signature must also include the intended retention period for the records, as specified in applicable law or by the physician's retention policy. This bill requires that the patient sign an acknowledgment of having received the statement. If the patient or the patient's representative refuses to sign the statement, that refusal must be noted in the patient's medical record.

This bill also requires physicians who plan to destroy patient records earlier than the period originally specified in the statement to notify the patient no fewer than sixty days prior to the destruction. The physician must notify the patient via first class mail, electronic mail, or both, to the patient's last mailing or electronic mail address, or both. The notification must inform the patient that his or her records are going to be destroyed and when the date of destruction is scheduled. The physician must provide a patient with his or her original medical records earlier than the period specified in the statement if the patient makes a request for the records to the physician before the date of the proposed destruction

**FISCAL:**               None

**POSITION:**           Support

July 17, 2008

AMENDED IN ASSEMBLY JULY 14, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN ASSEMBLY JUNE 19, 2008

AMENDED IN SENATE MAY 20, 2008

AMENDED IN SENATE APRIL 22, 2008

AMENDED IN SENATE APRIL 10, 2008

**SENATE BILL**

**No. 1415**

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**Introduced by Senator Kuehl**  
(Coauthor: Assembly Member Dymally)

February 21, 2008

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An act to add Section 123106 to the Health and Safety Code, relating to patient records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1415, as amended, Kuehl. Patient records: maintenance and storage.

Existing law establishes procedures for providing access to various types of health care records, including patient records, as defined, by patients and persons having responsibility for decisions respecting the health care of others. Existing law gives health care providers, as defined, various responsibilities in connection with providing access to these records.

This bill would require certain health care providers who create patient records, at the time the initial patient record is created, to provide a statement ~~to be signed by~~ the patient, or the patient's representative, that sets forth the patient's rights, as specified, and the intended retention



period for the records, as specified in applicable law or by the health care provider's retention policy. The bill would require ~~a copy of the signed statement to be provided to~~ the patient, or the patient's representative, *to sign an acknowledgment of having received the statement described above*, and would also require, if the patient, or the patient's representative, refuses to sign the ~~statement~~ *acknowledgment*, that this fact be included in the patient's record.

This bill would require certain health care providers that plan to destroy patient records earlier than the period specified in the ~~signed~~ statement, no fewer than 60 days before a patient's records are to be destroyed, to notify the patient that his or her records are scheduled to be destroyed, when they are scheduled to be destroyed, and set forth the patient's rights, as specified. The bill would require a health care provider to provide a patient with his or her original medical records that the provider plans to destroy earlier than the period specified in the ~~signed~~ statement if the patient makes a request for the records to the provider before the date of the proposed destruction of the records.

This bill would provide that the above provisions shall only apply to a health care provider, as defined, whose first visit with a patient occurs on or after January 1, 2009. It would also provide that the above provisions shall not apply to a health care provider whose patient is a minor at the time the patient record is created.

This bill would provide for the issuance of citations and the assessment of administrative penalties for violation of the bill's requirements, as specified. The bill would exempt the patient records created by a psychiatrist, as defined, from the requirements of 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:*

- 1 SECTION 1. Section 123106 is added to the Health and Safety
- 2 Code, to read:
- 3 123106. (a) A health care provider described in paragraphs
- 4 (4), (5), (6), (8), and (9) of subdivision (a) of Section 123105, who
- 5 creates patient records, as defined in subdivision (d) of Section
- 6 123105, shall, at the time the initial patient record is created,
- 7 provide a statement ~~to be signed by~~ the patient, or the patient's
- 8 representative, that sets forth both of the following:

1 (1) The patient's rights under this chapter to inspect his or her  
2 medical records, obtain copies of his or her medical records, and  
3 to provide a written addendum, pursuant to Section 123111, with  
4 respect to any item or statement in the patient's records that the  
5 patient believes to be incomplete or incorrect.

6 (2) The intended retention period for the records, as specified  
7 in applicable law or by the health care provider's retention policy.

8 ~~(b) A copy of the signed statement required pursuant to~~  
9 ~~subdivision (a) shall be provided to the patient.~~

10 *(b) The patient, or the patient's representative, shall sign an*  
11 *acknowledgment that he or she received the statement required*  
12 *pursuant to subdivision (a).*

13 *(c) Nothing in this section shall preclude the statement required*  
14 *pursuant to subdivision (a) from being included in another form*  
15 *or statement provided to the patient, or the patient's representative,*  
16 *at the time the initial patient record is created.*

17 ~~(e)~~

18 *(d) If a patient, or the patient's representative, is provided a*  
19 *statement to be signed at the time that the initial patient record is*  
20 *created, and the patient, or the patient's representative, refuses to*  
21 *sign an acknowledgment that he or she received the statement, the*  
22 *patient's record shall indicate that the patient, or the patient's*  
23 *representative, refused to sign.*

24 ~~(d)~~

25 *(e) If a health care provider to whom subdivision (a) applies*  
26 *plans to destroy patient records earlier than the period specified*  
27 *in the signed statement, the health care provider shall, no fewer*  
28 *than 60 days before a patient's records are to be destroyed, notify*  
29 *the patient, via first-class mail, electronic mail, or both, to the*  
30 *patient's last known mailing or electronic mail address, or both.*  
31 *The notification shall inform the patient that his or her records are*  
32 *scheduled to be destroyed and the date of the proposed destruction*  
33 *of records. The notification shall also inform the patient of his or*  
34 *her rights under this chapter to inspect his or her medical records.*  
35 *A health care provider to whom subdivision (a) applies shall*  
36 *provide a patient with his or her original medical records that the*  
37 *provider plans to destroy earlier than the period specified in the*  
38 *signed statement statement required pursuant to subdivision (a)*  
39 *if the patient makes a request for the records to the health care*  
40 *provider before the date of the proposed destruction of the records.*

1 Nothing in this section shall be construed to reduce the length of  
2 record retention as otherwise required by law.

3 (e)

4 (f) A health care provider to whom subdivision (a) applies shall  
5 not be subject to this section for medical records that are created  
6 for a patient who is referred to the provider solely for a diagnostic  
7 evaluation, if the provider does not provide treatment to the patient  
8 and reports the results of the diagnostic evaluation to the patient's  
9 referring provider.

10 (f)

11 (g) This section shall only apply to a health care provider, as  
12 defined in subdivision (a), *provider to whom subdivision (a) applies*  
13 who creates an initial patient record for a patient whose first visit  
14 with the health care provider occurs on or after January 1, 2009.

15 (g)

16 (h) This section shall not apply to a health care provider, as  
17 defined in subdivision (a), *provider to whom subdivision (a) applies*  
18 whose patient is a minor at the time the patient record is created.

19 (h)

20 (i) A health care provider who violates this section may be cited  
21 and assessed an administrative penalty in accordance with Section  
22 125.9 of the Business and Professions Code. No citation shall be  
23 issued and no penalty shall be assessed upon the first violation by  
24 a licensee of this section. Upon the second and each subsequent  
25 violation by a health care provider of this section, a citation may  
26 be issued and an administrative penalty may be assessed after  
27 appropriate notice and opportunity for hearings. Notwithstanding  
28 any other provision of law, the remedy described in this subdivision  
29 constitutes the exclusive remedy for a violation of this section.  
30 However, nothing in this section affects other existing rights,  
31 duties, or remedies provided by law.

32 (i)

33 (j) The patient records created by a psychiatrist, including  
34 psychotherapy notes, as defined in Section 164.501 of Title 45 of  
35 the Code of Federal Regulations, are not subject to this section.  
36 For the purposes of this subdivision, "psychiatrist" means a  
37 physician and surgeon licensed pursuant to Chapter 5 (commencing  
38 with Section 2000) of Division 2 of the Business and Professions  
39 Code or pursuant to the Osteopathic Act, who devotes, or is

- 1 reasonably believed by the patient to devote, a substantial portion
- 2 of his or her time to the practice of psychiatry.

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1441  
**Author:** Ridley-Thomas  
**Bill Date:** July 3, 2008, amended  
**Subject:** Task Force: address standards for impaired  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would establish the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA) which would be comprised of the executive officers of the department's healing arts licensing boards. The bill would require the committee to formulate, no later than January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees.

**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 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.

This bill establishes the SACC for all Boards to issue a set of best practices and recommendations to govern the boards' diversion programs and diversion evaluation committees, and would be comprised of the executive officers of the boards. The SACC will be required to formulate standards that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

A concern raised at the committee hearing was the lack of addiction healthcare expertise on this committee.

**FISCAL:**               None

**POSITION:**           Support if amended to require the committee to have provider expertise.

July 16, 2008

AMENDED IN ASSEMBLY JULY 3, 2008  
AMENDED IN ASSEMBLY JUNE 16, 2008  
AMENDED IN SENATE MAY 7, 2008  
AMENDED IN SENATE APRIL 7, 2008

**SENATE BILL**

**No. 1441**

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**Introduced by Senator Ridley-Thomas**

February 21, 2008

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An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, *and* 3534.9 of, and 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. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, 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, and gives the diversion evaluation committees certain duties related to termination of a license from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining

completion of the program, and purging and destroying records, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified. The bill would require the committee to formulate, no later than January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties previously assigned to the diversion evaluation committees under those programs, including, as specified, duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate in an advisory role to the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations to the program managers.

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

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Substance abuse is an increasing problem in the health care
- 4 professions, where the impairment of a health care practitioner for
- 5 even one moment can mean irreparable harm to a patient.
- 6 (b) Several health care licensing boards have "diversion
- 7 programs" designed to identify substance-abusing licensees, direct
- 8 them to treatment and monitoring, and return them to practice in
- 9 a manner that will not endanger the public health and safety.



1 (c) Substance abuse monitoring programs, particularly for health  
2 care professionals, must operate with the highest level of integrity  
3 and consistency. Patient protection is paramount.

4 (d) The diversion program of the Medical Board of California,  
5 created in 1981, has been subject to five external performance  
6 audits in its 27-year history and has failed all five audits, which  
7 uniformly concluded that the program has inadequately monitored  
8 substance-abusing physicians and has failed to promptly terminate  
9 from the program, and appropriately refer for discipline, physicians  
10 who do not comply with the terms and conditions of the program,  
11 thus placing patients at risk of harm.

12 (e) The medical board's diversion program has failed to protect  
13 patients from substance-abusing physicians, and the medical board  
14 has properly decided to cease administering the program effective  
15 June 30, 2008.

16 (f) The administration of diversion programs created at other  
17 health care boards has been contracted to a series of private  
18 vendors, and none of those vendors has ever been subject to a  
19 performance audit, such that it is not possible to determine whether  
20 those programs are effective in monitoring substance-abusing  
21 licensees and assisting them to recover from their addiction in the  
22 long term.

23 (g) Various health care licensing boards have inconsistent or  
24 nonexistent standards that guide the way they deal with  
25 substance-abusing licensees.

26 (h) Patients would be better protected from substance-abusing  
27 licensees if their regulatory boards agreed to and enforced  
28 consistent and uniform standards and best practices in dealing with  
29 substance-abusing licensees.

30 SEC. 2. It is the intent of the Legislature that:

31 (a) Pursuant to Section 156.1 of the Business and Professions  
32 Code and Section 8546.7 of the Government Code, that the  
33 Department of Consumer Affairs conduct a thorough audit of the  
34 effectiveness, efficiency, and overall performance of the vendor  
35 chosen by the department to manage diversion programs for  
36 substance-abusing licensees of health care licensing boards created  
37 in the Business and Professions Code, and make recommendations  
38 regarding the continuation of the programs and any changes or  
39 reforms required to ensure that individuals participating in the  
40 programs are appropriately monitored, and the public is protected

1 from health care practitioners who are impaired due to alcohol or  
2 drug abuse or mental or physical illness.

3 (b) The audit shall identify, by type of board licensee, the  
4 percentage of self-referred participants, board-referred participants,  
5 and board-ordered participants. The audit shall describe in detail  
6 the diversion services provided by the vendor, including all aspects  
7 of bodily fluids testing, including, but not limited to, frequency of  
8 testing, randomicity, method of notice to participants, number of  
9 hours between the provision of notice and the test, standards for  
10 specimen collectors, procedures used by specimen collectors, such  
11 as whether the collection process is observed by the collector,  
12 location of testing, and average timeframe from the date of the test  
13 to the date the result of the test becomes available; group meeting  
14 attendance requirements, including, but not limited to, required  
15 qualifications for group meeting facilitators, frequency of required  
16 meeting attendance, and methods of documenting and reporting  
17 attendance or nonattendance by program participants; standards  
18 used in determining whether inpatient or outpatient treatment is  
19 necessary; and, if applicable, worksite monitoring requirements  
20 and standards. The audit shall review the timeliness of diversion  
21 services provided by the vendor; the thoroughness of  
22 documentation of treatment, aftercare, and monitoring services  
23 received by participants; and the thoroughness of documentation  
24 of the effectiveness of the treatment and aftercare services received  
25 by participants. In determining the effectiveness and efficiency of  
26 the vendor, the audit shall evaluate the vendor's approval process  
27 for providers or contractors that provide diversion services,  
28 including specimen collectors, group meeting facilitators, and  
29 worksite monitors; the vendor's disapproval of providers or  
30 contractors that fail to provide effective or timely diversion  
31 services; and the vendor's promptness in notifying the boards when  
32 a participant fails to comply with the terms of his or her diversion  
33 contract or the rules of the board's program. The audit shall also  
34 recommend whether the vendor should be more closely monitored  
35 by the department, including whether the vendor should provide  
36 the department with periodic reports demonstrating the timeliness  
37 and thoroughness of documentation of noncompliance with  
38 diversion program contracts and regarding its approval and  
39 disapproval of providers and contractors that provide diversion  
40 services.

1 (c) The vendor and its staff shall cooperate with the department  
2 and shall provide data, information, and case files as requested by  
3 the department to perform all of his or her duties. The provision  
4 of confidential data, information, and case files from health  
5 care-related boards and the vendor to the department shall not  
6 constitute a waiver of any exemption from disclosure or discovery  
7 or of any confidentiality protection or privilege otherwise provided  
8 by law that is applicable to the data, information, or case files. It  
9 is the Legislature's intent that the audit be completed by June 30,  
10 2010, and on subsequent years thereafter as determined by the  
11 department.

12 SEC. 3. Article 3.6 (commencing with Section 315) is added  
13 to Chapter 4 of Division 1 of the Business and Professions Code,  
14 to read:

15  
16 Article 3.6. Uniform Standards Regarding Substance-Abusing  
17 Healing Arts Licensees  
18

19 315. (a) For the purpose of determining uniform standards  
20 that will be used by healing arts boards in dealing with  
21 substance-abusing licensees, there is established in the Department  
22 of Consumer Affairs the Substance Abuse Coordination  
23 Committee. The committee shall be comprised of the executive  
24 officers of the department's healing arts boards established pursuant  
25 to Division 2 (commencing with Section 500), the State Board of  
26 Chiropractic Examiners, and the Osteopathic Medical Board of  
27 California. The Director of Consumer Affairs shall chair the  
28 committee.

29 (b) The committee shall be subject to the Bagley-Keene Open  
30 Meeting Act (Article 9 (commencing with Section 11120) of  
31 Division 3 of Title 2 of the Government Code).

32 (c) By January 1, 2010, the committee shall formulate uniform  
33 and specific standards in each of the following areas that each  
34 healing arts board shall use in dealing with substance-abusing  
35 licensees, whether or not a board chooses to have a formal  
36 diversion program:

37 (1) Specific requirements for a clinical diagnostic evaluation of  
38 the licensee, including, but not limited to, required qualifications  
39 for the providers evaluating the licensee.

1 (2) Specific requirements for the temporary removal of the  
2 licensee from practice, in order to enable the licensee to undergo  
3 the clinical diagnostic evaluation described in subdivision (a) and  
4 any treatment recommended by the evaluator described in  
5 subdivision (a) and approved by the board, and specific criteria  
6 that the licensee must meet before being permitted to return to  
7 practice on a full-time or part-time basis.

8 (3) Specific requirements that govern the ability of the licensing  
9 board to communicate with the licensee's employer about the  
10 licensee's status and condition.

11 (4) Standards governing all aspects of required testing, including,  
12 but not limited to, frequency of testing, randomicity, method of  
13 notice to the licensee, number of hours between the provision of  
14 notice and the test, standards for specimen collectors, procedures  
15 used by specimen collectors, the permissible locations of testing,  
16 whether the collection process must be observed by the collector,  
17 back-up testing requirements when the licensee is on vacation or  
18 otherwise unavailable for local testing, requirements for the  
19 laboratory that analyzes the specimens, and the required maximum  
20 timeframe from the test to the receipt of the result of the test.

21 (5) Standards governing all aspects of group meeting attendance  
22 requirements, including, but not limited to, required qualifications  
23 for group meeting facilitators, frequency of required meeting  
24 attendance, and methods of documenting and reporting attendance  
25 or nonattendance by licensees.

26 (6) Standards used in determining whether inpatient, outpatient,  
27 or other type of treatment is necessary.

28 (7) Worksite monitoring requirements and standards, including,  
29 but not limited to, required qualifications of worksite monitors,  
30 required methods of monitoring by worksite monitors, and required  
31 reporting by worksite monitors.

32 (8) Procedures to be followed when a licensee tests positive for  
33 a banned substance.

34 (9) Procedures to be followed when a licensee is confirmed to  
35 have ingested a banned substance.

36 (10) Specific consequences for major violations and minor  
37 violations. In particular, the committee shall consider the use of a  
38 "deferred prosecution" stipulation similar to the stipulation  
39 described in Section 1000 of the Penal Code, in which the licensee  
40 admits to self-abuse of drugs or alcohol and surrenders his or her

1 license. That agreement is deferred by the agency unless or until  
2 the licensee commits a major violation, in which case it is revived  
3 and the license is surrendered.

4 (11) Criteria that a licensee must meet in order to petition for  
5 return to practice on a full-time basis.

6 (12) Criteria that a licensee must meet in order to petition for  
7 reinstatement of a full and unrestricted license.

8 (13) If a board uses a private-sector vendor that provides  
9 diversion services, standards for immediate reporting by the vendor  
10 to the board of any and all noncompliance with any term of the  
11 diversion contract or probation; standards for the vendor's approval  
12 process for providers or contractors that provide diversion services,  
13 including, but not limited to, specimen collectors, group meeting  
14 facilitators, and worksite monitors; standards requiring the vendor  
15 to disapprove and discontinue the use of providers or contractors  
16 that fail to provide effective or timely diversion services; and  
17 standards for a licensee's termination from the program and referral  
18 to enforcement.

19 (14) If a board uses a private-sector vendor that provides  
20 diversion services, the extent to which licensee participation in  
21 that program shall be kept confidential from the public.

22 (15) If a board uses a private-sector vendor that provides  
23 diversion services, a schedule for external independent audits of  
24 the vendor's performance in adhering to the standards adopted by  
25 the committee.

26 (16) Measurable criteria and standards to determine whether  
27 each board's method of dealing with substance-abusing licensees  
28 protects patients from harm and is effective in assisting its licensees  
29 in recovering from substance abuse in the long term.

30 SEC. 4. Section 1695.1 of the Business and Professions Code  
31 is amended to read:

32 1695.1. As used in this article:

33 (a) "Board" means the Board of Dental Examiners of California.

34 (b) "Committee" means a diversion evaluation committee  
35 created by this article.

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

1 SEC. 5. Section 1695.5 of the Business and Professions Code  
2 is amended to read:

3 1695.5. (a) The board shall establish criteria for the acceptance,  
4 denial, or termination of licentiates in a diversion program. Unless  
5 ordered by the board as a condition of licentiate disciplinary  
6 probation, only those licentiates who have voluntarily requested  
7 diversion treatment and supervision by a committee shall  
8 participate in a diversion program.

9 (b) A licentiate who is not the subject of a current investigation  
10 may self-refer to the diversion program on a confidential basis,  
11 except as provided in subdivision (f).

12 (c) A licentiate under current investigation by the board may  
13 also request entry into the diversion program by contacting the  
14 board's Diversion Program Manager. The Diversion Program  
15 Manager may refer the licentiate requesting participation in the  
16 program to a diversion evaluation committee for evaluation of  
17 eligibility. Prior to authorizing a licentiate to enter into the  
18 diversion program, the Diversion Program Manager may require  
19 the licentiate, while under current investigation for any violations  
20 of the Dental Practice Act or other violations, to execute a  
21 statement of understanding that states that the licentiate understands  
22 that his or her violations of the Dental Practice Act or other statutes  
23 that would otherwise be the basis for discipline, may still be  
24 investigated and the subject of disciplinary action.

25 (d) If the reasons for a current investigation of a licentiate are  
26 based primarily on the self-administration of any controlled  
27 substance or dangerous drugs or alcohol under Section 1681 of  
28 the Business and Professions Code, or the illegal possession,  
29 prescription, or nonviolent procurement of any controlled substance  
30 or dangerous drugs for self-administration that does not involve  
31 actual, direct harm to the public, the board shall close the  
32 investigation without further action if the licentiate is accepted  
33 into the board's diversion program and successfully completes the  
34 requirements of the program. If the licentiate withdraws or is  
35 terminated from the program by the program manager, the  
36 investigation shall be reopened and disciplinary action imposed,  
37 if warranted, as determined by the board.

38 (e) Neither acceptance nor participation in the diversion program  
39 shall preclude the board from investigating or continuing to  
40 investigate, or taking disciplinary action or continuing to take

1 disciplinary action against, any licentiate for any unprofessional  
2 conduct committed before, during, or after participation in the  
3 diversion program.

4 (f) All licentiates shall sign an agreement of understanding that  
5 the withdrawal or termination from the diversion program at a time  
6 when the program manager determines the licentiate presents a  
7 threat to the public's health and safety shall result in the utilization  
8 by the board of diversion treatment records in disciplinary or  
9 criminal proceedings.

10 (g) Any licentiate terminated from the diversion program for  
11 failure to comply with program requirements is subject to  
12 disciplinary action by the board for acts committed before, during,  
13 and after participation in the diversion program. A licentiate who  
14 has been under investigation by the board and has been terminated  
15 from the diversion program by the program manager shall be  
16 reported by the program manager to the board.

17 SEC. 6. Section 1695.6 of the Business and Professions Code  
18 is amended to read:

19 1695.6. A committee created under this article operates in an  
20 advisory role to the diversion program manager. Each committee  
21 shall have the following duties and responsibilities:

22 (a) To evaluate those licentiates who request to participate in  
23 the diversion program according to the guidelines prescribed by  
24 the board and to make recommendations to the program manager.  
25 In making the recommendations, a committee shall consider the  
26 recommendations of any licentiates designated by the board to  
27 serve as consultants on the admission of the licentiate to the  
28 diversion program.

29 (b) To review and designate those treatment facilities to which  
30 licentiates in a diversion program may be referred, and make  
31 recommendations to the program manager.

32 (c) To receive and review information concerning a licentiate  
33 participating in the program.

34 (d) To consider in the case of each licentiate participating in a  
35 program whether he or she may with safety continue or resume  
36 the practice of dentistry, and make recommendations to the  
37 program manager.

38 (e) To perform such other related duties, in an advisory capacity,  
39 as the board may by regulation require.

1 SEC. 7. Section 1697 of the Business and Professions Code is  
2 amended to read:

3 1697. Each licentiate who requests participation in a diversion  
4 program shall agree to cooperate with the treatment program  
5 designed by the program manager and to bear all costs related to  
6 the program, unless the cost is waived by the board. Any failure  
7 to comply with the provisions of a treatment program may result  
8 in termination of the licentiate's participation in a program.

9 SEC. 8. Section 1698 of the Business and Professions Code is  
10 amended to read:

11 1698. (a) After the program manager in his or her discretion  
12 has determined that a licentiate has been rehabilitated and the  
13 diversion program is completed, the program manager shall purge  
14 and destroy all records pertaining to the licentiate's participation  
15 in a diversion program.

16 (b) Except as authorized by subdivision (f) of Section 1695.5,  
17 all board and committee records and records of proceedings  
18 pertaining to the treatment of a licentiate in a program shall be  
19 kept confidential and are not subject to discovery or subpoena.

20 SEC. 9. Section 2361 of the Business and Professions Code is  
21 amended to read:

22 2361. As used in this article:

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

24 (b) "Diversion program" means a treatment program created  
25 by this article for osteopathic physicians and surgeons whose  
26 competency may be threatened or diminished due to abuse of drugs  
27 or alcohol.

28 (c) "Committee" means a diversion evaluation committee  
29 created by this article.

30 (d) "Participant" means a California licensed osteopathic  
31 physician and surgeon.

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

36 SEC. 10. Section 2365 of the Business and Professions Code  
37 is amended to read:

38 2365. (a) The board shall establish criteria for the acceptance,  
39 denial, or termination of participants in the diversion program.  
40 Unless ordered by the board as a condition of disciplinary



1 probation, only those participants who have voluntarily requested  
2 diversion treatment and supervision by a committee shall  
3 participate in the diversion program.

4 (b) A participant who is not the subject of a current investigation  
5 may self-refer to the diversion program on a confidential basis,  
6 except as provided in subdivision (f).

7 (c) A participant under current investigation by the board may  
8 also request entry into the diversion program by contacting the  
9 board's Diversion Program Manager. The Diversion Program  
10 Manager may refer the participant requesting participation in the  
11 program to a diversion evaluation committee for evaluation of  
12 eligibility. Prior to authorizing a licentiate to enter into the  
13 diversion program, the Diversion Program Manager may require  
14 the licentiate, while under current investigation for any violations  
15 of the Medical Practice Act or other violations, to execute a  
16 statement of understanding that states that the licentiate understands  
17 that his or her violations of the Medical Practice Act or other  
18 statutes that would otherwise be the basis for discipline may still  
19 be investigated and the subject of disciplinary action.

20 (d) If the reasons for a current investigation of a participant are  
21 based primarily on the self-administration of any controlled  
22 substance or dangerous drugs or alcohol under Section 2239, or  
23 the illegal possession, prescription, or nonviolent procurement of  
24 any controlled substance or dangerous drugs for self-administration  
25 that does not involve actual, direct harm to the public, the board  
26 may close the investigation without further action if the licentiate  
27 is accepted into the board's diversion program and successfully  
28 completes the requirements of the program. If the participant  
29 withdraws or is terminated from the program by the program  
30 manager, the investigation may be reopened and disciplinary action  
31 imposed, if warranted, as determined by the board.

32 (e) Neither acceptance nor participation in the diversion program  
33 shall preclude the board from investigating or continuing to  
34 investigate, or taking disciplinary action or continuing to take  
35 disciplinary action against, any participant for any unprofessional  
36 conduct committed before, during, or after participation in the  
37 diversion program.

38 (f) All participants shall sign an agreement of understanding  
39 that the withdrawal or termination from the diversion program at  
40 a time when the program manager determines the licentiate presents

1 a threat to the public's health and safety shall result in the  
2 utilization by the board of diversion treatment records in  
3 disciplinary or criminal proceedings.

4 (g) Any participant terminated from the diversion program for  
5 failure to comply with program requirements is subject to  
6 disciplinary action by the board for acts committed before, during,  
7 and after participation in the diversion program. A participant who  
8 has been under investigation by the board and has been terminated  
9 from the diversion program by the program manager shall be  
10 reported by the program manager to the board.

11 SEC. 11. Section 2366 of the Business and Professions Code  
12 is amended to read:

13 2366. A committee created under this article operates in an  
14 advisory role to the diversion program manager. Each committee  
15 shall have the following duties and responsibilities:

16 (a) To evaluate those licensees who request participation in the  
17 program according to the guidelines prescribed by the board, and  
18 to make recommendations to the program manager.

19 (b) To review and designate those treatment facilities and  
20 services to which a participant in the program may be referred,  
21 and to make recommendations to the program manager.

22 (c) To receive and review information concerning participants  
23 in the program.

24 (d) To consider whether each participant in the treatment  
25 program may safely continue or resume the practice of medicine,  
26 and to make recommendations to the program manager.

27 (e) To prepare quarterly reports to be submitted to the board,  
28 which include, but are not limited to, information concerning the  
29 number of cases accepted, denied, or terminated with compliance  
30 or noncompliance and a cost analysis of the program.

31 (f) To promote the program to the public and within the  
32 profession, including providing all current licentiates with written  
33 information concerning the program.

34 (g) To perform such other related duties as the board may by  
35 regulation require.

36 SEC. 12. Section 2367 of the Business and Professions Code  
37 is amended to read:

38 2367. (a) Each licensee who requests participation in a  
39 treatment program shall agree to cooperate with the treatment  
40 program designed by the program manager. The committee shall

1 inform each participant in the program of the procedures followed,  
2 the rights and responsibilities of the participant, and the possible  
3 results of noncompliance with the program. Any failure to comply  
4 with the treatment program may result in termination of  
5 participation.

6 (b) Participation in a program under this article shall not be a  
7 defense to any disciplinary action which may be taken by the board.  
8 Further, no provision of this article shall preclude the board from  
9 commencing disciplinary action against a licensee who is  
10 terminated from a program established pursuant to this article.

11 SEC. 13. Section 2369 of the Business and Professions Code  
12 is amended to read:

13 2369. (a) After the program manager, in his or her discretion,  
14 has determined that a participant has been rehabilitated and the  
15 program is completed, the program manager shall purge and  
16 destroy all records pertaining to the participation in a treatment  
17 program.

18 (b) Except as authorized by subdivision (f) of Section 2365, all  
19 board and committee records and records of proceedings pertaining  
20 to the treatment of a participant in a program shall be confidential  
21 and are not subject to discovery or subpoena except in the case of  
22 discovery or subpoena in any criminal proceeding.

23 SEC. 14. Section 2663 of the Business and Professions Code  
24 is amended to read:

25 2663. The board shall establish and administer a diversion  
26 program for the rehabilitation of physical therapists and physical  
27 therapist assistants whose competency is impaired due to the abuse  
28 of drugs or alcohol. The board may contract with any other state  
29 agency or a private organization to perform its duties under this  
30 article. The board may establish one or more diversion evaluation  
31 committees to assist it in carrying out its duties under this article.  
32 Any diversion evaluation committee established by the board shall  
33 operate in an advisory role to the diversion program manager, as  
34 designated by the executive officer of the board.

35 SEC. 15. Section 2665 of the Business and Professions Code  
36 is amended to read:

37 2665. Each diversion evaluation committee has the following  
38 duties and responsibilities:

39 (a) To evaluate physical therapists and physical therapist  
40 assistants who request participation in the program and to make

1 recommendations to the program manager. In making  
2 recommendations, the committee shall consider any  
3 recommendations from professional consultants on the admission  
4 of applicants to the diversion program.

5 (b) To review and designation of treatment facilities to which  
6 physical therapists and physical therapist assistants in the diversion  
7 program may be referred, and to make recommendations to the  
8 program manager.

9 (c) The receipt and review of information concerning physical  
10 therapists and physical therapist assistants participating in the  
11 program.

12 (d) Calling meetings as necessary to consider the requests of  
13 physical therapists and physical therapist assistants to participate  
14 in the diversion program, to consider reports regarding participants  
15 in the program, and to consider any other matters referred to it by  
16 the board.

17 (e) To consider whether each participant in the diversion  
18 program may with safety continue or resume the practice of  
19 physical therapy, and to make recommendations to the program  
20 manager.

21 (f) To make recommendations to the program manager regarding  
22 the terms and conditions of the diversion agreement for each  
23 physical therapist and physical therapist assistant participating in  
24 the program, including treatment, supervision, and monitoring  
25 requirements.

26 (g) Holding a general meeting at least twice a year, which shall  
27 be open and public, to evaluate the diversion program's progress,  
28 to prepare reports to be submitted to the board, and to suggest  
29 proposals for changes in the diversion program.

30 (h) For the purposes of Division 3.6 (commencing with Section  
31 810) of Title 1 of the Government Code, any member of a diversion  
32 evaluation committee shall be considered a public employee. No  
33 board or diversion evaluation committee member, contractor, or  
34 agent thereof, shall be liable for any civil damage because of acts  
35 or omissions which may occur while acting in good faith in a  
36 program established pursuant to this article.

37 SEC. 16. Section 2666 of the Business and Professions Code  
38 is amended to read:

39 2666. (a) Criteria for acceptance into the diversion program  
40 shall include all of the following:

1 (1) The applicant shall be licensed as a physical therapist or  
2 approved as a physical therapist assistant by the board and shall  
3 be a resident of California.

4 (2) The applicant shall be found to abuse dangerous drugs or  
5 alcoholic beverages in a manner which may affect his or her ability  
6 to practice physical therapy safely or competently.

7 (3) The applicant shall have voluntarily requested admission to  
8 the program or shall be accepted into the program in accordance  
9 with terms and conditions resulting from a disciplinary action.

10 (4) The applicant shall agree to undertake any medical or  
11 psychiatric examination ordered to evaluate the applicant for  
12 participation in the program.

13 (5) The applicant shall cooperate with the program by providing  
14 medical information, disclosure authorizations, and releases of  
15 liability as may be necessary for participation in the program.

16 (6) The applicant shall agree in writing to cooperate with all  
17 elements of the treatment program designed for him or her.

18 Any applicant may be denied participation in the program if the  
19 board or the program manager determines that the applicant will  
20 not substantially benefit from participation in the program or that  
21 the applicant's participation in the program creates too great a risk  
22 to the public health, safety, or welfare.

23 (b) A participant may be terminated from the program for any  
24 of the following reasons:

25 (1) The participant has successfully completed the treatment  
26 program.

27 (2) The participant has failed to comply with the treatment  
28 program designated for him or her.

29 (3) The participant fails to meet any of the criteria set forth in  
30 subdivision (a) or (c).

31 (4) It is determined that the participant has not substantially  
32 benefited from participation in the program or that his or her  
33 continued participation in the program creates too great a risk to  
34 the public health, safety, or welfare. Whenever an applicant is  
35 denied participation in the program or a participant is terminated  
36 from the program for any reason other than the successful  
37 completion of the program, and it is determined that the continued  
38 practice of physical therapy by that individual creates too great a  
39 risk to the public health, safety, and welfare, that fact shall be  
40 reported to the executive officer of the board and all documents

1 and information pertaining to and supporting that conclusion shall  
2 be provided to the executive officer. The matter may be referred  
3 for investigation and disciplinary action by the board. Each physical  
4 therapist or physical therapy assistant who requests participation  
5 in a diversion program shall agree to cooperate with the recovery  
6 program designed for him or her. Any failure to comply with that  
7 program may result in termination of participation in the program.

8 The diversion evaluation committee shall inform each participant  
9 in the program of the procedures followed in the program, of the  
10 rights and responsibilities of a physical therapist or physical  
11 therapist assistant in the program, and the possible results of  
12 noncompliance with the program.

13 (c) In addition to the criteria and causes set forth in subdivision  
14 (a), the board may set forth in its regulations additional criteria for  
15 admission to the program or causes for termination from the  
16 program.

17 SEC. 17. Section 2770.1 of the Business and Professions Code  
18 is amended to read:

19 2770.1. As used in this article:

20 (a) "Board" means the Board of Registered Nursing.

21 (b) "Committee" means a diversion evaluation committee  
22 created by this article.

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

27 SEC. 18. Section 2770.8 of the Business and Professions Code  
28 is amended to read:

29 2770.8. A committee created under this article operates in an  
30 advisory role to the diversion program manager. Each committee  
31 shall have the following duties and responsibilities:

32 (a) To evaluate those registered nurses who request participation  
33 in the program according to the guidelines prescribed by the board,  
34 and to make recommendations to the program manager.

35 (b) To review and designate those treatment services to which  
36 registered nurses in a diversion program may be referred, and to  
37 make recommendations to the program manager.

38 (c) To receive and review information concerning a registered  
39 nurse participating in the program.

1 (d) To consider in the case of each registered nurse participating  
2 in a program whether he or she may with safety continue or resume  
3 the practice of nursing, and to make recommendations to the  
4 program manager.

5 (e) To call meetings as necessary to consider the requests of  
6 registered nurses to participate in a diversion program, and to  
7 consider reports regarding registered nurses participating in a  
8 program.

9 (f) To make recommendations to the program manager regarding  
10 the terms and conditions of the diversion agreement for each  
11 registered nurse participating in the program, including treatment,  
12 supervision, and monitoring requirements.

13 SEC. 19. Section 2770.11 of the Business and Professions  
14 Code is amended to read:

15 2770.11. (a) Each registered nurse who requests participation  
16 in a diversion program shall agree to cooperate with the  
17 rehabilitation program designed by the program manager. Any  
18 failure to comply with the provisions of a rehabilitation program  
19 may result in termination of the registered nurse's participation in  
20 a program. The name and license number of a registered nurse  
21 who is terminated for any reason, other than successful completion,  
22 shall be reported to the board's enforcement program.

23 (b) If the program manager determines that a registered nurse,  
24 who is denied admission into the program or terminated from the  
25 program, presents a threat to the public or his or her own health  
26 and safety, the program manager shall report the name and license  
27 number, along with a copy of all diversion records for that  
28 registered nurse, to the board's enforcement program. The board  
29 may use any of the records it receives under this subdivision in  
30 any disciplinary proceeding.

31 SEC. 20. Section 2770.12 of the Business and Professions  
32 Code is amended to read:

33 2770.12. (a) After the program manager in his or her discretion  
34 has determined that a registered nurse has successfully completed  
35 the diversion program, all records pertaining to the registered  
36 nurse's participation in the diversion program shall be purged.

37 (b) All board and committee records and records of a proceeding  
38 pertaining to the participation of a registered nurse in the diversion  
39 program shall be kept confidential and are not subject to discovery

1 or subpoena, except as specified in subdivision (b) of Section  
2 2770.11 and subdivision (c).

3 (c) A registered nurse shall be deemed to have waived any rights  
4 granted by any laws and regulations relating to confidentiality of  
5 the diversion program, if he or she does any of the following:

6 (1) Presents information relating to any aspect of the diversion  
7 program during any stage of the disciplinary process subsequent  
8 to the filing of an accusation, statement of issues, or petition to  
9 compel an examination pursuant to Article 12.5 (commencing with  
10 Section 820) of Chapter 1. The waiver shall be limited to  
11 information necessary to verify or refute any information disclosed  
12 by the registered nurse.

13 (2) Files a lawsuit against the board relating to any aspect of  
14 the diversion program.

15 (3) Claims in defense to a disciplinary action, based on a  
16 complaint that led to the registered nurse's participation in the  
17 diversion program, that he or she was prejudiced by the length of  
18 time that passed between the alleged violation and the filing of the  
19 accusation. The waiver shall be limited to information necessary  
20 to document the length of time the registered nurse participated in  
21 the diversion program.

22 *SEC. 21. Section 3501 of the Business and Professions Code*  
23 *is amended to read:*

24 3501. As used in this chapter:

25 (a) "Board" means the ~~Division of Licensing of the Medical~~  
26 Board of California.

27 (b) "Approved program" means a program for the education of  
28 physician assistants ~~which~~ *that* has been formally approved by the  
29 committee.

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

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

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



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

4 (g) “Committee” or “examining committee” means the Physician  
5 Assistant Committee.

6 (h) “Regulations” means the rules and regulations as contained  
7 in Chapter 13.8 (commencing with Section 1399.500) of Title 16  
8 of the California Code of Regulations.

9 (i) “Routine visual screening” means uninvase  
10 nonpharmacological simple testing for visual acuity, visual field  
11 defects, color blindness, and depth perception.

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

16 ~~SEC. 21.~~

17 SEC. 22. Section 3534.1 of the Business and Professions Code  
18 is amended to read:

19 3534.1. The examining committee shall establish and  
20 administer a diversion program for the rehabilitation of physician  
21 assistants whose competency is impaired due to the abuse of drugs  
22 or alcohol. The examining committee may contract with any other  
23 state agency or a private organization to perform its duties under  
24 this article. The examining committee may establish one or more  
25 diversion evaluation committees to assist it in carrying out its  
26 duties under this article. As used in this article, “committee” means  
27 a diversion evaluation committee. A committee created under this  
28 article operates in an advisory role to the diversion program  
29 manager, as designated by the executive officer of the examining  
30 committee.

31 ~~SEC. 22.~~

32 SEC. 23. Section 3534.3 of the Business and Professions Code  
33 is amended to read:

34 3534.3. Each committee has the following duties and  
35 responsibilities:

36 (a) To evaluate physician assistants who request participation  
37 in the program and to make recommendations to the program  
38 manager. In making recommendations, a committee shall consider  
39 any recommendations from professional consultants on the  
40 admission of applicants to the diversion program.

1 (b) To review and designate treatment facilities to which  
2 physician assistants in the diversion program may be referred, and  
3 to make recommendations to the program manager.

4 (c) The receipt and review of information concerning physician  
5 assistants participating in the program.

6 (d) To call meetings as necessary to consider the requests of  
7 physician assistants to participate in the diversion program, to  
8 consider reports regarding participants in the program, and to  
9 consider any other matters referred to it by the examining  
10 committee.

11 (e) To consider whether each participant in the diversion  
12 program may with safety continue or resume the practice of  
13 medicine, and to make recommendations to the program manager.

14 (f) To make recommendations to the program manager regarding  
15 the terms and conditions of the diversion agreement for each  
16 physician assistant participating in the program, including  
17 treatment, supervision, and monitoring requirements.

18 (g) To hold a general meeting at least twice a year, which shall  
19 be open and public, to evaluate the diversion program's progress,  
20 to prepare reports to be submitted to the examining committee,  
21 and to suggest proposals for changes in the diversion program.

22 (h) For the purposes of Division 3.6 (commencing with Section  
23 810) of Title 1 of the Government Code, any member of a  
24 committee shall be considered a public employee. No examining  
25 committee or committee member, contractor, or agent thereof,  
26 shall be liable for any civil damage because of acts or omissions  
27 which may occur while acting in good faith in a program  
28 established pursuant to this article.

29 ~~SEC. 23.~~

30 *SEC. 24.* Section 3534.4 of the Business and Professions Code  
31 is amended to read:

32 3534.4. Criteria for acceptance into the diversion program shall  
33 include all of the following: (a) the applicant shall be licensed as  
34 a physician assistant by the examining committee and shall be a  
35 resident of California; (b) the applicant shall be found to abuse  
36 dangerous drugs or alcoholic beverages in a manner which may  
37 affect his or her ability to practice medicine safely or competently;  
38 (c) the applicant shall have voluntarily requested admission to the  
39 program or shall be accepted into the program in accordance with  
40 terms and conditions resulting from a disciplinary action; (d) the

1 applicant shall agree to undertake any medical or psychiatric  
2 examination ordered to evaluate the applicant for participation in  
3 the program; (e) the applicant shall cooperate with the program  
4 by providing medical information, disclosure authorizations, and  
5 releases of liability as may be necessary for participation in the  
6 program; and (f) the applicant shall agree in writing to cooperate  
7 with all elements of the treatment program designed for him or  
8 her.

9 An applicant may be denied participation in the program if the  
10 examining committee or the program manager determines that the  
11 applicant will not substantially benefit from participation in the  
12 program or that the applicant's participation in the program creates  
13 too great a risk to the public health, safety, or welfare.

14 ~~SEC. 24.~~

15 *SEC. 25.* Section 3534.9 of the Business and Professions Code  
16 is amended to read:

17 3534.9. If the examining committee contracts with any other  
18 entity to carry out this section, the executive officer of the  
19 examining committee or the program manager shall review the  
20 activities and performance of the contractor on a biennial basis.  
21 As part of this review, the examining committee shall review files  
22 of participants in the program. However, the names of participants  
23 who entered the program voluntarily shall remain confidential,  
24 except when the review reveals misdiagnosis, case  
25 mismanagement, or noncompliance by the participant.

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1454  
**Author:** Ridley-Thomas  
**Bill Date:** June 16, 2008, amended  
**Subject:** Advertising, OSM, Cosmetic Surgery Standards  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill requires health care practitioners to provide specified information on all advertisements. This bill allows 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 or provide the information verbally. This bill requires the Medical Board (Board) to adopt regulations on the appropriate level of physician availability 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. This bill places the investigation of unlicensed activity or corporate practice violations in settings using laser or intense light as a priority.

**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 degree received upon graduation from professional training. This will provide to consumers information to understand the type of healthcare practitioner advertising services. It also specifies types of advertisements that do and do not require this information.
- Health care practitioners 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 or verbally.
- The Board must make the 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. This must be done by July 1, 2009.
- 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, and that the setting's status.
- The Board or the accrediting agency must periodically inspect every outpatient setting. Cycles are to 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.

Amendments to this bill clarify the definition of “advertisement” for these purposes and specify exclusions from this requirement. Advertisements shall not include a medical directory released by a health care service plan or a health insurer, a billing statement from a health care practitioner to a patient, an appointment reminder from a health care practitioner to a patient.

**FISCAL:** \$723,000 start up costs associated with establishment of 6.0 positions within the Office of Safe Medicine (4.0 Senior Investigators, 1.0 Supervising Investigator and 1.0 Office Technician) dedicated solely to these mandates.  
\$596,000 on-going cost.

**POSITION:** Support

July 17, 2008

AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE APRIL 7, 2008

**SENATE BILL**

**No. 1454**

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**Introduced by Senator Ridley-Thomas**

February 21, 2008

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An act to amend Sections 651, 680, and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248.15, 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.

(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.

(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 exclude from that exemption a health care practitioner working in an outpatient clinic~~ *allow a health care practitioner to disclose his or her name and practitioner's license status verbally. The bill would delete the exemption for a health care practitioner whose license is prominently displayed in a practice or office.*

(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 ~~availability~~ needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures.

(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 *Internet* 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~~ 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(10) 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).

1 Any “before” and “after” views (i) shall be comparable in  
2 presentation so that the results are not distorted by favorable poses,  
3 lighting, or other features of presentation, and (ii) shall contain a  
4 statement that the same “before” and “after” results may not occur  
5 for all patients.

6 (4) Relates to fees, other than a standard consultation fee or a  
7 range of fees for specific types of services, without fully and  
8 specifically disclosing all variables and other material factors.

9 (5) Contains other representations or implications that in  
10 reasonable probability will cause an ordinarily prudent person to  
11 misunderstand or be deceived.

12 (6) Makes a claim either of professional superiority or of  
13 performing services in a superior manner, unless that claim is  
14 relevant to the service being performed and can be substantiated  
15 with objective scientific evidence.

16 (7) Makes a scientific claim that cannot be substantiated by  
17 reliable, peer reviewed, published scientific studies.

18 (8) Includes any statement, endorsement, or testimonial that is  
19 likely to mislead or deceive because of a failure to disclose material  
20 facts.

21 (c) Any price advertisement shall be exact, without the use of  
22 phrases, including, but not limited to, “as low as,” “and up,”  
23 “lowest prices,” or words or phrases of similar import. Any  
24 advertisement that refers to services, or costs for services, and that  
25 uses words of comparison shall be based on verifiable data  
26 substantiating the comparison. Any person so advertising shall be  
27 prepared to provide information sufficient to establish the accuracy  
28 of that comparison. Price advertising shall not be fraudulent,  
29 deceitful, or misleading, including statements or advertisements  
30 of bait, discount, premiums, gifts, or any statements of a similar  
31 nature. In connection with price advertising, the price for each  
32 product or service shall be clearly identifiable. The price advertised  
33 for products shall include charges for any related professional  
34 services, including dispensing and fitting services, unless the  
35 advertisement specifically and clearly indicates otherwise.

36 (d) Any person so licensed shall not compensate or give anything  
37 of value to a representative of the press, radio, television, or other  
38 communication medium in anticipation of, or in return for,  
39 professional publicity unless the fact of compensation is made  
40 known in that publicity.

1 (e) Any person so licensed may not use any professional card,  
2 professional announcement card, office sign, letterhead, telephone  
3 directory listing, medical list, medical directory listing, or a similar  
4 professional notice or device if it includes a statement or claim  
5 that is false, fraudulent, misleading, or deceptive within the  
6 meaning of subdivision (b).

7 (f) Any person so licensed who violates this section is guilty of  
8 a misdemeanor. A bona fide mistake of fact shall be a defense to  
9 this subdivision, but only to this subdivision.

10 (g) Any violation of this section by a person so licensed shall  
11 constitute good cause for revocation or suspension of his or her  
12 license or other disciplinary action.

13 (h) Advertising by any person so licensed may include the  
14 following:

15 (1) A statement of the name of the practitioner.

16 (2) A statement of addresses and telephone numbers of the  
17 offices maintained by the practitioner.

18 (3) A statement of office hours regularly maintained by the  
19 practitioner.

20 (4) A statement of languages, other than English, fluently spoken  
21 by the practitioner or a person in the practitioner's office.

22 (5) (A) A statement that the practitioner is certified by a private  
23 or public board or agency or a statement that the practitioner limits  
24 his or her practice to specific fields.

25 (i) For the purposes of this section, a dentist licensed under  
26 Chapter 4 (commencing with Section 1600) may not hold himself  
27 or herself out as a specialist, or advertise membership in or  
28 specialty recognition by an accrediting organization, unless the  
29 practitioner has completed a specialty education program approved  
30 by the American Dental Association and the Commission on Dental  
31 Accreditation, is eligible for examination by a national specialty  
32 board recognized by the American Dental Association, or is a  
33 diplomate of a national specialty board recognized by the American  
34 Dental Association.

35 (ii) A dentist licensed under Chapter 4 (commencing with  
36 Section 1600) shall not represent to the public or advertise  
37 accreditation either in a specialty area of practice or by a board  
38 not meeting the requirements of clause (i) unless the dentist has  
39 attained membership in or otherwise been credentialed by an  
40 accrediting organization that is recognized by the board as a bona

1 fide organization for that area of dental practice. In order to be  
2 recognized by the board as a bona fide accrediting organization  
3 for a specific area of dental practice other than a specialty area of  
4 dentistry authorized under clause (i), the organization shall  
5 condition membership or credentialing of its members upon all of  
6 the following:

7 (I) Successful completion of a formal, full-time advanced  
8 education program that is affiliated with or sponsored by a  
9 university based dental school and is beyond the dental degree at  
10 a graduate or postgraduate level.

11 (II) Prior didactic training and clinical experience in the specific  
12 area of dentistry that is greater than that of other dentists.

13 (III) Successful completion of oral and written examinations  
14 based on psychometric principles.

15 (iii) Notwithstanding the requirements of clauses (i) and (ii), a  
16 dentist who lacks membership in or certification, diplomate status,  
17 other similar credentials, or completed advanced training approved  
18 as bona fide either by an American Dental Association recognized  
19 accrediting organization or by the board, may announce a practice  
20 emphasis in any other area of dental practice only if the dentist  
21 incorporates in capital letters or some other manner clearly  
22 distinguishable from the rest of the announcement, solicitation, or  
23 advertisement that he or she is a general dentist.

24 (iv) A statement of certification by a practitioner licensed under  
25 Chapter 7 (commencing with Section 3000) shall only include a  
26 statement that he or she is certified or eligible for certification by  
27 a private or public board or parent association recognized by that  
28 practitioner's licensing board.

29 (B) A physician and surgeon licensed under Chapter 5  
30 (commencing with Section 2000) by the Medical Board of  
31 California may include a statement that he or she limits his or her  
32 practice to specific fields, but shall not include a statement that he  
33 or she is certified or eligible for certification by a private or public  
34 board or parent association, including, but not limited to, a  
35 multidisciplinary board or association, unless that board or  
36 association is (i) an American Board of Medical Specialties  
37 member board, (ii) a board or association with equivalent  
38 requirements approved by that physician and surgeon's licensing  
39 board, or (iii) a board or association with an Accreditation Council  
40 for Graduate Medical Education approved postgraduate training

1 program that provides complete training in that specialty or  
2 subspecialty. A physician and surgeon licensed under Chapter 5  
3 (commencing with Section 2000) by the Medical Board of  
4 California who is certified by an organization other than a board  
5 or association referred to in clause (i), (ii), or (iii) shall not use the  
6 term “board certified” in reference to that certification, unless the  
7 physician and surgeon is also licensed under Chapter 4  
8 (commencing with Section 1600) and the use of the term “board  
9 certified” in reference to that certification is in accordance with  
10 subparagraph (A). A physician and surgeon licensed under Chapter  
11 5 (commencing with Section 2000) by the Medical Board of  
12 California who is certified by a board or association referred to in  
13 clause (i), (ii), or (iii) shall not use the term “board certified” unless  
14 the full name of the certifying board is also used and given  
15 comparable prominence with the term “board certified” in the  
16 statement.

17 For purposes of this subparagraph, a “multidisciplinary board  
18 or association” means an educational certifying body that has a  
19 psychometrically valid testing process, as determined by the  
20 Medical Board of California, for certifying medical doctors and  
21 other health care professionals that is based on the applicant’s  
22 education, training, and experience.

23 For purposes of the term “board certified,” as used in this  
24 subparagraph, the terms “board” and “association” mean an  
25 organization that is an American Board of Medical Specialties  
26 member board, an organization with equivalent requirements  
27 approved by a physician and surgeon’s licensing board, or an  
28 organization with an Accreditation Council for Graduate Medical  
29 Education approved postgraduate training program that provides  
30 complete training in a specialty or subspecialty.

31 The Medical Board of California shall adopt regulations to  
32 establish and collect a reasonable fee from each board or  
33 association applying for recognition pursuant to this subparagraph.  
34 The fee shall not exceed the cost of administering this  
35 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
36 Statutes of 1990, this subparagraph shall become operative July  
37 1, 1993. However, an administrative agency or accrediting  
38 organization may take any action contemplated by this  
39 subparagraph relating to the establishment or approval of specialist  
40 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

1 subparagraph, to be deposited in the State Treasury in the Podiatry  
2 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
3 of administering this subparagraph.

4 (6) A statement that the practitioner provides services under a  
5 specified private or public insurance plan or health care plan.

6 (7) A statement of names of schools and postgraduate clinical  
7 training programs from which the practitioner has graduated,  
8 together with the degrees received.

9 (8) A statement of publications authored by the practitioner.

10 (9) A statement of teaching positions currently or formerly held  
11 by the practitioner, together with pertinent dates.

12 (10) A statement of his or her affiliations with hospitals or  
13 clinics.

14 (11) A statement of the charges or fees for services or  
15 commodities offered by the practitioner.

16 (12) A statement that the practitioner regularly accepts  
17 installment payments of fees.

18 (13) Otherwise lawful images of a practitioner, his or her  
19 physical facilities, or of a commodity to be advertised.

20 (14) A statement of the manufacturer, designer, style, make,  
21 trade name, brand name, color, size, or type of commodities  
22 advertised.

23 (15) An advertisement of a registered dispensing optician may  
24 include statements in addition to those specified in paragraphs (1)  
25 to (14), inclusive, provided that any statement shall not violate  
26 subdivision (a), (b), (c), or (e) or any other section of this code.

27 (16) A statement, or statements, providing public health  
28 information encouraging preventative or corrective care.

29 (17) Any other item of factual information that is not false,  
30 fraudulent, misleading, or likely to deceive.

31 (i) Advertising by any person licensed under Chapter 2  
32 (commencing with Section 1000), Chapter 4 (commencing with  
33 Section 1600), Chapter 5 (commencing with Section 2000), Chapter  
34 6 (commencing with Section 2700), Chapter 6.5 (commencing  
35 with Section 2840), Chapter 6.6 (commencing with Section 2900),  
36 Chapter 7 (commencing with Section 3000), Chapter 7.7  
37 (commencing with Section 3500), and Chapter 8 (commencing  
38 with Section 3600) shall include all of the following information:

39 ~~(1) The type of license under which the licensee is practicing.~~



1     ~~(2) The~~ *the* type of degree received upon graduation from  
2 professional training.

3     *(1) For purposes of this subdivision, "advertisement" includes*  
4 *communication by means of mail, television, radio, motion picture,*  
5 *newspaper, book, directory, Internet, or other electronic*  
6 *communication. Advertisements shall not include any of the*  
7 *following:*

8     *(A) A medical directory released by a health care service plan*  
9 *or a health insurer.*

10    *(B) A billing statement from a health care practitioner to a*  
11 *patient.*

12    *(C) An appointment reminder from a health care practitioner*  
13 *to a patient.*

14    *(2) This subdivision shall not apply until January 1, 2010, to*  
15 *any advertisement that is published annually and prior to July 1,*  
16 *2009.*

17    *(3) This subdivision shall not apply to any advertisement or*  
18 *business card disseminated by a health care service plan that is*  
19 *subject to the requirements of Section 1367.26 of the Health and*  
20 *Safety Code.*

21    (i) Each of the healing arts boards and examining committees  
22 within Division 2 shall adopt appropriate regulations to enforce  
23 this section in accordance with Chapter 3.5 (commencing with  
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
25 Code.

26    Each of the healing arts boards and committees and examining  
27 committees within Division 2 shall, by regulation, define those  
28 efficacious services to be advertised by businesses or professions  
29 under their jurisdiction for the purpose of determining whether  
30 advertisements are false or misleading. Until a definition for that  
31 service has been issued, no advertisement for that service shall be  
32 disseminated. However, if a definition of a service has not been  
33 issued by a board or committee within 120 days of receipt of a  
34 request from a licensee, all those holding the license may advertise  
35 the service. Those boards and committees shall adopt or modify  
36 regulations defining what services may be advertised, the manner  
37 in which defined services may be advertised, and restricting  
38 advertising that would promote the inappropriate or excessive use  
39 of health services or commodities. A board or committee shall not,  
40 by regulation, unreasonably prevent truthful, nondeceptive price

1 or otherwise lawful forms of advertising of services or  
2 commodities, by either outright prohibition or imposition of  
3 onerous disclosure requirements. However, any member of a board  
4 or committee acting in good faith in the adoption or enforcement  
5 of any regulation shall be deemed to be acting as an agent of the  
6 state.

7 (k) The Attorney General shall commence legal proceedings in  
8 the appropriate forum to enjoin advertisements disseminated or  
9 about to be disseminated in violation of this section and seek other  
10 appropriate relief to enforce this section. Notwithstanding any  
11 other provision of law, the costs of enforcing this section to the  
12 respective licensing boards or committees may be awarded against  
13 any licensee found to be in violation of any provision of this  
14 section. This shall not diminish the power of district attorneys,  
15 county counsels, or city attorneys pursuant to existing law to seek  
16 appropriate relief.

17 (l) A physician and surgeon or doctor of podiatric medicine  
18 licensed pursuant to Chapter 5 (commencing with Section 2000)  
19 by the Medical Board of California who knowingly and  
20 intentionally violates this section may be cited and assessed an  
21 administrative fine not to exceed ten thousand dollars (\$10,000)  
22 per event. Section 125.9 shall govern the issuance of this citation  
23 and fine except that the fine limitations prescribed in paragraph  
24 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
25 under this subdivision.

26 SEC. 2. Section 680 of the Business and Professions Code is  
27 amended to read:

28 680. (a) Except as otherwise provided in this section, a health  
29 care practitioner shall disclose, while working, his or her name  
30 and practitioner's license status, as granted by this state, on a name  
31 tag in at least 18-point type. ~~A health care practitioner in a practice~~  
32 ~~or an office, whose license is prominently displayed, may opt to~~  
33 ~~not wear a name tag unless the health care practitioner is working~~  
34 ~~in a clinic accredited pursuant to Chapter 1.3 (commencing with~~  
35 ~~Section 1248) of Division 2 of the Health and Safety Code. If a~~  
36 ~~type or verbally. If a~~ health care practitioner or a licensed clinical  
37 social worker is working in a psychiatric setting or in a setting that  
38 is not licensed by the state, the employing entity or agency shall  
39 have the discretion to make an exception from the name tag  
40 requirement for individual safety or therapeutic concerns. In the

1 interest of public safety and consumer awareness, it shall be  
2 unlawful for any person to use the title “nurse” in reference to  
3 himself or herself and in any capacity, except for an individual  
4 who is a registered nurse or a licensed vocational nurse, or as  
5 otherwise provided in Section 2800. Nothing in this section shall  
6 prohibit a certified nurse assistant from using his or her title.

7 (b) Facilities licensed by the State Department of Social  
8 Services, the State Department of Mental Health, or the State  
9 Department of Public Health shall develop and implement policies  
10 to ensure that health care practitioners providing care in those  
11 facilities are in compliance with subdivision (a). The State  
12 Department of Social Services, the State Department of Mental  
13 Health, and the State Department of Public Health shall verify  
14 through periodic inspections that the policies required pursuant to  
15 subdivision (a) have been developed and implemented by the  
16 respective licensed facilities.

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

21 SEC. 3. Section 2023.5 of the Business and Professions Code  
22 is amended to read:

23 2023.5. (a) The board, in conjunction with the Board of  
24 Registered Nursing, and in consultation with the Physician  
25 Assistant Committee and professionals in the field, shall review  
26 issues and problems surrounding the use of laser or intense light  
27 pulse devices for elective cosmetic procedures by physicians and  
28 surgeons, nurses, and physician assistants. The review shall include,  
29 but need not be limited to, all of the following:

30 (1) The appropriate level of physician supervision needed.

31 (2) The appropriate level of training to ensure competency.

32 (3) Guidelines for standardized procedures and protocols that  
33 address, at a minimum, all of the following:

34 (A) Patient selection.

35 (B) Patient education, instruction, and informed consent.

36 (C) Use of topical agents.

37 (D) Procedures to be followed in the event of complications or  
38 side effects from the treatment.

39 (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 availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures.

(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 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its *Internet* 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:

1 (i) Have a written transfer agreement with a local accredited or  
2 licensed acute care hospital, approved by the facility's medical  
3 staff.

4 (ii) Permit surgery only by a licensee who has admitting  
5 privileges at a local accredited or licensed acute care hospital, with  
6 the exception that licensees who may be precluded from having  
7 admitting privileges by their professional classification or other  
8 administrative limitations; shall have a written transfer agreement  
9 with licensees who have admitting privileges at local accredited  
10 or licensed acute care hospitals.

11 (D) Submission for approval by an accrediting agency of a  
12 detailed procedural plan for handling medical emergencies that  
13 shall be reviewed at the time of accreditation. No reasonable plan  
14 shall be disapproved by the accrediting agency.

15 (E) Submission for approval by an accrediting agency at the  
16 time of accreditation of a detailed plan, standardized procedures,  
17 and protocols to be followed in the event of serious complications  
18 or side effects from surgery that would place a patient at high risk  
19 for injury or harm and to govern emergency and urgent care  
20 situations.

21 (F) All physicians and surgeons transferring patients from an  
22 outpatient setting shall agree to cooperate with the medical staff  
23 peer review process on the transferred case, the results of which  
24 shall be referred back to the outpatient setting, if deemed  
25 appropriate by the medical staff peer review committee. If the  
26 medical staff of the acute care facility determines that inappropriate  
27 care was delivered at the outpatient setting, the acute care facility's  
28 peer review outcome shall be reported, as appropriate, to the  
29 accrediting body, the Health Care Financing Administration, the  
30 State Department of ~~Health Services~~ *Public Health*, and the  
31 appropriate licensing authority.

32 (3) The outpatient setting shall permit surgery by a dentist acting  
33 within his or her scope of practice under Chapter 4 (commencing  
34 with Section 1600) of Division 2 of the Business and Professions  
35 Code or physician and surgeon, osteopathic physician and surgeon,  
36 or podiatrist acting within his or her scope of practice under  
37 Chapter 5 (commencing with Section 2000) of Division 2 of the  
38 Business and Professions Code or the Osteopathic Initiative Act.  
39 The outpatient setting may, in its discretion, permit anesthesia  
40 service by a certified registered nurse anesthetist acting within his

1 or her scope of practice under Article 7 (commencing with Section  
2 2825) of Chapter 6 of Division 2 of the Business and Professions  
3 Code.

4 (4) Outpatient settings shall have a system for maintaining  
5 clinical records.

6 (5) Outpatient settings shall have a system for patient care and  
7 monitoring procedures.

8 (6) (A) Outpatient settings shall have a system for quality  
9 assessment and improvement.

10 (B) Members of the medical staff and other practitioners who  
11 are granted clinical privileges shall be professionally qualified and  
12 appropriately credentialed for the performance of privileges  
13 granted. The outpatient setting shall grant privileges in accordance  
14 with recommendations from qualified health professionals, and  
15 credentialing standards established by the outpatient setting.

16 (C) Clinical privileges shall be periodically reappraised by the  
17 outpatient setting. The scope of procedures performed in the  
18 outpatient setting shall be periodically reviewed and amended as  
19 appropriate.

20 (7) Outpatient settings regulated by this chapter that have  
21 multiple service locations governed by the same standards may  
22 elect to have all service sites surveyed on any accreditation survey.  
23 Organizations that do not elect to have all sites surveyed shall have  
24 a sample, not to exceed 20 percent of all service sites, surveyed.  
25 The actual sample size shall be determined by the division. The  
26 accreditation agency shall determine the location of the sites to be  
27 surveyed. Outpatient settings that have five or fewer sites shall  
28 have at least one site surveyed. When an organization that elects  
29 to have a sample of sites surveyed is approved for accreditation,  
30 all of the organizations' sites shall be automatically accredited.

31 (8) Outpatient settings shall post the certificate of accreditation  
32 in a location readily visible to patients and staff.

33 (9) Outpatient settings shall post the name and telephone number  
34 of the accrediting agency with instructions on the submission of  
35 complaints in a location readily visible to patients and staff.

36 (10) Outpatient settings shall have a written discharge criteria.

37 (b) Outpatient settings shall have a minimum of two staff  
38 persons on the premises, one of whom shall either be a licensed  
39 physician and surgeon or a licensed health care professional with  
40 current certification in advanced cardiac life support (ACLS), as

1 long as a patient is present who has not been discharged from  
2 supervised care. Transfer to an unlicensed setting of a patient who  
3 does not meet the discharge criteria adopted pursuant to paragraph  
4 (10) of subdivision (a) shall constitute unprofessional conduct.

5 (c) An accreditation agency may include additional standards  
6 in its determination to accredit outpatient settings if these are  
7 approved by the division to protect the public health and safety.

8 (d) No accreditation standard adopted or approved by the  
9 division, and no standard included in any certification program of  
10 any accreditation agency approved by the division, shall serve to  
11 limit the ability of any allied health care practitioner to provide  
12 services within his or her full scope of practice. Notwithstanding  
13 this or any other provision of law, each outpatient setting may limit  
14 the privileges, or determine the privileges, within the appropriate  
15 scope of practice, that will be afforded to physicians and allied  
16 health care practitioners who practice at the facility, in accordance  
17 with credentialing standards established by the outpatient setting  
18 in compliance with this chapter. Privileges may not be arbitrarily  
19 restricted based on category of licensure.

20 SEC. 6. Section 1248.2 of the Health and Safety Code is  
21 amended to read:

22 1248.2. (a) Any outpatient setting may apply to an  
23 accreditation agency for a certificate of accreditation. Accreditation  
24 shall be issued by the accreditation agency solely on the basis of  
25 compliance with its standards as approved by the division under  
26 this chapter.

27 (b) The division shall obtain and maintain a list of all accredited,  
28 certified, and licensed outpatient settings from the information  
29 provided by the accreditation, certification, and licensing agencies  
30 approved by the division, and shall notify the public whether a  
31 setting is accredited, certified, or licensed, or the setting's  
32 accreditation, certification, or license has been revoked, suspended,  
33 or placed on probation, or the setting has received a reprimand by  
34 the accreditation agency.

35 SEC. 7. Section 1248.25 of the Health and Safety Code is  
36 amended to read:

37 1248.25. If an outpatient setting does not meet the standards  
38 approved by the division, accreditation shall be denied by the  
39 accreditation agency, which shall provide the outpatient setting  
40 notification of the reasons for the denial. An outpatient setting may

1 reapply for accreditation at any time after receiving notification  
2 of the denial. The accrediting agency shall immediately report to  
3 the division if the outpatient setting's certificate for accreditation  
4 has been denied.

5 SEC. 8. Section 1248.35 of the Health and Safety Code is  
6 amended to read:

7 1248.35. (a) Every outpatient setting which is accredited shall  
8 be periodically inspected by the Division of Medical Quality or  
9 the accreditation agency. The frequency of inspections shall depend  
10 upon the type and complexity of the outpatient setting to be  
11 inspected. Inspections shall be conducted no less often than once  
12 every three years and as often as necessary to ensure the quality  
13 of care provided. The Division of Medical Quality or the  
14 accreditation agency may enter and inspect any outpatient setting  
15 that is accredited by an accreditation agency at any reasonable  
16 time to ensure compliance with, or investigate an alleged violation  
17 of, any standard of the accreditation agency or any provision of  
18 this chapter.

19 (b) If an accreditation agency determines, as a result of its  
20 inspection, that an outpatient setting is not in compliance with the  
21 standards under which it was approved, the accreditation agency  
22 may do any of the following:

23 (1) Issue a reprimand.

24 (2) Place the outpatient setting on probation, during which time  
25 the setting shall successfully institute and complete a plan of  
26 correction, approved by the division or the accreditation agency,  
27 to correct the deficiencies.

28 (3) Suspend or revoke the outpatient setting's certification of  
29 accreditation.

30 (c) Except as is otherwise provided in this subdivision, before  
31 suspending or revoking a certificate of accreditation under this  
32 chapter, the accreditation agency shall provide the outpatient setting  
33 with notice of any deficiencies and the outpatient setting shall  
34 agree with the accreditation agency on a plan of correction that  
35 shall give the outpatient setting reasonable time to supply  
36 information demonstrating compliance with the standards of the  
37 accreditation agency in compliance with this chapter, as well as  
38 the opportunity for a hearing on the matter upon the request of the  
39 outpatient center. During that allotted time, a list of deficiencies  
40 and the plan of correction shall be conspicuously posted in a clinic



1 location accessible to public view. The accreditation agency may  
2 immediately suspend the certificate of accreditation before  
3 providing notice and an opportunity to be heard, but only when  
4 failure to take the action may result in imminent danger to the  
5 health of an individual. In such cases, the accreditation agency  
6 shall provide subsequent notice and an opportunity to be heard.

7 (d) If the division determines that deficiencies found during an  
8 inspection suggests that the accreditation agency does not comply  
9 with the standards approved by the division, the division may  
10 conduct inspections, as described in this section, of other settings  
11 accredited by the accreditation agency to determine if the agency  
12 is accrediting settings in accordance with Section 1248.15.

13 (e) Reports on the results of each inspection shall be kept on  
14 file with the division or the accrediting agency along with the plan  
15 of correction and the outpatient setting comments. The inspection  
16 report may include a recommendation for reinspection. All  
17 inspection reports, lists of deficiencies, and plans of correction  
18 shall be public records open to public inspection.

19 (f) The accrediting agency shall immediately report to the  
20 division if the outgoing patient setting has been issued a reprimand  
21 or if the outpatient setting's certification of accreditation has been  
22 suspended or revoked or if the outpatient setting has been placed  
23 on probation.

24 SEC. 9. Section 1248.5 of the Health and Safety Code is  
25 amended to read:

26 1248.5. The division shall evaluate the performance of an  
27 approved accreditation agency no less than every three years, or  
28 in response to complaints against an agency, or complaints against  
29 one or more outpatient settings accreditation by an agency that  
30 indicates noncompliance by the agency with the standards approved  
31 by the division.

32 SEC. 10. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 the only costs that may be incurred by a local agency or school  
35 district will be incurred because this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within

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

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1526  
**Author:** Perata  
**Bill Date:** June 11, 2008, amended  
**Subject:** Polysomnographic Technologists  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill requires the Medical Board (Board) to adopt regulations by July 1, 2010, 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 polysomnography 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 licensing practice act, it is a registration program. 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.

This bill has been amended to require certified polysomnographic technologists to register with the Board. Upon passing a national certifying exam approved by the Board, the applicant for registration must submit fingerprint cards or a completed Live Scan form in order to become registered as a certified polysomnographic technologist.

The author does not want to impose a burdensome program on the Medical Board and has included the ability for the Board to set a registration fee to support the work required to implement and maintain the program.

**FISCAL:**

First year cost of \$110,000, ongoing cost per year of \$59,000.  
Revenue is expected to offset costs, making the program  
revenue/cost neutral.

**POSITION:**

Neutral while bill is in development. Assign a board member to  
work with staff and interested parties in the development of this final  
bill.

Recommendation: Neutral

July 17, 2008

AMENDED IN ASSEMBLY JUNE 11, 2008

AMENDED IN SENATE APRIL 29, 2008

AMENDED IN SENATE APRIL 16, 2008

AMENDED IN SENATE MARCH 28, 2008

**SENATE BILL**

**No. 1526**

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**Introduced by Senator Perata  
(Coauthor: Senator Denham)**

February 22, 2008

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An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts, *and making an appropriation therefor.*

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 January 1, 2010, to establish qualifications *and registration procedures* for certified polysomnographic technologists,

including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, *with a specified exception for that examination requirement until January 1, 2012*. The bill would require a certified polysomnographic technologist to be *registered with the board, to be supervised by a licensed physician and surgeon, and to undergo criminal record clearance by the Department of Justice submit his or her fingerprints, as specified*. 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.

*This bill would require polysomnographic technologists to register with the Medical Board of California for a fee to be fixed by the board at no more than \$100, and biennially at no more than \$50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California for purposes of the act, thereby making an appropriation. The bill would further set forth disciplinary standards and procedures, as specified.*

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

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

1 SECTION 1. Chapter 7.8 (commencing with Section 3575) is  
2 added to Division 2 of the Business and Professions Code, to read:

3  
4 CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

5  
6 3575. (a) As used in this ~~section~~ chapter, “board” means the  
7 Medical Board of California.

8 (b) The board shall promulgate regulations by January 1, 2010,  
9 relative to the qualifications for designation of an individual as a  
10 certified polysomnographic technologist. Those qualifications shall  
11 include all of the following:

12 (1) He or she shall have valid, current credentials as a  
13 polysomnographic technologist by a national accrediting agency  
14 approved by the board.

1 (2) He or she shall have graduated from a polysomnographic  
2 educational program that has been approved by the board.

3 (3) He or she shall have passed a national certifying examination  
4 that has been approved by the board, *or in the alternative, may*  
5 *submit proof to the board that he or she has been practicing*  
6 *polysomnography for at least five years in a manner that is*  
7 *acceptable to the board. However, by January 1, 2012, all*  
8 *individuals seeking to obtain new certification as a*  
9 *polysomnographic technologist shall have passed the national*  
10 *certifying examination.*

11 (c) Notwithstanding any other provision of law, an individual  
12 may use the title “certified polysomnographic technologist” and  
13 may engage in the practice of polysomnography only under the  
14 following circumstances:

15 (1) *He or she has registered with the board.*

16 (2) He or she works under the supervision and direction of a  
17 licensed physician and surgeon.

18 ~~(2) He or she has submitted electronic fingerprint images and~~  
19 ~~related information to the Department of Justice for a criminal~~  
20 ~~record clearance. The results of that criminal record clearance shall~~  
21 ~~be provided to the facility employing the polysomnographic~~  
22 ~~technologist.~~

23 ~~(3)–~~

24 (3) *He or she submits fingerprint cards or a copy of a completed*  
25 *Live Scan form in order to establish the identity of the applicant*  
26 *and in order to determine whether the applicant has a record of*  
27 *any criminal convictions in this state or in any other jurisdiction,*  
28 *including foreign countries. The information obtained as a result*  
29 *of the fingerprinting of the applicant shall be used in accordance*  
30 *with Section 11105 of the Penal Code and to determine whether*  
31 *the applicant is subject to denial of registration under the*  
32 *provisions of Division 1.5 (commencing with Section 475).*

33 (4) He or she meets the requirements of this ~~section~~ chapter.

34 (d) “Polysomnography” means the treatment, management,  
35 diagnostic testing, ~~research~~, control, education, and care of patients  
36 with sleep and wake disorders. Polysomnography shall include,  
37 but not be limited to, the process of analysis, monitoring, and  
38 recording of physiologic data during sleep and wakefulness to  
39 assist in the treatment ~~and research~~ of disorders, syndromes, and  
40 dysfunctions that are sleep-related, manifest during sleep, or disrupt

1 normal sleep and wake cycles and activities. Polysomnography  
2 shall also include, but not be limited to, the therapeutic and  
3 diagnostic use of oxygen, the use of positive airway pressure  
4 including continuous positive airway pressure (CPAP) and bilevel  
5 modalities, *adaptive servo-ventilation*, and maintenance of nasal  
6 and oral airways that do not extend into the trachea.

7 (e) The board shall adopt regulations by January 1, 2010, that  
8 establish the means and circumstances in which a licensed  
9 physician and surgeon may employ polysomnographic technicians  
10 and polysomnographic trainees.

11 (f) As used in this ~~section~~ *chapter*, “supervision” means that  
12 the supervising physician and surgeon shall remain available, either  
13 in person or through telephonic or electronic means, at the time  
14 that the polysomnographic services are provided.

15 (g) This ~~section~~ *chapter* shall not apply to the following:

16 ~~(1) Allied health professionals providing in-home diagnostic~~  
17 ~~testing and the set up, education, and training of patients requiring~~  
18 ~~positive airway pressure treatment to maintain their upper airways.~~

19 ~~(2) Respiratory care practitioners working within the scope of~~  
20 ~~practice of their license. California licensed allied health~~  
21 ~~professionals working within the scope of practice of their license.~~

22 3576. (a) A registration may be denied, suspended, revoked,  
23 or otherwise subjected to discipline for any of the following:

24 (1) Incompetence, gross negligence, or repeated similar  
25 negligent acts performed by the registrant.

26 (2) An act of dishonesty or fraud.

27 (3) Committing any act or being convicted of a crime  
28 constituting grounds for denial of licensure or registration under  
29 Section 480.

30 (b) The proceedings shall be conducted in accordance with  
31 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
32 3 of Title 2 of the Government Code, and the board shall have all  
33 powers granted therein.

34 3577. (a) Each person to whom registration is granted under  
35 the provisions of this chapter shall pay into the Contingent Fund  
36 of the Medical Board of California a fee to be fixed by the board  
37 at a sum not in excess of one hundred dollars (\$100).

38 (b) The registration shall expire after two years. The registration  
39 may be renewed biennially at a fee to be fixed by the board at a  
40 sum not in excess of fifty dollars (\$50).



1     (c) *The money in the Contingent Fund of the Medical Board of*  
2     *California that is collected pursuant to this section shall be used*  
3     *for the administration of this chapter.*

4     3578. *Notwithstanding any other provision of law, nothing in*  
5     *this chapter shall prohibit a clinic or health facility licensed*  
6     *pursuant to Division 2 (commencing with Section 1200) of the*  
7     *Health and Safety Code from employing a polysomnography*  
8     *technologist.*

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1779  
**Author:** Senate Business and Professions Committee  
**Bill Date:** June 12, 2008, amended  
**Subject:** Healing Arts: Omnibus  
**Sponsor:** Author/Various Boards

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill is the vehicle by which omnibus legislation will be carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, 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 among all licensing pathways.
  - Technical changes.
- 2168.4 – Making the renewal requirements for the special faculty permit the same as those for the physician's certificate renewal.

- 2172 – Repeal; board no longer administers examinations.
- 2173 – Repeal; board no longer administers examinations.
- 2174 – Repeal; board no longer administers examinations.
- 2175 – 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 (2007), the Board’s restructuring bill, due to subsequent section amendments in a bill that was signed afterward. This section was included in a bill that was signed after ours, which did not include the amendments we were requesting.

Additional amendments to this bill are planned to include Business and Professions Code sections 801.01 and 2221. Section 801.01 is to be amended to make clear whether or not malpractice actions have to be in California to be reported. Section 2221 is being amended to make the process by which an applicant’s probationary certificate can be modified or terminated consistent with the process that a probationary certificate is modified or terminated through enforcement.

**FISCAL:**                      None

**POSITION:**                      Support the technical provisions regarding the Medical Board.

June 16, 2008

AMENDED IN ASSEMBLY JUNE 12, 2008

AMENDED IN ASSEMBLY JUNE 5, 2008

AMENDED IN SENATE MAY 5, 2008

AMENDED IN SENATE APRIL 16, 2008

**SENATE BILL**

**No. 1779**

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**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

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An act to amend Sections 128.5, 149, 683, 733, 800, 801, 803, 2089.5, 2096, 2102, 2107, 2135, 2168.4, 2175, 2307, 2335, 2486, 2488, 2570.5, 2570.7, 2570.6, 2760.1, 3503, 3517, 3518, 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, 4161, 4174, 4231, 4301, 4305, 4329, 4330, 4980.03, 4980.30, 4980.43, 4982, 4989.54, 4992.3, 4996.2, 4996.17, 4996.18, and 4996.23 of, to amend and renumber Section 2570.185 of, to add Sections 2169, 2570.36, 4036.5, 4980.04, and 4990.09 to, and to repeal Sections 2172, 2173, 2174, 4981, 4994.1, 4996.20, and 4996.21 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, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1779, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Under existing law, if, upon investigation, a specified state regulatory agency has probable cause to believe that a person is

advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with that agency, the agency is authorized to issue a specified citation.

This bill would add the Physical Therapy Board of California to those authorized agencies.

Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

(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. *Under existing law, any person who meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit that authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions.*

This bill would revise the training requirements for a physician and surgeon's license, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of

examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2069. The bill would revise the requirements for a petition for reinstatement or modification, as specified. *The bill would require the holder of a special faculty permit to meet the same continuing medical education requirements as the holder of a physician's and surgeon's certificate and would also require a special faculty permitholder to show that he or she meets these requirements at the time of permit renewal.*

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(3) Existing law, the Occupational Therapy Practice Act, provides for the licensure of occupational therapists and the certification of occupational therapy assistants by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in 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. Existing law requires an applicant applying for a license or certification to file with the board a written application provided by and satisfactory to the board, showing that he or she meets certain requirements, including, but not limited to, successful completion of an educational program's academic requirements approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council

for Occupational Therapy Education (ACOTE) and successful completion of a period of supervised fieldwork experience. Existing law also specifies the curriculum requirements for an education program for occupational therapists and occupational therapy assistants.

This bill would require an occupational therapy assistant to document in 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 that the applicant successfully complete the educational program's academic requirements approved by the board and accredited by ACOTE, or accredited or approved by the American Occupational Therapy Association's predecessor organization, or approved by AOTA's Career Mobility Program. The bill would also revise those curriculum requirements for an educational program. The bill would authorize an applicant who is a graduate of an educational program and is unable to provide evidence of having met the curriculum requirements to demonstrate passage of a specified examination as evidence of having successfully satisfied the curriculum requirements. The bill would require an applicant who completed AOTA's Career Mobility Program to demonstrate participation in the program and passage of a specified examination as evidence of having successfully satisfied the educational program and curriculum requirements. The bill would revise the supervised fieldwork experience requirement. The bill would require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(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 Physician Assistant Practice Act, provides for the licensure and regulation of physician's assistants by the Physician Assistant Committee of the Medical Board of California. Existing law authorizes the committee to grant interim approval to an applicant for licensure as a physician assistant.

This bill would delete that authority to grant interim approval and would make conforming changes.

(6) 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.

(7) 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.

(8) 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 prohibits a person from acting as a wholesaler of any dangerous drug or device without a license from the board. Existing law requires a nonresident wholesaler, as defined, to be licensed prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.*

*This bill would modify that definition and would also require a nonresident wholesaler to be licensed prior to selling, brokering, or distributing dangerous drugs or devices within this state. By subjecting these nonresident wholesalers to these licensure requirements which include, among other things, payment of specified fees, the bill would increase that part of the revenue in the Pharmacy Board Contingent Fund that is continuously appropriated and would thereby make an appropriation.*

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

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

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(9) Existing law provides for the licensure and regulation of psychologists, clinical social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of \$1,500 or less for more than 5 years from the date of issuance of the citation.

Existing law authorizes the board to deny a license or registration or to suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct and existing law specifies that unprofessional conduct includes, but is not limited to, the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any specified substances or any combination thereof.

This bill would delete that provision specifying that unprofessional conduct includes the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any specified substances or any combination thereof. The bill would specify that unprofessional conduct includes the failure to comply with telemedicine requirements as well as engaging in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination as specified.

Existing law requires applicants for a clinical social worker license to furnish evidence satisfactory to the board that he or she has, among other things, 2 year's of supervised postmaster's degree experience. Existing law requires this experience to meet various criteria including, but not limited to, at least 3,200 hours of postmaster's degree supervised experience providing clinical social work services, and of those hours, at least 1,700 hours gained under the supervision of a licensed clinical social worker, and the remaining hours under the supervision of a board-acceptable licensed mental health professional. Existing law also requires this experience to include at least one hour of direct supervisor contact, as defined, for a minimum of 104 weeks. Existing law provides

various alternative criteria sufficient to satisfy the experience requirement.

This bill would revise the definition of one hour of direct supervisor contact and would delete those various alternative criteria.

(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~~ yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 128.5 of the Business and Professions  
2 Code is amended to read:

3 128.5. (a) Notwithstanding any other provision of law, if at  
4 the end of any fiscal year, an agency within the Department of  
5 Consumer Affairs, except the agencies referred to in subdivision  
6 (b), has unencumbered funds in an amount that equals or is more  
7 than the agency's operating budget for the next two fiscal years,  
8 the agency shall reduce license or other fees, whether the license  
9 or other fees be fixed by statute or may be determined by the  
10 agency within limits fixed by statute, during the following fiscal  
11 year in an amount that will reduce any surplus funds of the agency  
12 to an amount less than the agency's operating budget for the next  
13 two fiscal years.

14 (b) Notwithstanding any other provision of law, if at the end of  
15 any fiscal year, the California Architects Board, the Board of  
16 Behavioral Sciences, the Veterinary Medical Board, the Court  
17 Reporters Board of California, the Medical Board of California,  
18 the Board of Vocational Nursing and Psychiatric Technicians, or  
19 the Bureau of Security and Investigative Services has  
20 unencumbered funds in an amount that equals or is more than the  
21 agency's operating budget for the next two fiscal years, the agency  
22 shall reduce license or other fees, whether the license or other fees  
23 be fixed by statute or may be determined by the agency within  
24 limits fixed by statute, during the following fiscal year in an amount  
25 that will reduce any surplus funds of the agency to an amount less  
26 than the agency's operating budget for the next two fiscal years.

1 SEC. 2. Section 149 of the Business and Professions Code is  
2 amended to read:

3 149. (a) If, upon investigation, an agency designated in  
4 subdivision (e) has probable cause to believe that a person is  
5 advertising in a telephone directory with respect to the offering or  
6 performance of services, without being properly licensed by or  
7 registered with the agency to offer or perform those services, the  
8 agency may issue a citation under Section 148 containing an order  
9 of correction that requires the violator to do both of the following:

10 (1) Cease the unlawful advertising.

11 (2) Notify the telephone company furnishing services to the  
12 violator to disconnect the telephone service furnished to any  
13 telephone number contained in the unlawful advertising.

14 (b) This action is stayed if the person to whom a citation is  
15 issued under subdivision (a) notifies the agency in writing that he  
16 or she intends to contest the citation. The agency shall afford an  
17 opportunity for a hearing, as specified in Section 125.9.

18 (c) If the person to whom a citation and order of correction is  
19 issued under subdivision (a) fails to comply with the order of  
20 correction after that order is final, the agency shall inform the  
21 Public Utilities Commission of the violation and the Public Utilities  
22 Commission shall require the telephone corporation furnishing  
23 services to that person to disconnect the telephone service furnished  
24 to any telephone number contained in the unlawful advertising.

25 (d) The good faith compliance by a telephone corporation with  
26 an order of the Public Utilities Commission to terminate service  
27 issued pursuant to this section shall constitute a complete defense  
28 to any civil or criminal action brought against the telephone  
29 corporation arising from the termination of service.

30 (e) Subdivision (a) shall apply to the following boards, bureaus,  
31 committees, commissions, or programs:

32 (1) The Bureau of Barbering and Cosmetology.

33 (2) The Funeral Directors and Embalmers Program.

34 (3) The Veterinary Medical Board.

35 (4) The Hearing Aid Dispensers Advisory Commission.

36 (5) The Landscape Architects Technical Committee.

37 (6) The California Board of Podiatric Medicine.

38 (7) The Respiratory Care Board of California.

39 (8) The Bureau of Home Furnishings and Thermal Insulation.

40 (9) The Bureau of Security and Investigative Services.

- (10) The Bureau of Electronic and Appliance Repair.
- (11) The Bureau of Automotive Repair.
- (12) The Tax Preparers Program.
- (13) The California Architects Board.
- (14) The Speech-Language Pathology and Audiology Board.
- (15) The Board for Professional Engineers and Land Surveyors.
- (16) The Board of Behavioral Sciences.
- (17) The State Board for Geologists and Geophysicists.
- (18) The Structural Pest Control Board.
- (19) The Acupuncture Board.
- (20) The Board of Psychology.
- (21) The California Board of Accountancy.
- (22) The Bureau of Naturopathic Medicine.
- (23) The Physical Therapy Board of California.

SEC. 3. 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. 4. 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)

1 of Section 4024, pursuant to a lawful order or prescription unless  
2 one of the following circumstances exists:

3 (1) Based solely on the licentiate's professional training and  
4 judgment, dispensing pursuant to the order or the prescription is  
5 contrary to law, or the licentiate determines that the prescribed  
6 drug or device would cause a harmful drug interaction or would  
7 otherwise adversely affect the patient's medical condition.

8 (2) The prescription drug or device is not in stock. If an order,  
9 other than an order described in Section 4019, or prescription  
10 cannot be dispensed because the drug or device is not in stock, the  
11 licentiate shall take one of the following actions:

12 (A) Immediately notify the patient and arrange for the drug or  
13 device to be delivered to the site or directly to the patient in a  
14 timely manner.

15 (B) Promptly transfer the prescription to another pharmacy  
16 known to stock the prescription drug or device that is near enough  
17 to the site from which the prescription or order is transferred, to  
18 ensure the patient has timely access to the drug or device.

19 (C) Return the prescription to the patient and refer the patient.  
20 The licentiate shall make a reasonable effort to refer the patient to  
21 a pharmacy that stocks the prescription drug or device that is near  
22 enough to the referring site to ensure that the patient has timely  
23 access to the drug or device.

24 (3) The licentiate refuses on ethical, moral, or religious grounds  
25 to dispense a drug or device pursuant to an order or prescription.  
26 A licentiate may decline to dispense a prescription drug or device  
27 on this basis only if the licentiate has previously notified his or  
28 her employer, in writing, of the drug or class of drugs to which he  
29 or she objects, and the licentiate's employer can, without creating  
30 undue hardship, provide a reasonable accommodation of the  
31 licentiate's objection. The licentiate's employer shall establish  
32 protocols that ensure that the patient has timely access to the  
33 prescribed drug or device despite the licentiate's refusal to dispense  
34 the prescription or order. For purposes of this section, "reasonable  
35 accommodation" and "undue hardship" shall have the same  
36 meaning as applied to those terms pursuant to subdivision (I) of  
37 Section 12940 of the Government Code.

38 (c) For the purposes of this section, "prescription drug or device"  
39 has the same meaning as the definition in Section 4022.

1 (d) The provisions of this section shall apply to the drug therapy  
2 described in Section 4052.3.

3 (e) This section imposes no duty on a licentiate to dispense a  
4 drug or device pursuant to a prescription or order without payment  
5 for the drug or device, including payment directly by the patient  
6 or through a third-party payer accepted by the licentiate or payment  
7 of any required copayment by the patient.

8 (f) The notice to consumers required by Section 4122 shall  
9 include a statement that describes patients' rights relative to the  
10 requirements of this section.

11 SEC. 5. Section 800 of the Business and Professions Code is  
12 amended to read:

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

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

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

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

39 (4) Disciplinary information reported pursuant to Section 805.



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

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

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

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

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

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

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

3 SEC. 6. Section 801 of the Business and Professions Code is  
4 amended to read:

5 801. (a) Except as provided in Section 801.01 and subdivisions  
6 (b), (c), and (d) of this section, every insurer providing professional  
7 liability insurance to a person who holds a license, certificate, or  
8 similar authority from or under any agency mentioned in  
9 subdivision (a) of Section 800 shall send a complete report to that  
10 agency as to any settlement or arbitration award over three  
11 thousand dollars (\$3,000) of a claim or action for damages for  
12 death or personal injury caused by that person's negligence, error,  
13 or omission in practice, or by his or her rendering of unauthorized  
14 professional services. The report shall be sent within 30 days after  
15 the written settlement agreement has been reduced to writing and  
16 signed by all parties thereto or within 30 days after service of the  
17 arbitration award on the parties.

18 (b) Every insurer providing professional liability insurance to  
19 a person licensed pursuant to Chapter 13 (commencing with  
20 Section 4980) or Chapter 14 (commencing with Section 4990)  
21 shall send a complete report to the Board of Behavioral Sciences  
22 as to any settlement or arbitration award over ten thousand dollars  
23 (\$10,000) of a claim or action for damages for death or personal  
24 injury caused by that person's negligence, error, or omission in  
25 practice, or by his or her rendering of unauthorized professional  
26 services. The report shall be sent within 30 days after the written  
27 settlement agreement has been reduced to writing and signed by  
28 all parties thereto or within 30 days after service of the arbitration  
29 award on the parties.

30 (c) Every insurer providing professional liability insurance to  
31 a dentist licensed pursuant to Chapter 4 (commencing with Section  
32 1600) shall send a complete report to the Dental Board of  
33 California as to any settlement or arbitration award over ten  
34 thousand dollars (\$10,000) of a claim or action for damages for  
35 death or personal injury caused by that person's negligence, error,  
36 or omission in practice, or rendering of unauthorized professional  
37 services. The report shall be sent within 30 days after the written  
38 settlement agreement has been reduced to writing and signed by  
39 all parties thereto or within 30 days after service of the arbitration  
40 award on the parties.

1 (d) Every insurer providing liability insurance to a veterinarian  
2 licensed pursuant to Chapter 11 (commencing with Section 4800)  
3 shall send a complete report to the Veterinary Medical Board of  
4 any settlement or arbitration award over ten thousand dollars  
5 (\$10,000) of a claim or action for damages for death or injury  
6 caused by that person's negligence, error, or omission in practice,  
7 or rendering of unauthorized professional service. The report shall  
8 be sent within 30 days after the written settlement agreement has  
9 been reduced to writing and signed by all parties thereto or within  
10 30 days after service of the arbitration award on the parties.

11 (e) The insurer shall notify the claimant, or if the claimant is  
12 represented by counsel, the insurer shall notify the claimant's  
13 attorney, that the report required by subdivision (a), (b), or (c) has  
14 been sent to the agency. If the attorney has not received this notice  
15 within 45 days after the settlement was reduced to writing and  
16 signed by all of the parties, the arbitration award was served on  
17 the parties, or the date of entry of the civil judgment, the attorney  
18 shall make the report to the agency.

19 (f) Notwithstanding any other provision of law, no insurer shall  
20 enter into a settlement without the written consent of the insured,  
21 except that this prohibition shall not void any settlement entered  
22 into without that written consent. The requirement of written  
23 consent shall only be waived by both the insured and the insurer.  
24 This section shall only apply to a settlement on a policy of  
25 insurance executed or renewed on or after January 1, 1971.

26 SEC. 7. Section 803 of the Business and Professions Code is  
27 amended to read:

28 803. (a) Except as provided in subdivision (b), within 10 days  
29 after a judgment by a court of this state that a person who holds a  
30 license, certificate, or other similar authority from the Board of  
31 Behavioral Sciences or from an agency mentioned in subdivision  
32 (a) of Section 800 (except a person licensed pursuant to Chapter  
33 3 (commencing with Section 1200)) has committed a crime, or is  
34 liable for any death or personal injury resulting in a judgment for  
35 an amount in excess of thirty thousand dollars (\$30,000) caused  
36 by his or her negligence, error or omission in practice, or his or  
37 her rendering unauthorized professional services, the clerk of the  
38 court that rendered the judgment shall report that fact to the agency  
39 that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

SEC. 8. 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.

1 (e) If the institution, specified in subdivision (d), is formally  
2 affiliated with a medical school or a school of osteopathic medicine  
3 located outside the United States or Canada, it shall meet the  
4 following:

5 (1) The formal affiliation shall be documented by a written  
6 contract detailing the relationship between the medical school, or  
7 a school of osteopathic medicine, and hospital and the  
8 responsibilities of each.

9 (2) The school and hospital shall provide to the board a  
10 description of the clinical program. The description shall be in  
11 sufficient detail to enable the board to determine whether or not  
12 the program provides students an adequate medical education. The  
13 board shall approve the program if it determines that the program  
14 provides an adequate medical education. If the board does not  
15 approve the program, it shall provide its reasons for disapproval  
16 to the school and hospital in writing specifying its findings about  
17 each aspect of the program that it considers to be deficient and the  
18 changes required to obtain approval.

19 (3) The hospital, if located in the United States, shall be  
20 accredited by the Joint Commission on Accreditation of Hospitals,  
21 and if located in another country, shall be accredited in accordance  
22 with the law of that country.

23 (4) The clinical instruction shall be supervised by a full-time  
24 director of medical education, and the head of the department for  
25 each core clinical course shall hold a full-time faculty appointment  
26 of the medical school or school of osteopathic medicine and shall  
27 be board certified or eligible, or have an equivalent credential in  
28 that specialty area appropriate to the country in which the hospital  
29 is located.

30 (5) The clinical instruction shall be conducted pursuant to a  
31 written program of instruction provided by the school.

32 (6) The school shall supervise the implementation of the  
33 program on a regular basis, documenting the level and extent of  
34 its supervision.

35 (7) The hospital-based faculty shall evaluate each student on a  
36 regular basis and shall document the completion of each aspect of  
37 the program for each student.

38 (8) The hospital shall ensure a minimum daily census adequate  
39 to meet the instructional needs of the number of students enrolled

1 in each course area of clinical instruction, but not less than 15  
2 patients in each course area of clinical instruction.

3 (9) The board, in reviewing the application of a foreign medical  
4 graduate, may require the applicant to submit a description of the  
5 clinical program, if the board has not previously approved the  
6 program, and may require the applicant to submit documentation  
7 to demonstrate that the applicant's clinical training met the  
8 requirements of this subdivision.

9 (10) The medical school or school of osteopathic medicine shall  
10 bear the reasonable cost of any site inspection by the board or its  
11 agents necessary to determine whether the clinical program offered  
12 is in compliance with this subdivision.

13 SEC. 9. Section 2096 of the Business and Professions Code is  
14 amended to read:

15 2096. In addition to other requirements of this chapter, before  
16 a physician's and surgeon's license may be issued, each applicant,  
17 including an applicant applying pursuant to Article 5 (commencing  
18 with Section 2100), shall show by evidence satisfactory to the  
19 board that he or she has satisfactorily completed at least one year  
20 of postgraduate training, which includes at least four months of  
21 general medicine, in a postgraduate training program approved by  
22 the Accreditation Council for Graduate Medical Education  
23 (ACGME) or Royal College of Physicians and Surgeons of Canada  
24 (RCPSC).

25 The amendments made to this section at the 1987 portion of the  
26 1987-88 session of the Legislature shall not apply to applicants  
27 who completed their one year of postgraduate training on or before  
28 July 1, 1990.

29 SEC. 10. Section 2102 of the Business and Professions Code  
30 is amended to read:

31 2102. Any applicant whose professional instruction was  
32 acquired in a country other than the United States or Canada shall  
33 provide evidence satisfactory to the board of compliance with the  
34 following requirements to be issued a physician's and surgeon's  
35 certificate:

36 (a) Completion in a medical school or schools of a resident  
37 course of professional instruction equivalent to that required by  
38 Section 2089 and issuance to the applicant of a document  
39 acceptable to the board that shows final and successful completion  
40 of the course. However, nothing in this section shall be construed

1 to require the board to evaluate for equivalency any coursework  
2 obtained at a medical school disapproved by the board pursuant  
3 to this section.

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

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

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

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

31 SEC. 11. Section 2107 of the Business and Professions Code  
32 is amended to read:

33 2107. (a) The Legislature intends that the board shall have the  
34 authority to substitute postgraduate education and training to  
35 remedy deficiencies in an applicant's medical school education  
36 and training. The Legislature further intends that applicants who  
37 substantially completed their clinical training shall be granted that  
38 substitute credit if their postgraduate education took place in an  
39 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. 12. Section 2135 of the Business and Professions Code is amended to read:

2135. The 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 board to evaluate for equivalency any coursework obtained at a medical school disapproved by the 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 board shall not be included in the calculation of this four-year period.

(c) The 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



1 division determines constitutes evidence of a pattern of negligence  
2 or incompetence.

3 (d) The applicant (1) has satisfactorily completed at least one  
4 year of approved postgraduate training and is certified by a  
5 specialty board approved by the American Board of Medical  
6 Specialties or approved by the division pursuant to subdivision (h)  
7 of Section 651; (2) has satisfactorily completed at least two years  
8 of approved postgraduate training; or (3) has satisfactorily  
9 completed at least one year of approved postgraduate training and  
10 takes and passes the clinical competency written examination.

11 (e) The applicant has not committed any acts or crimes  
12 constituting grounds for denial of a certificate under Division 1.5  
13 (commencing with Section 475) or Article 12 (commencing with  
14 Section 2220).

15 (f) Any application received from an applicant who has held an  
16 unrestricted license to practice medicine, in a state or states, or  
17 Canadian province or Canadian provinces, or as a member of the  
18 active military, United States Public Health Services, or other  
19 federal program for four or more years shall be reviewed and  
20 processed pursuant to this section. Any time spent by the applicant  
21 in an approved postgraduate training program or clinical fellowship  
22 acceptable to the board shall not be included in the calculation of  
23 this four-year period. This subdivision does not apply to  
24 applications that may be reviewed and processed pursuant to  
25 Section 2151.

26 *SEC. 13. Section 2168.4 of the Business and Professions Code*  
27 *is amended to read:*

28 2168.4. (a) A special faculty permit expires and becomes  
29 invalid at midnight on the last day of the permitholder's birth  
30 month during the second year of a two-year term, if not renewed.

31 (b) A person who holds a special faculty permit shall show at  
32 the time of license renewal that he or she continues to meet the  
33 eligibility criteria set forth in Section 2168.1. After the first renewal  
34 of a special faculty permit, the permitholder shall not be required  
35 to hold a full-time faculty position, and may instead be employed  
36 part-time in a position that otherwise meets the requirements set  
37 forth in paragraph (1) of subdivision (a) of Section 2168.1.

38 (c) *A person who holds a special faculty permit shall show at*  
39 *the time of license renewal that he or she meets the continuing*

1 *medical education requirements of Article 10 (commencing with*  
2 *Section 2190).*

3 ~~(e)~~

4 *(d)* In addition to the requirements set forth above, a special  
5 faculty permit shall be renewed in accordance with Article 19  
6 (commencing with Section 2420) in the same manner as a  
7 physician's and surgeon's certificate.

8 ~~(e)~~

9 *(e)* Those fees applicable to a physician's and surgeon's  
10 certificate shall also apply to a special faculty permit and shall be  
11 paid into the State Treasury and credited to the Contingent Fund  
12 of the Medical Board of California.

13 *SEC. 14. Section 2169 is added to the Business and Professions*  
14 *Code, to read:*

15 *2169. A person who holds a special faculty permit shall meet*  
16 *the continuing medical education requirements set forth in Article*  
17 *10 (commencing with Section 2190).*

18 ~~SEC. 13.~~

19 *SEC. 15.* Section 2172 of the Business and Professions Code  
20 is repealed.

21 ~~SEC. 14.~~

22 *SEC. 16.* Section 2173 of the Business and Professions Code  
23 is repealed.

24 ~~SEC. 15.~~

25 *SEC. 17.* Section 2174 of the Business and Professions Code  
26 is repealed.

27 ~~SEC. 16.~~

28 *SEC. 18.* Section 2175 of the Business and Professions Code  
29 is amended to read:

30 2175. State examination records shall be kept on file by the  
31 board until June 1, 2069. Examinees shall be known and designated  
32 by number only, and the name attached to the number shall be kept  
33 secret until the examinee is sent notification of the results of the  
34 examinations.

35 ~~SEC. 17.~~

36 *SEC. 19.* Section 2307 of the Business and Professions Code  
37 is amended to read:

38 2307. (a) A person whose certificate has been surrendered  
39 while under investigation or while charges are pending or whose  
40 certificate has been revoked or suspended or placed on probation,

1 may petition the board for reinstatement or modification of penalty,  
2 including modification or termination of probation.

3 (b) The person may file the petition after a period of not less  
4 than the following minimum periods have elapsed from the  
5 effective date of the surrender of the certificate or the decision  
6 ordering that disciplinary action:

7 (1) At least three years for reinstatement of a license surrendered  
8 or revoked for unprofessional conduct, except that the board may,  
9 for good cause shown, specify in a revocation order that a petition  
10 for reinstatement may be filed after two years.

11 (2) At least two years for early termination of probation of three  
12 years or more.

13 (3) At least one year for modification of a condition, or  
14 reinstatement of a license surrendered or revoked for mental or  
15 physical illness, or termination of probation of less than three years.

16 (c) The petition shall state any facts as may be required by the  
17 board. The petition shall be accompanied by at least two verified  
18 recommendations from physicians and surgeons licensed in any  
19 state who have personal knowledge of the activities of the petitioner  
20 since the disciplinary penalty was imposed.

21 (d) The petition may be heard by a panel of the board. The board  
22 may assign the petition to an administrative law judge designated  
23 in Section 11371 of the Government Code. After a hearing on the  
24 petition, the administrative law judge shall provide a proposed  
25 decision to the board or the California Board of Podiatric Medicine,  
26 as applicable, which shall be acted upon in accordance with Section  
27 2335.

28 (e) The panel of the board or the administrative law judge  
29 hearing the petition may consider all activities of the petitioner  
30 since the disciplinary action was taken, the offense for which the  
31 petitioner was disciplined, the petitioner's activities during the  
32 time the certificate was in good standing, and the petitioner's  
33 rehabilitative efforts, general reputation for truth, and professional  
34 ability. The hearing may be continued from time to time as the  
35 administrative law judge designated in Section 11371 of the  
36 Government Code finds necessary.

37 (f) The administrative law judge designated in Section 11371  
38 of the Government Code reinstating a certificate or modifying a  
39 penalty may recommend the imposition of any terms and conditions  
40 deemed necessary.

1 (g) No petition shall be considered while the petitioner is under  
2 sentence for any criminal offense, including any period during  
3 which the petitioner is on court-imposed probation or parole. No  
4 petition shall be considered while there is an accusation or petition  
5 to revoke probation pending against the person. The board may  
6 deny without a hearing or argument any petition filed pursuant to  
7 this section within a period of two years from the effective date  
8 of the prior decision following a hearing under this section.

9 (h) This section is applicable to and may be carried out with  
10 regard to licensees of the California Board of Podiatric Medicine.  
11 In lieu of two verified recommendations from physicians and  
12 surgeons, the petition shall be accompanied by at least two verified  
13 recommendations from doctors of podiatric medicine licensed in  
14 any state who have personal knowledge of the activities of the  
15 petitioner since the date the disciplinary penalty was imposed.

16 (i) Nothing in this section shall be deemed to alter Sections 822  
17 and 823.

18 ~~SEC. 18.~~

19 *SEC. 20.* Section 2335 of the Business and Professions Code  
20 is amended to read:

21 2335. (a) All proposed decisions and interim orders of the  
22 Medical Quality Hearing Panel designated in Section 11371 of the  
23 Government Code shall be transmitted to the executive director  
24 of the board, or the executive director of the California Board of  
25 Podiatric Medicine as to the licensees of that board, within 48  
26 hours of filing.

27 (b) All interim orders shall be final when filed.

28 (c) A proposed decision shall be acted upon by the board or by  
29 any panel appointed pursuant to Section 2008 or by the California  
30 Board of Podiatric Medicine, as the case may be, in accordance  
31 with Section 11517 of the Government Code, except that all of the  
32 following shall apply to proceedings against licensees under this  
33 chapter:

34 (1) When considering a proposed decision, the board or panel  
35 and the California Board of Podiatric Medicine shall give great  
36 weight to the findings of fact of the administrative law judge,  
37 except to the extent those findings of fact are controverted by new  
38 evidence.

39 (2) The board's staff or the staff of the California Board of  
40 Podiatric Medicine shall poll the members of the board or panel

1 or of the California Board of Podiatric Medicine by written mail  
2 ballot concerning the proposed decision. The mail ballot shall be  
3 sent within 10 calendar days of receipt of the proposed decision,  
4 and shall poll each member on whether the member votes to  
5 approve the decision, to approve the decision with an altered  
6 penalty, to refer the case back to the administrative law judge for  
7 the taking of additional evidence, to defer final decision pending  
8 discussion of the case by the panel or board as a whole, or to  
9 nonadopt the decision. No party to the proceeding, including  
10 employees of the agency that filed the accusation, and no person  
11 who has a direct or indirect interest in the outcome of the  
12 proceeding or who presided at a previous stage of the decision,  
13 may communicate directly or indirectly, upon the merits of a  
14 contested matter while the proceeding is pending, with any member  
15 of the panel or board, without notice and opportunity for all parties  
16 to participate in the communication. The votes of a majority of the  
17 board or of the panel, and a majority of the California Board of  
18 Podiatric Medicine, are required to approve the decision with an  
19 altered penalty, to refer the case back to the administrative law  
20 judge for the taking of further evidence, or to nonadopt the  
21 decision. The votes of two members of the panel or board are  
22 required to defer final decision pending discussion of the case by  
23 the panel or board as a whole. If there is a vote by the specified  
24 number to defer final decision pending discussion of the case by  
25 the panel or board as a whole, provision shall be made for that  
26 discussion before the 100-day period specified in paragraph (3)  
27 expires, but in no event shall that 100-day period be extended.

28 (3) If a majority of the board or of the panel, or a majority of  
29 the California Board of Podiatric Medicine vote to do so, the board  
30 or the panel or the California Board of Podiatric Medicine shall  
31 issue an order of nonadoption of a proposed decision within 100  
32 calendar days of the date it is received by the board. If the board  
33 or the panel or the California Board of Podiatric Medicine does  
34 not refer the case back to the administrative law judge for the  
35 taking of additional evidence or issue an order of nonadoption  
36 within 100 days, the decision shall be final and subject to review  
37 under Section 2337. Members of the board or of any panel or of  
38 the California Board of Podiatric Medicine who review a proposed  
39 decision or other matter and vote by mail as provided in paragraph

1 (2) shall return their votes by mail to the board within 30 days  
2 from receipt of the proposed decision or other matter.

3 (4) The board or the panel or the California Board of Podiatric  
4 Medicine shall afford the parties the opportunity to present oral  
5 argument before deciding a case after nonadoption of the  
6 administrative law judge's decision.

7 (5) A vote of a majority of the board or of a panel, or a majority  
8 of the California Board of Podiatric Medicine, are required to  
9 increase the penalty from that contained in the proposed  
10 administrative law judge's decision. No member of the board or  
11 panel or of the California Board of Podiatric Medicine may vote  
12 to increase the penalty except after reading the entire record and  
13 personally hearing any additional oral argument and evidence  
14 presented to the panel or board.

15 ~~SEC. 19.~~

16 *SEC. 21.* Section 2486 of the Business and Professions Code  
17 is amended to read:

18 2486. The Medical Board of California shall issue, upon the  
19 recommendation of the board, a certificate to practice podiatric  
20 medicine if the applicant has submitted directly to the board from  
21 the credentialing organizations verification that he or she meets  
22 all of the following requirements:

23 (a) The applicant has graduated from an approved school or  
24 college of podiatric medicine and meets the requirements of Section  
25 2483.

26 (b) The applicant, within the past 10 years, has passed parts I,  
27 II, and III of the examination administered by the National Board  
28 of Podiatric Medical Examiners of the United States or has passed  
29 a written examination that is recognized by the board to be the  
30 equivalent in content to the examination administered by the  
31 National Board of Podiatric Medical Examiners of the United  
32 States.

33 (c) The applicant has satisfactorily completed the postgraduate  
34 training required by Section 2484.

35 (d) The applicant has passed within the past 10 years any oral  
36 and practical examination that may be required of all applicants  
37 by the board to ascertain clinical competence.

38 (e) The applicant has committed no acts or crimes constituting  
39 grounds for denial of a certificate under Division 1.5 (commencing  
40 with Section 475).

1 (f) The board determines that no disciplinary action has been  
2 taken against the applicant by any podiatric licensing authority  
3 and that the applicant has not been the subject of adverse judgments  
4 or settlements resulting from the practice of podiatric medicine  
5 that the board determines constitutes evidence of a pattern of  
6 negligence or incompetence.

7 (g) A disciplinary databank report regarding the applicant is  
8 received by the board from the Federation of Podiatric Medical  
9 Boards.

10 ~~SEC. 20.~~

11 *SEC. 22.* Section 2488 of the Business and Professions Code  
12 is amended to read:

13 2488. Notwithstanding any other provision of law, the Medical  
14 Board of California shall issue, upon the recommendation of the  
15 board, a certificate to practice podiatric medicine by credentialing  
16 if the applicant has submitted directly to the board from the  
17 credentialing organizations verification that he or she is licensed  
18 as a doctor of podiatric medicine in any other state and meets all  
19 of the following requirements:

20 (a) The applicant has graduated from an approved school or  
21 college of podiatric medicine.

22 (b) The applicant, within the past 10 years, has passed either  
23 part III of the examination administered by the National Board of  
24 Podiatric Medical Examiners of the United States or a written  
25 examination that is recognized by the board to be the equivalent  
26 in content to the examination administered by the National Board  
27 of Podiatric Medical Examiners of the United States.

28 (c) The applicant has satisfactorily completed a postgraduate  
29 training program approved by the Council on Podiatric Medical  
30 Education.

31 (d) The applicant, within the past 10 years, has passed any oral  
32 and practical examination that may be required of all applicants  
33 by the board to ascertain clinical competence.

34 (e) The applicant has committed no acts or crimes constituting  
35 grounds for denial of a certificate under Division 1.5 (commencing  
36 with Section 475).

37 (f) The board determines that no disciplinary action has been  
38 taken against the applicant by any podiatric licensing authority  
39 and that the applicant has not been the subject of adverse judgments  
40 or settlements resulting from the practice of podiatric medicine

1 that the board determines constitutes evidence of a pattern of  
2 negligence or incompetence.

3 (g) A disciplinary databank report regarding the applicant from  
4 the Federation of Podiatric Medical Boards.

5 ~~SEC. 21.~~

6 SEC. 23. Section 2570.5 of the Business and Professions Code  
7 is amended to read:

8 2570.5. (a) A limited permit may be granted to any person  
9 who has completed the education and experience requirements of  
10 this chapter.

11 (b) A person who meets the qualifications to be admitted to the  
12 examination for licensure or certification under this chapter and  
13 is waiting to take the examination or awaiting the announcement  
14 of the results of the examination, according to the application  
15 requirements for a limited permit, may practice as an occupational  
16 therapist or as an occupational therapy assistant under the direction  
17 and appropriate supervision of an occupational therapist duly  
18 licensed under this chapter. If that person fails to pass the  
19 examination during the initial eligibility period, all privileges under  
20 this section shall automatically cease upon due notice to the  
21 applicant of that failure and may not be renewed.

22 (c) A limited permit shall be subject to other requirements set  
23 forth in rules adopted by the board.

24 ~~SEC. 22.~~

25 SEC. 24. Section 2570.6 of the Business and Professions Code  
26 is amended to read:

27 2570.6. An applicant applying for a license as an occupational  
28 therapist or certification as an occupational therapy assistant shall  
29 file with the board a written application provided by the board,  
30 showing to the satisfaction of the board that he or she meets all of  
31 the following requirements:

32 (a) That the applicant is in good standing and has not committed  
33 acts or crimes constituting grounds for denial of a license under  
34 Section 480.

35 (b) (1) That the applicant has successfully completed the  
36 academic requirements of an educational program for occupational  
37 therapists or occupational therapy assistants that is approved by  
38 the board and accredited by the American Occupational Therapy  
39 Association's Accreditation Council for Occupational Therapy  
40 Education (ACOTE), or accredited or approved by the American



1 Occupational Therapy Association's (OTA) predecessor  
2 organization, or approved by OTA's Career Mobility Program.

3 (2) The curriculum of an educational program for occupational  
4 therapists shall contain the content required by the ACOTE  
5 accreditation standards, or as approved by OTA's predecessor  
6 organization, or as approved by OTA's Career Mobility Program,  
7 including all of the following subjects:

8 (A) Biological, behavioral, and health sciences.

9 (B) Structure and function of the human body, including  
10 anatomy, kinesiology, physiology, and the neurosciences.

11 (C) Human development throughout the life span.

12 (D) Human behavior in the context of sociocultural systems.

13 (E) Etiology, clinical course, management, and prognosis of  
14 disease processes and traumatic injuries, and the effects of those  
15 conditions on human functioning.

16 (F) Occupational therapy theory, practice, and processes.

17 (3) The curriculum of an educational program for occupational  
18 therapy assistants shall contain the content required by the ACOTE  
19 accreditation standards, or as approved or accredited by OTA's  
20 predecessor organization, including all of the following subjects:

21 (A) Biological, behavioral, and health sciences.

22 (B) Structure and function of the normal human body.

23 (C) Human development.

24 (D) Conditions commonly referred to occupational therapists.

25 (E) Occupational therapy principles and skills.

26 (c) (1) For an applicant who is a graduate of an occupational  
27 therapy or occupational therapy assistant educational program who  
28 is unable to provide evidence of having met the requirements of  
29 paragraph (2) or (3) of subdivision (b), he or she may demonstrate  
30 passage of the examination administered by the National Board  
31 for Certification in Occupational Therapy, the American  
32 Occupational Therapy Certification Board, or the American  
33 Occupational Therapy Association, as evidence of having  
34 successfully satisfied the requirements of paragraph (2) or (3) of  
35 subdivision (b).

36 (2) For an applicant who completed OTA's Career Mobility  
37 Program, he or she shall demonstrate participation in the program  
38 and passage of the examination administered by the National Board  
39 for Certification in Occupational Therapy, the American  
40 Occupational Therapy Certification Board, or the American

1 Occupational Therapy Association, as evidence of having  
2 successfully satisfied the requirements of paragraphs (1) and (2)  
3 of subdivision (b).

4 (d) That the applicant has successfully completed a period of  
5 supervised fieldwork experience approved by the board and  
6 arranged by a recognized educational institution where he or she  
7 met the academic requirements of subdivision (b) or (c) or arranged  
8 by a nationally recognized professional association. The fieldwork  
9 requirements for applicants applying for licensure as an  
10 occupational therapist or certification as an occupational therapy  
11 assistant shall be consistent with the requirements of the ACOTE  
12 accreditation standards, or AOTA's predecessor organization, or  
13 AOTA's Career Mobility Program, that were in effect when the  
14 applicant completed his or her educational program.

15 (e) That the applicant has passed an examination as provided  
16 in Section 2570.7.

17 (f) That the applicant, at the time of application, is a person over  
18 18 years of age, is not addicted to alcohol or any controlled  
19 substance, and has not committed acts or crimes constituting  
20 grounds for denial of licensure or certification under Section 480.

21 *SEC. 25. Section 2570.7 of the Business and Professions Code*  
22 *is amended to read:*

23 2570.7. (a) An applicant who has satisfied the requirements  
24 of Section 2570.6 may apply for examination for licensure or  
25 certification in a manner prescribed by the board. Subject to the  
26 provisions of this chapter, an applicant who fails an examination  
27 may apply for reexamination.

28 (b) Each applicant for licensure or certification shall successfully  
29 complete the entry level certification examination for occupational  
30 therapists or occupational therapy assistants approved by the board,  
31 such as the examination administered by the National Board for  
32 Certification in Occupational Therapy ~~or by another nationally~~  
33 ~~recognized credentialing body, the American Occupational Therapy~~  
34 *Certification Board, or the American Occupational Therapy*  
35 *Association*. The examination shall be appropriately validated.  
36 Each applicant shall be examined by written examination to test  
37 his or her knowledge of the basic and clinical sciences relating to  
38 occupational therapy, occupational therapy techniques and  
39 methods, and any other subjects that the board may require to  
40 determine the applicant's fitness to practice under this chapter.

1 (c) Applicants for licensure or certification shall be examined  
2 at a time and place and under that supervision as the board may  
3 require.

4 ~~SEC. 23.~~

5 *SEC. 26.* Section 2570.185 of the Business and Professions  
6 Code is amended and renumbered to read:

7 2570.18.5. (a) An occupational therapist shall document his  
8 or her evaluation, goals, treatment plan, and summary of treatment  
9 in the patient record.

10 (b) An occupational therapy assistant shall document the services  
11 provided in the patient record.

12 (c) Occupational therapists and occupational therapy assistants  
13 shall document and sign the patient record legibly.

14 (d) Patient records shall be maintained for a period of no less  
15 than seven years following the discharge of the patient, except that  
16 the records of unemancipated minors shall be maintained at least  
17 one year after the minor has reached the age of 18 years, and not  
18 in any case less than seven years.

19 ~~SEC. 24.~~

20 *SEC. 27.* Section 2570.36 is added to the Business and  
21 Professions Code, to read:

22 2570.36. If a licensee has knowledge that an applicant or  
23 licensee may be in violation of, or has violated, any of the statutes  
24 or regulations administered by the board, the licensee shall report  
25 this information to the board in writing and shall cooperate with  
26 the board in providing information or assistance as may be  
27 required.

28 ~~SEC. 25.~~

29 *SEC. 28.* Section 2760.1 of the Business and Professions Code  
30 is amended to read:

31 2760.1. (a) A registered nurse whose license has been revoked  
32 or suspended or who has been placed on probation may petition  
33 the board for reinstatement or modification of penalty, including  
34 reduction or termination of probation, after a period not less than  
35 the following minimum periods has elapsed from the effective  
36 date of the decision ordering that disciplinary action, or if the order  
37 of the board or any portion of it is stayed by the board itself or by  
38 the superior court, from the date the disciplinary action is actually  
39 implemented in its entirety, or for a registered nurse whose initial

1 license application is subject to a disciplinary decision, from the  
2 date the initial license was issued:

3 (1) Except as otherwise provided in this section, at least three  
4 years for reinstatement of a license that was revoked, except that  
5 the board may, in its sole discretion, specify in its order a lesser  
6 period of time provided that the period shall be not less than one  
7 year.

8 (2) At least two years for early termination of a probation period  
9 of three years or more.

10 (3) At least one year for modification of a condition, or  
11 reinstatement of a license revoked for mental or physical illness,  
12 or termination of probation of less than three years.

13 (b) The board shall give notice to the Attorney General of the  
14 filing of the petition. The petitioner and the Attorney General shall  
15 be given timely notice by letter of the time and place of the hearing  
16 on the petition, and an opportunity to present both oral and  
17 documentary evidence and argument to the board. The petitioner  
18 shall at all times have the burden of proof to establish by clear and  
19 convincing evidence that he or she is entitled to the relief sought  
20 in the petition.

21 (c) The hearing may be continued from time to time as the board  
22 deems appropriate.

23 (d) The board itself shall hear the petition and the administrative  
24 law judge shall prepare a written decision setting forth the reasons  
25 supporting the decision.

26 (e) The board may grant or deny the petition, or may impose  
27 any terms and conditions that it reasonably deems appropriate as  
28 a condition of reinstatement or reduction of penalty.

29 (f) The petitioner shall provide a current set of fingerprints  
30 accompanied by the necessary fingerprinting fee.

31 (g) No petition shall be considered while the petitioner is under  
32 sentence for any criminal offense, including any period during  
33 which the petitioner is on court-imposed probation or parole, or  
34 subject to an order of registration pursuant to Section 290 of the  
35 Penal Code. No petition shall be considered while there is an  
36 accusation or petition to revoke probation pending against the  
37 petitioner.

38 (h) Except in those cases where the petitioner has been  
39 disciplined pursuant to Section 822, the board may in its discretion  
40 deny without hearing or argument any petition that is filed pursuant

1 to this section within a period of two years from the effective date  
2 of a prior decision following a hearing under this section.

3 ~~SEC. 26.~~

4 *SEC. 29.* Section 3503 of the Business and Professions Code  
5 is amended to read:

6 3503. No person other than one who has been licensed to  
7 practice as a physician assistant shall practice as a physician  
8 assistant or in a similar capacity to a physician and surgeon or  
9 podiatrist or hold himself or herself out as a “physician assistant,”  
10 or shall use any other term indicating or implying that he or she  
11 is a physician assistant.

12 ~~SEC. 27.~~

13 *SEC. 30.* Section 3517 of the Business and Professions Code  
14 is amended to read:

15 3517. The committee shall require a written examination of  
16 physician assistants in the manner and under the rules and  
17 regulations as it shall prescribe, but the examination shall be  
18 conducted in that manner as to ensure that the identity of each  
19 applicant taking the examination will be unknown to all of the  
20 examiners until all examination papers have been graded. Except  
21 as otherwise provided in this chapter, or by regulation, no physician  
22 assistant applicant shall receive approval under this chapter without  
23 first successfully passing an examination given under the direction  
24 of the committee.

25 Examinations for licensure as a physician assistant may be  
26 required by the committee under a uniform examination system,  
27 and for that purpose the committee may make those arrangements  
28 with organizations furnishing examination material as may, in its  
29 discretion, be desirable. The committee shall, however, establish  
30 a passing score for each examination. The licensure examination  
31 for physician assistants shall be held by the committee at least  
32 once a year with such additional examinations as the committee  
33 deems necessary. The time and place of examination shall be fixed  
34 by the committee.

35 ~~SEC. 28.~~

36 *SEC. 31.* Section 3518 of the Business and Professions Code  
37 is amended to read:

38 3518. The committee shall keep current, two separate registers,  
39 one for approved supervising physicians and one for licensed  
40 physician’s assistants, by specialty if applicable. These registers

1 shall show the name of each licensee, his or her last known address  
2 of record, and the date of his or her licensure or approval. Any  
3 interested person is entitled to obtain a copy of the register in  
4 accordance with the Information Practices Act of 1977 (Chapter  
5 1 (commencing with Section 1798) of Title 1.8 of Part 4 of  
6 Division 3 of the Civil Code) upon application to the committee  
7 together with a sum as may be fixed by the committee, which  
8 amount shall not exceed the cost of this list so furnished.

9 ~~SEC. 29.~~

10 *SEC. 32.* Section 3625 of the Business and Professions Code  
11 is amended to read:

12 3625. (a) The Director of Consumer Affairs shall establish an  
13 advisory council consisting of nine members. Members of the  
14 advisory council shall include three members who are California  
15 licensed naturopathic doctors, or have met the requirements for  
16 licensure pursuant to this chapter, three members who are  
17 California licensed physicians and surgeons, and three public  
18 members.

19 (b) A member of the advisory council shall be appointed for a  
20 four-year term. A person shall not serve as a member of the council  
21 for more than two consecutive terms. A member shall hold office  
22 until the appointment and qualification of his or her successor, or  
23 until one year from the expiration of the term for which the member  
24 was appointed, whichever first occurs. Vacancies shall be filled  
25 by appointment for unexpired terms. The first terms of the members  
26 first appointed shall be as follows:

27 (1) The Governor shall appoint one physician and surgeon  
28 member, one naturopathic doctor member, and one public member,  
29 with term expirations of June 1, 2006; one physician and surgeon  
30 member with a term expiration date of June 1, 2007; and one  
31 naturopathic doctor member with a term expiration date of June  
32 1, 2008.

33 (2) The Senate Committee on Rules shall appoint one physician  
34 and surgeon member with a term expiration of June 1, 2008, and  
35 one public member with a term expiration of June 1, 2007.

36 (3) The Speaker of the Assembly shall appoint one naturopathic  
37 doctor member with a term expiration of June 1, 2007, and one  
38 public member with a term expiration of June 1, 2008.

1 (c) (1) A public member of the advisory council shall be a  
2 citizen of this state for at least five years preceding his or her  
3 appointment.

4 (2) A person shall not be appointed as a public member if the  
5 person or the person's immediate family in any manner owns an  
6 interest in a college, school, or institution engaged in naturopathic  
7 education, or the person or the person's immediate family has an  
8 economic interest in naturopathy or has any other conflict of  
9 interest. "Immediate family" means the public member's spouse,  
10 parents, children, or his or her children's spouses.

11 (d) In order to operate in as cost-effective a manner as possible,  
12 the advisory council and any advisory committee created pursuant  
13 to this chapter shall meet as few times as necessary to perform its  
14 duties.

15 ~~SEC. 30.~~

16 *SEC. 33.* Section 3633.1 of the Business and Professions Code  
17 is amended to read:

18 3633.1. The bureau may grant a license to an applicant who  
19 meets the requirements of Section 3630, but who graduated prior  
20 to 1986, pre-NPLEX, and passed a state or Canadian Province  
21 naturopathic licensing examination. Applications under this section  
22 shall be received no later than December 31, 2010.

23 ~~SEC. 31.~~

24 *SEC. 34.* Section 3635 of the Business and Professions Code  
25 is amended to read:

26 3635. (a) In addition to any other qualifications and  
27 requirements for licensure renewal, the bureau shall require the  
28 satisfactory completion of 60 hours of approved continuing  
29 education biennially. This requirement is waived for the initial  
30 license renewal. The continuing education shall meet the following  
31 requirements:

32 (1) At least 20 hours shall be in pharmacotherapeutics.

33 (2) No more than 15 hours may be in naturopathic medical  
34 journals or osteopathic or allopathic medical journals, or audio or  
35 videotaped presentations, slides, programmed instruction, or  
36 computer-assisted instruction or preceptorships.

37 (3) No more than 20 hours may be in any single topic.

38 (4) No more than 15 hours of the continuing education  
39 requirements for the specialty certificate in naturopathic childbirth

1 attendance shall apply to the 60 hours of continuing education  
2 requirement.

3 (b) The continuing education requirements of this section may  
4 be met through continuing education courses approved by the  
5 bureau, the California Naturopathic Doctors Association, the  
6 American Association of Naturopathic Physicians, the California  
7 State Board of Pharmacy, the State Board of Chiropractic  
8 Examiners, or other courses that meet the standards for continuing  
9 education for licensed physicians and surgeons in California.

10 ~~SEC. 32.~~

11 *SEC. 35.* Section 3636 of the Business and Professions Code  
12 is amended to read:

13 3636. (a) Upon a written request, the bureau may grant inactive  
14 status to a naturopathic doctor who is in good standing and who  
15 meets the requirements of Section 462.

16 (b) A person whose license is in inactive status may not engage  
17 in any activity for which a license is required under this chapter.

18 (c) A person whose license is in inactive status shall be exempt  
19 from continuing education requirements while his or her license  
20 is in that status.

21 (d) To restore a license to active status, a person whose license  
22 is in inactive status must fulfill continuing education requirements  
23 for the two-year period prior to reactivation, and be current with  
24 all licensing fees as determined by the bureau.

25 ~~SEC. 33.~~

26 *SEC. 36.* Section 3685 of the Business and Professions Code  
27 is amended to read:

28 3685. (a) This chapter shall become inoperative on July 1,  
29 2010, and, as of January 1, 2011, is repealed, unless a later enacted  
30 statute that is enacted before January 1, 2011, deletes or extends  
31 the dates on which it becomes inoperative and is repealed. The  
32 repeal of this chapter renders the bureau subject to the review  
33 required by Division 1.2 (commencing with Section 473).

34 (b) The bureau shall prepare the report required by Section 473.2  
35 no later than September 1, 2008.

36 ~~SEC. 34.~~

37 *SEC. 37.* Section 3750.5 of the Business and Professions Code  
38 is amended to read:



1 3750.5. In addition to any other grounds specified in this  
2 chapter, the board may deny, suspend, or revoke the license of any  
3 applicant or licenseholder who has done any of the following:

4 (a) Obtained, possessed, used, or administered to himself or  
5 herself, in violation of law, or furnished or administered to another,  
6 any controlled substances, as defined in Division 10 (commencing  
7 with Section 11000) of the Health and Safety Code, or any  
8 dangerous drug, as defined in Article 2 (commencing with Section  
9 4015) of Chapter 9, except as directed by a licensed physician and  
10 surgeon, dentist, podiatrist, or other authorized health care provider.

11 (b) Used any controlled substance as defined in Division 10  
12 (commencing with Section 11000) of the Health and Safety Code,  
13 any dangerous drug as defined in Article 2 (commencing with  
14 Section 4015) of Chapter 9, or any alcoholic beverage, to an extent  
15 or in a manner dangerous or injurious to himself or herself, another  
16 person, or the public, or to the extent that the use impaired his or  
17 her ability to conduct with safety to the public the practice  
18 authorized by his or her license.

19 (c) Applied for employment or worked in any health care  
20 profession or environment while under the influence of alcohol.

21 (d) Been convicted of a criminal offense involving the  
22 consumption or self-administration of any of the substances  
23 described in subdivision (a), or the possession of, or falsification  
24 of a record pertaining to, the substances described in subdivision  
25 (a), in which event the record of the conviction is conclusive  
26 evidence thereof.

27 (e) Been committed or confined by a court of competent  
28 jurisdiction for intemperate use of or addiction to the use of any  
29 of the substances described in subdivisions (a), (b), and (c), in  
30 which event the court order of commitment or confinement is  
31 prima facie evidence of that commitment or confinement.

32 (f) Falsified, or made grossly incorrect, grossly inconsistent, or  
33 unintelligible entries in any hospital, patient, or other record  
34 pertaining to the substances described in subdivision (a).

35 ~~SEC. 35.~~

36 *SEC. 38.* Section 3753.5 of the Business and Professions Code  
37 is amended to read:

38 3753.5. (a) In any order issued in resolution of a disciplinary  
39 proceeding before the board, the board or the administrative law  
40 judge may direct any practitioner or applicant found to have

1 committed a violation or violations of law, or any term and  
2 condition of board probation, to pay to the board a sum not to  
3 exceed the costs of the investigation and prosecution of the case.  
4 A certified copy of the actual costs, or a good faith estimate of  
5 costs where actual costs are not available, signed by the official  
6 custodian of the record or his or her designated representative shall  
7 be prima facie evidence of the actual costs of the investigation and  
8 prosecution of the case.

9 (b) The costs shall be assessed by the administrative law judge  
10 and shall not be increased by the board; however, the costs may  
11 be imposed or increased by the board if it does not adopt the  
12 proposed decision of the case.

13 Where an order for recovery of costs is made and timely payment  
14 is not made as directed in the board's decision the board may  
15 enforce the order for repayment in any appropriate court. This  
16 right of enforcement shall be in addition to any other rights the  
17 board may have as to any practitioner directed to pay costs.

18 (c) In any action for recovery of costs, proof of the board's  
19 decision shall be conclusive proof of the validity of the order of  
20 payment and the terms for payment.

21 (d) (1) The board shall not renew or reinstate the license of any  
22 licensee who has failed to pay all of the costs ordered under this  
23 section.

24 (2) Notwithstanding paragraph (1), the board may, in its  
25 discretion, conditionally renew, for a maximum of one year, the  
26 license of any licensee who demonstrates financial hardship,  
27 through documentation satisfactory to the board, and who enters  
28 into a formal agreement with the board to reimburse the board  
29 within that one-year period for those unpaid costs.

30 ~~SEC. 36.~~

31 *SEC. 39.* Section 3773 of the Business and Professions Code  
32 is amended to read:

33 3773. (a) At the time of application for renewal of a respiratory  
34 care practitioner license, the licensee shall notify the board of all  
35 of the following:

36 (1) Whether he or she has been convicted of any crime  
37 subsequent to the licensee's previous renewal.

38 (2) The name and address of the licensee's current employer or  
39 employers.

(b) The licensee shall cooperate in providing additional information as requested by the board. If a licensee fails to provide the requested information within 30 days, the license shall become inactive until the information is received.

~~SEC. 37.~~

*SEC. 40.* Section 4022.5 of the Business and Professions Code is amended to read:

4022.5. (a) "Designated representative" means an individual to whom a license has been granted pursuant to Section 4053. A pharmacist fulfilling the duties of Section 4053 shall not be required to obtain a license as a designated representative.

(b) "Designated representative-in-charge" means a designated representative or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer and approved by the board as the supervisor or manager responsible for ensuring the wholesaler's or veterinary food-animal drug retailer's compliance with all state and federal laws and regulations pertaining to practice in the applicable license category.

(c) This section shall become operative on January 1, 2006.

~~SEC. 38.~~

*SEC. 41.* Section 4027 of the Business and Professions Code is amended to read:

4027. (a) As used in this chapter, the terms "skilled nursing facility," "intermediate care facility," and other references to health facilities shall be construed with respect to the definitions contained in Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

(b) As used in Section 4052.1, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) As used in Section 4052.2, "health care facility" means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of the Health and Safety Code, or by an organization under common

1 ownership or control of the health care service plan; “licensed  
2 home health agency” means a private or public organization  
3 licensed by the State Department of Health Services pursuant to  
4 Chapter 8 (commencing with Section 1725) of Division 2 of the  
5 Health and Safety Code, as further defined in Section 1727 of the  
6 Health and Safety Code; and “licensed clinic” means a clinic  
7 licensed pursuant to Article 1 (commencing with Section 1200)  
8 of Chapter 1 of Division 2 of the Health and Safety Code.

9 (d) “Licensed health care facility” or “facility,” as used in  
10 Section 4065, means a health facility licensed pursuant to Article  
11 1 (commencing with Section 1250) of Chapter 2 of Division 2 of  
12 the Health and Safety Code or a facility that is owned or operated  
13 by a health care service plan licensed pursuant to Chapter 2.2  
14 (commencing with Section 1340) of Division 2 of the Health and  
15 Safety Code or by an organization under common ownership or  
16 control with the health care service plan.

17 ~~SEC. 39.~~

18 *SEC. 42.* Section 4036.5 is added to the Business and  
19 Professions Code, to read:

20 4036.5. “Pharmacist-in-charge” means a pharmacist proposed  
21 by a pharmacy and approved by the board as the supervisor or  
22 manager responsible for ensuring the pharmacy’s compliance with  
23 all state and federal laws and regulations pertaining to the practice  
24 of pharmacy.

25 ~~SEC. 40.~~

26 *SEC. 43.* Section 4040 of the Business and Professions Code  
27 is amended to read:

28 4040. (a) “Prescription” means an oral, written, or electronic  
29 transmission order that is both of the following:

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

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

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

35 (C) The date of issue.

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

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

3 (F) If in writing, signed by the prescriber issuing the order, or  
4 the certified nurse-midwife, nurse practitioner, physician assistant,  
5 or naturopathic doctor who issues a drug order pursuant to Section  
6 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist  
7 who issues a drug order pursuant to either Section 4052.1 or  
8 4052.2.

9 (2) Issued by a physician, dentist, optometrist, podiatrist,  
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,  
11 if a drug order is issued pursuant to Section 2746.51, 2836.1,  
12 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,  
13 physician assistant, or naturopathic doctor licensed in this state,  
14 or pursuant to either Section 4052.1 or 4052.2 by a pharmacist  
15 licensed in this state.

16 (b) Notwithstanding subdivision (a), a written order of the  
17 prescriber for a dangerous drug, except for any Schedule II  
18 controlled substance, that contains at least the name and signature  
19 of the prescriber, the name and address of the patient in a manner  
20 consistent with paragraph (2) of subdivision (a) of Section 11164  
21 of the Health and Safety Code, the name and quantity of the drug  
22 prescribed, directions for use, and the date of issue may be treated  
23 as a prescription by the dispensing pharmacist as long as any  
24 additional information required by subdivision (a) is readily  
25 retrievable in the pharmacy. In the event of a conflict between this  
26 subdivision and Section 11164 of the Health and Safety Code,  
27 Section 11164 of the Health and Safety Code shall prevail.

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

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

38 (e) Nothing in the amendments made to this section (formerly  
39 Section 4036) at the 1969 Regular Session of the Legislature shall  
40 be construed as expanding or limiting the right that a chiropractor,

1 while acting within the scope of his or her license, may have to  
2 prescribe a device.

3 ~~SEC. 41.~~

4 *SEC. 44.* Section 4051 of the Business and Professions Code  
5 is amended to read:

6 4051. (a) Except as otherwise provided in this chapter, it is  
7 unlawful for any person to manufacture, compound, furnish, sell,  
8 or dispense any dangerous drug or dangerous device, or to dispense  
9 or compound any prescription pursuant to Section 4040 of a  
10 prescriber unless he or she is a pharmacist under this chapter.

11 (b) Notwithstanding any other law, a pharmacist may authorize  
12 the initiation of a prescription, pursuant to Section 4052.1, 4052.2,  
13 or 4052.3, and otherwise provide clinical advice or information or  
14 patient consultation if all of the following conditions are met:

15 (1) The clinical advice or information or patient consultation is  
16 provided to a health care professional or to a patient.

17 (2) The pharmacist has access to prescription, patient profile,  
18 or other relevant medical information for purposes of patient and  
19 clinical consultation and advice.

20 (3) Access to the information described in paragraph (2) is  
21 secure from unauthorized access and use.

22 ~~SEC. 42.~~

23 *SEC. 45.* Section 4059.5 of the Business and Professions Code  
24 is amended to read:

25 4059.5. (a) Except as otherwise provided in this chapter,  
26 dangerous drugs or dangerous devices may only be ordered by an  
27 entity licensed by the board and shall be delivered to the licensed  
28 premises and signed for and received by a pharmacist. Where a  
29 licensee is permitted to operate through a designated representative,  
30 the designated representative shall sign for and receive the delivery.

31 (b) A dangerous drug or dangerous device transferred, sold, or  
32 delivered to a person within this state shall be transferred, sold, or  
33 delivered only to an entity licensed by the board, to a manufacturer,  
34 or to an ultimate user or the ultimate user's agent.

35 (c) Notwithstanding subdivisions (a) and (b), deliveries to a  
36 hospital pharmacy may be made to a central receiving location  
37 within the hospital. However, the dangerous drugs or dangerous  
38 devices shall be delivered to the licensed pharmacy premises within  
39 one working day following receipt by the hospital, and the

1 pharmacist on duty at that time shall immediately inventory the  
2 dangerous drugs or dangerous devices.

3 (d) Notwithstanding any other provision of law, a dangerous  
4 drug or dangerous device may be ordered by and provided to a  
5 manufacturer, physician, dentist, podiatrist, optometrist,  
6 veterinarian, naturopathic doctor pursuant to Section 3640.7, or  
7 laboratory, or a physical therapist acting within the scope of his  
8 or her license. A person or entity receiving delivery of a dangerous  
9 drug or dangerous device, or a duly authorized representative of  
10 the person or entity, shall sign for the receipt of the dangerous drug  
11 or dangerous device.

12 (e) A dangerous drug or dangerous device shall not be  
13 transferred, sold, or delivered to a person outside this state, whether  
14 foreign or domestic, unless the transferor, seller, or deliverer does  
15 so in compliance with the laws of this state and of the United States  
16 and of the state or country to which the dangerous drugs or  
17 dangerous devices are to be transferred, sold, or delivered.  
18 Compliance with the laws of this state and the United States and  
19 of the state or country to which the dangerous drugs or dangerous  
20 devices are to be delivered shall include, but not be limited to,  
21 determining that the recipient of the dangerous drugs or dangerous  
22 devices is authorized by law to receive the dangerous drugs or  
23 dangerous devices.

24 (f) Notwithstanding subdivision (a), a pharmacy may take  
25 delivery of dangerous drugs and dangerous devices when the  
26 pharmacy is closed and no pharmacist is on duty if all of the  
27 following requirements are met:

28 (1) The drugs are placed in a secure storage facility in the same  
29 building as the pharmacy.

30 (2) Only the pharmacist-in-charge or a pharmacist designated  
31 by the pharmacist-in-charge has access to the secure storage facility  
32 after dangerous drugs or dangerous devices have been delivered.

33 (3) The secure storage facility has a means of indicating whether  
34 it has been entered after dangerous drugs or dangerous devices  
35 have been delivered.

36 (4) The pharmacy maintains written policies and procedures for  
37 the delivery of dangerous drugs and dangerous devices to a secure  
38 storage facility.

39 (5) The agent delivering dangerous drugs and dangerous devices  
40 pursuant to this subdivision leaves documents indicating the name

1 and amount of each dangerous drug or dangerous device delivered  
2 in the secure storage facility.

3 The pharmacy shall be responsible for the dangerous drugs and  
4 dangerous devices delivered to the secure storage facility. The  
5 pharmacy shall also be responsible for obtaining and maintaining  
6 records relating to the delivery of dangerous drugs and dangerous  
7 devices to a secure storage facility.

8 (g) This section shall become operative on January 1, 2006.

9 ~~SEC. 43.~~

10 *SEC. 46.* Section 4060 of the Business and Professions Code  
11 is amended to read:

12 4060. No person shall possess any controlled substance, except  
13 that furnished to a person upon the prescription of a physician,  
14 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
15 pursuant to Section 3640.7, or furnished pursuant to a drug order  
16 issued by a certified nurse-midwife pursuant to Section 2746.51,  
17 a nurse practitioner pursuant to Section 2836.1, a physician  
18 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant  
19 to Section 3640.5, or a pharmacist pursuant to either Section 4052.1  
20 or 4052.2. This section shall not apply to the possession of any  
21 controlled substance by a manufacturer, wholesaler, pharmacy,  
22 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
23 naturopathic doctor, certified nurse-midwife, nurse practitioner,  
24 or physician assistant, when in stock in containers correctly labeled  
25 with the name and address of the supplier or producer.

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

29 ~~SEC. 44.~~

30 *SEC. 47.* Section 4062 of the Business and Professions Code  
31 is amended to read:

32 4062. (a) Notwithstanding Section 4059 or any other provision  
33 of law, a pharmacist may, in good faith, furnish a dangerous drug  
34 or dangerous device in reasonable quantities without a prescription  
35 during a federal, state, or local emergency, to further the health  
36 and safety of the public. A record containing the date, name, and  
37 address of the person to whom the drug or device is furnished, and  
38 the name, strength, and quantity of the drug or device furnished  
39 shall be maintained. The pharmacist shall communicate this  
40 information to the patient's attending physician as soon as possible.



1 Notwithstanding Section 4060 or any other provision of law, a  
2 person may possess a dangerous drug or dangerous device  
3 furnished without prescription pursuant to this section.

4 (b) During a declared federal, state, or local emergency, the  
5 board may waive application of any provisions of this chapter or  
6 the regulations adopted pursuant to it if, in the board's opinion,  
7 the waiver will aid in the protection of public health or the  
8 provision of patient care.

9 (c) During a declared federal, state, or local emergency, the  
10 board shall allow for the employment of a mobile pharmacy in  
11 impacted areas in order to ensure the continuity of patient care, if  
12 all of the following conditions are met:

13 (1) The mobile pharmacy shares common ownership with at  
14 least one currently licensed pharmacy in good standing.

15 (2) The mobile pharmacy retains records of dispensing, as  
16 required by subdivision (a).

17 (3) A licensed pharmacist is on the premises and the mobile  
18 pharmacy is under the control and management of a pharmacist  
19 while the drugs are being dispensed.

20 (4) Reasonable security measures are taken to safeguard the  
21 drug supply maintained in the mobile pharmacy.

22 (5) The mobile pharmacy is located within the declared  
23 emergency area or affected areas.

24 (6) The mobile pharmacy ceases the provision of services within  
25 48 hours following the termination of the declared emergency.

26 ~~SEC. 45.~~

27 *SEC. 48.* Section 4076 of the Business and Professions Code  
28 is amended to read:

29 4076. (a) A pharmacist shall not dispense any prescription  
30 except in a container that meets the requirements of state and  
31 federal law and is correctly labeled with all of the following:

32 (1) Except where the prescriber or the certified nurse-midwife  
33 who functions pursuant to a standardized procedure or protocol  
34 described in Section 2746.51, the nurse practitioner who functions  
35 pursuant to a standardized procedure described in Section 2836.1,  
36 or protocol, the physician assistant who functions pursuant to  
37 Section 3502.1, the naturopathic doctor who functions pursuant  
38 to a standardized procedure or protocol described in Section  
39 3640.5, or the pharmacist who functions pursuant to a policy,  
40 procedure, or protocol pursuant to either Section 4052.1 or 4052.2

1 orders otherwise, either the manufacturer's trade name of the drug  
2 or the generic name and the name of the manufacturer. Commonly  
3 used abbreviations may be used. Preparations containing two or  
4 more active ingredients may be identified by the manufacturer's  
5 trade name or the commonly used name or the principal active  
6 ingredients.

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

8 (3) The name of the patient or patients.

9 (4) The name of the prescriber or, if applicable, the name of the  
10 certified nurse-midwife who functions pursuant to a standardized  
11 procedure or protocol described in Section 2746.51, the nurse  
12 practitioner who functions pursuant to a standardized procedure  
13 described in Section 2836.1, or protocol, the physician assistant  
14 who functions pursuant to Section 3502.1, the naturopathic doctor  
15 who functions pursuant to a standardized procedure or protocol  
16 described in Section 3640.5, or the pharmacist who functions  
17 pursuant to a policy, procedure, or protocol pursuant to either  
18 Section 4052.1 or 4052.2.

19 (5) The date of issue.

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

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

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

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

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

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

33 (i) Prescriptions dispensed by a veterinarian.

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

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

40 (B) This paragraph applies to outpatient pharmacies only.

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

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

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

13 (c) If a pharmacist dispenses a dangerous drug or device in a  
14 facility licensed pursuant to Section 1250 of the Health and Safety  
15 Code, it is not necessary to include on individual unit dose  
16 containers for a specific patient, the name of the certified  
17 nurse-midwife who functions pursuant to a standardized procedure  
18 or protocol described in Section 2746.51, the nurse practitioner  
19 who functions pursuant to a standardized procedure described in  
20 Section 2836.1, or protocol, the physician assistant who functions  
21 pursuant to Section 3502.1, the naturopathic doctor who functions  
22 pursuant to a standardized procedure or protocol described in  
23 Section 3640.5, or the pharmacist who functions pursuant to a  
24 policy, procedure, or protocol pursuant to either Section 4052.1  
25 or 4052.2.

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

36 ~~SEC. 46.~~

37 *SEC. 49.* Section 4081 of the Business and Professions Code  
38 is amended to read:

39 4081. (a) All records of manufacture and of sale, acquisition,  
40 or disposition of dangerous drugs or dangerous devices shall be

at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or designated representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on January 1, 2006.

~~SEC. 47.~~

*SEC. 50.* Section 4110 of the Business and Professions Code is amended to read:

4110. (a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

(b) The board may, at its discretion, issue a temporary permit, when the ownership of a pharmacy is transferred from one person to another, upon the conditions and for any periods of time as the board determines to be in the public interest. A temporary permit fee shall be established by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy.

1 When needed to protect public safety, a temporary permit may be  
2 issued for a period not to exceed 180 days, and may be issued  
3 subject to terms and conditions the board deems necessary. If the  
4 board determines a temporary permit was issued by mistake or  
5 denies the application for a permanent license or registration, the  
6 temporary license or registration shall terminate upon either  
7 personal service of the notice of termination upon the permitholder  
8 or service by certified mail, return receipt requested, at the  
9 permitholder's address of record with the board, whichever comes  
10 first. Neither for purposes of retaining a temporary permit nor for  
11 purposes of any disciplinary or license denial proceeding before  
12 the board shall the temporary permitholder be deemed to have a  
13 vested property right or interest in the permit.

14 (c) The board may allow the temporary use of a mobile  
15 pharmacy when a pharmacy is destroyed or damaged, the mobile  
16 pharmacy is necessary to protect the health and safety of the public,  
17 and the following conditions are met:

18 (1) The mobile pharmacy shall provide services only on or  
19 immediately contiguous to the site of the damaged or destroyed  
20 pharmacy.

21 (2) The mobile pharmacy is under the control and management  
22 of the pharmacist-in-charge of the pharmacy that was destroyed  
23 or damaged.

24 (3) A licensed pharmacist is on the premises while drugs are  
25 being dispensed.

26 (4) Reasonable security measures are taken to safeguard the  
27 drug supply maintained in the mobile pharmacy.

28 (5) The pharmacy operating the mobile pharmacy provides the  
29 board with records of the destruction or damage of the pharmacy  
30 and an expected restoration date.

31 (6) Within three calendar days of restoration of the pharmacy  
32 services, the board is provided with notice of the restoration of the  
33 permanent pharmacy.

34 (7) The mobile pharmacy is not operated for more than 48 hours  
35 following the restoration of the permanent pharmacy.

36 ~~SEC. 48.~~

37 *SEC. 51.* Section 4111 of the Business and Professions Code  
38 is amended to read:

1 4111. (a) Except as otherwise provided in subdivision (b), (d),  
2 or (e), the board shall not issue or renew a license to conduct a  
3 pharmacy to any of the following:

4 (1) A person or persons authorized to prescribe or write a  
5 prescription, as specified in Section 4040, in the State of California.

6 (2) A person or persons with whom a person or persons specified  
7 in paragraph (1) shares a community or other financial interest in  
8 the permit sought.

9 (3) Any corporation that is controlled by, or in which 10 percent  
10 or more of the stock is owned by a person or persons prohibited  
11 from pharmacy ownership by paragraph (1) or (2).

12 (b) Subdivision (a) shall not preclude the issuance of a permit  
13 for an inpatient hospital pharmacy to the owner of the hospital in  
14 which it is located.

15 (c) The board may require any information the board deems is  
16 reasonably necessary for the enforcement of this section.

17 (d) Subdivision (a) shall not preclude the issuance of a new or  
18 renewal license for a pharmacy to be owned or owned and operated  
19 by a person licensed on or before August 1, 1981, under the  
20 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
21 (commencing with Section 1340) of Division 2 of the Health and  
22 Safety Code) and qualified on or before August 1, 1981, under  
23 subsection (d) of Section 1310 of Title XIII of the federal Public  
24 Health Service Act, as amended, whose ownership includes persons  
25 defined pursuant to paragraphs (1) and (2) of subdivision (a).

26 (e) Subdivision (a) shall not preclude the issuance of a new or  
27 renewal license for a pharmacy to be owned or owned and operated  
28 by a pharmacist authorized to issue a drug order pursuant to Section  
29 4052.1 or 4052.2.

30 ~~SEC. 49.~~

31 *SEC. 52.* Section 4126.5 of the Business and Professions Code  
32 is amended to read:

33 4126.5. (a) A pharmacy may furnish dangerous drugs only to  
34 the following:

35 (1) A wholesaler owned or under common control by the  
36 wholesaler from whom the dangerous drug was acquired.

37 (2) The pharmaceutical manufacturer from whom the dangerous  
38 drug was acquired.

39 (3) A licensed wholesaler acting as a reverse distributor.

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

(6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

(7) To another pharmacy under common control.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

(c) Amounts due from any person under this section on or after January 1, 2005, shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) For purposes of this section, “common control” means the power to direct or cause the direction of the management and policies of another person whether by ownership, by voting rights, by contract, or by other means.

*SEC. 53. Section 4161 of the Business and Professions Code is amended to read:*

4161. (a) A person located outside this state that (1) ships, sells, mails, or delivers dangerous drugs or dangerous devices into this state or (2) sells, brokers, or distributes dangerous drugs or devices within this state shall be considered a nonresident wholesaler.

(b) A nonresident wholesaler shall be licensed by the board prior to shipping, selling, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state or selling, brokering, or distributing dangerous drugs or devices within this state.

(c) A separate license shall be required for each place of business owned or operated by a nonresident wholesaler from or through which dangerous drugs or dangerous devices are shipped, sold, mailed, or delivered to a site located in this state or sold, brokered,

1 *or distributed within this state.* A license shall be renewed annually  
2 and shall not be transferable.

3 (d) The following information shall be reported, in writing, to  
4 the board at the time of initial application for licensure by a  
5 nonresident wholesaler, on renewal of a nonresident wholesaler  
6 license, or within 30 days of a change in that information:

7 (1) Its agent for service of process in this state.

8 (2) Its principal corporate officers, as specified by the board, if  
9 any.

10 (3) Its general partners, as specified by the board, if any.

11 (4) Its owners if the applicant is not a corporation or partnership.

12 (e) A report containing the information in subdivision (d) shall  
13 be made within 30 days of any change of ownership, office,  
14 corporate officer, or partner.

15 (f) A nonresident wholesaler shall comply with all directions  
16 and requests for information from the regulatory or licensing  
17 agency of the state in which it is licensed, as well as with all  
18 requests for information made by the board.

19 (g) A nonresident wholesaler shall maintain records of dangerous  
20 drugs and dangerous devices sold, traded, or transferred to persons  
21 in this state *or within this state*, so that the records are in a readily  
22 retrievable form.

23 (h) A nonresident wholesaler shall at all times maintain a valid,  
24 unexpired license, permit, or registration to conduct the business  
25 of the wholesaler in compliance with the laws of the state in which  
26 it is a resident. An application for a nonresident wholesaler license  
27 in this state shall include a license verification from the licensing  
28 authority in the applicant's state of residence.

29 (i) The board may not issue or renew a nonresident wholesaler  
30 license until the nonresident wholesaler identifies a designated  
31 representative-in-charge and notifies the board in writing of the  
32 identity and license number of the designated  
33 representative-in-charge.

34 (j) The designated representative-in-charge shall be responsible  
35 for the nonresident wholesaler's compliance with state and federal  
36 laws governing wholesalers. A nonresident wholesaler shall  
37 identify and notify the board of a new designated  
38 representative-in-charge within 30 days of the date that the prior  
39 designated representative-in-charge ceases to be the designated  
40 representative-in-charge.



(k) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be five hundred fifty dollars (\$550) or another amount established by the board not to exceed the annual fee for renewal of a license to compound injectable sterile drug products. When needed to protect public safety, a temporary license may be issued for a period not to exceed 180 days, subject to terms and conditions that the board deems necessary. If the board determines that a temporary license was issued by mistake or denies the application for a permanent license, the temporary license shall terminate upon either personal service of the notice of termination upon the licenseholder or service by certified mail, return receipt requested, at the licenseholder's address of record with the board, whichever occurs first. Neither for purposes of retaining a temporary license, nor for purposes of any disciplinary or license denial proceeding before the board, shall the temporary licenseholder be deemed to have a vested property right or interest in the license.

(l) The registration fee shall be the fee specified in subdivision (f) of Section 4400.

~~SEC. 50.~~

*SEC. 54.* Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the drug order of a nurse practitioner functioning pursuant to Section 2836.1 or a certified nurse-midwife functioning pursuant to Section 2746.51, a drug order of a physician assistant functioning pursuant to Section 3502.1 or a naturopathic doctor functioning pursuant to Section 3640.5, or the order of a pharmacist acting under Section 4052.1, 4052.2, or 4052.3.

~~SEC. 51.~~

*SEC. 55.* Section 4231 of the Business and Professions Code is amended to read:

4231. (a) The board shall not renew a pharmacist license unless the applicant submits proof satisfactory to the board that he or she has successfully completed 30 hours of approved courses of continuing pharmacy education during the two years preceding the application for renewal.

1 (b) Notwithstanding subdivision (a), the board shall not require  
2 completion of continuing education for the first renewal of a  
3 pharmacist license.

4 (c) If an applicant for renewal of a pharmacist license submits  
5 the renewal application and payment of the renewal fee but does  
6 not submit proof satisfactory to the board that the licensee has  
7 completed 30 hours of continuing pharmacy education, the board  
8 shall not renew the license and shall issue the applicant an inactive  
9 pharmacist license. A licensee with an inactive pharmacist license  
10 issued pursuant to this section may obtain an active pharmacist  
11 license by paying the renewal fees due and submitting satisfactory  
12 proof to the board that the licensee has completed 30 hours of  
13 continuing pharmacy education.

14 (d) If, as part of an investigation or audit conducted by the board,  
15 a pharmacist fails to provide documentation substantiating the  
16 completion of continuing education as required in subdivision (a),  
17 the board shall cancel the active pharmacist license and issue an  
18 inactive pharmacist license in its place. A licensee with an inactive  
19 pharmacist license issued pursuant to this section may obtain an  
20 active pharmacist license by paying the renewal fees due and  
21 submitting satisfactory proof to the board that the licensee has  
22 completed 30 hours of continuing pharmacy education.

23 ~~SEC. 52.~~

24 *SEC. 56.* Section 4301 of the Business and Professions Code  
25 is amended to read:

26 4301. The board shall take action against any holder of a license  
27 who is guilty of unprofessional conduct or whose license has been  
28 procured by fraud or misrepresentation or issued by mistake.  
29 Unprofessional conduct shall include, but is not limited to, any of  
30 the following:

31 (a) Gross immorality.

32 (b) Incompetence.

33 (c) Gross negligence.

34 (d) The clearly excessive furnishing of controlled substances  
35 in violation of subdivision (a) of Section 11153 of the Health and  
36 Safety Code.

37 (e) The clearly excessive furnishing of controlled substances in  
38 violation of subdivision (a) of Section 11153.5 of the Health and  
39 Safety Code. Factors to be considered in determining whether the  
40 furnishing of controlled substances is clearly excessive shall

1 include, but not be limited to, the amount of controlled substances  
2 furnished, the previous ordering pattern of the customer (including  
3 size and frequency of orders), the type and size of the customer,  
4 and where and to whom the customer distributes its product.

5 (f) The commission of any act involving moral turpitude,  
6 dishonesty, fraud, deceit, or corruption, whether the act is  
7 committed in the course of relations as a licensee or otherwise,  
8 and whether the act is a felony or misdemeanor or not.

9 (g) Knowingly making or signing any certificate or other  
10 document that falsely represents the existence or nonexistence of  
11 a state of facts.

12 (h) The administering to oneself, of any controlled substance,  
13 or the use of any dangerous drug or of alcoholic beverages to the  
14 extent or in a manner as to be dangerous or injurious to oneself,  
15 to a person holding a license under this chapter, or to any other  
16 person or to the public, or to the extent that the use impairs the  
17 ability of the person to conduct with safety to the public the practice  
18 authorized by the license.

19 (i) Except as otherwise authorized by law, knowingly selling,  
20 furnishing, giving away, or administering, or offering to sell,  
21 furnish, give away, or administer, any controlled substance to an  
22 addict.

23 (j) The violation of any of the statutes of this state, of any other  
24 state, or of the United States regulating controlled substances and  
25 dangerous drugs.

26 (k) The conviction of more than one misdemeanor or any felony  
27 involving the use, consumption, or self-administration of any  
28 dangerous drug or alcoholic beverage, or any combination of those  
29 substances.

30 (l) The conviction of a crime substantially related to the  
31 qualifications, functions, and duties of a licensee under this chapter.  
32 The record of conviction of a violation of Chapter 13 (commencing  
33 with Section 801) of Title 21 of the United States Code regulating  
34 controlled substances or of a violation of the statutes of this state  
35 regulating controlled substances or dangerous drugs shall be  
36 conclusive evidence of unprofessional conduct. In all other cases,  
37 the record of conviction shall be conclusive evidence only of the  
38 fact that the conviction occurred. The board may inquire into the  
39 circumstances surrounding the commission of the crime, in order  
40 to fix the degree of discipline or, in the case of a conviction not

1 involving controlled substances or dangerous drugs, to determine  
2 if the conviction is of an offense substantially related to the  
3 qualifications, functions, and duties of a licensee under this chapter.  
4 A plea or verdict of guilty or a conviction following a plea of nolo  
5 contendere is deemed to be a conviction within the meaning of  
6 this provision. The board may take action when the time for appeal  
7 has elapsed, or the judgment of conviction has been affirmed on  
8 appeal or when an order granting probation is made suspending  
9 the imposition of sentence, irrespective of a subsequent order under  
10 Section 1203.4 of the Penal Code allowing the person to withdraw  
11 his or her plea of guilty and to enter a plea of not guilty, or setting  
12 aside the verdict of guilty, or dismissing the accusation,  
13 information, or indictment.

14 (m) The cash compromise of a charge of violation of Chapter  
15 13 (commencing with Section 801) of Title 21 of the United States  
16 Code regulating controlled substances or of Chapter 7  
17 (commencing with Section 14000) of Part 3 of Division 9 of the  
18 Welfare and Institutions Code relating to the Medi-Cal program.  
19 The record of the compromise is conclusive evidence of  
20 unprofessional conduct.

21 (n) The revocation, suspension, or other discipline by another  
22 state of a license to practice pharmacy, operate a pharmacy, or do  
23 any other act for which a license is required by this chapter.

24 (o) Violating or attempting to violate, directly or indirectly, or  
25 assisting in or abetting the violation of or conspiring to violate any  
26 provision or term of this chapter or of the applicable federal and  
27 state laws and regulations governing pharmacy, including  
28 regulations established by the board or by any other state or federal  
29 regulatory agency.

30 (p) Actions or conduct that would have warranted denial of a  
31 license.

32 (q) Engaging in any conduct that subverts or attempts to subvert  
33 an investigation of the board.

34 (r) The selling, trading, transferring, or furnishing of drugs  
35 obtained pursuant to Section 256b of Title 42 of the United States  
36 Code to any person a licensee knows or reasonably should have  
37 known, not to be a patient of a covered entity, as defined in  
38 paragraph (4) of subsection (a) of Section 256b of Title 42 of the  
39 United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code. For purposes of this section, "long-term care facility" shall have the same meaning given the term in Section 1418 of the Health and Safety Code.

(t) This section shall become operative on January 1, 2006.

~~SEC. 53.~~

*SEC. 57.* Section 4305 of the Business and Professions Code is amended to read:

4305. (a) Failure by any pharmacist to notify the board in writing that he or she has ceased to act as pharmacist-in-charge of a pharmacy, or by any pharmacy to notify the board in writing that a pharmacist-in-charge is no longer acting in that capacity, within the 30-day period specified in Sections 4101 and 4113 shall constitute grounds for disciplinary action.

(b) Operation of a pharmacy for more than 30 days without supervision or management by a pharmacist-in-charge shall constitute grounds for disciplinary action.

(c) Any person who has obtained a license to conduct a pharmacy, who willfully fails to timely notify the board that the pharmacist-in-charge of the pharmacy has ceased to act in that capacity, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist subject to the supervision and management of a responsible pharmacist-in-charge,

1 shall be subject to summary suspension or revocation of his or her  
2 license to conduct a pharmacy.

3 ~~SEC. 54.~~

4 *SEC. 58.* Section 4329 of the Business and Professions Code  
5 is amended to read:

6 4329. Any nonpharmacist who takes charge of or acts as  
7 supervisor, manager, or pharmacist-in-charge of any pharmacy,  
8 or who compounds or dispenses a prescription or furnishes  
9 dangerous drugs except as otherwise provided in this chapter, is  
10 guilty of a misdemeanor.

11 ~~SEC. 55.~~

12 *SEC. 59.* Section 4330 of the Business and Professions Code  
13 is amended to read:

14 4330. (a) Any person who has obtained a license to conduct  
15 a pharmacy, who fails to place in charge of the pharmacy a  
16 pharmacist, or any person, who by himself or herself, or by any  
17 other person, permits the compounding or dispensing of  
18 prescriptions, or the furnishing of dangerous drugs, in his or her  
19 pharmacy, except by a pharmacist, or as otherwise provided in this  
20 chapter, is guilty of a misdemeanor.

21 (b) Any pharmacy owner who commits any act that would  
22 subvert or tend to subvert the efforts of the pharmacist-in-charge  
23 to comply with the laws governing the operation of the pharmacy  
24 is guilty of a misdemeanor.

25 ~~SEC. 56.~~

26 *SEC. 60.* Section 4980.03 of the Business and Professions Code  
27 is amended to read:

28 4980.03. (a) "Board," as used in this chapter, means the Board  
29 of Behavioral Sciences.

30 (b) "Intern," as used in this chapter, means an unlicensed person  
31 who has earned his or her master's or doctor's degree qualifying  
32 him or her for licensure and is registered with the board.

33 (c) "Trainee," as used in this chapter, means an unlicensed  
34 person who is currently enrolled in a master's or doctor's degree  
35 program, as specified in Section 4980.40, that is designed to qualify  
36 him or her for licensure under this chapter, and who has completed  
37 no less than 12 semester units or 18 quarter units of coursework  
38 in any qualifying degree program.

39 (d) "Applicant," as used in this chapter, means an unlicensed  
40 person who has completed a master's or doctoral degree program,

1 as specified in Section 4980.40, and whose application for  
2 registration as an intern is pending, or an unlicensed person who  
3 has completed the requirements for licensure as specified in this  
4 chapter, is no longer registered with the board as an intern, and is  
5 currently in the examination process.

6 (e) “Advertise,” as used in this chapter, includes, but is not  
7 limited to, the issuance of any card, sign, or device to any person,  
8 or the causing, permitting, or allowing of any sign or marking on,  
9 or in, any building or structure, or in any newspaper or magazine  
10 or in any directory, or any printed matter whatsoever, with or  
11 without any limiting qualification. It also includes business  
12 solicitations communicated by radio or television broadcasting.  
13 Signs within church buildings or notices in church bulletins mailed  
14 to a congregation shall not be construed as advertising within the  
15 meaning of this chapter.

16 (f) “Experience,” as used in this chapter, means experience in  
17 interpersonal relationships, psychotherapy, marriage and family  
18 therapy, and professional enrichment activities that satisfies the  
19 requirement for licensure as a marriage and family therapist  
20 pursuant to Section 4980.40.

21 (g) “Supervisor,” as used in this chapter, means an individual  
22 who meets all of the following requirements:

23 (1) Has been licensed by a state regulatory agency for at least  
24 two years as a marriage and family therapist, licensed clinical  
25 social worker, licensed psychologist, or licensed physician certified  
26 in psychiatry by the American Board of Psychiatry and Neurology.

27 (2) Has not provided therapeutic services to the trainee or intern.

28 (3) Has a current and valid license that is not under suspension  
29 or probation.

30 (4) Complies with supervision requirements established by this  
31 chapter and by board regulations.

32 (h) “Client-centered advocacy,” as used in this chapter, includes  
33 researching, identifying, and accessing resources, or other activities,  
34 related to obtaining or providing services and supports for clients  
35 or groups of clients receiving psychotherapy or counseling services.

36 ~~SEC. 57.~~

37 *SEC. 61.* Section 4980.04 is added to the Business and  
38 Professions Code, to read:

39 4980.04. This chapter shall be known and may be cited as the  
40 Marriage and Family ~~Therapy~~ *Therapist Act*.

1     ~~SEC. 58.~~

2     ~~SEC. 62.~~ Section 4980.30 of the Business and Professions Code  
3 is amended to read:

4     4980.30. Except as otherwise provided herein, a person desiring  
5 to practice and to advertise the performance of marriage and family  
6 therapy services shall apply to the board for a license, shall pay  
7 the license fee required by this chapter, and obtain a license from  
8 the board.

9     ~~SEC. 59.~~

10    ~~SEC. 63.~~ Section 4980.43 of the Business and Professions Code  
11 is amended to read:

12    4980.43. (a) Prior to applying for licensure examinations, each  
13 applicant shall complete experience that shall comply with the  
14 following:

15    (1) A minimum of 3,000 hours completed during a period of at  
16 least 104 weeks.

17    (2) Not more than 40 hours in any seven consecutive days.

18    (3) Not less than 1,700 hours of supervised experience  
19 completed subsequent to the granting of the qualifying master's  
20 or doctor's degree.

21    (4) Not more than 1,300 hours of experience obtained prior to  
22 completing a master's or doctor's degree. This experience shall  
23 be composed as follows:

24    (A) Not more than 750 hours of counseling and direct supervisor  
25 contact.

26    (B) Not more than 250 hours of professional enrichment  
27 activities, excluding personal psychotherapy as described in  
28 paragraph (2) of subdivision (I).

29    (C) Not more than 100 hours of personal psychotherapy as  
30 described in paragraph (2) of subdivision (I). The applicant shall  
31 be credited for three hours of experience for each hour of personal  
32 psychotherapy.

33    (5) No hours of experience may be gained prior to completing  
34 either 12 semester units or 18 quarter units of graduate instruction  
35 and becoming a trainee except for personal psychotherapy.

36    (6) No hours of experience gained more than six years prior to  
37 the date the application for examination eligibility was filed, except  
38 that up to 500 hours of clinical experience gained in the supervised  
39 practicum required by subdivision (b) of Section 4980.40 shall be  
40 exempt from this six-year requirement.



1 (7) Not more than a total of 1,000 hours of experience for direct  
2 supervisor contact and professional enrichment activities.

3 (8) Not more than 500 hours of experience providing group  
4 therapy or group counseling.

5 (9) Not more than 250 hours of postdegree experience  
6 administering and evaluating psychological tests of counselees,  
7 writing clinical reports, writing progress notes, or writing process  
8 notes.

9 (10) Not more than 250 hours of experience providing  
10 counseling or crisis counseling on the telephone.

11 (11) Not less than 500 total hours of experience in diagnosing  
12 and treating couples, families, and children.

13 (12) Not more than 125 hours of experience providing personal  
14 psychotherapy services via telemedicine in accordance with Section  
15 2290.5.

16 (b) All applicants, trainees, and registrants shall be at all times  
17 under the supervision of a supervisor who shall be responsible for  
18 ensuring that the extent, kind, and quality of counseling performed  
19 is consistent with the training and experience of the person being  
20 supervised, and who shall be responsible to the board for  
21 compliance with all laws, rules, and regulations governing the  
22 practice of marriage and family therapy. Supervised experience  
23 shall be gained by interns and trainees either as an employee or as  
24 a volunteer. The requirements of this chapter regarding gaining  
25 hours of experience and supervision are applicable equally to  
26 employees and volunteers. Experience shall not be gained by  
27 interns or trainees as an independent contractor.

28 (c) Supervision shall include at least one hour of direct  
29 supervisor contact in each week for which experience is credited  
30 in each work setting, as specified:

31 (1) A trainee shall receive an average of at least one hour of  
32 direct supervisor contact for every five hours of client contact in  
33 each setting.

34 (2) Each individual supervised after being granted a qualifying  
35 degree shall receive an average of at least one hour of direct  
36 supervisor contact for every 10 hours of client contact in each  
37 setting in which experience is gained.

38 (3) For purposes of this section, “one hour of direct supervisor  
39 contact” means one hour of face-to-face contact on an individual

1 basis or two hours of face-to-face contact in a group of not more  
2 than eight persons.

3 (4) All experience gained by a trainee shall be monitored by the  
4 supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios  
5 specified in this subdivision shall be applicable to all hours gained  
6 on or after January 1, 1995.

7 (d) (1) A trainee may be credited with supervised experience  
8 completed in any setting that meets all of the following:

9 (A) Lawfully and regularly provides mental health counseling  
10 or psychotherapy.

11 (B) Provides oversight to ensure that the trainee's work at the  
12 setting meets the experience and supervision requirements set forth  
13 in this chapter and is within the scope of practice for the profession  
14 as defined in Section 4980.02.

15 (C) Is not a private practice owned by a licensed marriage and  
16 family therapist, a licensed psychologist, a licensed clinical social  
17 worker, a licensed physician and surgeon, or a professional  
18 corporation of any of those licensed professions.

19 (2) Experience may be gained by the trainee solely as part of  
20 the position for which the trainee volunteers or is employed.

21 (e) (1) An intern may be credited with supervised experience  
22 completed in any setting that meets both of the following:

23 (A) Lawfully and regularly provides mental health counseling  
24 or psychotherapy.

25 (B) Provides oversight to ensure that the intern's work at the  
26 setting meets the experience and supervision requirements set forth  
27 in this chapter and is within the scope of practice for the profession  
28 as defined in Section 4980.02.

29 (2) An applicant shall not be employed or volunteer in a private  
30 practice, as defined in subparagraph (C) of paragraph (1) of  
31 subdivision (d), until registered as an intern.

32 (3) While an intern may be either a paid employee or a  
33 volunteer, employers are encouraged to provide fair remuneration  
34 to interns.

35 (4) Except for periods of time during a supervisor's vacation or  
36 sick leave, an intern who is employed or volunteering in private  
37 practice shall be under the direct supervision of a licensee that has  
38 satisfied the requirements of subdivision (g) of Section 4980.03.

39 The supervising licensee shall either be employed by and practice  
40 at the same site as the intern's employer, or shall be an owner or

1 shareholder of the private practice. Alternative supervision may  
2 be arranged during a supervisor's vacation or sick leave if the  
3 supervision meets the requirements of this section.

4 (5) Experience may be gained by the intern solely as part of the  
5 position for which the intern volunteers or is employed.

6 (f) Except as provided in subdivision (g), all persons shall  
7 register with the board as an intern in order to be credited for  
8 postdegree hours of supervised experience gained toward licensure.

9 (g) Except when employed in a private practice setting, all  
10 postdegree hours of experience shall be credited toward licensure  
11 so long as the applicant applies for the intern registration within  
12 90 days of the granting of the qualifying master's or doctor's  
13 degree and is thereafter granted the intern registration by the board.

14 (h) Trainees, interns, and applicants shall not receive any  
15 remuneration from patients or clients, and shall only be paid by  
16 their employers.

17 (i) Trainees, interns, and applicants shall only perform services  
18 at the place where their employers regularly conduct business,  
19 which may include performing services at other locations, so long  
20 as the services are performed under the direction and control of  
21 their employer and supervisor, and in compliance with the laws  
22 and regulations pertaining to supervision. Trainees and interns  
23 shall have no proprietary interest in their employers' businesses  
24 and shall not lease or rent space, pay for furnishings, equipment  
25 or supplies, or in any other way pay for the obligations of their  
26 employers.

27 (j) Trainees, interns, or applicants who provide volunteered  
28 services or other services, and who receive no more than a total,  
29 from all work settings, of five hundred dollars (\$500) per month  
30 as reimbursement for expenses actually incurred by those trainees,  
31 interns, or applicants for services rendered in any lawful work  
32 setting other than a private practice shall be considered an  
33 employee and not an independent contractor. The board may audit  
34 applicants who receive reimbursement for expenses, and the  
35 applicants shall have the burden of demonstrating that the payments  
36 received were for reimbursement of expenses actually incurred.

37 (k) Each educational institution preparing applicants for  
38 licensure pursuant to this chapter shall consider requiring, and  
39 shall encourage, its students to undergo individual, marital or  
40 conjoint, family, or group counseling or psychotherapy, as

1 appropriate. Each supervisor shall consider, advise, and encourage  
2 his or her interns and trainees regarding the advisability of  
3 undertaking individual, marital or conjoint, family, or group  
4 counseling or psychotherapy, as appropriate. Insofar as it is deemed  
5 appropriate and is desired by the applicant, the educational  
6 institution and supervisors are encouraged to assist the applicant  
7 in locating that counseling or psychotherapy at a reasonable cost.

8 (I) For purposes of this chapter, “professional enrichment  
9 activities” includes the following:

10 (1) Workshops, seminars, training sessions, or conferences  
11 directly related to marriage and family therapy attended by the  
12 applicant that are approved by the applicant’s supervisor.

13 (2) Participation by the applicant in personal psychotherapy  
14 which includes group, marital or conjoint, family, or individual  
15 psychotherapy by an appropriately licensed professional.

16 ~~SEC. 60.~~

17 *SEC. 64.* Section 4981 of the Business and Professions Code  
18 is repealed.

19 ~~SEC. 61.~~

20 *SEC. 65.* Section 4982 of the Business and Professions Code  
21 is amended to read:

22 4982. The board may deny a license or registration or may  
23 suspend or revoke the license or registration of a licensee or  
24 registrant if he or she has been guilty of unprofessional conduct.  
25 Unprofessional conduct includes, but is not limited to, the  
26 following:

27 (a) The conviction of a crime substantially related to the  
28 qualifications, functions, or duties of a licensee or registrant under  
29 this chapter. The record of conviction shall be conclusive evidence  
30 only of the fact that the conviction occurred. The board may inquire  
31 into the circumstances surrounding the commission of the crime  
32 in order to fix the degree of discipline or to determine if the  
33 conviction is substantially related to the qualifications, functions,  
34 or duties of a licensee or registrant under this chapter. A plea or  
35 verdict of guilty or a conviction following a plea of nolo contendere  
36 made to a charge substantially related to the qualifications,  
37 functions, or duties of a licensee or registrant under this chapter  
38 shall be deemed to be a conviction within the meaning of this  
39 section. The board may order any license or registration suspended  
40 or revoked, or may decline to issue a license or registration when

1 the time for appeal has elapsed, or the judgment of conviction has  
2 been affirmed on appeal, or, when an order granting probation is  
3 made suspending the imposition of sentence, irrespective of a  
4 subsequent order under Section 1203.4 of the Penal Code allowing  
5 the person to withdraw a plea of guilty and enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the  
7 accusation, information, or indictment.

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

13 (c) Administering to himself or herself any controlled substance  
14 or using of any of the dangerous drugs specified in Section 4022,  
15 or of any alcoholic beverage to the extent, or in a manner, as to be  
16 dangerous or injurious to the person applying for a registration or  
17 license or holding a registration or license under this chapter, or  
18 to any other person, or to the public, or, to the extent that the use  
19 impairs the ability of the person applying for or holding a  
20 registration or license to conduct with safety to the public the  
21 practice authorized by the registration or license. *The board shall*  
22 *deny an application for a registration or license or revoke the*  
23 *license or registration of any person, other than one who is licensed*  
24 *as a physician and surgeon, who uses or offers to use drugs in the*  
25 *course of performing marriage and family therapy services.*

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (q) Reproduction or description in public, or in any publication  
38 subject to general public distribution, of any psychological test or  
39 other assessment device, the value of which depends in whole or

1 in part on the naivete of the subject, in ways that might invalidate  
2 the test or device.

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

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

11 (t) Permitting a trainee or registered intern under one's  
12 supervision or control to perform, or permitting the trainee or  
13 registered intern to hold himself or herself out as competent to  
14 perform, professional services beyond the trainee's or registered  
15 intern's level of education, training, or experience.

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

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

21 (w) Failure to comply with the child abuse reporting  
22 requirements of Section 11166 of the Penal Code.

23 (x) Failure to comply with the elder and dependent adult abuse  
24 reporting requirements of Section 15630 of the Welfare and  
25 Institutions Code.

26 (y) Willful violation of Chapter 1 (commencing with Section  
27 123100) of Part 1 of Division 106 of the Health and Safety Code.

28 (z) Failure to comply with Section 2290.5.

29 (aa) Engaging in any conduct that subverts or attempts to subvert  
30 any licensing examination or the administration of an examination  
31 as described in Section 123.

32 ~~SEC. 62.~~

33 *SEC. 66.* Section 4989.54 of the Business and Professions Code  
34 is amended to read:

35 4989.54. The board may deny a license or may suspend or  
36 revoke the license of a licensee if he or she has been guilty of  
37 unprofessional conduct. Unprofessional conduct includes, but is  
38 not limited to, the following:

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

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

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

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

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

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

25 (c) Administering to himself or herself a controlled substance  
26 or using any of the dangerous drugs specified in Section 4022 or  
27 an alcoholic beverage to the extent, or in a manner, as to be  
28 dangerous or injurious to himself or herself or to any other person  
29 or to the public or to the extent that the use impairs his or her ability  
30 to safely perform the functions authorized by the license. *The board*  
31 *shall deny an application for a license or revoke the license of any*  
32 *person, other than one who is licensed as a physician and surgeon,*  
33 *who uses or offers to use drugs in the course of performing*  
34 *educational psychology.*

35 (d) Advertising in a manner that is false, misleading, or  
36 deceptive.

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



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

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

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

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

17 (j) Gross negligence or incompetence in the practice of  
18 educational psychology.

19 (k) Misrepresentation as to the type or status of a license held  
20 by the licensee or otherwise misrepresenting or permitting  
21 misrepresentation of his or her education, professional  
22 qualifications, or professional affiliations to any person or entity.

23 (l) Intentionally or recklessly causing physical or emotional  
24 harm to any client.

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

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

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

39 (p) Failing to maintain confidentiality, except as otherwise  
40 required or permitted by law, of all information that has been

1 received from a client in confidence during the course of treatment  
2 and all information about the client that is obtained from tests or  
3 other means.

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

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

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

18 (t) When employed by another person or agency, encouraging,  
19 either orally or in writing, the employer's or agency's clientele to  
20 utilize his or her private practice for further counseling without  
21 the approval of the employing agency or administration.

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

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

27 (w) Willful violation of Chapter 1 (commencing with Section  
28 123100) of Part 1 of Division 106 of the Health and Safety Code.

29 (x) Failure to comply with Section 2290.5.

30 (y) Engaging in any conduct that subverts or attempts to subvert  
31 any licensing examination or the administration of an examination  
32 as described in Section 123.

33 ~~SEC. 63.~~

34 *SEC. 67.* Section 4990.09 is added to the Business and  
35 Professions Code, to read:

36 4990.09. The board shall not publish on the Internet the final  
37 determination of a citation and fine of one thousand five hundred  
38 dollars (\$1,500) or less issued against a licensee or registrant  
39 pursuant to Section 125.9 for a period of time in excess of five  
40 years from the date of issuance of the citation.

1     ~~SEC. 64.~~

2     SEC. 68. Section 4992.3 of the Business and Professions Code  
3 is amended to read:

4     4992.3. The board may deny a license or a registration, or may  
5 suspend or revoke the license or registration of a licensee or  
6 registrant if he or she has been guilty of unprofessional conduct.  
7 Unprofessional conduct includes, but is not limited to, the  
8 following:

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

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

35     (c) Administering to himself or herself any controlled substance  
36 or using any of the dangerous drugs specified in Section 4022 or  
37 any alcoholic beverage to the extent, or in a manner, as to be  
38 dangerous or injurious to the person applying for a registration or  
39 license or holding a registration or license under this chapter, or  
40 to any other person, or to the public, or, to the extent that the use

1 impairs the ability of the person applying for or holding a  
2 registration or license to conduct with safety to the public the  
3 practice authorized by the registration or license. *The board shall*  
4 *deny an application for a registration or license or revoke the*  
5 *license or registration of any person who uses or offers to use*  
6 *drugs in the course of performing clinical social work. This*  
7 *provision does not apply to any person also licensed as a physician*  
8 *and surgeon under Chapter 5 (commencing with Section 2000) or*  
9 *the Osteopathic Act who lawfully prescribes drugs to a patient*  
10 *under his or her care.*

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

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

15 (f) Misrepresentation as to the type or status of a license or  
16 registration held by the person, or otherwise misrepresenting or  
17 permitting misrepresentation of his or her education, professional  
18 qualifications, or professional affiliations to any person or entity.  
19 For purposes of this subdivision, this misrepresentation includes,  
20 but is not limited to, misrepresentation of the person's  
21 qualifications as an adoption service provider pursuant to Section  
22 8502 of the Family Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (t) Failure to comply with the child abuse reporting requirements  
38 of Section 11166 of the Penal Code.

1 (u) Failure to comply with the elder and dependent adult abuse  
2 reporting requirements of Section 15630 of the Welfare and  
3 Institutions Code.

4 (v) Willful violation of Chapter 1 (commencing with Section  
5 123100) of Part 1 of Division 106 of the Health and Safety Code.

6 (w) Failure to comply with Section 2290.5.

7 (x) Engaging in any conduct that subverts or attempts to subvert  
8 any licensing examination or the administration of an examination  
9 as described in Section 123.

10 ~~SEC. 65.~~

11 *SEC. 69.* Section 4994.1 of the Business and Professions Code  
12 is repealed.

13 ~~SEC. 66.~~

14 *SEC. 70.* Section 4996.2 of the Business and Professions Code  
15 is amended to read:

16 4996.2. Each applicant shall furnish evidence satisfactory to  
17 the board that he or she complies with all of the following  
18 requirements:

19 (a) Is at least 21 years of age.

20 (b) Has received a master's degree from an accredited school  
21 of social work.

22 (c) Has had two years of supervised post-master's degree  
23 experience, as specified in Section 4996.23.

24 (d) Has not committed any crimes or acts constituting grounds  
25 for denial of licensure under Section 480. The board shall not issue  
26 a registration or license to any person who has been convicted of  
27 any crime in this or another state or in a territory of the United  
28 States that involves sexual abuse of children or who is required to  
29 register pursuant to Section 290 of the Penal Code or the equivalent  
30 in another state or territory.

31 (e) Has completed adequate instruction and training in the  
32 subject of alcoholism and other chemical substance dependency.  
33 This requirement applies only to applicants who matriculate on or  
34 after January 1, 1986.

35 (f) Has completed instruction and training in spousal or partner  
36 abuse assessment, detection, and intervention. This requirement  
37 applies to an applicant who began graduate training during the  
38 period commencing on January 1, 1995, and ending on December  
39 31, 2003. An applicant who began graduate training on or after  
40 January 1, 2004, shall complete a minimum of 15 contact hours

1 of coursework in spousal or partner abuse assessment, detection,  
2 and intervention strategies, including knowledge of community  
3 resources, cultural factors, and same gender abuse dynamics.  
4 Coursework required under this subdivision may be satisfactory  
5 if taken either in fulfillment of other educational requirements for  
6 licensure or in a separate course. This requirement for coursework  
7 shall be satisfied by, and the board shall accept in satisfaction of  
8 the requirement, a certification from the chief academic officer of  
9 the educational institution from which the applicant graduated that  
10 the required coursework is included within the institution's required  
11 curriculum for graduation.

12 (g) Has completed a minimum of 10 contact hours of training  
13 or coursework in human sexuality as specified in Section 1807 of  
14 Title 16 of the California Code of Regulations. This training or  
15 coursework may be satisfactory if taken either in fulfillment of  
16 other educational requirements for licensure or in a separate course.

17 (h) Has completed a minimum of seven contact hours of training  
18 or coursework in child abuse assessment and reporting as specified  
19 in Section 1807.2 of Title 16 of the California Code of Regulations.  
20 This training or coursework may be satisfactory if taken either in  
21 fulfillment of other educational requirements for licensure or in a  
22 separate course.

23 ~~SEC. 67.~~

24 *SEC. 71.* Section 4996.17 of the Business and Professions Code  
25 is amended to read:

26 4996.17. (a) Experience gained outside of California shall be  
27 accepted toward the licensure requirements if it is substantially  
28 the equivalent of the requirements of this chapter.

29 (b) The board may issue a license to any person who, at the time  
30 of application, holds a valid active clinical social work license  
31 issued by a board of clinical social work examiners or  
32 corresponding authority of any state, if the person passes the board  
33 administered licensing examinations as specified in Section 4996.1  
34 and pays the required fees. Issuance of the license is conditioned  
35 upon all of the following:

36 (1) The applicant has supervised experience that is substantially  
37 the equivalent of that required by this chapter. If the applicant has  
38 less than 3,200 hours of qualifying supervised experience, time  
39 actively licensed as a clinical social worker shall be accepted at a  
40 rate of 100 hours per month up to a maximum of 1,200 hours.

1 (2) Completion of the following coursework or training in or  
2 out of this state:

3 (A) A minimum of seven contact hours of training or coursework  
4 in child abuse assessment and reporting as specified in Section 28,  
5 and any regulations promulgated thereunder.

6 (B) A minimum of 10 contact hours of training or coursework  
7 in human sexuality as specified in Section 25, and any regulations  
8 promulgated thereunder.

9 (C) A minimum of 15 contact hours of training or coursework  
10 in alcoholism and other chemical substance dependency, as  
11 specified by regulation.

12 (D) A minimum of 15 contact hours of coursework or training  
13 in spousal or partner abuse assessment, detection, and intervention  
14 strategies.

15 (3) The applicant's license is not suspended, revoked, restricted,  
16 sanctioned, or voluntarily surrendered in any state.

17 (4) The applicant is not currently under investigation in any  
18 other state, and has not been charged with an offense for any act  
19 substantially related to the practice of social work by any public  
20 agency, entered into any consent agreement or been subject to an  
21 administrative decision that contains conditions placed by an  
22 agency upon an applicant's professional conduct or practice,  
23 including any voluntary surrender of license, or been the subject  
24 of an adverse judgment resulting from the practice of social work  
25 that the board determines constitutes evidence of a pattern of  
26 incompetence or negligence.

27 (5) The applicant shall provide a certification from each state  
28 where he or she holds a license pertaining to licensure, disciplinary  
29 action, and complaints pending.

30 (6) The applicant is not subject to denial of licensure under  
31 Section 480, 4992.3, 4992.35, or 4992.36.

32 (c) The board may issue a license to any person who, at the time  
33 of application, has held a valid, active clinical social work license  
34 for a minimum of four years, issued by a board of clinical social  
35 work examiners or a corresponding authority of any state, if the  
36 person passes the board administered licensing examinations as  
37 specified in Section 4996.1 and pays the required fees. Issuance  
38 of the license is conditioned upon all of the following:

39 (1) Completion of the following coursework or training in or  
40 out of state:



1 (A) A minimum of seven contact hours of training or coursework  
2 in child abuse assessment and reporting as specified in Section 28,  
3 and any regulations promulgated thereunder.

4 (B) A minimum of 10 contact hours of training or coursework  
5 in human sexuality as specified in Section 25, and any regulations  
6 promulgated thereunder.

7 (C) A minimum of 15 contact hours of training or coursework  
8 in alcoholism and other chemical substance dependency, as  
9 specified by regulation.

10 (D) A minimum of 15 contact hours of coursework or training  
11 in spousal or partner abuse assessment, detection, and intervention  
12 strategies.

13 (2) The applicant has been licensed as a clinical social worker  
14 continuously for a minimum of four years prior to the date of  
15 application.

16 (3) The applicant's license is not suspended, revoked, restricted,  
17 sanctioned, or voluntarily surrendered in any state.

18 (4) The applicant is not currently under investigation in any  
19 other state, and has not been charged with an offense for any act  
20 substantially related to the practice of social work by any public  
21 agency, entered into any consent agreement or been subject to an  
22 administrative decision that contains conditions placed by an  
23 agency upon an applicant's professional conduct or practice,  
24 including any voluntary surrender of license, or been the subject  
25 of an adverse judgment resulting from the practice of social work  
26 that the board determines constitutes evidence of a pattern of  
27 incompetence or negligence.

28 (5) The applicant provides a certification from each state where  
29 he or she holds a license pertaining to licensure, disciplinary action,  
30 and complaints pending.

31 (6) The applicant is not subject to denial of licensure under  
32 Section 480, 4992.3, 4992.35, or 4992.36.

33 ~~SEC. 68.~~

34 *SEC. 72.* Section 4996.18 of the Business and Professions Code  
35 is amended to read:

36 4996.18. (a) A person who wishes to be credited with  
37 experience toward licensure requirements shall register with the  
38 board as an associate clinical social worker prior to obtaining that  
39 experience. The application shall be made on a form prescribed  
40 by the board.

1 (b) An applicant for registration shall satisfy the following  
2 requirements:

3 (1) Possess a master's degree from an accredited school or  
4 department of social work.

5 (2) Have committed no crimes or acts constituting grounds for  
6 denial of licensure under Section 480.

7 (c) An applicant who possesses a master's degree from a school  
8 or department of social work that is a candidate for accreditation  
9 by the Commission on Accreditation of the Council on Social  
10 Work Education shall be eligible, and shall be required, to register  
11 as an associate clinical social worker in order to gain experience  
12 toward licensure if the applicant has not committed any crimes or  
13 acts that constitute grounds for denial of licensure under Section  
14 480. That applicant shall not, however, be eligible for examination  
15 until the school or department of social work has received  
16 accreditation by the Commission on Accreditation of the Council  
17 on Social Work Education.

18 (d) Any experience obtained under the supervision of a spouse  
19 or relative by blood or marriage shall not be credited toward the  
20 required hours of supervised experience. Any experience obtained  
21 under the supervision of a supervisor with whom the applicant has  
22 a personal relationship that undermines the authority or  
23 effectiveness of the supervision shall not be credited toward the  
24 required hours of supervised experience.

25 (e) An applicant who possesses a master's degree from an  
26 accredited school or department of social work shall be able to  
27 apply experience the applicant obtained during the time the  
28 accredited school or department was in candidacy status by the  
29 Commission on Accreditation of the Council on Social Work  
30 Education toward the licensure requirements, if the experience  
31 meets the requirements of Section 4996.23. This subdivision shall  
32 apply retroactively to persons who possess a master's degree from  
33 an accredited school or department of social work and who  
34 obtained experience during the time the accredited school or  
35 department was in candidacy status by the Commission on  
36 Accreditation of the Council on Social Work Education.

37 (f) An applicant for registration or licensure trained in an  
38 educational institution outside the United States shall demonstrate  
39 to the satisfaction of the board that he or she possesses a master's  
40 of social work degree that is equivalent to a master's degree issued

1 from a school or department of social work that is accredited by  
2 the Commission on Accreditation of the Council on Social Work  
3 Education. These applicants shall provide the board with a  
4 comprehensive evaluation of the degree and shall provide any  
5 other documentation the board deems necessary. The board has  
6 the authority to make the final determination as to whether a degree  
7 meets all requirements, including, but not limited to, course  
8 requirements regardless of evaluation or accreditation.

9 (g) A registrant shall not provide clinical social work services  
10 to the public for a fee, monetary or otherwise, except as an  
11 employee.

12 (h) A registrant shall inform each client or patient prior to  
13 performing any professional services that he or she is unlicensed  
14 and is under the supervision of a licensed professional.

15 ~~SEC. 69.~~

16 *SEC. 73.* Section 4996.20 of the Business and Professions Code  
17 is repealed.

18 ~~SEC. 70.~~

19 *SEC. 74.* Section 4996.21 of the Business and Professions Code  
20 is repealed.

21 ~~SEC. 71.~~

22 *SEC. 75.* Section 4996.23 of the Business and Professions Code  
23 is amended to read:

24 4996.23. The experience required by subdivision (c) of Section  
25 4996.2 shall meet the following criteria:

26 (a) All persons registered with the board on and after January  
27 1, 2002, shall have at least 3,200 hours of post-master's degree  
28 supervised experience providing clinical social work services as  
29 permitted by Section 4996.9. At least 1,700 hours shall be gained  
30 under the supervision of a licensed clinical social worker. The  
31 remaining required supervised experience may be gained under  
32 the supervision of a licensed mental health professional acceptable  
33 to the board as defined by a regulation adopted by the board. This  
34 experience shall consist of the following:

35 (1) A minimum of 2,000 hours in clinical psychosocial  
36 diagnosis, assessment, and treatment, including psychotherapy or  
37 counseling.

38 (2) A maximum of 1,200 hours in client-centered advocacy,  
39 consultation, evaluation, and research.

1 (3) Of the 2,000 clinical hours required in paragraph (1), no less  
2 than 750 hours shall be face-to-face individual or group  
3 psychotherapy provided to clients in the context of clinical social  
4 work services.

5 (4) A minimum of two years of supervised experience is required  
6 to be obtained over a period of not less than 104 weeks and shall  
7 have been gained within the six years immediately preceding the  
8 date on which the application for licensure was filed.

9 (5) Experience shall not be credited for more than 40 hours in  
10 any week.

11 (b) "Supervision" means responsibility for, and control of, the  
12 quality of clinical social work services being provided.  
13 Consultation or peer discussion shall not be considered to be  
14 supervision.

15 (c) (1) Prior to the commencement of supervision, a supervisor  
16 shall comply with all requirements enumerated in Section 1870 of  
17 Title 16 of the California Code of Regulations and shall sign under  
18 penalty of perjury the "Responsibility Statement for Supervisors  
19 of an Associate Clinical Social Worker" form.

20 (2) Supervised experience shall include at least one hour of  
21 direct supervisor contact for a minimum of 104 weeks.

22 (3) For purposes of this section, "one hour of direct supervisor  
23 contact" means one hour per week of face-to-face contact on an  
24 individual basis or two hours of face-to-face contact in a group  
25 conducted within the same week as the hours claimed.

26 (4) An associate shall receive an average of at least one hour of  
27 direct supervisor contact for every week in which more than 10  
28 hours of face-to-face psychotherapy is performed in each setting  
29 in which experience is gained. No more than five hours of  
30 supervision, whether individual or group, shall be credited during  
31 any single week.

32 (5) Group supervision shall be provided in a group of not more  
33 than eight supervisees and shall be provided in segments lasting  
34 no less than one continuous hour.

35 (6) An associate clinical social worker working in a  
36 governmental entity, a school, college, or university, or an  
37 institution that is both nonprofit and charitable may be credited  
38 with up to 30 hours of direct supervisor contact, via two-way, real  
39 time videoconferencing. The supervisor shall be responsible for  
40 ensuring that client confidentiality is upheld.

1 (7) Of the 104 weeks of required supervision, 52 weeks shall  
2 be individual supervision, and of the 52 weeks of required  
3 individual supervision, not less than 13 weeks shall be supervised  
4 by a licensed clinical social worker.

5 (d) The supervisor and the associate shall develop a supervisory  
6 plan that describes the goals and objectives of supervision. These  
7 goals shall include the ongoing assessment of strengths and  
8 limitations and the assurance of practice in accordance with the  
9 laws and regulations. The associate shall submit to the board the  
10 initial original supervisory plan upon application for licensure.

11 (e) Experience shall only be gained in a setting that meets both  
12 of the following:

13 (1) Lawfully and regularly provides clinical social work, mental  
14 health counseling, or psychotherapy.

15 (2) Provides oversight to ensure that the associate's work at the  
16 setting meets the experience and supervision requirements set forth  
17 in this chapter and is within the scope of practice for the profession  
18 as defined in Section 4996.9.

19 (f) Experience shall not be gained until the applicant has been  
20 registered as an associate clinical social worker.

21 (g) Employment in a private practice as defined in subdivision  
22 (h) shall not commence until the applicant has been registered as  
23 an associate clinical social worker.

24 (h) A private practice setting is a setting that is owned by a  
25 licensed clinical social worker, a licensed marriage and family  
26 therapist, a licensed psychologist, a licensed physician and surgeon,  
27 or a professional corporation of any of those licensed professions.

28 (i) If volunteering, the associate shall provide the board with a  
29 letter from his or her employer verifying his or her voluntary status  
30 upon application for licensure.

31 (j) If employed, the associate shall provide the board with copies  
32 of his or her W-2 tax forms for each year of experience claimed  
33 upon application for licensure.

34 (k) While an associate may be either a paid employee or  
35 volunteer, employers are encouraged to provide fair remuneration  
36 to associates.

37 (l) Associates shall not do the following:

38 (1) Receive any remuneration from patients or clients and shall  
39 only be paid by his or her employer.

40 (2) Have any proprietary interest in the employer's business.

1 (m) An associate, whether employed or volunteering, may obtain  
2 supervision from a person not employed by the associate's  
3 employer if that person has signed a written agreement with the  
4 employer to take supervisory responsibility for the associate's  
5 social work services.

6 (n) Notwithstanding any other provision of law, associates and  
7 applicants for examination shall receive a minimum of one hour  
8 of supervision per week for each setting in which he or she is  
9 working.

10 ~~SEC. 72.~~

11 *SEC. 76.* Section 8659 of the Government Code is amended  
12 to read:

13 8659. Any physician or surgeon (whether licensed in this state  
14 or any other state), hospital, pharmacist, respiratory care  
15 practitioner, nurse, or dentist who renders services during any state  
16 of war emergency, a state of emergency, or a local emergency at  
17 the express or implied request of any responsible state or local  
18 official or agency shall have no liability for any injury sustained  
19 by any person by reason of those services, regardless of how or  
20 under what circumstances or by what cause those injuries are  
21 sustained; provided, however, that the immunity herein granted  
22 shall not apply in the event of a willful act or omission.

23 ~~SEC. 73.~~

24 *SEC. 77.* Section 11150 of the Health and Safety Code is  
25 amended to read:

26 11150. No person other than a physician, dentist, podiatrist,  
27 or veterinarian, or naturopathic doctor acting pursuant to Section  
28 3640.7 of the Business and Professions Code, or pharmacist acting  
29 within the scope of a project authorized under Article 1  
30 (commencing with Section 128125) of Chapter 3 of Part 3 of  
31 Division 107 or within the scope of Section 4052.1 or 4052.2 of  
32 the Business and Professions Code, a registered nurse acting within  
33 the scope of a project authorized under Article 1 (commencing  
34 with Section 128125) of Chapter 3 of Part 3 of Division 107, a  
35 certified nurse-midwife acting within the scope of Section 2746.51  
36 of the Business and Professions Code, a nurse practitioner acting  
37 within the scope of Section 2836.1 of the Business and Professions  
38 Code, a physician assistant acting within the scope of a project  
39 authorized under Article 1 (commencing with Section 128125) of  
40 Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the

1 Business and Professions Code, a naturopathic doctor acting within  
2 the scope of Section 3640.5 of the Business and Professions Code,  
3 or an optometrist acting within the scope of Section 3041 of the  
4 Business and Professions Code, or an out-of-state prescriber acting  
5 pursuant to Section 4005 of the Business and Professions Code  
6 shall write or issue a prescription.

7 ~~SEC. 74.~~

8 *SEC. 78.* Section 11165 of the Health and Safety Code is  
9 amended to read:

10 11165. (a) To assist law enforcement and regulatory agencies  
11 in their efforts to control the diversion and resultant abuse of  
12 Schedule II, Schedule III, and Schedule IV controlled substances,  
13 and for statistical analysis, education, and research, the Department  
14 of Justice shall, contingent upon the availability of adequate funds  
15 from the Contingent Fund of the Medical Board of California, the  
16 Pharmacy Board Contingent Fund, the State Dentistry Fund, the  
17 Board of Registered Nursing Fund, and the Osteopathic Medical  
18 Board of California Contingent Fund, maintain the Controlled  
19 Substance Utilization Review and Evaluation System (CURES)  
20 for the electronic monitoring of the prescribing and dispensing of  
21 Schedule II, Schedule III, and Schedule IV controlled substances  
22 by all practitioners authorized to prescribe or dispense these  
23 controlled substances.

24 (b) The reporting of Schedule III and Schedule IV controlled  
25 substance prescriptions to CURES shall be contingent upon the  
26 availability of adequate funds from the Department of Justice. The  
27 Department of Justice may seek and use grant funds to pay the  
28 costs incurred from the reporting of controlled substance  
29 prescriptions to CURES. Funds shall not be appropriated from the  
30 Contingent Fund of the Medical Board of California, the Pharmacy  
31 Board Contingent Fund, the State Dentistry Fund, the Board of  
32 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the  
33 Osteopathic Medical Board of California Contingent Fund to pay  
34 the costs of reporting Schedule III and Schedule IV controlled  
35 substance prescriptions to CURES.

36 (c) CURES shall operate under existing provisions of law to  
37 safeguard the privacy and confidentiality of patients. Data obtained  
38 from CURES shall only be provided to appropriate state, local,  
39 and federal persons or public agencies for disciplinary, civil, or  
40 criminal purposes and to other agencies or entities, as determined

1 by the Department of Justice, for the purpose of educating  
2 practitioners and others in lieu of disciplinary, civil, or criminal  
3 actions. Data may be provided to public or private entities, as  
4 approved by the Department of Justice, for educational, peer  
5 review, statistical, or research purposes, provided that patient  
6 information, including any information that may identify the  
7 patient, is not compromised. Further, data disclosed to any  
8 individual or agency as described in this subdivision shall not be  
9 disclosed, sold, or transferred to any third party.

10 (d) For each prescription for a Schedule II, Schedule III, or  
11 Schedule IV controlled substance, the dispensing pharmacy or  
12 clinic shall provide the following information to the Department  
13 of Justice on a weekly basis and in a format specified by the  
14 Department of Justice:

15 (1) Full name, address, and the telephone number of the ultimate  
16 user or research subject, or contact information as determined by  
17 the Secretary of the United States Department of Health and Human  
18 Services, and the gender, and date of birth of the ultimate user.

19 (2) The prescriber's category of licensure and license number;  
20 federal controlled substance registration number; and the state  
21 medical license number of any prescriber using the federal  
22 controlled substance registration number of a government-exempt  
23 facility.

24 (3) Pharmacy prescription number, license number, and federal  
25 controlled substance registration number.

26 (4) NDC (National Drug Code) number of the controlled  
27 substance dispensed.

28 (5) Quantity of the controlled substance dispensed.

29 (6) ICD-9 (diagnosis code), if available.

30 (7) Number of refills ordered.

31 (8) Whether the drug was dispensed as a refill of a prescription  
32 or as a first-time request.

33 (9) Date of origin of the prescription.

34 (10) Date of dispensing of the prescription.

35 (e) This section shall become operative on January 1, 2005.

36 ~~SEC. 75.~~

37 *SEC. 79.* No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or



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

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AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE MARCH 25, 2008

AMENDED IN SENATE MARCH 11, 2008

AMENDED IN SENATE JANUARY 24, 2008

## Senate Joint Resolution

No. 19

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**Introduced by Senator Ridley-Thomas  
(Coauthors: Senators Perata and Romero)**

(Coauthors: Assembly Members Coto, Davis, Dymally, Krekorian,  
Laird, Levine, Portantino, Price, and Soto)

January 7, 2008

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

### LEGISLATIVE COUNSEL'S DIGEST

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

This measure would request all relevant California agencies to notify California-licensed health professionals about their professional obligations under international law relating to torture and the treatment of detainees, as specified, and to also notify those professionals that those who participate in coercive *or enhanced* interrogation, torture, or other forms of cruel, inhuman, or degrading treatment or punishment may be subject to prosecution. *The measure would request that those health professionals report abusive interrogation practices to the appropriate authorities, as specified.* In addition, the measure would request the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals from participating in prisoner and detainee interrogations, as specified.

Fiscal committee: yes.

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

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

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

20 WHEREAS, In honor of the birthday of Dr. Martin Luther King,  
21 Jr., a broad coalition of medical, human rights, and legal  
22 organizations are petitioning the State of California to warn its  
23 medical licensees of the legal prohibitions against torture and the  
24 risks of prosecution, and are demanding that the United States  
25 government remove California-licensed health professionals from  
26 coercive interrogation and torture of detainees; and

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

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

38 WHEREAS, United States Army regulations and the War Crimes  
39 Act and, relative to the treatment of prisoners of war, Common  
40 Article III of the Geneva Conventions and the Convention against

1 Torture and Other Cruel, Inhuman, or Degrading Treatment or  
2 Punishment (CAT) require that all military personnel report and  
3 not engage in acts of abuse or torture; and

4 WHEREAS, CAT defines the term “torture” as “any act by  
5 which severe pain or suffering, whether physical or mental, is  
6 intentionally inflicted on a person for such purposes as obtaining  
7 from him or a third person information or a confession, punishing  
8 him for an act he or a third person has committed or is suspected  
9 of having committed, or intimidating or coercing him or a third  
10 person, or for any reason based on discrimination of any kind,  
11 when such pain or suffering is inflicted by or at the instigation of  
12 or with the consent or acquiescence of a public official or other  
13 person acting in an official capacity”; and

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

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

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

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

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

37 WHEREAS, AMA policy also states that “[t]orture refers to the  
38 deliberate, systematic or wanton administration of cruel, inhumane  
39 and degrading treatments or punishments during imprisonment or  
40 detainment. Physicians must oppose and must not participate in

1 torture for any reason ... . Physicians should help provide support  
2 for victims of torture and, whenever possible, strive to change the  
3 situation in which torture is practiced or the potential for torture  
4 is great”; and

5 WHEREAS, Section 2340 of Title 18 of the United States Code  
6 defines the term “torture” as an act committed by a person acting  
7 under the color of law specifically intended to inflict severe  
8 physical or mental pain or suffering (other than pain or suffering  
9 incidental to lawful sanctions) upon another person within his  
10 custody or physical control. That section further defines the term  
11 “severe mental pain or suffering” as the prolonged mental harm  
12 caused by or resulting from: (A) the intentional infliction or  
13 threatened infliction of severe physical pain or suffering; (B) the  
14 administration or application, or threatened administration or  
15 application, of mind-altering substances or other procedures  
16 calculated to disrupt profoundly the senses or the personality; (C)  
17 the threat of imminent death; or (D) the threat that another person  
18 will imminently be subjected to death, severe physical pain or  
19 suffering, or the administration or application of mind-altering  
20 substances or other procedures calculated to disrupt profoundly  
21 the senses or personality; and

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

31 WHEREAS, In August 2006, the American Psychological  
32 Association stated that “psychologists shall not knowingly  
33 participate in any procedure in which torture or other forms of  
34 cruel, inhuman, or degrading treatment or cruel, inhuman, or  
35 degrading punishment is used or threatened” and that “should  
36 torture or other cruel, inhuman, or degrading treatment or cruel,  
37 inhuman, or degrading punishment evolve during a procedure  
38 where a psychologist is present, the psychologist shall attempt to  
39 intervene to stop such behavior, and failing that exit the procedure”;  
40 and

1 WHEREAS, In June 2005, the House of Delegates of the  
2 American Nurses Association issued a resolution stating all of the  
3 following: “prisoners and detainees have the right to health care  
4 and humane treatment”; “registered nurses shall not voluntarily  
5 participate in any deliberate infliction of physical or mental  
6 suffering”; “registered nurses who have knowledge of ill-treatment  
7 of any individuals including detainees and prisoners must take  
8 appropriate action to safeguard the rights of that individual”; “the  
9 American Nurses Association shall condemn interrogation  
10 procedures that are harmful to mental and physical health”; “the  
11 American Nurses Association shall advocate for nondiscriminatory  
12 access to health care for wounded military and paramilitary  
13 personnel and prisoners of war”; and “the American Nurses  
14 Association shall counsel and support nurses who speak out about  
15 acts of torture and abuse”; and

16 *WHEREAS, The California Nurses Association clearly states*  
17 *that “the social contract between registered nurses and society is*  
18 *based upon a code of ethics that is grounded in the basic ethical*  
19 *principles of respect for human rights and dignity, the*  
20 *non-infliction of harm, and because these principles command*  
21 *that registered nurses protect or preserve life, avoid doing harm,*  
22 *advocate in the exclusive interest of their patients, and create a*  
23 *fiduciary relationship of trust and loyalty with recipients of their*  
24 *care”;* and

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

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

39 WHEREAS, The United States military medical system in  
40 Guantanamo Bay, Afghanistan, Iraq, and other foreign military

1 prisons operated by the United States failed to protect detainees’  
2 rights to medical treatment, failed to prevent disclosure of  
3 confidential medical information to interrogators and others, failed  
4 to promptly report injuries or deaths caused by beatings, failed to  
5 report acts of psychological and sexual degradation, and sometimes  
6 collaborated with abusive interrogators and guards; and

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

14 WHEREAS, Evidence in the public record indicates that military  
15 psychologists participated in the design and implementation of  
16 psychologically abusive interrogation methods used at Guantanamo  
17 Bay, in Iraq, and elsewhere, including sleep deprivation, long-term  
18 isolation, sexual and cultural humiliation, forced nudity, induced  
19 hypothermia and other temperature extremes, stress positions,  
20 sensory bombardment, manipulation of phobias, force-feeding  
21 hunger strikers, and more; and

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

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

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

35 WHEREAS, Waterboarding is a crime under the United States  
36 War Crimes Act and Chapter 113C (commencing with Section  
37 2340) of Title 18 of the United States Code, is a crime against  
38 humanity under international human rights law, is a war crime  
39 under humanitarian laws, and is prohibited by the United States  
40 Army Field Manual. United States district courts, state courts,

1 including, but not limited to, the Mississippi Supreme Court, and  
2 United States military tribunals have convicted defendants of  
3 criminal acts in waterboarding cases; and

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

8 *Resolved by the Senate and the Assembly of the State of*  
9 *California, jointly,* That California-licensed health professionals  
10 are absolutely prohibited from knowingly planning, designing,  
11 participating in, or assisting in the use of condemned techniques  
12 at any time and may not enlist others to employ these techniques  
13 to circumvent that prohibition; and be it further

14 *Resolved,* That the Legislature hereby requests all relevant  
15 California agencies, including, but not limited to, the Board of  
16 Behavioral Sciences, the Dental Board of California, the Medical  
17 Board of California, the Osteopathic Medical Board of California,  
18 the Bureau of Naturopathic Medicine, the California State Board  
19 of Pharmacy, the Physician Assistant Committee of the Medical  
20 Board of California, the California Board of Podiatric Medicine,  
21 the Board of Vocational Nursing and Psychiatric Technicians, the  
22 Board of Psychology, and the Board of Registered Nursing, to  
23 notify California-licensed health professionals via newsletter,  
24 email, Web site, or existing notification processes about their  
25 professional obligations under international law, specifically  
26 Common Article III of the Geneva Conventions, the Convention  
27 against Torture and Other Cruel, Inhuman, or Degrading Treatment  
28 or Punishment (CAT), and the amended War Crimes Act, which  
29 prohibit the torture of, and the cruel, inhuman, and degrading  
30 treatment or punishment of, detainees in United States custody;  
31 and be it further

32 *Resolved,* That the Legislature hereby requests all relevant  
33 California agencies to notify health professionals licensed in  
34 California that those who participate in coercive or “enhanced”  
35 interrogation, torture, as defined by CAT, or other forms of cruel,  
36 inhuman, or degrading treatment or punishment may one day be  
37 subject to prosecution; and be it further

38 *RESOLVED, That the Legislature hereby requests that when*  
39 *California licensed health professionals have reason to believe*  
40 *that interrogations are coercive or “enhanced” or involve torture*



1 *or cruel, inhuman, or degrading treatment or punishment, they*  
2 *shall report their observations to the appropriate authorities, and*  
3 *if the authorities are aware of those abusive interrogation*  
4 *practices, but have not intervened, then those health professionals*  
5 *are ethically obligated to report those practices to independent*  
6 *authorities that have the power to investigate and adjudicate those*  
7 *allegations; and be it further*

8 *Resolved*, That in view of the ethical obligations of health  
9 professionals, the record of abusive interrogation practices, and  
10 the Legislature's interest in protecting California-licensed health  
11 professionals, the Legislature hereby requests the United States  
12 Department of Defense and the Central Intelligence Agency to  
13 remove all California-licensed health professionals from  
14 participating in any way in prisoner and detainee interrogations  
15 that are coercive or "enhanced" or that involve torture or cruel,  
16 inhuman, or degrading treatment or punishment, as defined by the  
17 Geneva Conventions, CAT, relevant jurisprudence regarding CAT,  
18 and related human rights documents and treaties; and be it further

19 *Resolved*, That no law, regulation, order, or exceptional  
20 circumstance, whether induced by state of war or threat of war,  
21 internal political instability, or any other public emergency, may  
22 be invoked as justification for torture or cruel, inhuman, or  
23 degrading treatment or punishment; and be it further

24 *Resolved*, However, that California-licensed health professionals  
25 continue to provide appropriate health care if called upon to deal  
26 with a victim of the conduct and torture described in this resolution;  
27 and be it further

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

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<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>AMENDED</u>
AB 10	De La Torre	Health Care Providers	Sen. Approps.	06/23/08
AB 54	Dymally	Health Care Coverage: acupuncture	Enrolled	03/03/08
AB 55	Laird	Referral Fee: technology and services	Asm. Health (8/5)	07/03/08
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. Approps. (8/5)	05/07/08
AB 638	Bass	Physician Assistants: educational loan program	Sen. Approps. - susp	07/02/08
AB 865	Davis	State Agencies: live customer service agents	Asm. Concur.	06/24/08
AB 1137	Eng	Chiropractors	Asm. B&P	06/04/07
AB 1154	Leno	Diabetes Task Force and Pilot Program	Sen. Approps. - susp	06/18/08
AB 1203	Salas	Health Care Service Plans: noncontracting hospitals	Sen. Approps. (8/4)	06/30/08
AB 1390	Huffman	Health Care Service Plans: unfair payment patterns	Sen. Approps. (8/4)	06/12/08
AB 1486	Calderon	Licensed Professional Counselors	Sen. Approps. (8/4)	06/23/08
AB 1861	Emmerson	State Board of Chiropractice Examiners	DEAD	03/28/08
AB 1869	Anderson	Transition DCA Boards to Bureaus	DEAD	04/03/08
AB 1922	Hernandez	Healing Arts Practitioners: peer review	Chaptered	05/14/08
AB 1925	Eng	Franchise Tax Board: business and prof. licenses	Sen. Rev. & Tax	07/03/08
AB 1940	DeVore	Temporary Disabled Persons' Placards: pregnancy	DEAD	Introduced
AB 2111	Smyth	Physical Therapists	Sen. Approps.	06/23/08
AB 2117	Evans	Dependent Children: psychotropic medications	Asm. Approps.-susp	07/10/08
AB 2120	Galgiani	Medical Telemedicine	Enrolled	05/15/08
AB 2122	Plescica	Surgical Clinics: licensure	DEAD	03/24/08
AB 2207	Lieu	Emergency Rooms: overcrowding	DEAD	04/22/08
AB 2210	Price	Dentistry: emergency services	Sen. Approps. (8/4)	07/02/08

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<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>AMENDED</u>
AB 2234	Portantino	Health Care Coverage: breast conditions	DEAD	04/22/08
AB 2351	Garrick	Workers' Comp.: medical treatment utilization reviews	DEAD	Introduced
AB 2423	Bass	Professions and Vocations: Licensure	Sen. Approps. (8/4)	07/01/08
AB 2539	Strickland	State Boards and Commissions: salaries: suspension	DEAD	03/10/08
AB 2542	Nakanishi	Patient Safety	DEAD	Introduced
AB 2661	Dymally	Telemedicine: without appropriate exam	DEAD	03/24/08
AB 2690	Krekorian	Prod. Liability Actions: pres. pharmaceutical products	DEAD	05/07/08
AB 2697	Huffman	Hospitals: emergency medical services	Sen. Approps. (8/4)	07/02/08
AB 2702	Nunez	Maddy Emerg. Med. Serv. Fund: phys. reimburs.: LA county	Sen. Floor	06/30/08
AB 2721	Fuller	Telemedicine Task Force	DEAD	Introduced
AB 2787	Arambula	Clinics: licensing: hours of operation	DEAD	Introduced
AB 2794	Blakeslee	Diagnostic Imaging Services	Sen. Approps. (8/4)	06/19/08
AB 2807	Adams	Department of Consumer Affairs	DEAD	Introduced
AB 2811	Bass	Physician Assistant Practice Act	DEAD	Introduced
AB 2847	Krekorian	Health Care Coverage	DEAD	04/23/08
AB 3000	Wolk	Health Care Decisions: life sustaining treatment	Enrolled	07/02/08
AB 3037	Eng	Boards and Commissions	DEAD	04/21/08
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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 Neuropathy	Sen. Rules	06/19/08
ACR 112	Soto	Legislative Task Force on Fibromyalgia	Sen. Rules	06/25/08

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<b><u>BILL</u></b>	<b><u>AUTHOR</u></b>	<b><u>TITLE</u></b>	<b><u>STATUS</u></b>	<b><u>AMENDED</u></b>
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. Approps. - susp	06/11/08
SB 840	Kuehl	Single-Payer Health Care Coverage	Asm. Approps. - susp	07/10/07
SB 1098	Migden	Medical Marijuana	DEAD	03/11/08
SB 1184	Kuehl	Public Health	Asm. Floor	07/03/08
SB 1260	Runner	Health Clinics	Sen. Concur.	06/18/08
SB 1288	Scott	Cal. State Univ.: Doctor of Nursing Practice Degree	DEAD	04/23/08
SB 1307	Ridley-Thomas	Pharmacy: pedigree	Asm. Approps.	06/17/08
SB 1338	Migden	Workers' Comp.: med. treatment: predesignation of phy.	Asm. Floor	04/30/08
SB 1402	Corbett	Reporting Requirements	Asm. Floor	06/11/08
SB 1494	McClintock	State Agency Web Sites: information	DEAD	04/10/08
SB 1505	Yee	Board of Behavioral Sciences: fees	Asm. Approps.	07/14/08
SB 1525	Kuehl	Health Care Coverage: medical necessity determinations	Asm. Approps. - susp	04/24/08
SB 1535	Kuehl	MBC: medical directors	DEAD	Introduced
SB 1633	Kuehl	Dental Services: credit	Asm. Floor	06/18/08
SB 1639	Ashburn	Nurse Practitioners	DEAD	Introduced
SB 1729	Migden	Nursing Home: training	Asm. Approps. - susp	05/23/08
SB 1769	Perata	Department of Consumer Affairs	DEAD	Introduced
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SBX1 6	Runner	Hospitals: preventative medical services	Sen. Rules	Introduced
SBX1 9	Runner	Primary Care Clinics	Sec. of Senate	01/10/08
SBX1 12	Runner	Health Care Cost and Quality Transparency	Sen. Health	01/14/08
SJR 20	Migden	Medical Marijuana	Asm. Pub. Safety	06/16/08