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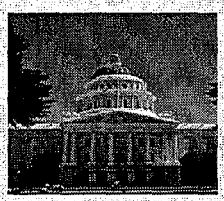

The mission of the California State Board of Optometry is to serve the public and optometrists by promoting and enforcing laws and regulations, which protect the health and safety of California's consumers, and to ensure high quality care.

California State Board of Optometry
2420 Del Paso Road, Suite 255, Sacramento, CA 95834

Board Meeting
Tuesday, May 11, 2010
9:00 a.m.
Department of Consumer Affairs
1625 N. Market Boulevard
2nd Floor, El Dorado Room
Sacramento, CA
(916) 575-7170

And

Via telephone at the following locations:

- **9033 Wilshire Blvd., Suite 402, Beverly Hills, CA 90211**
- **155 Cadillac Drive, Sacramento, CA 95825**
- **Southern California College of Optometry**
  TVCI Conference Room
  2575 Yorba Linda Boulevard
  Fullerton, CA 92831-1699

FULL BOARD OPEN SESSION

1. Call to Order - Establishment of a Quorum
2. Discussion and Possible Approval of the Responses Pertaining to the Comments Received During the 15-Day Comment Period for the Modified Text, Regarding the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification.
3. Discussion and Possible Action To Adopt CCR Section 1520, Infection Control Guidelines.
4. Discussion and Possible Action to Initiate a Rulemaking to Add and Amend Sections of Division 15, of Title 16, of the CCR Related to the Board of Optometry's Enforcement Authority.
5. Public Comment for Items Not on the Agenda
6. Adjournment

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

NOTICE: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Krista Eklund at (916) 575-7170 or sending a written request to that person at the California State Board of Optometry 2420 Del Paso Road, Suite 255, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

California State Board of Optometry

Memo

2420 Del Paso Road, Suite 255
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To: Board Members **Date:** May 11, 2010

From: Andrea Leiva, Policy Analyst **Telephone:** (916) 575-7182

Subject: **Agenda Item 2 – Discussion and Possible Approval of the Responses Pertaining to the Comments Received During the 15-Day Comment Period for the Modified Text, Regarding the Proposed Rulemaking, California Code of Regulations (CCR), Title 16, Section 1571, Requirements for Glaucoma Certification**

Action Requested:

Staff requests that the Board review and fully consider all the comments received during the 15-day comment period for the modified text of CCR section 1571, Requirements for Glaucoma Certification. A proper response will show adequate consideration of a comment and will thoroughly describe why the comment is being accepted or rejected (As required by Government Code section 11346.9, subdivision (a)(5)). If a comment is being rejected, the Board must show why the regulation is still necessary despite the rejecter's concerns.

No changes were made to the modified text.

Suggested responses to the comments have been included in Attachment 1. Staff requests that the Board review, make any edits necessary, and approve the suggested responses and make a motion to adopt the language in order to move forward with the rulemaking file.

Attachments:

1. Final Statement of Reasons
   (Pages 21-24 contain the proposed responses to the comments received during the 15-day comment period for the modified text of CCR section 1571.)

2. CCR section 1571 Proposed Language (as modified during 15-day comment period)

BOARD OF OPTOMETRY
FINAL STATEMENT OF REASONS **DRAFT**

Hearing Date: December 22, 2009

Subject Matter of Proposed Regulations: Requirements for Glaucoma Certification

Section(s) Affected: 1571

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business Impact:

The Board has determined that this regulatory proposal will not have a significant adverse impact on small businesses.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations Received During the 45-day Comment Period/Responses:

The following associations and individuals were in support of the regulations as written:

Written Comment 1 - Curtis Knight, O.D., Inglewood, California

Written Comment 2 - John D. Robinson, O.D., Executive Director, North Carolina State Board of Examiners in Optometry

Written Comment 3 - Russell Hosaka, O.D., Torrance, California

Written Comment 4 - Greg McFarland, O.D., Desert Palm Springs

Written Comment 5 - Clifford Silverman, O.D., Lancaster, California

Written Comment 6 - Robert L. Shapiro, O.D., Los Angeles, California

Written Comment 7 - Ellis Miles, O.D., Northridge, California

Written Comment 8 - Greg Evans, O.D., Palm Desert, California

Written Comment 9 - C.K. Chan O.D., Monterey Park, California

Written Comment 10 - Frank G. Balestrery, O.D., M.S., University of California Berkeley School of Optometry

Written Comment 11 - Steven J. Fronk, O.D., Jackson, California

Written Comment 12 - Chris L. Bartelson, O.D., Fillmore, California

Written Comment 13 - Michael E. Jacobs, O.D., Pismo Beach, California

Written Comment 14 - Alan Lubanes, O.D., Georgetown, California

Written Comment 15 - Trajan J. Soares, O.D. F.A.A.O., Los Banos, California

Written Comment 16 - Robert Meisel, O.D. F.A.A.O., Southern California

Written Comment 17 - Wayne Johnson, O.D. F.A.A.O, Los Alamitos, California

Written Comment 19 - Tim Welton, O.D., Anaheim, California

Written Comment 20 - Nicky R. Holdeman, O.D., M.D., Houston, Texas

Written Comment 21 - Kevin L. Alexander, O.D., Ph.D., F.A.A.O., President, Southern California College of Optometry

Written & Verbal Comment 22 - Hilary Hawthrone, O.D., President, California Optometric Association

Written & Verbal Comment 23 - Elizabeth Hoppe, O.D., Founding Dean, Western University of Health Science, College of Optometry

Written & Verbal Comment 24 - David A. Cockrell, O.D., Oklahoma

Written Comment 28 - Eric E. Gaylord, O.D., Optometric Specialties, Inc.

Verbal Comment 37 – Robert DiMartino, O.D., M.S., F.A.A.O., University of California Berkeley School of Optometry

Verbal Comment 39 – David Sendrowski, O.D., F.A.A.O., Southern California College of Optometry

Verbal Comment 41 – Tim Hart, California Optometric Association

The listed associations and individuals believe the regulation should be accepted as proposed for the following reasons:

- The previous glaucoma certification guidelines that were established by Senate Bill 929 were difficult to implement because many optometrists could not find an interested,

cooperating ophthalmologist to fulfill the co-management requirement.

- Optometrists who practice in rural and underserved areas were forced to refer glaucoma patients to an ophthalmologist who often was located hours away from their patient's home because there were no ophthalmologists nearby. Patients were forced to travel long distances, which increased their expenses, and often times discouraged them from seeking further care.

- The requirement to co-manage 50 patients with an ophthalmologist usually resulted in the optometrist having to see more than 50 patients due to the fact that a significant number of patients did not complete the two year co-management period. Reasons for this include: death, illness, re-location, change of insurance coverage or panel doctors and failure to return for treatment.

- The proposed regulations will give optometrists the ability to become glaucoma certified in an appropriate and timely basis and will benefit the patient by increasing access to care, treatment and appropriate glaucoma management.

- It is well known throughout the eye care industry that the optometric practice emphasizes patient education along with clinical expertise. These skills help optometrists meet their patient's needs and help patients to understand their vision conditions and diseases such as glaucoma. Patients are then much more apt to comply with treatment requirements and follow-up visits.

- Optometrists in forty-nine of the fifty states can treat glaucoma. California patients need to have the same access to care as those in other states and optometrists should be allowed to treat glaucoma when trained to do so.

- California has two of the finest schools of optometry in the nation.

- Only 177 optometrists were able to become glaucoma certified under the terms of Senate Bill 929 in six years. That indicates that Senate Bill 929 was not effective in meeting the needs of patients in California.

- Optometrists are well trained to diagnose and treat glaucoma, which is a core part of their optometric curriculum and clinical training at the California schools and colleges of optometry.

- Optometrists are capable practitioners that can distinguish between what they can and can't treat and when to refer appropriately.

- Optometric and ophthalmologic training and licensure is thorough and rigorous. Both educational models achieve the same goal, which is to treat patients appropriately and effectively.

- Professional liability data for states that have bestowed optometrists with authority to diagnose and manage glaucoma has not revealed an increase in disciplinary action or litigation as a result.

- The prevalence of glaucoma in California is estimated to be 430,000 and multiple studies have shown that Latinos, African Americans and people with diabetes have higher risks of developing glaucoma. Many of those cases go untreated, so having optometrists earn

glaucoma treatment privileges will greatly improve access to glaucoma treatment.

- Most medical treatment of glaucoma requires the use of eye drops and over the past decade, there have been many improvements in medical treatment. Most glaucoma patients can be managed by their optometrist with an appropriate referral to an ophthalmologist (if or when required), for surgical care to control their glaucoma or when that is the best treatment option for the patient.

- The proposed case management requirement goes far beyond what the majority of other states require but the regulations represent a step in the right direction.

Accept: The Board acknowledges these comments of support.

Written & Verbal Comment 18 - Tony Carnevali, O.D., addresses the issues presented by the California Academy of Eye Physicians and Surgeons, the California Medical Association and the American Glaucoma Society pertaining to his position as a special consultant to the Office of Professional Examination Services. Dr. Carnevali discusses his 34 years of expertise in glaucoma diagnosis, treatment and management, and justifies that he was indeed an appropriate candidate to assist in the development of regulations for glaucoma certification in California by pointing out that:

- The fact that he is an employee of the Southern California School of Optometry is not a conflict of interest because the passage of the proposed regulations would not provide him with further compensation in any form, directly or indirectly.

- The schools and colleges of optometry are typically charged by the legislature to conduct training and certification programs for California optometrists.

- His research was not solely based on California optometric training, but training from several other schools and colleges of optometry in the country.

- His tenure as a past California Optometric Association is also not a conflict of interest because he served in 1991-1992, which was 18 years ago. He also identifies other optometric organizations of which he is a member, but has recused himself when it comes to discussing glaucoma certification due to his position as special consultant.

- He fit the criteria and was hired by the Office of Professional Examination Services.

Accept: Although this comment is not directly related to the proposed language, the Board acknowledges its support of the proposed regulation and the process in which it was developed.

Written Comments 25-26 regarding subsection 1571(b) - Jerry L. Jolley and Richard Van Buskirk state that although they support the proposed regulation, the extensive training in glaucoma, which has been part of an optometrist's basic education for years, is not recognized. They recommend that subsection (b) be modified to permit optometrists that graduated on or after May 1, 1990 be exempt from the didactic course and case management requirements, instead of optometrists that graduated on May 1, 2008 or after.

Reject: Business and Professions Code (BPC) section 3041, the scope of practice of optometry as amended by Senate Bill 1406, states that, "[f]or licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that

institution [is required for glaucoma certification]." In order to implement this recommendation, BPC section 3041 would need to be amended. The Board does not have the authority to amend a statute, only the California legislature has this authority.

Written Comment 27 - The California Optometric Association (COA) opposed the proposed language submitted in the California Academy of Eye Physicians and Surgeon's (CAEPS) comment.

Reject: The Board finds this comment to be irrelevant for the purposes of this rulemaking file because the COA is commenting on a comment provided by CAEPS. The proposed language provided by CAEPS will be addressed in the response to Comment 36 below.

The following associations and individuals were in opposition of the regulation as written and believe it should be amended or redeveloped.

Written Comment 29 - Martin L. Fishman, M.D., M.P.A., Los Gatos, California

Written Comment 30 - Anita S. Aaron, Executive Director, LightHouse for the Blind and Visually Impaired

Written Comment 31 - JoAnn Giaconi, M.D., Assistant Clinical Professor of Ophthalmology, David Geffen School of Medicine, UCLA

Written Comment 32 - James D. Brandt, M.D., Professor of Ophthalmology, Glaucoma Service, University of California, Davis.

Written Comment 33 - California Medical Association

Written Comment 35 - Jane Vogel and Kathy Goodspeed, Joint Action Committee of Organizations Of and For the Visually Impaired (JAC)

The listed associations and individuals believe the regulation should be rejected because of the following reasons:

- The diagnosis and treatment of glaucoma cannot be learned from textbooks or lectures and practical hands-on experience is necessary. The current regulation allows an optometrist to treat glaucoma patients without actually managing a single glaucoma patient. A minimal number of patients should be treated in a supervised manner prior to certification.

Reject: The Board rejects this recommendation because the treatment and management of glaucoma can be learned in the schools and colleges of optometry. Additionally, optometry students actually manage patients while in school getting hands-on experience, and almost all other states do not require optometrists to manage patients for glaucoma certification.

The proposed regulations take into account the education of optometrists who graduated on or after May 1, 2008, as well as the experience of optometrists who graduated prior to May 1, 2008 and are already licensed and practicing in California. The proposed Case Management Course in subsection (a)(4)(A) and the Grand Rounds Program in subsection (a)(4)(B) are sufficient as requirements for glaucoma certification in addition to the 24-hour didactic course in subsection (a)(3). The 24-hour didactic course was a requirement established by Senate Bill (SB) 929 and

was not modified in SB 1406.

Furthermore, optometrists have had the obligation and were held to the same standard as ophthalmology to detect glaucoma since the 1970's. **(See pages 30-31 of Optometry GDTAC report & AOA bulletin from counsel regarding DPA)** As a result, the California schools and colleges of optometry have incorporated into their curriculum the training necessary to allow optometrists to recognize, diagnose, and refer patients with glaucoma to the appropriate physician or surgeon. Optometry students spend the first two years of their education studying the visual system and its ocular diseases extensively in lectures/seminars, laboratories, and clinics. For the last two years of their education, students spend the majority of their time in the school's clinic as interns examining, diagnosing, treating, and referring patients with ocular disease (this includes glaucoma) under the supervision of experienced, optometric professionals and ophthalmologists. With this evidence, it is inaccurate to assert that an optometrist would have no "hands-on" experience, when their four years of optometry school are spent solely focusing on all aspects of the eye. **(See page 26 and accompanying Tables 1&2 of Optometry GDTAC report).**

Students must also pass all portions of the National Board of Examiners in Optometry (NBEO) Examination, which is required nationwide and represents a national standard of entry-level competence to practice Optometry. The NBEO was established in 1951 as a private, nonprofit 501(c)3 organization that develops, administers, and scores examinations, and reports the results, that state regulatory boards utilize in licensing optometrists to practice eye care. Licensure is a regulatory function designed to protect the public in the competent provision of health care. In serving the profession and public for 56 years, the NBEO has compiled a distinguished record of accomplishments that include being the first national board among the doctoral level health professions to eliminate grading-on-a-curve, and one of the few national boards in any profession with a repertoire of examinations that includes conventional multiple-choice tests, a computer-based test, a clinical skills test with live patients, and an advanced competence examination.

The exam is comprised of Part 1, Applied Basic Science, Part II, Patient Assessment and Management/Treatment and Management of Ocular Disease (TMOD), and Part 3, Clinical Skills – a "hands-on" portion of the exam. All 50 states, the District of Columbia, and Puerto Rico require Parts I and II, and 47 states plus the District of Columbia and Puerto Rico require Part III. Also, 43 states plus the District of Columbia require the TMOD examination as one step toward therapeutic privileges. **(See pages 20-25 of Optometry GDTAC report).**

Forty-seven states in the country allow their optometrists to treat glaucoma without further requirements after completing optometry school and passing the NBEO exams **(See pages 30-31 of Optometry GDTAC report).** Optometrists in all these other states have been treating glaucoma successfully for years and optometrists in California need to be able to practice at a level equivalent to their colleagues in the United States.

In addition, optometrists are required to be certified to use Therapeutic Pharmaceutical Agents (TPA) in order to treat glaucoma. They are strongly encouraged to have this certification before applying to the Board of Optometry for licensure. Licensees were first authorized to become TPA certified effective in 1997, following the enactment of SB 668 in 1996. As of May 2008 according to the Board of Optometry's public licensure database, 94% of California licensed optometrists had attained this status.

In order to become TPA certified, optometrists receive extensive training in ocular disease with "hands-on" experience as a key component. Those graduating prior to January 1, 1992 had to complete an 80-hour TPA didactic course and exam provided by the schools and colleges of

optometry, pass the TMOD component of the NBEO exam, and complete 20 hours of self-directed study in the treatment and management of ocular, systemic disease (including glaucoma). They also had to complete a 65-hour preceptorship in a maximum of one year with a Board Certified California ophthalmologist that may have included patients with glaucoma. Those that graduated January 1, 1992 but before January 1, 1996 had to complete 20 hours of self directed study in the treatment and management of ocular, systemic disease and complete the 65-hour preceptorship. Those that graduated after January 1, 1996 had to obtain their California optometry license, be certified by an accredited school of optometry that they were competent in the diagnosis, treatment and management of ocular, systemic disease and had completed 10 hours of experience with ophthalmologist. Today, all these requirements have been incorporated into the curriculum of the schools and colleges of optometry, the same way that glaucoma certification requirements are now incorporated in the curricula. This is why students graduating on May 1, 2008 or after can be glaucoma certified upon graduation.

Approximately 430,000 Californians are estimated to have glaucoma. It is extremely likely that the 7,000 actively licensed optometrists in California have encountered many of these patients in their practice and during their optometric training. Glaucoma diagnosis, testing, referral, and treatment (when certified) are a routine part of optometric practice in California.

- The understanding of glaucoma management cannot be achieved in a one-year crash course because, most likely, no changes in vision will occur within the one particular year that the optometrist is training.

Reject: The proposed regulation takes this claim into account. For those optometrists that graduated prior to May 1, 2000, in addition to the didactic course, the proposed Case Management and Grand Rounds options allow an optometrist to see a number of patients with different levels and complexity of glaucoma. The optometrists will be trained in a manner that ensures that they have the appropriate diagnostic and treatment skills required to competently practice. The Case Management course will be designed to enhance optometrist's understanding of glaucoma, it's subtleties and nuances, and its treatment. The course will be designed to ensure that optometrists recognize glaucoma at all stages of the disease, and are proficient in identifying the treatment and referral options. Not only will they be educated on the different modalities of glaucoma, but also on the types of glaucoma an optometrist cannot treat and must refer and the treatments available that ophthalmologists can provide once the patient is referred. It is also important to recognize that optometrists who graduated prior to May 1, 2000 have spent a minimum of 10 years in practice, during which time they will have already diagnosed, referred, and co-managed a number of patients with glaucoma.

For those optometrists who graduated after May 1, 2000 but prior to May 1, 2008, and are already licensed and practicing in California, the didactic course would not be required because it was part of their education. They would have to choose up to two of the three options outlined in subsection (a)(4)(A), (a)(4)(B), and (a)(4)(C) in order to meet the 25-patient requirement. In addition, these experienced optometrists will have already been practicing for several years diagnosing and referring glaucoma patients and many will also have been treating glaucoma under the guidelines of SB 929.

For those that graduated on May 1, 2008 and after, since the education from the schools and colleges of optometry always expands to include scope expansions in order to provide the most up to date education to optometry students, the didactic course and all clinical training for glaucoma certification are already incorporated into their curriculum.

Based on this evidence, no matter what category an optometrist seeking to become glaucoma certified is in, their prior training and experience far exceed what is being considered a "one-year crash course." The commenter is not taking into account the education and clinical experiences of optometrists, the national examination they must pass which requires that candidates be knowledgeable in glaucoma in order to pass it, or the years spent in practice for those that are not new graduates.

It is important to note that SB 1406 expanded the scope of practice of optometry to include the non-surgical treatment of open-angle glaucoma, exfoliation and pigmentary glaucoma and, in an emergency, the stabilization of an acute attack of angle closure if possible, which, when stabilized, must be immediately referred to an ophthalmologist. The three types of glaucoma identified above are treated with topical and oral medications or drops and pills, which are TPAs. TPA certified optometrists in California are familiar with these kinds of medications and the effects they could have on a patient. From the beginning of their training, optometrists are taught when to refer to an ophthalmologist if a medication does not achieve the desired results, or causes intolerable side effects. Thus, it is inaccurate to presume that an optometrist would not know when something was going wrong with a glaucoma patient, whether they have been treating the patient for five years or one year.

The Case Management and Grand Round options will, in a directed and planned educational setting, allow optometrist to see many different stages of glaucoma, examine patients, and have a comprehensive learning experience. These training options are contemporary and would be more effective than random cases seen in a co-management program.

The proposed regulation furthers the intent of SB 1406, which is to increase access to care. Optometrists are capable practitioners that are very well prepared to treat glaucoma, a disease they have been diagnosing and co-managing for years. The additional training required in the proposed regulation may only be supplementary, but it will assure the public that optometrists are well trained to diagnose and treat glaucoma.

- The regulations do not impose any additional requirements on students who graduated on or after May 1, 2008 and they should. It is recommended that they at least demonstrate the equivalent experience requirements of Senate Bill 929.

Reject: Business and Professions Code (BPC) section 3041, as amended by SB 1406, does not require that there be any additional training for individuals who graduated on May 1, 2008 or after. SB 1406 mandated the Glaucoma Diagnosis and Treatment Advisory Committee (GDTAC) to do the following:

> In developing its findings, the committee shall presume that licensees who apply for glaucoma certification and who graduated from an accredited school of optometry on or after May 1, 2008 possess sufficient didactic and case management training in the treatment and management of patients diagnosed with glaucoma to be certified. After reviewing training programs for representative graduates, the committee in its discretion may (emphasis added) recommend additional glaucoma training to the Office of Professional Examination Services (OPES) pursuant to subdivision (f) to be completed before a license renewal application from any licensee described in this subdivision is approved.

The language of the statute is permissive, so the GDTAC and OPES did not have to include additional training. OPES had to then examine the GDTAC's reports (two were submitted, one

from the optometrists and one from the ophthalmologists) and recommend curriculum requirements to the Board. The Board was then mandated to only adopt the findings of the office and implement certification. Since no additional training was recommended for those graduating on May 1, 2008 or after, the Board did not include additional training in the regulation.

- The proposed regulation does not require additional continuing education for glaucoma certified optometrists.

Accept in part: The OPES report gives the Board the discretion to consider specifying a given number of additional hours of continuing education (CE) to glaucoma certified optometrists to be completed every two year renewal period. This CE would be a part of the 35 hours in ocular disease requirement within the 50 hours of CE, and no more.

Historically, from 2001 to 2006, there was a specific requirement of 12 hours in glaucoma CE. Since then, pursuant to AB 2464 (Chapter 426, Statutes 2004), specified CE hours for subcategories of ocular disease were eliminated. The Board and the legislature agreed that the specified hours of CE for the subcategories of the diagnosis, treatment and management of ocular disease was onerous and overly regulatory of the profession. Licensed optometrists found it difficult to meet the hourly requirements because national providers did not designate their courses by the sub-categories and many courses addressed more than one sub-category. This elimination allowed optometrists to stay up to date with a full range of CE on ocular disease without constricting them to very specific hourly requirements.

Despite the past action by the legislature to eliminate sub-categories, the Board is willing to accept this comment in part and designate that the glaucoma sub-category now require 10 hours specifically. To clarify, of the 35 hours of ocular disease, 10 hours must be in glaucoma education for glaucoma certified optometrists. Language was added to the proposed regulation to reflect this change.

- The Board should investigate and consider the incident at the Palo Alto Veteran's Hospital before developing regulations at all. The Department of Consumer Affairs (DCA) mandated an investigation requested by CMA, CAEPS and the American Glaucoma Society and granted by Brian Stiger, Director of the DCA.

Reject: The Board finds this comment to be irrelevant for the purposes of this rulemaking file. The Director's response did not impose a mandate on the Board. The Board has no jurisdiction over the Palo Alto Veteran's Hospital because it is a federal agency. Optometrists employed by federal agencies follow different laws and do not even have to be licensed in California to practice there. The Board has already taken all the possible steps to deal with this issue, which do not affect the regulation in any way. Correspondence was sent to the Palo Alto Veteran's Hospital requesting they share information with the Board upon the completion of their investigation pertaining to this matter. The Board has yet to receive any information. Furthermore, the Board has received no complaints regarding this situation. If a complaint were to be received, the Board would certainly investigate the California licensed optometrists in question, but would not be able to comment on the investigation pursuant to Government Code Section 6254 (f) as is being requested by CAEPS, CMA and the American Glaucoma Society. (See Comment 40 for additional information).

- The Board should not be basing this regulation on a report from an optometrist who is not glaucoma certified, treats glaucoma without a proper license from the State Board, and who is directly in a position to benefit personally and benefit his institution from allowing the broadest possible licensing for optometrists regarding glaucoma. An appropriate and unbiased consultant should be chosen to re-evaluate the report from the Glaucoma Diagnosis and Treatment Advisory Committee (GDTAC).

Reject: Pursuant to BPC section 3041.10, the Board had no authority to choose what recommendations were to be followed. BPC section 3041.10 reads:

"The board shall adopt the findings of the office and shall implement certification requirements pursuant to this section on or before January 1, 2010."

The Office of Professional Examination Services hired the consultant, and this decision was based on their understanding of BPC section 3041.10. Comment 18 by Dr. Tony Carnevali addresses this issue in depth, explaining why these accusations are false.

- The regulations violate Business and Professions Code section 3041.10 because the public is not being adequately protected. The current requirement is minimal compared to the extensive glaucoma training met by ophthalmologists.

Reject: The Board rejects this recommendation because the public is being protected and optometrists and ophthalmologists should not be compared because they are different professions. According to Nicky R. Holdeman, O.D., M.D., (Comment 20), it is true that there are similarities between optometrists and ophthalmologists, but at times, these comparisons become misguided. Both must receive four years of postgraduate training in an accredited school or college and pass a multi-part, uniform, national board examination to become eligible for state licensure. Both optometrists and ophthalmologists are skilled in refracting and correcting vision abnormalities. Both disciplines are capable of diagnosing a wide range of ophthalmic disorders and systemic conditions that might manifest in the eye or be detected by various ancillary tests or imaging modalities. Optometry is a single system specialty that emphasizes *noninvasive* detection and therapeutic management of diseases and conditions of the eye and ocular adnexa. Ophthalmology is a *surgical* sub-specialty that focuses on correction or treatment of ophthalmic disorders that cannot be effectively managed by less invasive means.

The curricular comparisons of four years' postgraduate work at three California colleges of medicine, dentistry, and optometry, which are on public record **(See pages 27-29 of Optometry GDTAC report)** illustrate a point. Optometrists, like dentists, focus on a single bodily system, so their specialized training begins the first year. In contrast, medical students spend their first four years in classroom and clinical training studying the entire human body. They have rotations in selected disciplines, in what will become medical and surgical specialties after graduation via internships and residencies. Like other physicians, ophthalmologists receive their specialty training in residencies and fellowships that focus heavily on disease and surgery, which is entirely appropriate. The fact that optometrists do not receive the same training in regards to a skill set they are not legally authorized to perform, does not seem to be a substantial concern; again, much akin to dentistry.

Optometrists diagnose and treat eye disorders always within their scope of practice and refer to other medical and surgical sub-specialists, such as ophthalmology when more invasive treatment such as surgery or injection, is indicated or when a second opinion is appropriate.

Optometrists identify and assess ocular surgical candidates, and co-manage theses patients postoperatively with the assistance and oversight of the surgeon.

The claim that the proposed regulation is violating BPC section 3041.10 because the public is not being adequately protected is incorrect. By definition, optometrists do not engage in the same level of risk as eye surgeons, but they are legally held to the same standard of care as their medical counterparts. As of 2004, California optometrists are held to the same standard as physicians and surgeons pursuant to BPC section 3041.1 that states:

"With respect to the practices set forth in subdivision (b), (d), and (e) of BPC section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held."

Thus, if an optometrist commits unprofessional conduct by not following the standard of care established above, the Board may take action pursuant to section 3110 (a)(w), Unprofessional conduct. Also, the Board's main mandate is to protect the public. The Board is well aware of that mandate and finds that the proposed regulations are sufficient and provide the appropriate foundation for optometrists to treat and diagnose glaucoma.

- The Board should do an objective appraisal of the current clinical education in glaucoma provided by optometric training.

Reject: The Board finds this comment to be irrelevant for the purposes of this rulemaking file. The Board was mandated to follow the process in BPC section 3041.10, which required it to accept and implement the recommendations from OPES, not evaluate them. Performing an objective appraisal of the current clinical education in glaucoma provided by optometric training was completed by the GDTAC and OPES. Their results are reflected in the reports provided within this rulemaking file.

Furthermore, all the schools and colleges of optometry are accredited by the Accreditation Council on Optometric Education (ACOE). ACOE serves the public by establishing, maintaining, and applying standards to ensure the academic quality and continuous improvement of optometric education that reflect the evolving practice of optometry. ACOE is the only accrediting body for professional optometric degree (O.D.) programs, optometric residency programs, and optometric technician programs in the United States and Canada. Both the U.S. Department of Education and the Council on Higher Education Accreditation recognize the ACOE as a reliable authority concerning the quality of education of the programs the Council accredits. ACOE accreditation means the programs that have attained accredited status:

- Meet the Council's standards of educational effectiveness; and
- Show a demonstrated commitment to quality assessment and improvement.
  (See ACOE Accreditation Process attachment)

- The regulation is not consistent with the legislative intent of SB 1406 and is not sufficient to ensure the type of eye care that patients deserve.

Reject: The proposed regulations are sufficient because the Board is doing everything it is entrusted to do to ensure that patients get the type of eye care they need and deserve. According to the Bill Analysis of SB 1406 by the Assembly Committee on Business and Professions **(See Attached Bill Analysis)**, the legislature's intent was to increase access to quality eye care for underserved and rural populations. Optometrists are usually the first and

only health providers that most people will see when it comes to their vision. Given that there are 7,000 actively licensed optometrists in California and there are less than 3,000 ophthalmologists, it is only logical to make use of their numbers and geographic distribution to reach the people that need primary care services the most. Thus, the regulation is consistent with the legislative intent.

Also, according to the recommendation of the OPES report, SB 1406 rejected the previous process required for glaucoma certification under SB 929 (Chapter 676, Statutes of 2000, Polanco) because it was too complex and cumbersome for both optometrists and ophthalmologists. There were too many barriers that prevented a timely completion of certification, such as:

- A lack of ophthalmologists willing to co-manage with optometrists;
- Insufficient number of ophthalmologists in a patient's geographic area;
- Patients being required to pay for multiple visits because their insurance only covers one visit;
- Change in doctor access caused by change in insurance coverage;
- Ophthalmologists refusing to sign forms after co-managing patients;
- Patients moving or changing doctors prior to the conclusion of the 2 year requirement;
- Patient health, mobility and compliance issues.

Thus, only 177 optometrists completed the glaucoma certification requirements from 2001 to the end of 2008 under SB 929. The intent of SB 1406 was to develop a process that would lead to a more appropriate and timely route for certification by resolving some of these problems, while at the same time ensuring the competency of the doctor and not compromising public safety.

Written Comment 34 - The Medical Board states that the regulations are missing: a) the statement that "the requirement for uniform curriculum and procedures established cooperatively by California schools and universities of optometry," and b) "the uniform curriculum and procedures be granted approval by the Board of Optometry." These elements were included in the recommendations made by the Office of Professional Examinations Services and the Board should add them or else they would not comply with the "consistency" standard of the Administrative Procedures Act. The two recommendations should be added in sections 1571 (a)(4)(A) and (B), which reference the curriculum and procedures, and case management and grand rounds program. The Medical Board also recommends adding additional continuing education requirements.

Accept: The Board accepts all the suggested changes to sections 1571 (a)(4)(A) and (B) of the regulation in order to conform to the "consistency standard and have added additional continuing education requirements to the language. All changes have been incorporated in the 15-day notice of modified text.

Written Comment 36 and Verbal Comment 38 - The California Academy of Eye Physicians and Surgeons (CAEPS) agrees with comments 29-35 and have provided proposed language of their own. They request that the Board withdraw the regulations and redevelop them in a manner consistent with patient safety and the legislative intent of SB 1406 or consider the proposed amendments in their language. CAEPS' rejects the proposed regulation for the following reasons:

- **Title:** CAEPS recommends adding "and Treatment" to the title Requirements for Glaucoma Certification.

Reject: The purpose of the regulations is to set forth the requirements for California licensed optometrist to become certified to diagnose and treat glaucoma. Adding "and Treatment" is not necessary as the treatment for glaucoma, including referral requirements, is defined in Business and Professions Code Section 3041, Acts Constituting Practice of Optometry. Also, BPC section 3041.10 states, "[t]he Board shall adopt the findings of the office and shall implement certification requirements pursuant to this section..." Thus, the Board is in compliance with BPC section 3041.10 when it titles this proposes regulation as "Requirements for Glaucoma Certification."

- **Subsection 1571(4):** CAEPS recommends removing the language stating that a minimum of 25 patients be prospectively treated in a consecutive 12-month period.

Reject: The recommendations by OPES state that 25 patients must be treated for 1 year prospectively and the Board is to adopt these recommendations. By removing this key sentence, 1571(4)(A) and 1571(4)(B) would have no time requirement for when the treatment should be completed.

- **Subsection 1571(4)(A):** CAEPS recommends that the 16-hour Case Management Course be approved by the Board and developed in collaboration with a board certified academic ophthalmologist with fellowship training in glaucoma. The Board may require collaboration of institutions to ensure a uniform experience.

Reject: This recommendation is redundant because the schools and colleges of optometry in California are already using these kinds of resources in order to develop their courses and curriculums, which must all be Board approved. The assumption that the same resources and procedures would not be used in order to develop the 16-hour Case Management Course is erroneous. The schools and colleges of optometry have a long history of developing quality education and training curriculum for their respective programs that prepares optometry students as primary healthcare professionals to practice full-scope optometry. The schools have adjunct ophthalmologists on staff and faculty regularly consults with ophthalmologists/eye specialists to collaborate on the treatment and care of patients. To further elaborate, the school and colleges of optometry are well qualified to develop this course for the following reasons:

➢ The Southern California College of Optometry (SCCO), Fullerton, CA

- Established in 1904.
- The Carling Huntington Childs Family Eye Care Center is the main clinical teaching facility of the College serving more than 25,000 patients annually.
- SCCO owns and operates a major teaching and community eye and vision care facility in Los Angeles – the Optometric Center of Los Angeles.
- SCCO offers 16 different postdoctoral residency programs, with 30 residency positions.
- All programs are fully accredited and structured in accordance with the guidelines of the ACOE Curriculum
- World-renown didactic and clinical optometric program.

- Curriculum prepares students as a primary healthcare professional to practice full-scope optometry.
- Strong basic science component that stresses clinical medicine and therapeutic pharmacology, as well as clinical patient care and practice administration and management.
- Faculty of leading optometric practitioners, educators and researchers.
- SCCO's curriculum prepares students and graduates to take any and all licensing exams in the United States and Canada.
- SCCO students consistently earn high pass rates on all national licensing exams.

➢ The University of California, Berkeley (UCB) School of Optometry, Berkeley, CA

- Established in 1923.
- The U. C. Berkeley School of Optometry is the #1 ranked optometric teaching institution in the United States.
- All programs are fully accredited and structured in accordance with the guidelines of the ACOE Curriculum
- Berkeley Optometry makes a major contribution to the field of health care by training skilled practitioners through a curriculum that is continuously updated to reflect the latest in research and clinical training.
- Berkeley Optometry is dedicated to keeping pace with the expanding field of optometry and the profession's move toward a more extensive health science model of primary care.
- Students have progressively more clinical training and responsibility as they advance through the four-year degree program. Third-year students spend about half their time in clinic, while fourth-year students spend virtually all their time in clinic.
- There are more than 80,000 patient visits each year for which the faculty and students at the Berkeley School of Optometry provide a full range of services from primary eye care to the diagnosis and management of vision problems caused by diseases such as glaucoma, cataracts, and diabetes. All students also participate in external clinical rotations. At the end of the four-year OD Program, each student will have, on average, examined 2,400 patients.
- Berkeley School of Optometry offers three clinics that provide a variety of patient services. The Tang Center is conveniently located in the University Health Services building. Tang offers the full range of primary eye-care services including contact lens fittings and specializes in sports vision. Minor Hall is the University's main clinic and is located adjacent to the School of Optometry. Minor Hall offers several specialty clinics in addition to comprehensive eye exams. The Refractive Surgery Center provides the best refractive laser correction one can obtain.
- Berkeley School of Optometry is now widely recognized as the international leader in eye and vision research. Its enduring reputation for excellence and innovation in the visual sciences is reflected not only in the school's distinguished history of important advances, but also in the range of pioneering research projects pursued by its current faculty.
- Benefiting from such research efforts, the School's graduates often go on to become world leaders in training, research, and professional eye care, and each year the School's clinics provide state-of-the-art care to about 65,000 members of the campus and local

communities.

➢ The Western University of Health Sciences, College of Optometry, Pomona, CA

- Established in 2008.
- Western University of Health Sciences has a distinguished history, and has set out to be known as a distinctive institution, as expressed by its Institutional Mission Statement.

- The over-arching themes of the curriculum include:
  1. Early entry into patient care
  2. Integration of basic and clinical sciences
  3. Interprofessional education in collaboration with other health disciplines
  4. Preparation for entry-level optometry care along with a special emphasis on neuro-science and neuro-optometry

- Students enrolled in the College of Optometry take courses presented by the medical school faculty, side by side with students from the medical school, and the colleges of dental and podiatric medicine thereby ensuring an in-depth understanding of basic science foundational material

- Students in the first year of the program are already participating in clerkship rotations, including time spent in ophthalmology practices and in primary care optometric settings where they are observing the treatment of glaucoma. These types of clerkship rotations do not occur until the third year of the medical school curriculum

- The planned curriculum includes dedicated didactic, laboratory and clinical time to provide education and experience in the diagnosis and management of the scope of glaucoma conditions

- The University has recently built a state-of-the-art 80,000 square foot interprofessional patient care center where students in the College of Optometry will deliver eye care services in a collaborative way with other health care professionals.

Furthermore, both SCCO and UCB School of Optometry are fully accredited institutions through ACOE. Western University of Health Sciences, College of Optometry was granted the pre-accreditation classification of "Preliminary Approval" by the ACOE on February 15, 2008 and will be granted full accreditation when the program is fully operational (i.e. nearing the end of its fourth year of implementation.)

SCCO and Western University of Health Sciences hold an additional accreditation by the Accrediting Commission for Senior Colleges and Universities of the Western Association of Schools and Colleges (WASC). When a University that is already accredited by WASC makes what is called a "substantive" change to its program, it is required to obtain prior approval. The "substantive change" process is designed to ensure the consistency of quality across all institutional operations.

- All optometrists are required to participate in ongoing continuing education courses to stay current on the latest standards of care.

- Optometrists must pass a rigorous national examination administered by the National Board of Examiners in Optometry (NBEO). The three-part exam includes basic science, clinical science and patient care.

- Curricula and continuing education are updated on an ongoing basis to reflect technological advances, including surgery techniques, prescriptive medications and other medical treatments related to eye diseases and disorders.

- In addition to being the experts on eye and vision diseases and disorders, doctors of optometry have the education and training to diagnose the ocular manifestations of diseases that affect the entire body, such as diabetes and hypertension. They also are qualified to evaluate their patients for surgery when appropriate and often manage their patients' care pre- and post-operatively.

- **Subsection 1571(4)(A):** CAEPS recommends that the case management course increase the cases from 15 to 50 cases of moderate to advanced complexity.

Reject: The Case Management Course proposed in the regulation includes presentation of selected clinical cases with emphasis on the exchange of information and the application of reasoning skills, specifically for unusual and challenging cases. The cases would be sufficient in number, quality, complexity, and length to provide the participant with a credible and worthwhile experience. Requiring more cases in this course would compromise the quality of the content being taught and force educators to spend less time on each case. The case management course as proposed in the regulation states the course would include at least 15 cases of moderate to advanced complexity. This gives the schools and colleges flexibility in the number and types of cases that could be presented in each course and allows for *quality* instead of quantity. The course would be developed to consist of 15 hours in case presentations of the conditions and types of glaucoma an optometrist can treat as well as the recognition of conditions that licensees cannot treat and must refer. Fifteen cases over a 15 hour course allows for approximately one hour (60 minutes) per case for discussion and review; whereas 50 cases over a 15 hour period would equate to approximately 15 minutes allotted to each case. One hour of the course is for an examination following the cases in the course.

Furthermore, one of the recommendations in the report by OPES was to have the schools and colleges of optometry develop and recommend to the Board for approval the specific format and content of the case management course. Thus, the representatives from all the California schools and colleges of optometry met on July 31, 2009 in order collaborate on determining what components would need to be included in the case management program. The recommendations adopted by the Board from OPES were of course used as the foundation of the case management program and all program suggestions were discussed and agreed upon by the representatives. The schools and colleges were brought together in order to ensure that a uniform program was being envisioned by all the educators which also met what was recommended by OPES **(See "Guidelines for Glaucoma Certification," the final product of the July 31, 2009 meeting).**

- **Subsection 1571(4)(C):** CAEPS recommends that the name of the Preceptorship Program be changed to Co-management Program.

Reject: A preceptorship can be defined as a period of practical experience and training for a student, especially of medicine or nursing, that is supervised by an expert or specialist in a particular field.

Co-management can be defined as the shared delegated care of a patient's medical condition among providers with either similar or disparate clinical expertise and/or professional credentials. Although practiced widely within many specialties of medicine, co-management is most commonly practiced after surgery.

With these definitions in mind, the Board rejects this comment because optometrists and ophthalmologists co-manage patients during their entire practice, whether it be for glaucoma or other conditions. A preceptorship is a training period, which is what this regulation is establishing for glaucoma certification and is not permanent. The word preceptorship better encompasses this requirement.

- **Subsection 1571(4)(C):** CAEPS recommends editorial changes to the language for clarity purposes regarding the treatment of glaucoma patients for one year each as well as adding language requiring that the course add a monitoring program.

Accept in part: The Board accepts the editorial changes for clarity purposes. The Board does not accept adding language requiring that the course add a monitoring program. The monitoring program CAEPS is suggesting would need to be established by an accredited school or college of optometry utilizing qualifying preceptors. This recommendation was not part of the final report by OPES and the Board is mandated by BPC section 3041.10 to adopt their findings as submitted to the Board.

Also, requiring the schools and colleges of optometry to set up a monitoring program would be an expense to them, thus adding to the fee licensees would need to pay in order to obtain this type of monitoring. The preceptorship program option allows licensees who are not able to go to one of the schools and colleges of optometry the opportunity to become glaucoma certified on their own with a preceptor like in the SB 929 requirements.

In addition, this suggestion for the language is permissive because the word "may" is used. The Board finds this suggestion unnecessary and chooses to exclude it.

- **Subsection 1571(4)(C):** CAEPS also recommends adding in the language that the patient be informed of the training arrangement in the preceptorship program.

Reject: The care being provided, and the ultimate clinical decision-making, is still the responsibility of the supervising preceptor. The inclusion of a training experience does not alter this relationship and informed consent is not required, as there is no change in the standard of care or quality of care being delivered.

- **Subsection 1571(4)(C):** CAEPS also recommends adding a requirement to have licensees submit a Statement of Intent to the Board in order to participate in the program which would then authorize the licensee to prescribe anti-glaucoma medication (without a fee). The Board would then have to develop a suffix to the license number of the participant that will identify him/her as having such authority. This authority is automatically revoked if the

participant ceases participation in the process or for any other reason at the discretion of the Board.

Reject: The Board rejects this recommendation because according to BPC section 3041, before a TPA-certified optometrist can diagnose or treat glaucoma with TPAs (which includes prescribing anti-glaucoma medication), the TPA-certified optometrist must first receive certification to treat glaucoma. Thus, in order for the Board to implement this recommendation, the legislature would first have to amend BPC section 3041 to provide those TPA certified optometrists in glaucoma training programs with the ability to prescribe anti-glaucoma medication (without a fee).

Additionally, current Board staff and Board funding could not absorb the time, workload, and expense of establishing and maintaining a new license status. Establishing such a license status category would require a large amount of time from Board staff and other staff from other departments at DCA (i.e. printing out a temporary license, evaluation of Statements of Intent, tracking licensees going through the certification process, verification of licensure from outside health entities and consumers etc.) Also, preliminary discussions with DCA revealed that the Department's current licensing databases are unable to accommodate the addition of a suffix to a participant's license number in the immediate future. The Department's main focus at this time is to research and transfer to a new licensing database due to a Governor backed initiative to improve all of the DCA's Board's and Bureau's enforcement processes. In addition to legislation, the Board would also need to request a Budget Change Proposal to request additional funds for staff, equipment, and space for the additional staff to manage the temporary license program.

- **Subsection 1571(4)(B):** CAEPS recommends modifying the Grand Rounds Program. Their Grand Rounds course would allow up to 20 optometrists to form a group and each individual in the group would follow a minimum of five patients in his or her own practice. The patients would be "pooled" for educational purposes. The groups would meet initially and two other evenly spaced times, spanning the 12 months period, and at each meeting a participant would present two of their patients, followed by discussions led by faculty. One of the faculty members would be an academic glaucoma specialist ophthalmologist. Patients would be followed using the procedures CAEPS' recommended in their co-management program described above.

Reject: The Board rejects this proposal because CAEPS' recommended Grand Rounds program is very similar to their recommended Preceptorship program. In the current proposed regulation, the purpose of having three different options is to maximize the learning experience, not provide repetitive courses. Each proposed training choice has ample education and "hands-on" training to ensure optometrists are more than prepared to treat glaucoma.

To add perspective, grand rounds can be defined as a ritual of medical education, consisting of presenting the medical problems and treatment of a particular patient to an audience consisting of doctors, residents, and medical students. There is a prevalent acceptance of this program, which is an important and effective teaching tool in the health professions, including optometry. Grand rounds have evolved considerably over the years, and have many advantages including the opportunity for in-depth presentation of clinical data that has been gathered over a series of visits, a collaborative approach to clinical decision-making, and inclusion of advanced imaging techniques. Grand rounds formats encourage more interactive learning of interesting, challenging and complex clinical cases, as well as greater participation by attendees in a structured educational format. Also, grand rounds programs provide an opportunity to showcase some of the nation's most distinguished clinicians and educators.

The Grand Rounds Program in the proposed regulation is based on the traditional model by using live patients for a "hands-on" approach to the clinical experience. This is immensely valuable from a clinical perspective and provides students with an excellent educational experience. The regulation specifies that the types of patients selected for presentation should include those with various types of glaucoma, at various stages of progression and complexity. Participants must actually examine the patient, do the necessary evaluation and testing, commit to a diagnosis, and finally make all decisions necessary for successful management of the patient. This approach will allow participants the opportunity to match their own diagnostic and clinical management skills with those of the experts, faculty and others in attendance. The program will be designed to assess the patient, plot the clinical course of the disease, and reveal the most contemporary thinking and principles that underlie the treatment and management decisions in glaucoma.

CAEPS continues to stress a co-management component in all their recommendations, but there are no advantages to co-management when compared to the proposed glaucoma certification regulations. As stated in the report by OPES:

> Cross sectional observations and studies are common in the fields of research as compared to longitudinal studies simply because it is often impossible to follow the same subject or patient over a longer period of time to monitor changes. Cross-sectional observations allow for a snapshot view at any particular point in time for any single patient thus permitting a composite assessment and comparisons over an entire population of patients. New patients if caught early generally will show very little damage to the optic nerve and visual field loss might be minimal; but established glaucoma patient may be seen at various levels of glaucoma progression. Therefore a shorter period of consultation will accomplish the same goal.

The grand rounds program in the proposed regulation is sufficient training and does not need the additional "co-management" component suggested by CAEPS, which would further complicate the process and delay optometrists from treating glaucoma in a timely manner. As stated by Senator Correa in his March 31, 2009 letter to Sonja Merold, Chief of OPES:

> We wanted to guarantee that SB 1406 would make it possible for more optometrists to be treating vulnerable populations in the state of California. At a time when health care is expensive to the point of being prohibitive, this bill will allow people at risk for visions loss to receive much needed attention.

- **Subsection 1571(b):** CAEPS recommends adding language to impose a 10 patient credit requirement on licensees that graduated after May 1, 2008 to be completed under either their suggested co-management or grand rounds programs. This would allow for retrospective review of existing patients to satisfy the requirement and exempt graduates (functionally graduating May 1, 2011 or after to allow for the development of a documentation system) who can document 75 one-patient, one-supervisor, one-trainee encounters with patients on (or begun on) active medication treatment for authorized glaucoma (thus establishing a "meet it or not" standard based on actual individualized education experience).

Reject: The intent of the legislature in passing the SB 1406, supported by letters from Senators Correa and Aanestad **(See OPES report pages 74-76)** is very clear - graduates after May 1,

2008 are "presumed" to have met all prerequisites for glaucoma certification and therefore need no additional training. The Board has the authority to monitor and impose additional requirements as it deems appropriate.

After reviewing the didactic and clinical programs at various schools and colleges in California, it is evident the current curriculum provides a comprehensive foundation of knowledge and skills for the entry-level practice of optometry and glaucoma diagnosis, treatment, and management. Based upon reports from the schools and colleges of optometry, students graduate with adequate proficiencies and clinical experiences in patient care, patient numbers, and patient encounters. Moreover, internal mechanisms consisting of course grades, chart reviews, and clinical evaluations by faculty for ensuring proficiency and competency by students are well established and effective.

The curriculum review process at each institution is more than adequate to ensure the continuing evolution of the curriculum to make certain that it is always current and addresses the changing nature of the profession (i.e. entry level definition, standards of care, etc). Furthermore, students must also pass all parts of the National Board of Examiner's in Optometry Examination, which is described in detail in the response to Comments 29-35 above.

The laws in most states, even those that had co-management requirements, are taking into consideration the comprehensive nature of the training that new optometry graduates receive and therefore have been willing to abolish co-management requirements. Seven of the nine states (California included) that require co-management have eliminated that requirement for optometrists graduating after a particular date. In 2009, Maine repealed its co-management requirement for those graduating after 1996, and waivers were given to those that graduated prior to 1996 based on education, training, practical experience, or due to their licensure in another jurisdiction. Nevada and California are the only two states left that require a co-management component for glaucoma certification.

- **Subsection 1571(e):** CAEPS recommends adding language allowing optometrists who began the glaucoma certification process under the SB 929 legislation to continue to follow that process until the 12 month case management requirement is met.

Reject: Making this change to the regulation would require a legislative amendment to BPC section 3041, which states:

"For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirement on or before December 31, 2009. Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009."

The process mandated by SB 929 requiring licensees to co-manage 50 patients in two years expired on January 1, 2010. The Board does not have the authority to amend a statute, only the California legislature has this authority.

- **Subsection 1571(f):** This completely new section recommended by CAEPS requires that an optometrist always consult with an ophthalmologist if the glaucoma patient they are treating has one or more of certain listed conditions. (See Exhibit A of Comment 36)

Reject: This recommendation is outside of the scope of this regulation as stated in the Initial Statement of Reasons. The treatments for glaucoma, including referral requirements are defined in Business and Professions Code Section 3041, Acts Constituting Practice of Optometry. It would be over-regulation of the practice of optometry to add a list of conditions, which will most likely change as the medical field learns more about glaucoma and how to treat it. After glaucoma certification is in place the Board may consider additional regulations regarding possible referral requirements while treating glaucoma.

Verbal Comment 40 - Robert Tyler, a local attorney representing himself, addressed the action taken against optometrists working at the Veterans Affairs Palo Alto Health Care System (VAPAHCS) who allegedly treated a 62-year old male veteran who suffered significant visual loss in one eye as a result of poorly controlled glaucoma. Mr. Tyler clarified that the use of this incident to justify that the glaucoma regulations be re-written is not valid due to various problems with complaint, the lack of documentation, and more importantly, a lack of provable breaches in patient safety.

Accept: Although this comment is outside the scope of the proposed language, the Board acknowledges that it sheds some light on the VAPAHCS issue.

Objections or Recommendations Received During the 15-day Comment Period/Responses:

The California Medical Association (CMA) opposed the changes to the modified text for the following reasons:

- The modifications to the regulation are minimal and fail to take critical patient safety concerns into account.
  1) The three-option certification process in Section 1571(a)(4) is complicated and allows optometrists to become certified to independently treat glaucoma without having ever treated a single patient.
  2) Patient safety is being sacrificed in order to increase patient access.
- While CMA appreciates the addition of glaucoma-specific continuing education requirements, the regulation fails to consider and incorporate additional training requirements for future optometry graduates.

Reject: These comments are rejected because the Board has already addressed these concerns, which were presented during the 45-day comment period. Although these concerns are now targeted at the 15-day modified text, they are not new.

The Board considered CMA's comments regarding the addition of continuing education (CE) for glaucoma certified optometrists and amended the proposed language to require that 10 of the 35 hours of CE in ocular disease be specific to glaucoma. The Board believes the schools and colleges of optometry provide sufficient education and training to ensure that all graduates successfully pass the national exam required of all optometry students in the U.S.A., and that all graduates have the minimum qualifications to treat patients.

Please refer to pages 5-8 of this document for a more detailed response regarding these concerns.

The California Academy of Eye Physicians (CAEPS) opposed the modification to the modified text for the following reasons:

- The Board's proposed changes fail to address concerns over patient treatment and care and have in no way addressed the patient safety concerns outlined in our prior comments [during the 45-day comment period)] and are therefore totally inadequate.

Reject: All their concerns were addressed in the Board's responses to the comments they submitted during the 45-day comment period. Please see pages 11-12 of this document.

- The proposed amended regulations fail to meet the legal requirements necessary to forward them to the Office of Administrative Law (OAL) for final review.

Reject: This comment is rejected. This comment is vague and does no specifically address or discuss what "legal requirements" the commentors are referring to. It is the jurisdiction and responsibility of OAL to determine whether or not the regulations meet its requirements.

- Even on its face, the proposed language fails the "clarity" standard since the minimally amended Section (a) (4) continues to state the same thing. The language is patently deceptive because the proposed regulations then goes on to describe three options, two of which can satisfy the entire requirement but involve no patients undergoing prospective treatment for any defined period.

Reject: This comment is rejected because the Board already addressed this concern in the Board's responses to the comments they submitted during the 45-day comment period. Please see pages 5-8 and 16 of this document.

CAEPS also introduced additional information to support their opposition of the regulations and refuted the Board's responses to the comments they submitted during the 45-day comment period as follows:

- The Board refused to halt the regulatory process upon the urging of Brian Stiger, Director of the Department of Consumer Affairs, to allow for the appointment of a new consultant who was not an advocate of the California Optometric Association (COA), glaucoma and the scope of practice of optometry.

Reject: This comment is rejected because the Board has already addressed this issue in the Board's responses to the comments they submitted in the 45-day comment period. Please see page 10 of this document.

- The Board was inappropriately involved in the development of the optometry-friendly job description for the selection of the Special Consultant. The compromise language in SB 1406 expressly limited the role of the Board in establishing the new clinical training requirements for glaucoma certification.

Reject: This comment is rejected. The commentor cites no provision of law for any possible inappropriate actions taken by the Board. The Board followed its legislative mandate. Furthermore, the Board already addressed this concern in the Board's responses to the comments they submitted during the 45-day comment period. To clarify further, in light of the additional information provided by CAEPS, the Board's involvement in the development of the consultant's statement of work did not occur in the manner grossly exaggerated by CAEPS. It is

true that OPES requested that the Board provide a draft Statement of Work to assist them. OPES themselves state that they do not posses the core competencies of curriculum review and in addition, are not experts in the field of optometry. The Board's involvement served only to educate and provide context to OPES about the practice of optometry and the treatment of glaucoma. In the draft Statement of Work provided by the Board, only the minimum requirements of what would be considered an appropriate consultant were included. The Board only provided a starting point for OPES and then the rest was up to them as they were mandated by SB 1406.

The Board did not assist in the final development of the Special Consultant Position Duty Statement. The Board did not assist in the selection of the candidates that responded to the Job Description on the State Personnel Board's Vacant Position Database. The Board was not advised of the names/qualifications of the individuals who applied to serve as the consultant to OPES, nor were board representatives present during the interview process, nor were they consulted in the final selection of the consultant.

- The Board ignored its statutory obligation to respond to our "glaucoma treatment loophole" comments and other procedural requirement comments in violation of Government Code Section 11346.9.

Reject: This comment is rejected because it is an untrue and unsubstantiated statement. The loophole they are referring to is that an optometrist could become certified to treat glaucoma without actually treating a single patient and that was addressed on page 5-8 of this document. The comments CAEPS submitted during the 45-day comment period regarding the procedural requirements provided by SB 1406 are not comments that should be directed to the Board. As CAEPS themselves states on pages 2-3 of their comment:

> The key element of the compromise language in SB 1406 expressly limited the role of the Board establishing the new clinical training requirements. The advisory committee, not the Board of Optometry was to establish the new glaucoma standards, and this resulted from an explicit amendment that took the power to establish those standards away from the Board making the legislative intent clear.

Also, the legislation mandate of SB 1406 states that the Board is to "adopt the findings" and implement the "certification requirements provided by the Office of Professional Examination Services (OPES). Thus, although CAEPS asserts that the Board has frequently (and often "conveniently) relied on the fact that the language of SB 1406 has tied their hands, essentially forcing the Board to move ahead despite the clear patient safety concerns expressed by CAEPS and others, it is the truth.

The Board strongly believes that optometrists have the training needed in order to become glaucoma certified following the requirements set by the proposed regulation. Please see pages 10-12 of this document to review the thorough responses provided by the Board regarding this matter.

- There was no investigation made regarding the incident at the Palo Alto Veteran's Affairs Hospital and was considered irrelevant to the rulemaking process.

Reject: This comment is rejected because the Board again feels this matter is irrelevant to the proposed regulations and it is an incorrect statement. The Board does not take claims such as these lightly and has already taken all the legal actions that are available without a complaint being filed by a consumer/patient. Business and Professions Code section 3010.1 states that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. However, when the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. The Board strictly upholds this mandate.

In addition, the Board does not comment on complaints or open investigations. Accusations, Statement of Issues or other legal disciplinary actions are made public once the action has been filed. Only closed cases that result in discipline against a licensee are reported to the public. There is no question that the Board would aggressively pursue this issue if a complaint were received in the future. The Palo Alto incident occurred on federal property and is beyond the Board's jurisdiction. Please see page 9 of this document for the Board's previous response.

- The proposed changes we made to the regulations imposing the requested "consultation requirement" were within the purview of the Board to make even before SB 1406 was enacted. B&P Section 3025 clearly authorizes the Board to promulgate appropriate regulations.

Reject: This comment is rejected because it is false. The Board would not have been able to set any regulations regarding procedures for glaucoma certification until the scope of practice was expanded. SB 929 set the original guidelines and did not require regulations to clarify or effectuate the statute. SB 1406 expanded the scope of practice and established the process for the development of glaucoma certification requirements. The Board felt that it should follow these guidelines until their completion before overriding SB 1406 with other statutory authorities. Furthermore, the Board is aware of its mandate to protect the public. The Board strongly believes the proposed regulations are sufficient and that optometrists possess the necessary education and training to treat glaucoma safely.

BOARD OF OPTOMETRY
MODIFIED TEXT

Changes to the originally proposed language are shown by double underline for new text and underline with strikeout for deleted text.

Adopt section 1571 of Division 15 of Title 16 of the California Code of Regulations to read as follows:

§ 1571. Requirements for Glaucoma Certification.

(a) Only optometrists meeting the requirements of this Article may apply for certification for the treatment of glaucoma as described in subdivision (j) of Section 3041, in patients over 18 years of age. The optometrist shall:

(1) Hold an active license as an optometrist in California in good standing with the State Board of Optometry (Board);

(2) Be certified to use Therapeutic Pharmaceutical Agents (TPA) pursuant to Section 3041.3;

(3) Complete a didactic course of no less than 24 hours in the diagnosis, pharmacological and other treatment and management of glaucoma. The following topics may be covered in the course:

(A) Anatomy and physiology of glaucoma
(B) Classification of glaucoma
(C) Pharmacology in glaucoma therapy
(D) Diagnosis of glaucoma including risk factors analysis
(E) Medical and surgical treatment
(F) Participant performance assessment; and

(4) Complete a Case Management Requirement where a minimum of 25 patients are prospectively treated for a minimum of 12 consecutive months ~~12-month period~~. The following options may be chosen in any combination to fulfill this requirement:

(A) **Case Management Course:** Completion of a 16-hour case management course developed cooperatively by ~~an~~ the accredited California schools ~~or~~ and colleges of optometry and approved by the Board, with at least 15 cases of moderate to advanced complexity. The course may be conducted live, over the Internet, or by use of telemedicine. One hour of the program will be used for a final competency examination. The program will count as a 15-patient credit towards the Case Management Requirement. The full course must be completed to receive the 15-patient credit. The course must include the following topics/conditions:

(1) Presentation of conditions/cases that licensees may treat:

(a) All primary open-angle glaucoma;
(b) Exfoliation and pigmentary glaucoma.
(2) Presentation of conditions/cases that licensees may not treat, but must recognize and refer to the appropriate physician and/or surgeon such as:
(a) Pseudoglaucoma with vascular, malignant, or compressive etiologies;
(b) Secondary glaucoma;
(c) Traumatic glaucoma;
(d) Infective or inflammatory glaucoma;
(e) Appropriate evaluation and analysis for medical or surgical consultation;
(f) In an emergency, if possible, stabilization of acute attack of angle closure and immediate referral of the patient.

(B) **Grand Rounds Program:** Completion of a 16-hour grand rounds program developed cooperatively by ~~an~~ the accredited California schools ~~or~~ and colleges of optometry and approved by the Board, wherein participants will evaluate and create a management plan for live patients. The program will count as a 15-patient credit towards the Case Management Requirement. The full program must be completed to receive the 15-patient credit. Patients must be evaluated in person. The program must include the following:

(1) Presentation of various patient types such as: glaucoma suspects~~,~~.; narrow angle, primary open angle glaucoma (early, moderate, late); and secondary open angle glaucoma such as pigment dispersion and pseudoexfoliation. Patient data, including but not limited to, visual acuities, intra-ocular pressures, visual fields, imaging, and pachymetry, will be available on-site and presented upon request~~.~~;

(2) Examination of patients, evaluation of data and test results, and commitment to a tentative diagnosis, treatment, and management plan~~.~~;

(3) Participation in group discussion of the cases with instructor feedback~~.~~;

(4) Attendance of follow-up meetings (within the 16-hour program requirement) where the same or different patients will be ~~used~~ reviewed via serial data, including but not limited to ~~from~~ visual fields~~,~~ and imaging photos~~, and etc~~.

(C) **Preceptorship Program:** Completion of a preceptorship program where each patient must be initially evaluated by the optometrist and co-managed with a preceptor. Each patient must be prospectively treated for ~~in~~ a minimum of 12 consecutive months ~~12-month period~~. A preceptor for purposes of this section is defined as:

(1) A California licensed, Board certified ophthalmologist in good standing; or
(2) A California licensed optometrist in good standing, who has been glaucoma certified for two or more years.

Preceptors shall confirm the diagnosis and treatment plan, and then approve the therapeutic goals and management plan for each patient. Consultation with the preceptor must occur at appropriate clinical intervals or when the therapeutic goals are not achieved. Clinical data will be exchanged at appropriate intervals

determined by the preceptor and the licensee. Telemedicine and electronic exchange of information may be used as agreed upon by the preceptor and the licensee. Each patient that is seen by the optometrist in the program will count as a 1-patient credit towards the Case Management Requirement.

(b) Licensees that are glaucoma certified pursuant to this Section shall be required to complete 10 hours of glaucoma specific optometric continuing education every license renewal period. These 10 hours shall be part of the required 35 hours on the diagnosis, treatment and management of ocular disease.

(cb) Licensees who completed their education from an accredited school or college of optometry on or after May 1, 2008, are exempt from the didactic course and case management requirements of this Section, provided they submit proof of graduation from that institution to the Board.

(dc) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2000, and who have not completed a didactic course of no less than 24 hours will be required to take the 24-hour course indicated in subsection (a). Licensees who graduated from an accredited school or college of optometry after May 1, 2000, are exempt from the didactic course requirement of this Section.

(ed) Licensees who graduated from an accredited school or college of optometry prior to May 1, 2008, and who have taken a didactic course of no less than 24 hours, but not completed the case management requirement under SB 929 [Stats. 2000, ch. 676, § 3], will be required to complete the 25-patient case management requirement indicated in subsection (a).

(fe) Licensees who started the process for certification to treat glaucoma under SB 929 [Stats. 2000, ch. 676, § 3] but will not complete the requirements by December 31, 2009, may apply all patients who have been co-managed prospectively for at least one consecutive year towards the 25-patient case management requirement.

NOTE: Authority cited: Section 3025, 3041, 3041.10, 3059 Business and Professions Code. Reference: Section 3041 and 3041.3, Business and Professions Code.

California State Board of Optometry

Memo

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To: Board Members **Date:** May 11, 2010

From: Andrea Leiva, Policy Analyst **Telephone:** (916) 575-7182

Subject: **Agenda Item 3 – Discussion and Possible Action to Adopt California Code of Regulations (CCR) Section 1520, Infection Control Guidelines.**

Action Requested:
Since no comments were received during the January 19, 2010 hearing of CCR 1520, Board staff requests that the Board members adopt the proposed language and move to continue on with the rulemaking file.

Background:
The Board initiated a rulemaking for CCR 1520 at the October 22-23, 2009 Board meeting.

The proposed language expands and renames CCR section 1520, Hand Washing Facilities, and requires all Board licensees to follow minimum infection control guidelines in their practice in order to reduce the risk of transmission of infectious diseases or agents.

The proposed regulation is based off a document issued by The Centers for Disease Control and Prevention (CDC) entitled *Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings 2007*. Within the document are established Standard Precautions, which combines the major features of the Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions except sweat, nonintact skin, and mucous membranes may contain transmissible infectious agents.

With optometrists now able to perform venipuncture, because of the scope of practice expansion authorized by SB1406, the Board feels it is important to clarify what is expected of California optometrists in regards to infection control. By adopting these Standard Precautions, the Board is not only publishing proven procedures that reduce minimize or eliminate the transmission of infectious agents, but is specifically identifying additional grounds for potential disciplinary action for failure to follow industry-accepted standards designed to protect patients and optometry practitioners.

Discussion:

BOARD OF OPTOMETRY: PROPOSED LANGUAGE

Amend section 1520 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§ 1520. ~~Hand Washing Facility.~~ Infection Control Guidelines

(a) Optometrists, assistants in the office of an optometrist, and staff must comply with all the applicable Standard Precautions.

(b) Standard Precautions combine the major features of Universal Precautions and Body Substance Isolation and are based on the principle that all blood, body fluids, secretions, excretions (except sweat), non-intact skin, and mucus membranes may contain transmissible infectious agents. All contact with these substances is treated as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis, and other transmissible infectious agents. Standard Precautions are also intended to protect patients by ensuring that optometric staff will not carry infectious agents to patients on their hands or via equipment used when providing optometric services. Standard Precautions must be used in the care of all patients, regardless of suspected or confirmed infection status, and in all settings wherein optometric services are provided. Standard Precautions include:

(1) Proper Hand Hygiene

(A) Each office shall ~~be provided with~~ have a hand washing facility ~~which shall be~~ that is entirely within the confines of the premises or space occupied by such office and not elsewhere, and which shall be for the exclusive use of the optometrist or optometrists practicing in such office and his/her or their assistants and patients and shall not be used by other persons.

(B) For the purpose of this section, a hand washing facility is a facility affording, at minimum, the following:

(i) A wash basin or sink with hot and cold running water which complies with Title 24, California Administrative Code, Part 5 (commencing with Section P100).
(ii) Liquid or powdered hand washing detergent in a dispensing device.
(iii) Single service sanitary towels in a dispensing device or a sanitary hot-air blower hand drying apparatus.

(C) Hand washing facilities shall be maintained in a condition of cleanliness and good repair.

(D) The optometrist and staff shall maintain at all times a high standard of cleanliness and personal hygiene in order to ensure proper patient care.

(E) Avoid unnecessary touching of face, nose, and surfaces in close proximity to the patient to prevent both contamination of clean hands from environmental surfaces and transmission of pathogens from contaminated hands to surfaces, when providing optometric services.

(F) When hands are visibly soiled, hands shall be washed with soap and water for a 20-second scrub and 10-second rinse or an antimicrobial hand wash. If hands are not visibly soiled, an acceptable alternative of hand decontamination is with an alcohol-based hand rub (except in cases of spores, as described below).

(G) Hands shall be washed or decontaminated as follows:
(i) Before having direct contact with any patient, immediately after a procedure (such as eye examinations or other procedures involving contact with tears), and in between patients.
(ii) After removing gloves, ensure that hands will not carry potential infectious material that might have penetrated through unrecognized tears or that could contaminate the hand during glove removal.
(iii) Artificial fingernails or extenders shall not be worn if duties include direct contact with patients at high risk for infection and associated adverse outcomes.

(H) After each patient session ends, hands must be washed with soap and water or an antimicrobial hand wash if contact with spores (including but not limited to C. *difficile* or *Bacillus anthracis)* is likely to have occurred. The physical action of washing and rinsing hands in such circumstances is required because alcohols, chlorhexidine, iodophors, and other antiseptic agents have poor activity against spores.

(I) If the optometrist or staff have exudative lesions or weeping dermatitis of the hand, direct patient care and the handling of patient care equipment must stop until the condition resolves.

(2) Use of Personal Protective Equipment

(A) Gloves: All health care workers must routinely use appropriate barrier precautions to prevent skin and mucous membrane exposure when anticipating direct contact with blood or body fluids, mucous membranes, nonintact skin, and other potentially infectious material or surfaces soiled with such fluids.

(B) Discard gloves after contact with each patient to prevent transmission of infectious material.

(C) If necessary change gloves if patient interaction involves touching portable computer keyboards or other mobile equipment that is transported from room to room.

(D) Gloves must not be reused.

(E) Gowns, masks and protective eye wear must be worn in situations where blood, respiratory secretions, or contaminated fluids may be sprayed or splashed into the eyes of the optometrist or their staff.

(F) Gowns, masks and protective eye wear must be worn if the patient is known or suspected to have a pathogen which can be transmitted by airborne means, or if the optometrist or staff is infected with a pulmonary or other disease that is transmitted by airborne means to protect the patient.

(G) Face shields and protective eyewear must be washed and disinfected between each patient or when visibly soiled.

(3) Handling of Sharp Instruments

(A) Precautions must be taken in order to prevent injuries caused by needles, scalpels, and other sharp instruments or devices when:

(i) Performing procedures, including but not limited to venipuncture;
(ii) Cleaning used instruments;
(iii) Disposing of used needles; and
(iv) Handling sharp instruments after procedures.

(B) To prevent needle stick injuries, optometrists, assistants in the office of an optometrist, and staff should be instructed in the proper handling of needles, including but not limited to when needles should not be recapped, or purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand.

(C) Optometrists, assistants in the office of an optometrist, and staff must be instructed to place disposable syringes and needles, scalpel blades and other sharp items in puncture resistant containers following their use. Puncture resistant containers should be provided and should be located as close as practical to the area where needles and syringes are in use.

(D) Pursuant to Cal/OSHA's Bloodborne Pathogens Standard, Title 8, Cal. Code Regs., Section 5193, employers governed by this rule must establish, maintain, review and update at least annually and whenever necessary their Exposure Control Plan to reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens, and establish and maintain a Sharps Injury Log. This rule applies to all employers with employees who have occupational exposure to blood or other potentially infectious materials.

(E) The optometrist, assistants, and staff shall adhere to all federal and state requirements for handling of sharp instruments (including but not limited to the Medical Waste Management Act, California Health and Safety Code sections 117600-118360).

(4) Instrument Disinfection

(A) Germicides and/or disinfectants must be used in order to eliminate most of all pathogenic microorganisms from inanimate objects, such as medical devices or equipment. If there are questions on how to disinfect a particular medical device, the office should contact the manufacturer of the product.

(B) Contact lenses and carrying cases used in trial and follow-up fittings should be handled in the following manner:

(i) Discarding the trial contact lenses is recommended. This procedure however is inapplicable to rigid gas permeable and non-disposable hydrogel trial contact lenses.

(ii) Disinfecting between each fitting by one of the following regimens:

(1) FDA approved chemical disinfection system appropriate for the contact lens type.

(2) Heat disinfection.

(C) When using eye drops, the bottle tip should not come into direct contact with the patient's tears or conjunctiva. If the tip touches the patient, the bottle should be discarded.

(D) The optometrist, assistants and staff shall follow employer-established policies and procedures for routine and targeted cleaning of environmental surfaces as indicated by the service-delivery setting, the level of patient contact, and degree of soiling.

(E) The optometrist, assistants, and staff shall clean and disinfect surfaces that are likely to be contaminated with pathogens, especially those in close proximity to the patient and frequently touched surfaces in the patient care environment.

(c) Practitioners shall comply with all minimum standards for infection control practices and comply with local, state, or federal recommendations, issued in response to an emergency health and safety situation.

Note: Authority cited: Sections 3010.1, 3025, 3025.5, 3110, Business and Professions Code. Reference: Sections 2544, 2564.5, ~~3025.5,~~ 3025.6, Business and Professions Code.

California State Board of Optometry

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To: Board Members **Date:** May 11, 2010

From: Mona Maggio, Executive Officer **Telephone:** (916) 575-7170

Subject: **Agenda Item 4 – Discussion and Possible Action to Initiate a Rulemaking to Add and Amend Sections of Division 15, of Title 16 of the CCR Related to the Board of Optometry's Enforcement Authority.**

Senate Bill 1111 created the Consumer Heath Protection Enforcement Act. This legislation was sponsored by the Department of Consumer Affairs (DCA) and was intended to address deficiencies in the enforcement processes of healing art boards within DCA.

However, this bill failed passage in the Senate Business, Professions and Economic Development Committee on April 22, 2010. For reference, the bill language and Senate Committee analysis are attached.

In light of the recent information, the DCA completed an initial review of SB 1111 and determined that many of the provisions in the bill could be implemented through regulation. Attached is a summary document of those provisions. The DCA requested that each board place an item on their next agenda for the board to consider authorizing the initiation of a rulemaking to implement these provisions.

The DCA's Legal Affairs Division has been working on specific language for particular boards that will be available to serve as a template for each board to use as deemed appropriate. In addition, the legislative office is preparing a stock initial statement of reasons that each board can work from.

Next Steps

Staff will work with Michael Santiago, Legal Counsel for the Board, to develop the draft language for the rulemaking file. At the July 28, 2010 Board Meeting, staff will present the draft language pertaining to the provisions in SB 1111 that fall under the Board's jurisdiction for the Board's review and consideration. Staff will also present draft language, to be included as appropriate, in the Board's disciplinary guidelines and regulations which will include provisions from SB 1441 (Chapter 548, Ridley-Thomas) pertaining to healing arts practitioners and substance abuse.

Action Requested

Typically, staff presents draft language when requesting the Board vote to initiate a rulemaking to add/amend/delete language to the California Code of Regulations; however, based on the Department's request, staff is asking for Board approval to begin the rulemaking process first.

Attachments

1. SB 1111 and Senate Committee Anaylsis
2. Summary from DCA
3. Uniform Standards

BILL NUMBER: SB 1111 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 12, 2010

INTRODUCED BY Senator Negrete McLeod

FEBRUARY 17, 2010

An act to amend Sections 27, 116, 125.9, 155, 159.5, 160, 726, 802.1 , 803, 803.5, 803.6, and 1005, and 2715 of, to amend and repeal Section 125.3 of, to add Sections 27.5, 125.4, 734, 735, 736, 737, 802.2, 803.7, 1006, 1007, 1699.2, 2372, 2815.6, 2669.2, 2770.18, 3534.12, 4375, and 4873.2 to, to add Article 10.1 (commencing with Section 720) , Article 15 (commencing with Section 870), and Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Article 4.7 (commencing with Section 1695) of Chapter 4 of, Article 15 (commencing with Section 2360) of Chapter 5 of, Article 5.5 (commencing with Section 2662) of Chapter 5.7 of, Article 3.1 (commencing with Section 2770) of Chapter 6 of, Article 6.5 (commencing with Section 3534) of Chapter 7.7 of, Article 21 (commencing with Section 4360) of Chapter 9 of, and Article 3.5 (commencing with Section 4860) of Chapter 11 of Division 2 of, the Business and Professions Code, to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of add Section 12529.8 to the Government Code, and to amend Section 830.3 of the Penal Code, relating to regulatory boards, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, as amended, Negrete McLeod. Regulatory boards.

Existing law provides for the regulation of healing arts licensees by various boards within the Department of Consumer Affairs. The department is under the control of the Director of Consumer Affairs.

Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners.

(1) Existing law requires certain boards within the department to disclose on the Internet information on their respective licensees.

This bill would additionally require specified healing arts boards and the State Board of Chiropractic Examiners to disclose on the Internet information on their respective licensees, as specified. The bill would also declare the intent of the Legislature that the department establish an information technology system to create and update healing arts license information and track enforcement cases pertaining to these licensees.

Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes an administrative law judge to order a licentiate in a disciplinary proceeding to pay, upon request of the licensing authority, a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

This bill would instead authorize any entity within the department, the State Board of Chiropractic Examiners, or the administrative law judge to order a licensee or applicant in any penalty or disciplinary hearing to pay a sum not to exceed the actual reasonable costs of the investigation, prosecution, and enforcement of the case, in full, within 30 days of the effective date of an order to pay costs, unless subject to an agreed upon payment plan. The bill would also authorize any entity within the department to request that the administrative law judge charge a licensee on probation the costs of the monitoring of his or her probation, and would prohibit relicensure if those costs are not paid. The bill would authorize any board within the department and the State Board of Chiropractic Examiners to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts, upon a final decision, and would authorize the release of personal information, including the birth date, telephone number, and social security number of the person who owes that money to the board.

Existing law provides for the regulation of citation or administrative fine assessments issued pursuant to a citation. Hearings to contest citations or administrative fine assessments are conducted pursuant to a formal adjudication process.

This bill would authorize a healing arts board to proceed pursuant to an alternative adjudication process, as specified, provided the board has adopted specified regulations.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, would require those licensees to submit a written report, and would further require a report upon the arrest of the licensee or when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government. The bill would also require a licensee who is arrested or charged with a misdemeanor or felony to inform law enforcement and the court that he or she is a licensee of a healing arts board .

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licentiate.

This bill would instead make those provisions applicable to any described healing arts board. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

(2) Under existing law, healing arts licensees are regulated by various healing arts boards and these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a healing arts board to appoint an executive officer or an executive director to, among other things, perform duties delegated by the board. Under existing law, the State Board of Chiropractic Examiners has the authority to issue, suspend, revoke a license to practice chiropractic, and to place a licensee on probation for various violations. Existing law requires the State Board of Chiropractic Examiners to employ an executive officer to carryout certain duties.

This bill would authorize the a healing arts board to delegate to its executive officer or the executive director of specified healing arts licensing boards, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense, appear at the hearing, or has agreed to the revocation or surrender of his or her license, to adopt a proposed default decision or a proposed settlement agreement. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant prior to in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

Upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of harm to the public health, safety, or welfare, or has failed to comply with a request to inspect or copy records, the bill would authorize the executive officer of the healing arts board to petition the director or his or her designee to issue a temporary order that the licensee cease all practice and activities under his or her license. The bill would require the executive officer to provide notice to the licensee of the hearing at least one hour 5 business days prior to the hearing and would provide a mechanism for the presentation of evidence and oral or written arguments. The bill would allow for the permanent revocation of the license if the director makes a determination that the action is necessary to protect upon a preponderance of the evidence that an imminent risk to the public health, safety, or welfare exists.

The bill would also provide that the license of a licensee shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a licensee.

The bill would also prohibit a licensee of healing arts boards from including certain provisions in an agreement to settle a civil dispute arising from his or her practice, as specified. The bill would make a licensee or a health care facility that fails to comply with a patient's medical record request, as specified, within 10 15 days, if a licensee, or 30 days, if a health care facility, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state mandated local program.

The bill would authorize the Attorney General and his or her investigative agents and the healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. The bill would also set forth procedures related to the inspection of patient records and patient confidentiality. The bill would require cooperation between state agencies and healing arts boards when investigating a licensee, and would require a state agency to provide to the board all records in the custody of the

state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide records to a healing arts board upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would require the healing arts boards to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse. The bill would require the healing arts boards to search submit licensee information to specified national databases , and to search those databases prior to licensure of an applicant or licensee who holds a license in another state , and would authorize a healing arts board to charge a fee for the cost of conducting the search. The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

The bill would authorize the healing arts boards to refuse to issue a license to an applicant if the applicant appears to may be unable to practice safely due to mental illness or chemical dependency, subject to specified procedural requirements and medical examinations. The bill would also authorize the healing arts boards to issue limited licenses to practice to an applicant with a disability, as specified.

(3) This bill would make it a crime to violate any of the provisions of (2) above; to engage in the practice of healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts ; or to represent oneself as engaging or authorized to engage in healing arts if he or she is not authorized to do so . The bill would, except as otherwise specified, make the provisions of paragraph (2) applicable to licensees subject to the jurisdiction of the State Board of Chiropractic Examiners. By creating new crimes, the bill would impose a state-mandated local program.

This bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

(4) Existing law requires regulatory fees to be deposited into special funds within the Professions and Vocations Fund, and certain of those special funds are continuously appropriated for those purposes. Those funds are created, and those fees are set, by the Legislature by statute or, if specified, by administrative regulation.

This bill would authorize the Department of Consumer Affairs to adjust those healing arts regulatory fees consistent with the California Consumer Price Index. By adding a new source of revenue for deposit into certain continuously appropriated funds, the bill would make an appropriation.

(4) Existing law provides in the State Treasury the Professions and Vocations Fund, consisting of the special funds of the healing arts boards, many of which are continuously appropriated.

This bill would establish in the State Treasury the Emergency Health Care Enforcement Reserve Fund, which would be a continuously appropriated fund, and would require that any moneys in a healing arts board fund consisting of more than 4 months operating expenditures be transferred to the fund and would authorize expenditure for specified enforcement purposes, thereby making an appropriation. The bill would require the fund to be administered by the department, and would authorize a healing arts board to loan its surplus moneys in the fund to another healing arts board, thereby making an appropriation.

Existing law requires specified agencies within the Department of Consumer Affairs with unencumbered funds equal to or more than the agency's operating budget for the next 2 fiscal years to reduce license fees in order to reduce surplus funds to an amount less than the agency's operating budget, as specified. With respect to certain other boards within the department, existing law imposes various reserve fund requirements.

Under this bill, if a healing arts board's fund reserve exceeds its statutory maximum, the bill would authorize the board to lower its fees by resolution in order to reduce its fund reserves to an amount below its statutory maximum.

The bill would also authorize the department to request that the Department of Finance augment the amount available for expenditures to pay enforcement costs for the services of the Attorney General's Office and the Office of Administrative Hearings and the bill would impose specified procedures for instances when the augmentation exceeds 20% of the board's budget for the enforcement costs for these services. The bill would make findings and statements of intent with respect to this provision.

(5) Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards and the State Board of Chiropractic Examiners to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Medical Board of California or provided by the Department of Justice. The bill would also provide within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

Existing law provides that the chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California have the authority of peace officers.

This bill would include within that provision investigators of the Board of Registered Nursing and would also provide that investigators employed by the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing are not required to be employed by the division. The bill would also authorize the Board of Registered Nursing to employ nurse consultants and other personnel as it deems necessary.

(6) Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists and physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, and veterinarians and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

This bill would make the provisions establishing these diversion programs inoperative on January 1, 2013.

(7) Existing law provides in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would require authorize a healing arts board to utilize the services of the Health Quality Enforcement Section to provide investigative and prosecutorial services to any healing arts board, as defined, upon request by the executive officer of the board or licensing section. If utilized, the bill would also require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the Health Quality Enforcement Unit licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

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

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Consumer Health Protection Enforcement Act.

SEC. 2. (a) The Legislature finds and declares the following:

(1) In recent years, it has been reported that many of the healing arts boards within the Department of Consumer Affairs take, on average, more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time that it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused, in part, by legal and procedural impediments to the enforcement programs.

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions. Consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this act will improve efficiency and increase accountability within the healing arts boards of the Department of Consumer Affairs, and will remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this act will provide the healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

SEC. 3. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every Each entity specified in subdivision (b) subdivisions (b) and (c) shall provide on the Internet information regarding the status of every license issued by that entity , whether the license is current, expired, canceled, suspended, or revoked, in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or

facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Board shall disclose information on its licensees.

(2) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists. .

(3) The Dental Board of California shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(10) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(12) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(13) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(14) The Board of Registered Nursing shall disclose information on its licensees.

(15) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.

(16) The Veterinary Medical Board shall disclose information on its licensees and registrants.

(17) The Physical Therapy Board of California shall disclose information on its licensees.

(18) The California State Board of Pharmacy shall disclose information on its licensees.

(19) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall disclose information on its licensees.

(20) The Respiratory Care Board of California shall disclose information on its licensees.

(21) The California Board of Occupational Therapy shall disclose information on its licensees.

(22) The Naturopathic Medicine Committee of the Osteopathic Medical Board of California shall disclose information on its licensees.

(23) The Physician Assistant Committee of the Medical Board of California shall disclose information on its licensees.

(24) The Dental Hygiene Committee of California shall disclose information on its licensees.

(c) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(d) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 4. Section 27.5 is added to the Business and Professions Code , to read:

27.5. (a) Each entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity, whether the license is current, expired, canceled, suspended, or revoked, in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board of Registered Nursing shall disclose information on its licensees.

(2) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.

(3) The Veterinary Medical Board shall disclose information on its licensees and registrants.

(4) The Physical Therapy Board of California shall disclose information on its licensees.

(5) The California State Board of Pharmacy shall disclose information on its licensees.

(6) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall disclose information on its licensees.

(7) The Respiratory Care Board of California shall disclose information on its licensees.

(8) The California Board of Occupational Therapy shall disclose information on its licensees.

(9) The Naturopathic Medicine Committee within the Osteopathic Medical Board of California shall disclose information on its licensees.

(10) The Physician Assistant Committee of the Medical Board of California shall disclose information on its licensees.

(11) The Dental Hygiene Committee of California shall disclose information on its licensees.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 4. SEC. 5. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any of the healing arts boards defined listed in Section 720. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

SEC. 5. SEC. 6. Section 125.3 of the Business and Professions Code, as amended by Section 2 of Chapter 223 of the Statutes of 2006, is amended to read:

125.3. (a) (1) Except as otherwise provided by law, in any order issued in resolution of a penalty or disciplinary proceeding or hearing on a citation issued pursuant to Section 125.9 or regulations adopted pursuant thereto, before any board specified in Section 101, the board or the administrative law judge may direct any licensee or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the actual reasonable costs of the investigation, prosecution, and enforcement of the case.

(2) In an order issued pursuant to paragraph (1) that places a license on probation, the administrative law judge may direct a licensee to pay the board's actual reasonable costs of monitoring that licensee while he or she remains on probation, if so requested by the entity bringing the proceeding. The board shall provide the administrative law judge with a good faith estimate of the probation monitoring costs at the time of the request.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of actual reasonable costs of investigation, prosecution, and enforcement of the case. The costs shall include the amount of investigative, prosecution, and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of actual reasonable costs of investigation, prosecution, and enforcement of the case and probation monitoring costs when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase any cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) In determining reasonable costs pursuant to subdivision (a), the administrative law judge shall only consider the public resources expended pursuant to the investigation, prosecution, and enforcement of the case. The administrative law judge shall provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered.

(f) If an order for recovery of costs is made, payment is due and payable, in full, 30 days after the effective date of the order, unless the licensee and the board have agreed to a payment plan. If timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(g) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(h) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license, reinstate the license, or terminate the probation of any licentiate who has failed to pay all of the costs ordered under this section. This paragraph shall not apply to an administrative law judge when preparing a proposed decision.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(i) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(j) Nothing in this section shall preclude a board from including the recovery of the costs of investigation, prosecution, and enforcement of a case in any stipulated settlement.

(k) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for broader authority for the recovery of costs in an administrative disciplinary proceeding.

(l) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

(m) For purposes of this chapter, costs of prosecution shall include, but not be limited to, costs of attorneys, expert consultants, witnesses, any administrative filing and service fees, and any other cost associated with the prosecution of the case.

SEC. 6. SEC. 7. Section 125.3 of the Business and Professions Code, as added by Section 1 of Chapter 1059 of the Statutes of 1992, is repealed.

SEC. 7. SEC. 8. Section 125.4 is added to the Business and Professions Code, to read:

125.4. (a) Notwithstanding any other provision of law, a board may contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board, and, for those purposes, may provide to the collection agency the personal information of that person, including his or her birth date, telephone number, and social security number. The contractual agreement shall provide that the collection agency may use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that the personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection agency liable for the unauthorized use or disclosure of personal information received or collected under this section.

(b) A board shall not use a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.

SEC. 8. SEC. 9. Section 125.9 of the Business and Professions Code is amended to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, commission, or committee within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation that may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, commission, or committee where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, commission, or committee exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, commission, or committee shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to appeal the finding of a violation, that hearing shall be requested by written notice to the board, bureau, commission, or committee within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or, at the discretion of a healing arts board, as defined listed in Section 720, pursuant to paragraph

(5) (A) If the healing arts board is a board or committee, the executive officer and two members of that board or committee shall hear the appeal and issue a citation decision. A licensee desiring to appeal the citation decision shall file a written appeal of the citation decision with the board or committee within 30 days of issuance of the decision. The appeal shall be considered by the board or committee itself and shall issue a written decision on the appeal. The members of the board or committee who issued the citation decision shall not participate in the appeal before the board or committee unless one or both of the members are needed to establish a quorum to act on the appeal.

(B) If the healing arts board is a bureau, the director shall appoint a designee to hear the appeal and issue a citation decision. A licensee desiring to appeal the citation decision shall file a written appeal of the citation decision with the bureau within 30 days of issuance of the decision. The appeal shall be considered by the director or his or her designee who shall issue a written decision on the appeal.

(C) The hearings specified in this paragraph are not subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(D) A healing arts board may adopt regulations to implement this paragraph, which may include the use of telephonic hearings.

(5) (A) If the healing arts board is a board or committee, two members of that board or committee shall hear the appeal and issue a citation decision. One of the two members shall be a licensee of the board.

(B) If the healing arts board is a bureau, the director shall appoint a designee to hear the appeal and issue a citation decision.

(C) A hearing held pursuant to this paragraph is not subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(D) A board or committee choosing to utilize the provisions of this paragraph shall first have adopted regulations providing for notice and opportunity to be heard. The regulations shall provide the licensee with due process and describe, in detail, the process for that hearing. Appeal of the citation decision may be made through the filing of a petition for writ of mandate.

(E) A healing arts board may permit the use of telephonic hearings. The decision to have a telephonic hearing shall be at the discretion of the licensee subject to the citation.

(6) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, commission, or committee. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, commission, or committee.

SEC. 9. SEC. 10. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary to properly to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as defined listed in Section 720, shall not be required to be employees of the Division of Investigation and the healing arts board may contract for investigative services provided by the Medical Board of California or provided by the Department of Justice.

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

SEC. 10. SEC. 11. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards specified listed in Section 720.

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, shall be in the division and the personnel shall be appointed by the director.

SEC. 11. SEC. 12. Section 160 of the Business and Professions Code is amended to read:

160. (a) The Chief and designated investigators of the Division of Investigation of the department, designated investigators of the Medical Board of California, designated investigators of the Dental Board of California, and designated investigators of the Board of Registered Nursing have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

(b) The Division of Investigation, the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing may employ investigators who are not peace officers to provide investigative services.

SEC. 12. SEC. 13. Article 10.1 (commencing with Section 720) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 10.1. Healing Arts Licensing Enforcement

720. (a) Unless otherwise provided, as used in this article, the term "healing arts board" shall include all of the following:

(1) The Dental Board of California.
(2) The Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.
(5) The Board of Registered Nursing.
(6) The Board of Behavioral Sciences.
(7) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
(8) The Respiratory Care Board of California.
(9) The Acupuncture Board.
(10) The Board of Psychology.
(11) The California Board of Podiatric Medicine.
(12) The Physical Therapy Board of California.
(13) The Physician Assistant Committee of the Medical Board of California.
(14) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
(15) The California Board of Occupational Therapy.
(16) The Osteopathic Medical Board of California.
(17) The Naturopathic Medicine Committee of within the Osteopathic Medical Board of California.
(18) The Dental Hygiene Committee of California.
(19) The Veterinary Medical Board.

(b) Unless otherwise provided, as used in this article, "board" means all healing arts boards described under subdivision (a) and "licensee" means a licensee of a healing arts board described in subdivision (a).

720.2. (a) The A healing arts board may delegate to its executive officer or executive director of a healing arts board may the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The A healing arts board may delegate to its executive officer or executive director of a healing arts board may the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to surrender the revocation or surrender of his or her license.

720.4. (a) Notwithstanding Section 11415.60 of the Government Code, a healing arts board may enter into a settlement with a licensee or applicant prior to the board's in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(b) No

(c) A person who enters a settlement pursuant to this section may petition
is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(c) Any settlement

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

720.6. (a) Notwithstanding any other provision of law, upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, or has failed to comply with a request to inspect or copy records made pursuant to Section
720.16, the executive officer of that board may petition the director to issue a temporary order that the licensee cease all practice and activities that require a license by that board.

(b) (1) The executive officer of the healing arts board shall, to the extent practicable, provide telephonic, electronic mail, message, or facsimile written notice to the licensee of a hearing on the petition at least 24 hours five business days prior to the hearing. The licensee and his or her counsel and the executive officer or his or her designee shall have the opportunity to present oral or written argument before the director. After presentation of the evidence and consideration of any arguments presented, the director may issue an order that the licensee cease all practice and activities that require a license by that board when, in the opinion of the director, the action is necessary to protect the public health, safety, or welfare. , if, in the director's opinion, the petitioner has established by a preponderance of the evidence that an imminent risk of serious harm to the public health, safety, or welfare exists, the director may issue an order that the licensee cease all practice and activities that require a license by that board.

(2) The hearing specified in this subdivision shall not be subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any order to cease practice issued pursuant to this section shall automatically be vacated within 120-90 days of issuance, or until the healing arts board , pursuant to Section 494, files a petition files a petition pursuant to Section 494 for an interim suspension order and the petition is denied or granted, whichever occurs first.

(d) A licensee who fails or refuses to comply with an order of the director to cease practice pursuant to this section is subject to disciplinary action to revoke or suspend his or her license by his or her the respective healing arts board and an administrative fine assessed by the board not to exceed twenty-five thousand dollars ($25,000). The remedies provided herein are in addition to any other authority of the healing arts board to sanction a licensee for practicing or engaging in activities subject to the jurisdiction of the board without proper legal authority.

(e) Upon receipt of new information, the executive officer for the healing arts board who requested the temporary suspension order shall review the basis for the license suspension to determine if the grounds for the suspension continue to exist. The executive officer shall immediately notify the director if the executive officer believes that the licensee no longer poses an imminent risk of serious harm to the public health, safety, or welfare or that the licensee has complied with the request to inspect or copy records pursuant to Section 720.16 . The director shall review the information from the executive officer and may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare.

(f) Any petition and order to cease practice shall be displayed on the Internet Web site of the applicable healing arts board, except that if the petition is not granted or the director vacates the suspension order pursuant to subdivision (e), the petition and order shall be removed from the respective board's Internet Web site.

(g) If the position of director is vacant, the chief deputy director of the department shall fulfill the duties of this section.

(h) Temporary suspension orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in, and for, the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

(i) For the purposes of this section, "imminent risk of serious harm to the public health, safety, or welfare" means that there is a reasonable likelihood that allowing the licensee to continue to practice will result in serious physical or emotional injury, unlawful sexual contact, or death to an individual or individuals within the next 90 days.

720.8. (a) The license of a licensee of a healing arts board shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The healing arts board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The healing arts board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Law Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the healing arts board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the healing arts board.

(d) (1) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or 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 his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Law Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the healing arts board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by a healing arts board shall not apply to proceedings conducted pursuant to this section.

720.10. Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in subdivision (c) of Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Unless otherwise provided in the laws and regulations of the healing arts board, the patient shall no longer be considered a patient of the licensee when the order for medical services and procedures provided by the licensee is terminated, discontinued, or not renewed by the prescribing physician and surgeon.

720.12. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the healing arts board shall be subject to the following requirements:

(1) The healing arts board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this division, the healing arts board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The healing arts board shall not stay the revocation and place the license on probation.

(3) The healing arts board shall not reinstate or reissue the individual's license. The healing arts board shall not issue a stay of license denial and nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the healing arts board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

720.14. (a) A licensee of a healing arts board shall not include or permit to be included any of the following provisions in an agreement to settle a civil dispute arising from his or her practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the healing arts board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the healing arts board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the healing arts board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

720.16. (a) Notwithstanding any other provision of law making a communication between a licensee of a healing arts board and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by a healing arts board. Members of a healing arts board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the healing arts board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and a healing arts board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the healing arts board or any other federal or state law, regulation, or rule relevant to the practice regulated by the healing arts board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A healing arts board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the healing arts board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) If a board complies with Section 2225, that board shall not be subject to the requirements of this section.

(h) This section shall not apply to a licensee who does not have access to, and control over, certified medical records.

720.18. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to a healing arts board, within 10 15 days of receiving the request and authorization, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 10th 15th day, up to one hundred thousand dollars ($100,000) ten thousand dollars ($10,000) , unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a healing arts board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the healing arts board within 10 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 10th 30th day, up to one hundred thousand dollars ($100,000) ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist a healing arts board in obtaining the patient's authorization. A healing arts board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

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

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

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to a healing arts board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to one hundred thousand dollars ($100,000) ten thousand dollars ($10,000) , after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

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

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

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

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, a healing arts board pursuant to this section shall be deposited into the fund administered by the healing arts board.

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

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

(h) If a board complies with Section 1684.5 1684.1 , 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.

720.20. (a) Notwithstanding any other provision of law, a state agency shall, upon receiving a request in writing from a healing arts board for records , immediately provide to the healing arts board all records in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a healing arts board, the state agency shall notify the healing arts board that it is conducting an investigation against one of its licentiates. The notification of investigation to the healing arts board is to shall include the name, address, and, if known, the professional licensure license type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the healing arts board in providing any requested information.

720.22. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a healing arts board shall provide records to the healing arts board upon request prior to receiving payment from the board for the cost of providing the records .

720.24. (a) Any Notwithstanding any other provision of law, any employer of a health care licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within five 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension or termination for cause" is defined as suspension or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Falsification of medical records.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(d) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

(e) This section shall not apply to any of the reporting requirements under Section 805.

(c) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(d) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(f) No report is required under this section where a report of the action taken is already required under Section 805.

720.26. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.

(2) The total number of complaint forms received by the board.

(3) The total number of reports received by the board pursuant to Sections 801, 801.01, and 803, as applicable.

(4) The total number of coroner reports received by the board.

(5) The total number of convictions reported to the board.

(6) The total number of criminal filings reported to the board.

(7) If the board is authorized to receive reports pursuant to Section 805, the total number of Section 805 reports received by the board, by the type of peer review body reporting and, where applicable, the type of health care facility involved, and the total number and type of administrative or disciplinary actions taken by the board with respect to the reports, and their disposition.

(8) The total number of complaints closed or resolved without discipline, prior to accusation.

(9) The total number of complaints and reports referred for formal investigation.

(10) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(11) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(12) The total number of final licensee disciplinary actions taken, by category.

(13) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(14) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(15) The total number of licensees in diversion or on probation for alcohol or drug abuse or mental disorder, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(16) The total number of probation violation reports and probation revocation filings, and their dispositions.

(17) The total number of petitions for reinstatement, and their dispositions.

(18) The total number of caseloads of investigators for original cases and for probation cases, respectively.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) If a board A board that complies with Section 2313 , that board shall not be subject to the requirements of this section.

720.28. Unless otherwise provided, on or after July 1, 2013, every healing arts board shall post on the Internet the following information in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every healing arts license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the healing arts board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the healing arts board after January 3, 1991 .

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board after January 1, 1993 .

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 720.18 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the healing arts board and shall be adopted by regulation.

720.30. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

(c) The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.

720.32. (a) Whenever it appears that an applicant for a license, certificate, or permit from a healing arts board may be unable to practice his or her profession safely because the applicant's ability to practice would may be impaired due to mental illness, or physical illness affecting competency, the healing arts board may order the applicant to be examined by one or more physicians and surgeons or psychologists designated by the healing arts board. The report of the examiners shall be made available to the applicant and may be received as direct evidence in proceedings conducted pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(b) An applicant's failure to comply with an order issued under subdivision (a) shall authorize the board to deny an applicant a license, certificate, or permit.

(c) A healing arts board shall not grant a license, certificate, or permit until it has received competent evidence of the absence or control of the condition that caused its action and until it is satisfied that with due regard for the public health and safety the person may safely practice the profession for which he or she seeks licensure.

720.34. (a) An applicant for a license, certificate, or permit from a healing arts board who is otherwise eligible for that license but is unable to practice some aspects of his or her profession safely due to a disability may receive a limited license if he or she does both of the following:

(1) Pays the initial licensure fee.

(2) Signs an agreement on a form prescribed by the healing arts board in which the applicant agrees to limit his or her practice in the manner prescribed by the healing arts board.

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

(c) Any person who knowingly provides false information in the agreement submitted pursuant to subdivision (a) shall be subject to any sanctions available to the healing arts board.

720.35. (a) Each Each healing arts board listed in Section 720 shall report to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank the following information on each of its licensees:

(1) Any adverse action taken by the board as a result of any disciplinary proceeding, including any revocation or suspension of a license and the length of that suspension, or any reprimand, censure, or probation.

(2) Any dismissal or closure of a disciplinary proceeding by reason of a licensee surrendering his or her license or leaving the state.

(3) Any other loss of the license of a licensee, whether by operation of law, voluntary surrender, or otherwise.

(4) Any negative action or finding by the board regarding a licensee.

(b) Each healing arts board shall conduct a search on the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank prior to granting or renewing a license, certificate, or permit to an applicant who is licensed by another state .

(c) A healing arts board may charge a fee to cover the actual cost to conduct the search specified in subdivision (a) (b) .

720.36. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright and is reported to the National Practitioner Data Bank, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in

California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical
disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

720.36. Unless it is

720.37. Unless otherwise expressly provided, any person, whether licensed pursuant to this division or not, who violates any provision of this article is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200), or by imprisonment in a county jail for a term of not less than 60 days nor no more than 180 days, or by both the fine and imprisonment.

720.38. (a) The Emergency Health Care Enforcement Reserve Fund is hereby established in the State Treasury, to be administered by the department. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are hereby continuously appropriated and shall be used to support the investigation and prosecution of any matter within the authority of any of the healing arts boards. The department, upon direction of a healing arts board, shall pay out the funds or approve such payments as deemed necessary from those funds as have been designated for the purpose of this section.

(b) Notwithstanding any other law, the funds of the Emergency Health Care Enforcement Reserve Fund are those moneys from the healing arts board's individual funds, which shall be deposited into the Emergency Health Care Enforcement Reserve Fund when the amount within those funds exceeds more than four months operating expenditures of the healing arts board.

(c) Notwithstanding any other law, the department, with approval of a healing arts board, may loan to any other board moneys necessary for the purpose of this section when it has been established that insufficient funds exist for that board, provided that the moneys will be repaid.

720.40. Notwithstanding any other provision of law, if a healing arts board's fund reserve exceeds its statutory maximum, the board may lower its fees by resolution in order to reduce its reserves to an amount below its maximum.

720.42. (a) The Legislature finds that there are occasions when a healing arts board, as listed in Section 720, urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that, apart from, and in addition to, the expenditure authority that may otherwise be established, the healing arts boards, as listed in Section 720, shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance pursuant to the provisions of subdivision (b) of this section, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for the services of the Attorney General and the Office of Administrative Hearings.

(b) Notwithstanding any other provision of law, upon the request of the department, the Department of Finance may augment the amount available for expenditures to pay enforcement costs for the services of the Attorney General's Office and the Office of Administrative Hearings. If an augmentation exceeds 20% of the board's budget for the Attorney General, it may be made no sooner than 30 days after notification in writing to chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the Joint Legislative Budget Committee may in each instance determine.

SEC. 13. SEC. 14. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any
person licensed under this division, and under any initiative act referred to in this division.

(b) For purposes of Division 1.5 (commencing with Section 475), and the licensing laws and regulations of a healing arts board, as defined in Section 720, the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board listed in Section 720 .

(c) This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

SEC. 14. SEC. 15. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the 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 the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 15. SEC. 16. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

SEC. 16. SEC. 17. Section 736 is added to the Business and Professions Code, to read:

736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the 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 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(c) A violation of subdivision (a) is a misdemeanor punishable by a fine of up to ten thousand dollars ($10,000), imprisonment in the county jail of up to six months, or both the fine and imprisonment.

SEC. 17. SEC. 18. Section 737 is added to the Business and Professions Code, to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if legally requested by the board.

(b) Cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself the licensee . However, this subdivision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require a licensee to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against him or her the licensee .

SEC. 18. SEC. 19. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A licensee of a healing arts board defined under Section 720 shall submit a written report of listed in Section 720 shall report any of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The arrest of the licensee.

(C) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(D) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government .

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the arrest, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000). dollars ($5,000) and shall constitute unprofessional conduct.

SEC. 20. Section 802.2 is added to the Business and Professions Code , to read:

802.2. A licensee of a healing arts board listed in Section 720 shall identify himself or herself as a licensee of the board to law enforcement and the court upon being arrested or charged with amisdemeanor or felony. The healing arts boards shall inform its licensees of this requirement.

SEC. 19. SEC. 21. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from a healing arts board defined listed in Section 720, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) 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, 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 board that issued the license.

SEC. 20. SEC. 22. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the appropriate healing arts board defined listed in Section 720 and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 21. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the appropriate healing arts boards defined in Section 720 where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the appropriate board.

SEC. 23. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable, appropriate healing arts board listed in Section 720 where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the appropriate healing arts board.

SEC. 22. SEC. 24. Section 803.7 is added to the Business and Professions Code, to read:

803.7. The Department of Justice shall ensure that subsequent reports authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

SEC. 23. Article 15 (commencing with Section870) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 15. Healing Arts Licensing Fees

870. (a) Notwithstanding any provision of law establishing a fee or a fee range in this division, the department may annually establish a maximum fee amount for each healing arts board, as defined in Section 720, adjusted consistent with the California Consumer Price Index.

(b) The department shall promulgate regulations pursuant to the Administrative Procedures Act to establish the maximum fee amount calculated pursuant to subdivision (a).

(c) A healing arts board, as defined in Section 720, shall establish, through regulations, the specific amount of all fees authorized by statute at a level that is at or below the amount established pursuant to subdivision (b).

SEC. 24. SEC. 25. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of

the Business and Professions Code, to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for a person to do any of the following:

(A) Any person who does not hold a current and valid license to practice a healing art under this division who engages in that practice.

(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.

(C) Any person who represents himself or herself as engaging or authorized to engage in a healing art of this division who is not authorized to do so.

(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific healing arts licensing provisions for which he or she engaged in unauthorized practice.

(b) Notwithstanding any other provision of law, any person who is licensed under this division, but who is not authorized to provide some or all services of another healing art, who practices or supervises the practice of those unauthorized services any person who does not hold a current and valid license to practice a healing art under this division , is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 26. Section 1005 of the Business and Professions Code is amended to read:

1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.3. 125.4, 125.6, 125.9, 136, 137, 140, 141, 143, 155, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, 720.2, 720.4, 720.8, 720.10, 720.12, 720.14, 720.16, 720.18, 720.20, 720.22, 720.24, 720.28, 720.30, 720.32, 720.35, 720.36, 730.5, 731, and 734, 735, 736, 737, 802.1, 803, 803.5, 803.6, 803.7, 851 , and 880 are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

SEC. 27. Section 1006 is added to the Business and Professions Code , to read:

1006. (a) Notwithstanding any other provision of law, upon receipt of evidence that a licensee of the State Board of Chiropractic Examiners has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, the executive officer may issue a temporary order that the licensee cease all practice and activities that require a license by the board.

(b) Before the executive officer may take any action pursuant to this section, the board shall delegate to the executive officer authority to issue a temporary cease practice order as specified in subdivision (a). The board may, by affirmative vote, rescind the executive officer's authority to issue cease temporary practice orders pursuant to subdivision (a).

(c) A licensee may appeal the temporary cease practice order decision pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any temporary order to cease practice issued pursuant to this section shall automatically be vacated within 90 days of issuance, or until the board files a petition pursuant to Section 494 for an interim suspension order and the petition is denied or granted, whichever occurs first.

(e) A licensee who fails or refuses to comply with a temporary order of the executive officer to cease practice pursuant to this section shall be subject to disciplinary action to revoke or suspend his or her license and by the board and an administrative fine assessed by the board not to exceed twenty-five thousand dollars ($25,000). The remedies provided herein are in addition to any other authority of the board to sanction a licensee for practicing or engaging in activities subject to the jurisdiction of the board without proper legal authority.

(f) Upon receipt of new information, the executive officer shall review the basis for the interim license suspension order pursuant to subdivision (d) to determine if the grounds for the suspension continue to exist. The executive officer may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare as described in subdivision (a) of Section 494.

(g) Any order to cease practice including an order pursuant to Section 494 shall be displayed on the board's Internet Web site, except that if the executive officer vacates the suspension order pursuant to subdivision (e), the petition and order shall be removed from the respective board's Internet Web site.

(h) Temporary suspension orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in, and for, the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

(i) For the purposes of this section, "imminent risk of serious harm to the public health, safety, or welfare" means that there is a reasonable likelihood that permitting the licensee to continue to practice will result in serious physical or emotional injury, unlawful sexual contact, or death to an individual or individuals within the next 90 days.

SEC. 28. Section 1007 is added to the Business and Professions Code , to read:

1007. (a) The State Board of Chiropractic Examiners shall report annually to the Legislature, not later than October 1 of each year, the following information:

(1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.

(2) The total number of complaint forms received by the board.

(3) The total number of reports received by the board pursuant to Sections 801, 801.01, and 803, as applicable.

(4) The total number of coroner reports received by the board.

(5) The total number of convictions reported to the board.

(6) The total number of criminal filings reported to the board.

(7) The total number of complaints closed or resolved without discipline, prior to accusation.

(8) The total number of complaints and reports referred for formal investigation.

(9) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(10) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(11) The total number of final licensee disciplinary actions taken, by category.

(12) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(13) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(14) The total number of licensees in diversion or on probation for alcohol or drug abuse or mental disorder, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(15) The total number of probation violation reports and probation revocation filings, and their dispositions.

(16) The total number of petitions for reinstatement, and their dispositions.

(17) The total number of caseloads of investigators for original cases and for probation cases, respectively.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

SEC. 25. SEC. 29. Section 1699.2 is added to the Business and Professions Code, to read:

1699.2. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 26. SEC. 30. Section 2372 is added to the Business and Professions Code, to read:

2372. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 27. SEC. 31. Section 2669.2 is added to the Business and Professions Code, to read:

2669.2. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 28. SEC. 32. Section 2715 of the Business and Professions Code is amended to read:

2715. The board shall prosecute all persons guilty of violating the provisions of this chapter.

The board, in accordance with the provisions of the Civil Service Law, may employ investigators, nurse consultants, and other personnel as it deems necessary to carry into effect the provisions of this chapter. Investigators employed by the board shall be provided special training in investigating alleged nursing practice activities violations .

The board shall have and use a seal bearing the name "Board of Registered Nursing." The board may adopt, amend, or repeal, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of this chapter.

SEC. 29. SEC. 33. Section 2770.18 is added to the Business and Professions Code, to read:

2770.18. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 34. Section 2815.6 is added to the Business and Professions Code , to read:

2815.6. (a) It is the intent of the Legislature that, notwithstanding Section 128.5, in order to maintain an appropriate fund reserve, and in setting fees pursuant to this chapter, the Board of Registered Nursing shall seek to maintain a reserve in the Board of Registered Nursing Fund of not less than three and no more than six months' operating expenditures.

SEC. 30. SEC. 35. Section 3534.12 is added to the Business and Professions Code, to read:

3534.12. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 31. SEC. 36. Section 4375 is added to the Business and Professions Code, to read:

4375. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 32. SEC. 37. Section 4873.2 is

added to the Business and Professions Code, to read:

4873.2. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 33. Section 12529 of the Government Code, as amended by Section 8 of Chapter 505 of the Statutes of 2009, 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, any committee under the jurisdiction of the Medical Board of California, or any other healing arts board, as defined in Section 720 of the Business and Professions Code, as requested by the executive officer of that 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 boards.

(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, the committees under the jurisdiction of the Medical Board of California, and any other healing arts board, as defined in Section 720 of the Business and Professions Code, with the intent that the expenses be proportionally shared as to services rendered.

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

SEC. 34. Section 12529 of the Government Code, as amended by Section 9 of Chapter 505 of the Statutes of 2009, 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, any committee under the jurisdiction of the Medical Board of California, or any other healing arts board, as defined in Section 720 of the Business and Professions Code, as requested by the executive officer of that 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 boards.

(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, the committees under the jurisdiction of the Medical Board of California, and any other healing arts board, as defined in Section 720 of the Business and Professions Code, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative January 1, 2013.

SEC. 35. Section 12529.5 of the Government Code, as amended by Section 10 of Chapter 505 of the Statutes of 2009, 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. Complaints or relevant information may be referred to the Health Quality Enforcement Section as determined by the executive officer of any other healing arts board, as defined in Section 720 of the Business and Professions Code.

(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 Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology, and shall assign attorneys to work on location at the Health Quality Enforcement Unit

of the Division of Investigation of the Department of Consumer Affairs 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, committees, and the Division of Investigation in designing and providing initial and in-service training programs for staff of the 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 boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

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

SEC. 36. Section 12529.5 of the Government Code, as amended by Section 11 of Chapter 505 of the Statutes of 2009, 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. Complaints or relevant information may be referred to the Health Quality Enforcement Section as determined by the executive officer of any other healing arts board, as defined in
Section 720 of the Business and Professions Code.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the boards in intake and investigations, shall assign attorneys to work on location at the Health Quality Enforcement Unit of the Division of Investigation of the Department of Consumer Affairs, 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 and the Division of Investigation. 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 or committees in designing and providing initial and in-service training programs for staff of the 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 boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

(e) This section shall become operative January 1, 2013.

SEC. 37. Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the healing arts boards, as defined in Section 720 of the Business and Professions Code, by ensuring the quality and safety of health care, perform one of the most critical functions of state government. Because of the critical importance of a board's public health and safety function, the complexity of cases involving alleged misconduct by health care practitioners, and the evidentiary burden in a healing arts 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, each complaint that is referred to a district office of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or the Health Quality Enforcement Unit 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 all 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 collocate, when feasible, its enforcement staff and the staff of the Health Quality Enforcement Section, in order to carry out the intent of the vertical enforcement and prosecution model.

(3) Establish and implement a plan to assist in team building between its enforcement staff and the staff of the Health Quality Enforcement Section in order to ensure a common and consistent knowledge base.

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

SEC. 38. Section 12529.7 of the Government Code is amended to read:

12529.7. By March 1, 2012, the Department of Consumer Affairs, in consultation with the healing arts boards, as defined in Section 720 of the Business and Professions Code, and the Department of Justice, shall report and make recommendations to the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.

SEC. 38. Section 12529.8 is added to the Government Code , to read:

12529.8. (a) Any healing arts board listed in Section 720 of the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs.

(b) The report requirements contained in Section 12529.7 shall apply to any healing arts board that utilizes those provisions for enforcement.

(c) This section shall not apply to any healing arts board listed in subdivision (a) of Section 12529.

SEC. 39. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10
(commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Care Services, Public Health, Social Services, Mental Health, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be the enforcement of Section 550.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(l) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be the enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The Chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring ensuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Science Center, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Employees of the Franchise Tax Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of the law as set forth in Chapter 9 (commencing with Section 19701) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(t) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

(u) Investigators of the Department of Managed Health Care designated by the Director of the Department of Managed Health Care, provided that the primary duty of these investigators shall be the enforcement of the provisions of laws administered by the Director of the Department of Managed Health Care. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(v) The Chief, Deputy Chief, supervising investigators, and investigators of the Office of Protective Services of the State Department of Developmental Services, provided that the primary duty of each of those persons shall be the enforcement of the law relating to the duties of his or her department or office.

SEC. 40. (a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department's licensing and enforcement functions.

(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.

SEC. 41. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, 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.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

BILL ANALYSIS

Hearing Date:April 22, 2010	Bill No:SB 1111

SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Gloria Negrete McLeod, Chair

Bill No: SB 1111 Author:Negrete McLeod
As Amended:April 12, 2009 Fiscal:Yes

SUBJECT: Regulatory boards.

SUMMARY: Enacts the Consumer Health Protection Enforcement Act that includes various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards.

Existing law:

1) Establishes the Department of Consumer Affairs (DCA) which oversees more than 40 boards, bureaus, committees, commissions and other programs which license and regulate more than 100 businesses and 200 professional categories, including doctors, nurses, dentists, engineers, architects, contractors, cosmetologists and automotive repair facilities, and other diverse industries.

2) Establishes the Office of Attorney General (AG) for the prosecution of cases against licensees of DCA's regulatory boards and bureaus.

3) Establishes the Office of Administrative Hearings charged with hearing administrative law cases, pursuant to the Administrative Procedures Act (APA), brought by the AG's Office on behalf of DCA's regulatory boards and bureaus.

4) Requires specified boards within the DCA to disclose on the Internet information on their respective licensees, including information on the status of every license, suspensions and revocations of licenses issued and other related enforcement actions.

5) Provides under the Medical Practice Act that the Medical Board of California (MBC) shall disclose certain information about physicians and surgeons, including information on whether the licensee is in good standing, subject to a temporary restraining order, interim suspension order, or any other enforcement actions, as specified.

6) Allows the Director of the DCA to audit and review inquiries, complaints, and disciplinary proceedings regarding licensees of the MBC, and the California Board of Podiatric Medicine. Allows the Director to make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, and submit a report to the Legislature on the findings of the audit and review.

7) Allows an administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. States that the costs shall include the amount of investigative and enforcement costs up.to the date of the hearing.

8) Prohibits a board from renewing or reinstating the license of a licentiate who failed to pay all of the costs ordered, but allows a board to conditionally renew or reinstate a license for a maximum of one year for financial hardship.

9) Prohibits the MBC from requesting or obtaining from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. Allows the MBC to increase fees accordingly to compensate for any losses that may result from their inability to seek cost recovery for investigation and prosecution costs.

10)Allows boards within DCA, except as specified, to establish by regulation, a system for the issuance to a licensee of a citation or an administrative fine for violations of applicable licensing act or regulation. Specifies that in no event shall the fine assessed exceed $5,000 for each violation. Requires that in assessing the fine, the board shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations. Provides that a licensee shall be provided an opportunity to contest the finding of a violation and the assessment of a fine at a hearing conducted in accordance with APA.

11)Establishes within the DCA, the Division of Investigation (DOI), to investigate alleged misconduct by licensees of boards. Allows the Director of the DCA to employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law. States Legislative intent that inspectors used by boards are not required to be employees of the DOI, but may be either employees, or under contract to the boards.

12)Specifies that investigators of the DOI, the MBC and the Dental Board of California (DBC) shall have the authority and status of peace officers. Provides that the Board of Registered Nursing (BRN) may employ personnel as it deems necessary.

13)Allows state departments and agencies to formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding, and specifies that the settlement may be on any terms the parties determine are appropriate. States that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

14)States that a board or an administrative law judge may issue an interim suspension order suspending any licentiate or imposing license restrictions, as specified.

15)Requires a physician and surgeon's certificate to be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed.

16)States that any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor. Defines sexual contact as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

17)Establishes the Sex Offender Registration Act which requires specified persons for the rest of his or her life while residing in California, or while attending school or working in California, to register, as specified.

18)Prohibits a physician and surgeon from including, or permitting to include the following in a civil dispute settlement agreement: a provision that prohibits another party to the dispute from contacting or cooperating with the MBC; a provision that prohibits another party to the dispute from filing a complaint with the MBC; and, a provision that requires another party to the dispute to withdraw a complaint he or she has filed with the MBC. States that such provisions are void as against public policy, and its violation is subject to disciplinary action by the MBC.

19)Provides in the Medical Practice Act that the AG's Office and his or her investigative agents, and the MBC or the California Board of Podiatric Medicine may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, and may inspect documents relevant to those investigations according to specified procedures. Requires that the names of any patients on those records that are reviewed to remain confidential. Allows any document relevant to an investigation to be inspected, and copies may be obtained, where patient consent is given.

20)Specifies, for physicians and surgeons, dentists, and psychologists, penalties for failure to produce medical records requested pursuant to a patient's written authorization and a court order mandating release of a record. Specifies penalties for health care facilities that fail to produce medical records.

21)Requires any employer of a vocational nurse , psychiatric technician , or respiratory care therapist to report to the appropriate board the suspension or termination for cause of any licensed vocational nurse, psychiatric technician or respiratory care therapist in its employ. Defines suspension or termination for cause as suspension or termination from employment for any of the following reasons: (a) use of controlled substances or alcohol, as specified; (b) unlawful sale of controlled substances or other prescription items; (c) patient or client abuse, neglect, physical harm, or sexual contact with a patient or client; (d) falsification of medical records; (e) gross negligence or incompetence and (f) theft from patients or clients, other employees, or the employer. Makes failure to report punishable by an administrative fine not to exceed $10,000 per violation.

22)Requires peer review reporting by a peer review body, as defined, of specified actions taken against or undertaken by a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, or dentist.

23)Allows a board to order a licentiate to be examined by one or more physicians whenever it appears that any person holding a license, certificate or permit may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate. States that if a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods: revoking the licentiate's certificate or license; suspending the licentiate's right to practice; placing the licentiate on probation; and taking any other action the licensing agency deems proper.

24)Provides that a hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. Defines an accusation as a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged.

25)Establishes the federal Health Care Quality Improvement Act, administered by the U. S. Department of Health and Human Services to manage the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank which collects and releases certain information relating to the professional competence and conduct of health care professionals.

26)Specifies in the Medical Practice Act that the conviction of a charge violating any federal or state statute or regulation regulating dangerous drugs or controlled substance constitutes unprofessional conduct.

27)Requires the clerk of court to report any judgment in excess of $30,000 that is related to rendering unprofessional services by specified licensees; and to transmit felony preliminary hearing transcript against a physician and surgeon.

28)Requires the district attorney, city attorney, or other prosecuting agency to notify the MBC, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners of any filings charging a felony against a licensee, as specified.

29)Establishes a drug diversion program for osteopathic physicians and surgeons, registered nurses, dentists, pharmacists, physical therapists, physician assistants, and veterinarians.

30)Establishes a vertical enforcement and prosecution model for investigations of cases against physician and surgeons and other healing arts licensees.

31)Provides for a listing of general provisions applicable to other boards under the DCA which shall also be applicable to the Chiropractic Board which are not considered inconsistent with the Chiropractic Initiative Act.

This bill:

1) Establishes the Consumer Health Protection Enforcement Act. States Legislative findings and declarations on the need to timely investigate and prosecute licensed health care professionals who have violated the law, and the importance of providing healing arts boards with the regulatory tools and authorities necessary to reduce the timeframe for investigating and prosecuting violations of law by healing arts practitioners between 12 and 18 months.

2) Specifies that the term "healing arts boards" includes all of the following:

a) The Dental Board of California.
b) The Medical Board of California.
c) The State Board of Optometry.
d) The California State Board of Pharmacy.
e) The Board of Registered Nursing.
f) The Board of Behavioral Sciences.
g) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
h) The Respiratory Care Board of California.
i) The Acupuncture Board.
j) The Board of Psychology.
aa) The California Board of Podiatric Medicine.
bb) The Physical Therapy Board of California.
cc) The Physician Assistant Committee of the Medical Board of California.
dd) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
ee) The California Board of Occupational Therapy.
ff) The Osteopathic Medical Board of California.
gg) The Naturopathic Medicine Committee of the Osteopathic Medical Board of California.
hh) The Dental Hygiene Committee of California.
ii) The Veterinary Medical Board

3) Requires the following entities within DCA to provide on the Internet information regarding the status of every license issued by that entity, whether the license is current, expired, cancelled, or revoked, in accordance with the California Public Records Act.

a) The Board of Registered Nursing.
b) The Board of Vocational Nursing and Psychiatric Technicians.
c) The Veterinary Medical Board of California.
d) The Physical Therapy Board of California.
e) The California State Board of Pharmacy.
f) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
g) The Respiratory Care Board of California.
h) The California Board of Occupational Therapy.

i) The Naturopathic Medicine Committee of the Osteopathic Medical Board.
j) The Physician Assistant Committee of the Medical Board of California.
aa) The Dental Hygiene Committee of California.

4) Prohibits the information required to be posted in Item #3) above from including personal information, including home telephone number, date of birth, or social security number. Further prohibits boards from including the licensee's address, but may include the city and county of the licensee's address of record.

5) Expands the current authority of the Director of the DCA to audit the MBC, and the California Board of Podiatric Medicine to include all healing arts boards. Clarifies that the recommendations of the Director to the healing arts boards pursuant to the audit and review are for the consideration of the healing arts boards. Allows a designee of the Director to perform the audit and review.

6) Allows an administrative law judge, in an order issued in resolution of a disciplinary proceeding before any board that places a license on probation, to direct a licensee to pay the board's reasonable costs of probation, as specified. Requires a board to provide the administrative law judge with a good faith estimate of the probation monitoring costs.

7) Provides that in determining reasonable costs for purposes of cost recovery, the administrative law judge shall only consider the public resources expended pursuant to the investigation, prosecution and enforcement of the case. Requires an administrative law judge to provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered.

8) Requires that payment for recovery of costs is due and payable in full 30 days after the effective date of the order, unless the licensee and the board have agreed to a payment plan.

9) States that costs of prosecution for purposes of the recovery of costs, shall include, but not be limited to, costs of attorneys, expert consultants, witnesses, any administrative filing, and service fees, and any other costs associated with the prosecution of the case.

10)Authorizes a board to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board. Authorizes a board to provide the collection agency with the personal information of that person, as specified. Prohibits the collection agency from using or releasing personal information for other purposes. Makes the collection agency liable for the unauthorized use or disclosure of personal information received or collected. Prohibits using a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.

11)Allows healing arts boards or committees, for the issuance of a citation, to hear the appeal for a citation or fine assessment. States that if a healing arts board or committee chooses to hear the appeal, two members of that board or committee shall hear the appeal and issue a citation decision. Requires that one of the two members be a licensee of the healing arts board or committee. Specifies that if the healing arts board is a bureau, the Director of the DCA shall appoint a designee to hear the appeal and issue a citation decision. States that this hearing is not subject to the provisions of the APA. Requires a board or committee that chooses to utilize this appeal process to first adopt regulations providing for notice and opportunity to be heard. Requires the regulations to provide the licensee with due process, and describe the detailed process of the hearing. States that an appeal of the citation decision may be made through the filing of a Petition for Writ of Mandate. States that a healing arts board may permit the use of telephonic hearings, at the discretion of the person cited.

12)States that investigators used by the healing arts boards shall not be required to be employees of the DOI and the healing arts boards may contract for investigative services provided by the AG.

13)Establishes within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards.

14)Allows the BRN to hire designated investigators with the authority and status of peace officers. Allows the DOI, the MBC, the DBC, and the BRN to employ investigators who are not peace officers to provide investigative services.

15)Allows a healing arts board to delegate to its executive officer or executive director the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

16)Allows a healing arts board to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to the revocation or surrender his or her license.

17)Allows a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. Requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated. Specifies that a person who enters a settlement is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or

petition for early termination of probation, if probation is part of the settlement. States that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the applicable board's Internet Website.

18)Allows the executive officer of a healing arts board, upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, to petition the Director of the DCA to issue a temporary order that a licensee cease all practice and activities.

19)Requires the executive officer, to the extent practicable, to provide telephonic, electronic mail, message, or facsimile written notice to the licensee of a hearing on the petition at least five business days prior to the hearing. Specifies that all parties have the opportunity to present oral or written argument before the Director. Specifies that after presentation of the evidence, if in the Director's opinion, the petitioner has established, by a preponderance of the evidence that an imminent risk of serious harm to the public health, safety or welfare exists, the Director may issue an order that the licensee cease all practice and activities that require a license by that board.

20)Provides that a cease practice order issued pursuant to Item #18) above shall be automatically vacated within 90 days of issuance, or until the healing arts board files a petition for an interim suspension order and the petition is denied or granted, whichever occurs first.

21)Indicates that a licensee who fails or refuses to comply with an order of the Director to cease practice pursuant to Item #18) above is subject to disciplinary action to revoke or suspend his or her license by the respective healing arts board, and an administrative fine assessed by the board not to exceed $25,000.

22)States that upon receipt of new information, the executive officer for the healing arts board who requested the temporary suspension order shall review the basis for the license suspension to determine if the grounds for the suspension continue to exist. Requires the executive officer to immediately notify the Director if the executive officer believes that the licensee no longer poses an imminent risk of serious harm to the public health, safety, or welfare. Requires the Director to review the information and may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare.

23)Requires any petition and order to cease practice to be displayed on the Internet Website of the applicable healing arts board, as specified.

24)States that the hearing is not subject to the APA, but allows a licensee whose license has been temporarily suspended to petition for a writ of mandate which shall be heard only in the Superior Court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

25)Defines imminent risk of serious harm to the public health, safety, or welfare as a reasonable likelihood that permitting the licensee to continue to practice will result in serious physical or emotional injury, unlawful sexual contact, or death to an individual or individuals within the next 90 days.

26)Requires the automatic suspension of any licensee who is incarcerated after conviction of a felony , regardless of whether the conviction has been appealed. Requires the healing arts board to notify the licensee in writing of the suspension and of his or her right to elect to have the issue of penalty heard, as specified.

27)Provides that a decision issued by an administrative law judge that contains a finding that a licensee or registrant has engaged in any act of sexual exploitation , as defined, with a patient, or has committed an act or been convicted of a sex offense as defined, shall contain an order of revocation. Specifies that the revocation shall not be stayed by the administrative law judge.

28)Specifies certain requirements for any applicant or licensee who is required to register as a sex offender.

29)Prohibits a licensee from including the following in settlement agreements for civil disputes arising from his or her practice: prohibiting another party to the dispute from contacting or cooperating with the healing arts board; prohibiting another party to the dispute from filing a complaint with the healing arts board; and requiring another party to the dispute to withdraw a complaint he or she has filed with the healing arts board. Specifies that any settlement agreement that contains any of these provisions is void as against public policy, and constitutes unprofessional conduct.

30)Allows the AG and his or her investigative agents, and a healing arts board and its investigators and representatives to inquire into any alleged violation of the laws under the jurisdiction of the healing arts board or any other federal or state law, regulation, or rule relevant to the practice regulated by the healing arts board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

a) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

b) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

31)Specifies that where certified documents are requested from licensees in accordance with Item #30) above by the AG, or his or her agents or deputies, or any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause. States that good cause includes, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Makes failure to produce requested certified documents or copies thereof, after being informed of the required deadline, unprofessional conduct.

32)States that any provision of law making a communication between a licensee of a healing arts board and his or her patients a privileged communication shall not apply to investigations or proceedings conducted by a healing arts board. Requires the names of any patients whose records are reviewed to be confidential, unless specified. States that the authority to examine records of patients in the office of a licensee is limited to records of patients who have complained to the healing arts board about that licensee.

33)Specifies that a licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to a healing arts board, within15 days of receiving the request and authorization, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced after the 15th day, up to $10,000, unless the licensee is unable to provide the documents within this time period for good cause.

34)Requires a health facility to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a healing arts board together with a notice citing this section and describing the penalties for failure to comply with this requirement. Specifies that failure to provide the authorizing patient's certified medical records to the healing arts board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to $10,000, unless the health care facility is unable to provide the documents within this time period for good cause. Requires healing arts boards to pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

35)States that a licensee who fails or refuses to comply with a court order , issued in the enforcement of a subpoena , mandating the release of records to a healing arts board, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to $10,000, unless it is determined that the order is unlawful or invalid. Indicates that any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals. Indicates that any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed $5,000, as specified. Indicates that multiple acts by a licensee in violation of this provision is punishable by a fine not to exceed $5,000 or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

36)Provides that a health care facility that fails or refuses to comply with a court order , issued in the enforcement of a subpoena , mandating the release of patient records to a healing arts board, that is accompanied by a notice citing this requirement and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced, up to $10,000, after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Indicates that any health care facility that fails or refuses to comply is guilty of a misdemeanor punishable by a fine payable to the board not to exceed $5,000. Indicates that multiple acts by a health care facility in violation of this provision is punishable by a fine not to exceed $5,000, shall be reported to the State Department of Public Health, and considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

37)States that imposition of civil penalties for failure to provide medical records shall be in accordance with the APA, and that any civil penalties paid to or received by a healing arts board shall be deposited into the fund administered by the healing arts board.

38)Defines "certified medical records" as a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

39)Specifies that the provisions requiring the production of medical records do not apply to a licensee who does not have access to and control over certified medical records.

40)Requires a state agency, upon receiving a request in writing from a healing arts board for records, to immediately provide to the healing arts board all records in the custody of the state agency, including but not limited to confidential records, medical records, and records related to closed or open investigations. Specifies that if a state agency has knowledge that a person it is investigating is licensed by a healing arts board, the state agency shall notify the healing arts

board that it is conducting an investigation against one of its licentiates. Requires the notification of investigation to the healing arts board to include the name, address, and, if known, the professional licensure type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted to cooperate with the healing arts board in providing any requested information.

41)Requires all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a healing arts board to provide records to the healing arts board upon request prior to receiving payment from the board for the cost of providing the records.

42)Requires any employer of a health care licensee to report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within 15 business days, as specified. Indicates that this reporting requirement does not constitute a waiver of confidentiality of medical records, and that the information reported or disclosed shall be kept confidential and not subject to discovery in civil cases. States that no person shall incur any civil penalty as a result of making this report.

43)Defines resignation, suspension or termination for cause as any of the following reasons:

a) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.
b) Unlawful sale of a controlled substance or other prescription items.
c) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
d) Gross negligence or incompetence.
e) Theft from a patient or client, any other employee, or the employer.

44)Defines gross negligence for purposes of Item #43) above, as a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent health care licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.

45)Defines incompetence for purposes of Item #43) above, as the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed by a responsible health care licensee.

46)States that a willful failure of an employer to make a report required in Item #42) above is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation. Defines willful as knowing and intentional violation of a known legal duty. States that any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed $50,000.

47) Requires healing arts boards to report annually, by October 1, to the DCA and to the Legislature certain information, including but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation or alcohol or drug abuse.

48)Provides that on or after July 1, 2013, every healing arts board shall post on the Internet specified information in its possession, custody, or control regarding every licensee for which the board licenses, including whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order, as specified, or subject to any of the enforcement actions, as specified; whether or not the licensee or former licensee has been subject to discipline by the healing arts board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the healing arts board; all current accusations filed by the AG's Office; and any malpractice judgment or arbitration award.

49)Requires the AG's Office to do the following:

a) Serve, or submit to a healing arts board for service, an accusation within 60 calendar days after receipt from the healing arts board.
b) Serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.
c) Set a hearing date within three days of receiving notice of defense, unless the healing arts board gives the AG's Office instruction otherwise.

50)Provides that whenever it appears that an applicant for a license, certificate, or permit from a healing arts board may be unable to practice his or her profession safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the healing arts board may order the applicant to be examined by one or more physicians and surgeons or psychologists designated by the healing arts board. States that an applicant's failure to comply with the specified order authorizes the board to deny an applicant a license, certificate, or permit. Prohibits a healing arts board from granting a license, certificate, or permit until it has received competent evidence of the absence or control of the condition that caused its action and until it is satisfied that with due regard for the public health and safety the person may safely practice the profession for which he or she seeks licensure.

51)States that an applicant for a license, certificate, or permit from a healing arts board who is otherwise eligible for that license but is unable to practice some aspects of his or her profession safely due to a disability may receive a limited license if he or she does both of the following:

a) Pays the initial licensure fee.

b) Signs an agreement on a form prescribed by the healing arts board in which the applicant agrees to limit his or her practice in the manner prescribed by the healing arts board.

52)Allows a healing arts board to require the applicant described in Item #51) above to obtain an independent clinical evaluation of his or her ability to practice safely as a condition of receiving a limited license. States that any person who knowingly provides false information in the agreement submitted shall be subject to any sanctions available to the healing arts board.

53)Requires a healing arts board to report to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) the following information on its licensees:

a) Any adverse action taken by such licensing authority as a result of any disciplinary proceeding, including any revocation or suspension of a license and the length of that suspension, or any reprimand, censure, or probation.

b) Any dismissal or closure of the proceedings by reason of a licensee surrendering his or her license or leaving the state.

c) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

d) Any negative action or finding by the board regarding a licensee.

54)Requires each healing arts board to conduct a search on the NPDB and HIPDB prior to granting or renewing a license, certificate, or permit to an applicant. Allows a healing arts board to charge a fee to cover the actual cost to conduct the search.

55)States, unless specified, that if a health care licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government, and that license or authority is suspended or revoked outright and is reported to the NPDB, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded, as provided. Requires a healing arts board to notify the licensee of the license suspension and of his or her right to have the issue of penalty heard, as specified. Allows a healing arts board to set aside the suspension when it appears to be in the interest of justice, as specified.

56)Establishes the Emergency Health Care Enforcement Reserve Fund in the State Treasury, to be administered by the DCA, and provides that any moneys in the fund shall be used to support the investigation and prosecution of any matter within the authority of any of the healing arts boards. States that the DCA, upon direction of a healing arts board, shall pay out the funds or approve such payments as deemed necessary from those funds as have been designated for these purposes. States that the contents of the Emergency Health Care Enforcement Reserve Fund are those moneys from the board's individual funds which shall be deposited into the Emergency Health Care Enforcement Reserve Fund when the amount within those funds exceeds more than four months operating expenditures of the individual board. Allows DCA, with approval of a healing arts board, may loan to another board moneys necessary for the purpose of this section when it has been established that insufficient funds exist for that individual board, provided that the moneys will be repaid.

57)States that if a healing arts board's fund reserve exceeds its statutory maximum, the board may lower its fees by resolution in order to reduce its reserves to an amount below its maximum.

58)States the following Legislative findings that there are occasions when a healing arts board urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that apart from and in addition to the expenditure authority that may otherwise be established, the healing arts boards shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance, as specified, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for the services of the AG and the Office of Administrative Hearings.

59)Provides that upon the request of the DCA, the Department of Finance may augment the amount available for expenditures to pay enforcement costs for the services of the AG's Office and the Office of Administrative Hearings. States that if an augmentation exceeds 20% of the board's budget for the Attorney General, it may be made no sooner than 30 days after notification in writing to chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the Joint Legislative Budget Committee may in each instance determine.

60)States that commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed, and under any initiative act, as specified. Specifies that the commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration, as specified, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board.

61)Specifies that the following constitutes unprofessional conduct :

a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances. States that the record of the conviction is conclusive evidence of the unprofessional conduct; and that a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction. Allows discipline to be ordered against a licensee, as specified.

b) A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances.

c) The use or prescribing for or administering to himself or herself of any controlled substance or the use of any of the dangerous drugs, as specified, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination, thereof. States that a violation of this provision is a misdemeanor punishable by a fine of up to $10,000, imprisonment in the county jail of up to 6 months, or both the fine and imprisonment.

62)Makes it unprofessional conduct for any licensee for failure to comply with the following:

a) Furnish information in a timely manner, as specified.

b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. States that this provision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges.

63)Requires a licensee of a healing arts board to submit a written report of any of the following: The bringing of an indictment or information charging a felony against the licensee; arrest of the licensee; conviction of the licensee, including any felony or misdemeanor; and, any disciplinary action taken by another licensing entity or authority of this state or of another state. Requires the report to be made in writing within 30 days; and that failure to make a report is a public offense punishable by a fine not to exceed $5,000 and shall constitute unprofessional conduct.

64)Requires a licensee of a healing arts board to identify him or herself as a licensee of the board to law enforcement and court officials upon being arrested or charged with a misdemeanor or felony. Requires healing arts boards to inform licensees of this requirement.

65)Requires the clerk of the court to do the following:

a) Report to a healing arts board any judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services.

b) Transmit any felony preliminary hearing transcript concerning a defendant licensee of a healing arts board.

66)Requires the district attorney, city attorney, other prosecuting agency, or clerk of the court to notify the appropriate healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

67)Requires the AG's Office to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees to healing arts boards.

68)Specifies that it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice including healing arts practice without a current and valid license. States that this provision applies to a licensee who supervises the practice of any person who does not hold a current and valid license to practice.

69)Sunsets on January 1, 2013, the drug diversion programs of the following boards: Dental Board of California, Osteopathic Medical Board of California, Physical Therapy Board of California, Board of Registered Nursing, Physician Assistant Committee, California State Board of Pharmacy, and Veterinary Medical Board.

70)Allows any healing arts board to utilize the vertical enforcement and prosecution model, as specified, for the investigation and prosecution of some or all of its enforcement actions.

71)States that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system for healing arts license information, as specified.

72)Provides for additional listing of general provisions which are now applicable to the healing arts boards which shall also be applicable to the Chiropractic Board which are not considered as inconsistent with the Chiropractic Initiative Act.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.
COMMENTS:

1.Purpose. According to the Department of Consumer Affairs , the Sponsor of this measure, in recent years, some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. Some boards have taken an average of three years or more to investigate and prosecute these cases. This is an unacceptable timeframe given that the highest priority of these boards is the protection of the public. This bill provides healing arts boards several tools to improve the enforcement process and ensure patient safety.

2.Background. On July 11, 2009, the Los Angeles Times, in conjunction with Pro-Publica, a nonprofit investigative news agency, published an article entitled "When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer," charging that the BRN, which oversees California's more than 350,000 nurses, often takes years to act on complaints of egregious misconduct. The article indicated that nurses with histories of drug abuse, negligence, violence, and incomptenence continue to provide care, and BRN often took more than three years on average to investigate and discipline errant nurses. The article also pointed out that complaints often take a circuitous route through several clogged bureaucracies; the BRN failed to act against nurses who have been sanctioned by others and failed to use its authority to immediately suspend dangerous nurses from practicing; there were failures in the probation monitoring of troubled nurses; there is a lack of reporting requirement for hospitals to report nurses who have been fired or suspended for harming a patient or other serious misconduct similar to what is required of vocational nurses, psychiatric technicians and respiratory care therapists; and, nurses convicted of crimes, including sex offenses and attempted murder continue to be licensed. On July 25, 2009, the LA Times published another article on the failures of BRN's drug diversion program . This article pointed out that participants in the program continue to practice while intoxicated, stole drugs from the bedridden and falsified records to cover their tracks. Moreover, more than half of those participating in drug diversion did not complete the program, and even those who were labeled as " public risk " or are considered dangerous to continue to treat patients did not trigger immediate action or public disclosure by BRN. The article further pointed out that because the program is confidential, it is impossible to know how many enrollees relapse or harm patients. But the article points out that a review of court and regulatory records filed since 2002, as well as interviews with diversion participants, regulators and experts suggests that dozens of nurses have not upheld their end of the bargain and oversight is lacking . These revelations, including other articles revealing lengthy enforcement timeframes against problem nurses who continue to practice and provide care to the detriment of patients, led Governor Schwarzenegger to replace four members of the BRN and appoint members to two long-time vacancies.

On July 27, 2009, DCA convened a meeting for the purpose of taking testimony and evidence relevant to the BRN enforcement program. BRN's discussion focused on its proposals that were contained in the "Enforcement Report On the Board of Registered Nursing." The report pointed out several barriers to BRN's enforcement process, but specifically indicated that for the board's diversion program, when a substance abuse case is referred to the diversion program, the investigation is placed on hold while the licensee decides if he/she wants to enter diversion. This practice allows the licensee to delay final disposition of the case. In addition, there is limited communication between the diversion program and the enforcement program which can delay investigation of licensees who are unsuccessfully diverted and are terminated from the program, and that the BRN lacks a number of enforcement tools, including the ability to automatically suspend licensees pending a hearing.

On August 17, 2009, this Committee held an informational hearing entitled "Creating a Seamless Enforcement Program for Consumer Boards" and investigated many of the problems pointed out by the LA Times, as well as others related to the BRN and other healing arts boards. A Background Paper was prepared for the hearing which pointed out many of the existing problems and made specific recommendation for improving the enforcement programs of the healing arts boards. This bill codifies many of the recommendations listed in the Background Paper for the informational hearing and well as others proposed by the Sponsor (DCA).

3.Previous and Similar Legislation.

a) SB 1172 (Negrete McLeod), pending in this Committee, requires a healing arts board of the DCA to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program; allows a healing arts board to adopt regulation s authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to uniform and specific standards, as specified.

b) SB 294 (Negrete McLeod), pending in the Assembly Business and Professions Committee contains similar provisions that are in this bill. It is anticipated that the current provisions of SB 294 will be amended out at a later date to deal with a different subject matter.

c) SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), established within the DCA the Substance Abuse Coordination Committee to formulate by January 1, 2010 , uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, whether or not a health care board operates a diversion program.

4.Specific Enforcement Changes for Healing Arts Boards within this Measure.

a) Information Required to be Posted on the Internet. Requires all healing arts boards to disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the healing arts board or by the board of another state or jurisdiction.

i) Justification. Currently there are a number of boards, including healing arts boards, which are required to post the aforementioned information regarding a licensee. According to the Sponsor, there appears to be no reason why all healing arts boards under the DCA should not be subject to the same basic requirements for disclosure over the Internet that other boards and bureaus are currently required to disclose to the public. Much of this information is considered as public information. One of the issues raised by the LA Times is that the public is unaware of problem licensees, whether they have had prior disciplinary action taken against them, or whether their license is currently in good standing. There were instances in which the LA Times looked up on the Internet or on the BRN's Website and never saw prior disciplinary or criminal convictions of nurses.

ii) Concerns Raised and Response. The American Nurses Association/California (ANA/C), the California Nurses Association (CNA), SEIU , and the United Nurses Associations of California (UNAC) opposes the disclosure of an address of record on the Internet. The recent amendments addressed this concern and removed provisions requiring disclosure of specified health care licensee's address on the Internet. Only the city or county in which they are located will be provided on the Internet.

Additionally, the California Dental Association (CDA) opposes disclosure of pending accusations in which there has not even been a hearing. CDA states that posting such accusations on the Internet is unfair and harmful to the practitioner and may be a violation of their due process rights. This does not appear justified. All other healing arts board within the DCA disclose pending accusations. The lack of disclosure of disciplinary actions is also one of the criticisms labeled by the LA Times against the BRN because the lack of disclosure is inconsistent with public protection. An accusation is a public record under the Public Records Act (PRA). If a consumer made a PRA request to the Dental Board about a particular dentist, DBC would have to disclose any pending accusation. An accusation means that the complaint/report has been fully investigated, the investigation is complete, and the prosecutor (board's EO and the AG's Office) believe that there is "clear and convincing evidence" of a violation that merits disciplinary action. An accusation is not a naked complaint. The filing of the accusation is what turns a confidential investigation into a matter of public record. The MBC has been publicly disclosing accusations since 1993. There is no reason why dentists should be exempted from disclosing accusations that are already public records. Once investigation is completed, and accusations are filed, the public must be made aware of the charges against healing arts licensees.

b) Director's Authority to Audit Enforcement Programs of Health Boards. Existing law authorizes the Director of DCA to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the MBC and the California Board of Podiatric Medicine. This bill will additionally authorize the Director to audit and review the aforementioned activities for any of the healing arts boards.

i) Justification. As indicated by the Sponsor, there does not appear to be any reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for the MBC and the Podiatric Board. The Director should be authorized to audit and review any healing arts boards as necessary, and allow the Director to make recommendations for changes to the board's disciplinary or enforcement system.

ii) Concerns Raised and Response. ANA/C indicates that it does not support the Director of the DCA making recommendations of changes to the BRN. Recent amendments provide that the recommendations of the DCA Director are for consideration of the boards only and no changes or recommendations are mandated.

c) Cost Recovery for Probation Monitoring and Determination of Reasonable Costs. Allows healing arts board to recover reasonable costs of probation monitoring for a licensee who is placed on probation by the administrative law judge; and specifies what an administrative law judge shall consider in determining reasonable costs.

i) Justification. Originally this provision changed recovery costs for investigation and prosecution of cases for boards that were successful in their disciplinary cases from "reasonable" to "actual" costs for the boards to collect. Also, it added as an additional cost recovery probation monitoring costs. As indicated by the Sponsor, while some boards have explicit statutory authority to recover costs associated with probation monitoring, not all boards do. Such a requirement can be made a term of probation without statutory authority, but the statutory authority will give boards more explicit authority, lead to quicker resolution of probation terms, and authorize boards to refuse to renew the license of a licensee who has not paid probation costs.

ii) Concerns Raised and Response. ANA/C indicates that adding additional penalties for nurses paying for the prosecution of cases could prevent nurses from returning to practice, or stop nurses from defending themselves since they

could not afford to pay for the cost of prosecution and defending themselves. SEIU opposes requiring individual licensees to pay the costs of investigation. CNA opposes the provisions allowing licensees to pay for actual costs of the case and is also concerned about the high costs of probation monitoring.

Additionally, the Hearing Healthcare Providers of California , the American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that the elimination of a "reasonable" cost standard and substituting "actual" cost is alarming and unreasonable.

It should first be noted that all boards are subject to cost recovery provisions. The only real change, as indicated, involved changing the standard from collecting reasonable costs to "actual costs" and including probation monitoring costs. Recent amendment deleted the term "actual costs" and retains the current "reasonable costs" requirement for cost recovery.

d) Allow Boards to Contract with Collection Agency. Allows a board to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts.

i) Justification. As explained by the Sponsor, all of DCA's boards are authorized to issue administrative citations which may include an administrative fine to licensees for violations of law, and to non-licensees for unlicensed activity. However, most boards come far from ever collecting all administrative fines due to them. In order to improve effectiveness in boards' fine collection efforts, the DCA will procure a contract with a collection agency that can serve all boards. Legislation is needed to allow the DCA the ability to provide the collection agency with social security numbers.

ii) Concerns Raised and Response. CDA supports allowing healing arts boards to contract with collection agencies but collection agencies should expressly be allowed to negotiate payment plans with practitioners. The Sponsor indicates it would work with CDA to address this concern.

e) Allow Health Boards to Hear Appeals of Citations and Fines. Allows healing arts boards to appoint two members of the board to conduct a hearing to hear an appeal of the citation decision and assessment of a fine. The hearing would not be required to be conducted in accordance with the APA but requires a board that chooses to utilize this process to first adopt regulations providing for notice and opportunity to be heard.

i) Justification. According to the Sponsor, all boards are authorized to issue administrative citations which may include an order of abatement or a fine of up to $5,000 so long as the board has regulations in place establishing a system for the issuance of the citations. Existing law permits a licensee who is issued a citation to appeal the citation and request a hearing pursuant to the APA. However, an administrative hearing can impose a large cost on a board; a board can spend $8,000 on legal costs to uphold a $600 fine. The Sponsor believes that allowing two board members would shorten and streamline the appeals process for citation and fine actions taken against the licensee.

ii) Concerns Raised and Response. ANA/C states that of the two board members which would hear cite and fine appeals, oneof the two members should be a licensee. Recent amendments require that one of the members must be a licensee.

CNA and SEIU argue that this bill undermines due process. Additionally, the American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) state that these provisions reduce due process standards, and that the hearing should continue to be conducted pursuant to the APA.

Recent amendments were taken to address certain due process concerns, including requiring a board to adopt regulations providing the licensee with due process, including notice and opportunity to be heard. (It should be noted that an appeal of the citation decision by board members is still permitted by allowing the licensee to file a petition for writ of mandate.)

f) Allow Health Boards to Contract for Investigative Services provided by the Department of Justice. Allows healing arts board to contract with the Department of Justice to provide investigative services as determined necessary by the Executive Officer of a board.

i) Justification. The Sponsor believes that health boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing health boards to contract with the Department of Justice, or to utilize the investigative services of the DOI, boards will be provided with the broadest opportunity to move cases forward in a more expeditious manner. The AG's Office made this recommendation to the Sponsor since they also believe that more difficult criminal-type cases could be investigated and prosecuted by their Office.

ii) Concerns Raised and Response. This provision originally allowed for boards to also contract for investigative services with the MBC. CNA pointed out that the MBC does not have the expertise or authority necessary to investigate or regulate nurses. Recent amendments removed reference to the MBC.

g) Create Within the Division of Investigation a Health Quality Enforcement Unit. Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on heath care quality cases and to work closely with the AG's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

i) Justification. The Sponsor believes that by creating a Health Quality Enforcement Unit to focus on heath care quality cases will create expertise in the investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

ii) No Concerns Raised.

h) Authority of the Board of Registered Nursing to Hire Investigators, Nurse Consultants and Other Personnel. Allows the BRN to hire a certain number of investigators with the authority and status of peace officers.

i) Justification. It is the opinion of the Sponsor and the BRN that the BRN could pursue investigations more quickly if they were able to hire both sworn peace officers and non-sworn investigators, as well as nurse consultants, and not always have to rely on the DCA's Division of Investigation.

ii) No Concerns Raised.

i) New Enforcement Article for all Health Care Boards. Lists all the boards which are considered as a "healing arts boards" within DCA.

i) Justification. Many of the requirements that now only apply to the MBC and the Podiatric Board will now have general application to all healing arts boards by creating a new article in the B&P Code and including those provisions which should apply to all healing arts boards. This article will also include new provisions which will have general application to all healing arts boards.

ii) No Concerns Raised.

j) Authority for Executive Officers to Adopt Default Decisions and Stipulated Settlements. Allows a healing arts board to delegate to the executive officer the authority to adopt a proposed default decision in an administrative action to revoke a license if a licensee fails to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license.

i) Justification. According to the AG's Office, a majority of filed cases settle and the receipt of a Notice of Defense can trigger either settlement discussions or the issuance of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The executive officer of the board can provide summary reports of all settlements to the board and the board can provide constant review and feedback to the executive officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed settlement has been forwarded to the board's headquarters and when it has been placed on the board's agenda for a vote. Delegating this authority to the executive officer will result in a final disposition of these matters much more quickly. The fact that the BRN, for example, has reduced the number of its annual meetings has only increased the need for this.

According to the Center for Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default decision is "not rocket science" and should only take a matter of hours.

ii) Concerns Raised and Response. ANA/C supports the ability of the Executive Officer to revoke a license, but does not agree that the person cannot come back to the board and request reconsideration of the terms and conditions. Licensees should not lose their right to petition for changes just because they stipulated a settlement or because they failed to appear. Additionally, CNA states that the Executive Officer should be explicitly required to report to the board on any actions he or she took to sign default decisions and settlement agreements under this new authority. Lastly, CDA requests clarifying language to ensure that practitioners are still afforded rights they are entitled to following issuance of a default decision; and that the executive officers be given the authority to accept all stipulated settlements on behalf of the board. The Sponsor indicates that it will work with ANA/C, CNA and CDA to address these concerns.

The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that clarification is needed to ascertain timing and duration of the process, notice to the licensee, and the nature of the process. The Sponsor indicates it will work with the organizations to address their concerns.

aa) Authority for Health Boards to Enter Into Stipulated Settlements Without Filing an Accusation. Authorizes a healing arts board to enter into a settlement with a licensee or applicant prior to the board's issuance of an accusation or statement of issues against the licensee.

i) Justification. According to the Sponsor, the APA requires a board to file an accusation or statement of issues against a licensee before the board can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, boards have experienced licensees who are willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process.

ii) Concerns Raised and Response. The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) indicate that these provisions raise questions about the possibility and the ability of a board to coerce a settlement and does not allow for any future modifications of the stipulation.

Recent amendments would give notice to licensees by requiring the settlement to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. In addition, the amendments also allow a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

bb) Director's Authority to Temporarily Suspend License. Authorizes the Director of DCA to issue a temporary order to suspend the license of a licensee for up to 90 days if the Director receives evidence from a board that the licensee has engaged in conduct that poses an imminent risk of serious harm to public health, safety, or welfare. This provision previously also allowed for the ability to suspend a license if a licensee failed to comply with a request to inspect medical records.

i) Justification. According to the Sponsor, under existing law, the Interim Suspension Order (ISO) process (Section 494 of the B&P Code) provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. However, the Sponsor argues that currently the ISO process can take weeks to months to achieve, allowing licensees who pose a serious risk to the public to continue to practice for an unacceptable amount of time. Also the timeframes in which future action against the licensee must be taken, such as 15 days to investigate and file an accusation, are unreasonable and prevents most boards from utilizing the ISO process to immediately suspend the license of a health care practitioner. To ensure the public is protected, the Sponsor is proposing that the Director be given the authority to issue a cease practice or restricted practice order, upon the request of an executive officer.

ii) Concerns Raised and Response. CNA states that allowing suspension by the Director of the DCA without a hearing violates due process. CNA asserts that it is unclear why the bill would grant new powers to the Director when the BRN currently has the authority to temporarily suspend licensees by issuing an ISO. As indicated above, the ISO process can take weeks to months to achieve and the time limits on filing an accusation deter the use of the current ISO process. The order of the Director for a licensee to cease practice would be in effect for up to 90 days, giving the board time to gather further evidence to support a petition for an ISO. This would allow boards to expeditiously remove licensees from practice if necessary to protect the public while the investigation continues forward. The Sponsor indicates, however, that it will continue to work with CNA to address its concerns.

The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) state that the failure to produce records does not justify immediate suspension; the 24-hours hearing notice is insufficient and there is need to specify a standard of evidence. Recent amendments extend the 24-hours notice provision to five business days, establish a preponderance of the evidence as a standard; and define imminent risk of serious harm may address their concerns. Amendments also removed the ability of the Director to suspend a license because the licensee failed to comply with a request to inspect medical records.

cc) Automatic Suspension of License While Incarcerated. Provides that the license of a licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and requires the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.

i) Justification. The Sponsor notes that existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated and argues that there is no reason why other health professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent health a care professional from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked. According to the LA Times, "in some cases, nurses with felony records continue to have spotless licenses even while serving time behind bars." The LA Times gave examples of at least five nurses who had felony convictions and yet continued to have a license in good standing.

ii) No Concerns Raised.

dd) Attempt to Assure that BRN's Fund Will Only be Used for Board Expenditures. This bill allows a healing arts board to lower licensing fees by resolution if that board's fund reserve exceeds its statutory maximum; allows the Department of Finance, upon the request of the DCA, to augment the amount available for expenditures to pay enforcement costs for the services of the Attorney General's Office and the Office of Administrative Hearings. Further, in its current form, the bill

establishes the Emergency Health Care Enforcement Reserve Fund in the State Treasury to be administered by DCA, which would be continuously appropriated to support the investigation and prosecution of any matter within the authority of any of the healing arts boards.

i) Justification. According to the Author, the state of California is experiencing an unprecedented budget crisis, which has affected every aspect of state government. In response, the Governor has issued multiple executive orders instructing state agencies to reduce personnel expenditures by implementing a hiring freeze, eliminating overtime, terminating temporary employees, suspending all personal service contracts, and implementing a mandatory furlough of state employees. BRN and other DCA boards are "special fund" agencies in that they are funded not by the state's General Fund, but by their own "special funds" consisting of fees paid by licensees. These licensing fees flow steadily into each special fund account and are statutorily required to fund the regulatory programs of their respective boards. Even though the special funds exist for the sole purpose of supporting their own specified programs, multiple loans totaling $304.5 million have been taken from DCA's special funds to augment the General Fund and balance the state budget. There are currently 14 DCA special funds with outstanding loans totaling $237.8 million, $159 million of which is due to the Bureau of Automotive Repair. Two of the boards with outstanding loans have recently found it necessary to increase their fees; BRN is seeking to increase its fees effective January 2011, and the Board of Pharmacy implemented a fee increase in January 2010.

BRN alone funded a $14 million loan to the General Fund and is still owed $2 million. This money, as the Author argues, could have been used to augment the BRN's enforcement programs at a time in which resources for the BRN were seriously needed. Another factor, as indicated by the Author, is that the Budget Change Proposals (BCPs) for additional staff positions, including positions for enforcement, have not been authorized for various boards. (There is, however, no estimate on the number of BCPs that were not authorized.) Because of all of the budget actions to limit program growth, reduce spending, preserve cash reserves and further salary reductions, the effect has been of building up cash reserves for special funds, which could be subject to additional loans in the future. Also, any additional fee increases as anticipated by the BRN would also continue to build up cash reserves unless the BRN is able to spend down their reserves for purposes of increased enforcement efforts as anticipated by this measure. For this reason, the Author considers it critical that this measure address the use of the BRN's funds to deal with increased enforcement costs so that reserve moneys in the BRN's special fund will not revert back to the General Fund by way of a loan.

ii) No Concerns Raised.

ee) Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender. States that a decision issued by an administrative law judge that contains a finding that a health care practitioner engaged in any act of sexual exploitation, as defined, or has committed an act of been convicted of a sex offense, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Also, adds a new section that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

i) Justification. The Sponsor argues that the mandatory revocation of a license for acts of sexual exploitation currently applies to physician and surgeons, psychologists, respiratory care therapists, marriage and family therapists, and clinical social workers. Additionally, there is a mandatory revocation for any physician and surgeon, dentist, physical therapist, or psychologist who registers as a sex offender. There is no reason why these provisions should not apply to other healing arts boards.

ii) No Concerns Raised.

ff) Prohibition of Gag Clauses in Civil Dispute Settlement Agreements. Prohibits a licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with a board based on any action arising from his or her practice.

i) Justification. Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. The Sponsor argues that there is no reason why other health professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus prevent a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a board's effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function - protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a health care professional.

ii) No Concerns Raised.

gg) Access to Medical Records/Documents Pursuant to Board Investigations. Authorizes the AG and his or her investigative agents and healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Imposes civil and criminal penalties for licensees or health facilities for failure to comply with a patient's medical record request or with a court order mandating release of record.

i) Justification. Provisions authorizing the AG and its investigative agents and boards to inquire into any alleged violations of the laws under the board's jurisdiction and to inspect documents subject to specified procedures; currently exists for physicians and surgeons. Furthermore, existing law requires physicians and surgeons, dentists, and psychologists to produce medical records accompanied by a patient's written authorization and pursuant to a court order (subpoena), and prescribes penalties for failure to produce the records. When a board or the AG is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the AG has sought a court order and the court has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records. According to the Sponsor, there is no reason why the requirement for obtaining important medical records and documents pursuant to an investigation by a board should not uniformly apply to all healing arts boards.

ii) Concerns Raised and Response. CNA specifies that licensees should receive the same notice that facilities are entitled to delineating the penalties for failure to provide medical records. The Sponsor will work with CNA to address this issue.

Additionally, CNA states that the provision relieving licensees of their duty to turn over certified medical records they do not control, or have access to, is too narrow as there are other documents and records such as timekeeping, payroll, staffing records, and electronic tracking that nurses may not own or control, but may be relevant to an investigation and are requested. Amendments will be made to this measure to address this concern. CNA also points out that the exemptions for communications between licensees and patients from existing legal confidentiality requirements during investigations or proceedings raises HIPAA concerns, and should trigger stronger patient consent requirements. The Sponsor indicates that it will work with CNA to address these concerns.

The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that this bill permits access to sensitive psychotherapy records in investigations without permission of the patient or express written authorization for waiving confidentiality.

Current law allows the AG's Office or the boards to inspect and copy medical records where there is patient consent . Additionally, the provisions allowing disclosures of privileged communication where patient consent is given currently applies to physicians and surgeons. The Sponsor's intent in applying these provisions to all healing arts boards is to give them consistent tools in obtaining important records and documents pursuant to an investigation of the licensee, and not to change existing legal requirements. Those concerned with the issue of changing the existing legal requirements for obtaining mental health records should pursue a separate bill and the Sponsor will assure that those changes would be double-jointed to this measure.

Additionally, the American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) indicate that the fines and penalties for failure to produce medical records are excessive. Recent amendments reduced the amount of penalties for failure to produce medical records so they are consistent with current law.

hh) Access to Records/Documents from Governmental Agencies. Requires a state agency, upon receiving a request from a board, to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations.

i) Justification. According to the Sponsor, when a regulatory program conducts an investigation on one of its licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

ii) Concerns Raised and Response. The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that a separate written patient authorization is necessary when seeking information from another state agency.

The Sponsor states they are willing to further discuss the consent requirements.

ii) Payment to Agencies for Record/Documents Received. Requires all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

i) Justification. According to the Sponsor, only a small number of external governmental agencies charges boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

ii) No Concerns Raised.

jj) Employer of Health Care Practitioner Reporting Requirements. Requires any employer of a healing arts licensee to report to the respective board the suspension or termination for cause, as defined (serious violations of professional practice), of any health care licensee in its employ.

i) Justification. The Sponsor notes that currently employers of vocational nurses, psychiatric technicians and respiratory care therapists are required to report to the respective boards the suspension or termination for cause of these health care practitioners. The MBC, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and the Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. The Sponsor argues that there is no reason why the remaining health-related boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for serious disciplinary reasons.

ii) Concerns Raised and Response. SEIU is concerned about how employers may use unsubstantiated charges such as falsification of records to terminate employment. Recent amendments deleted falsification of records as a cause for reporting, and defined gross negligence and incompetence for purposes of reporting.

UNAC states that the timeframe of five days to make the report may not allow adequate time to thoroughly review and investigate an incident. The timeframe for making the report has been extended to 15 business days to address this concern.

Lastly, CNA is concerned with the impact that these reporting requirements would have on whistleblowers, and other nurses who are disciplined or terminated by their employers for fulfilling their duties as patient advocates. CNA also points out that the bill currently gives more protection to public employees. Recent amendments provide that no person shall incur a penalty for making the report. The Author further indicates that she will continue to work on this reporting requirement to ensure that there is fairness in the reporting process.

aaa) Annual Enforcement Reports by Boards to the Department and Legislature. Requires healing arts boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse.

i) Justification. Currently, the MBC reports annually to the DCA and the Legislature certain enforcement actions taken against physicians and surgeons. The Sponsor argues that there is no reason why other health-related boards should not be subject to the same requirements in submitting an annual enforcement report both to the DCA and the Legislature.

ii) No Concerns Raised.

bbb) Enforcement Timeframes for the Attorney General's Office. Requires the AG's Office to serve an accusation within 60-calendar days after receipt of a request for accusation from a board; serve a default decision within 5 days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

i) Justification. According to the Sponsor, there are delays in the prosecution of cases at the AG's Office that are contributing to the lengthy enforcement and disciplinary process that can take on average up to 2 to 3 years. According to statistics provided by the AG's Office, the average time for the AG to file an accusation for a board is taking from 5 to 8 months, and to complete prosecution can take on average about 400 days. Concerns have also been raised about the time it takes the AG to prepare a proposed default decision. The filing of a default decision is made once a licensee has failed to file a "notice of defense" when an accusation has been served on him or her. If the licensee fails to file a notice of defense within a specified timeframe, he or she is subject to a default judgment because of a failure to appear or make a defense of the disciplinary case. In 2004-2005 it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. However, the filing of a proposed default decision is "not rocket science" and should only take a matter of days.

ii) Concerns Raised and Response. CDA is concerned that the proposed shortened timeframes may hinder the licensee's ability to prepare a defense, and questions whether the AG's Office has the capacity to meet strict timeline. The Sponsor states that it will work with CDA, and the AG's Office to resolve these issues.

ccc) Limited License for Mental Illness or Chemical Dependency. Grants healing arts boards the authority to provide a limited license, certificate or permit to an applicant who may be unable to practice his or her profession safely because of mental or physical illness. Specifies requirements for the provision of limited license.

i) Justification. The Sponsor points out that boards lack the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. Boards have the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one with mental illness or other physical illness.

ii) Concerns Raised and Response. ANA/C and CNA believe it is not necessary to define limited license in statute and that there are so many places a nurse can work with a physical disability. SEIU and CNA states that the limited licensure provisions violates the Americans with Disabilities Act (ADA).

Existing law allows boards to revoke, suspend, place on probation or take any other appropriate action against a licensee if the licensee's ability to practice his or her profession safely is impaired because of mental illness or physical illness affecting competency. According to the Legislative Counsel, the ADA prohibits discrimination against disabled persons by public entities, and that no qualified individual with a disability shall, by reason of such disability, be excludedfrom participation in or be denied the benefits of the services, programs, or activities of a public entity, including a public entity that administers a licensing program (Hason v. Medical Board of California (2002), 279 F.3d 1167). Instead of denying licensure of individuals who are impaired due to mental illness, or physical illness affecting competency, this bill provides reasonable accommodation through the limited licensure provisions, after specified conditions are met. This limited licensure provision is similar to what currently exists for physicians and surgeons adopted pursuant to AB 1070 (Hill, Chapter 505, Statutes of 2009).

ddd) Report Licensing Actions and Checking Information Maintained by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB). Requires health care licensing boards to check the NPDB and the HIPDB prior to renewing the license, certificate or permit. Allows a healing arts board to charge a fee to cover the actual costs to conduct the search. Codifies federal requirement of healing arts boards to report specific enforcement actions taken against health care practitioners.

i) Justification. According to the Sponsor there is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

For background purposes, the NPDB and HIPDB, managed by the Health Resources and Services Administration of the U.S. Department of Health and Human Services, serves as an electronic repository of information on adverse licensure actions, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners. The legislation that led to the creation of the NPDB was enacted because the U.S. Congress believed that the increasing occurrence of medical malpractice litigation and the need to improve the quality of medical care had become nationwide problems that warranted greater efforts than any individual State could undertake. The intent is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. The information reported to these databanks is not public information.

One of the articles published by the LA Times pointed out that these databanks were missing critical cases, including those who have harmed patients in California. The LA Times asserted that there has been sporadic reporting to these databanks, and state boards, hospitals and other entities could be missing information necessary to ensure the protection of the public.

ii) Concerns Raised and Response. CDA is concerned about the amount and the basis for the fee proposed in this section. The NPDB and the HIPDB databanks are supported by query fees which could range from $4 to $10. The Sponsor indicates it will continue to address the issue on query fees.

eee) Misdemeanor for Violation of Article 10.1 - Healing Arts Licensing Enforcement Act. Makes a violation of any of the above enforcement provisions a misdemeanor.

i) Justification. Since the provisions in new Article 10.1 relate to similar enforcement provisions within different Practice Acts, a violation of any of these provisions should also be a misdemeanor with specific penalties that would be applicable.

ii) No Concerns Raised.

fff) Conviction of Sexual Misconduct - Substantially Related Crime. Provides that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board license.

i) Justification. Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct or a felony requiring registration as a registered sex offender is considered a crime substantially related to the qualifications, functions, or duties of a board licensee. The Sponsor argues that there is no reason why other health professionals who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and finding that such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

ii) No Concerns Raised.

ggg) Unprofessional Conduct for Drug Related Offense. Specifies that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct.

i) Justification. The Medical Practice Act provides that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. The Sponsor argues that there is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

ii) No Concerns Raised.

hhh) Unprofessional Conduct for Failure to Cooperate With Investigation of Board. Specifies that failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

i) Justification. This requirement was recommended by the AG's Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

ii) Concerns Raised. The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that the standard in this provision is vague. These provisions were suggested by the AG's Office, and the Sponsor will continue to work with the AG's Office and these stakeholders to clarify these provisions.

iii) Reporting by Licensee of Arrest, Conviction or Disciplinary Action. Requires a healing arts licensee to submit a written report for the following reasons: (1) the bringing of an indictment or information charging a felony against the licensee; (2) arrest of the licensee; (3) conviction of the licensee of any felony or misdemeanor; and, (4) any disciplinary action taken by another healing arts board of this state or of another state or an agency of the federal government.

i) Justification. Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she been convicted of a felony or misdemeanor. As argued by the Sponsor, there is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

ii) Concerns Raised and Response. CNA indicates reporting of arrests and felony charges raises due process concerns. It should be noted that this is information which the board will eventually receive pursuant to fingerprint records maintained by the Department of Justice on health care practitioners. This reporting requirement is intended to serve as an early notification by the licensee to the board so disciplinary action, if necessary, is not delayed.

jjj) Report of Crime or Personal Injury Judgment by Clerk of Court. Requires that the clerk of the court provide notice to a healing arts boards for which the licensee is licensed, if there is a judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to their negligence, error or omission in practice, or his or her rendering unauthorized professional services.

i) Justification. As argued by the Sponsor, there is no reason the clerk of the court should not report a judgment for a crime or for personal injury to any of the other healing arts boards. Most healing arts boards are currently covered under this provision.

ii) No Concerns Raised.

aaaa)Report of Felony Charges by DA, City Attorney, or Clerk of Court. Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

i) Justification. As argued by the Sponsor, there is no reason why all the other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

ii) No Concerns Raised.

bbbb)Report of Preliminary Hearing Transcript of Felony by Clerk of Court. Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

i) Justification. As argued by the Sponsor, there is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

ii) No Concerns Raised.

cccc)Notification of Future Arrests or Convictions from DOJ. Requires the Department of Justice to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees.

i) Justification. According to the Sponsor, while all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The DCA is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices and will allow boards to take action against licensees sooner.

ii) No Concerns Raised.

dddd)Unlicensed Practice - Public Crime. Specifies that it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

i) Justification. According to the Sponsor, unlicensed practice presents a serious threat to public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold; not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

ii) No Concerns Raised.

eeee)Sunset Dates for Diversion Programs. Provides for a January 1, 2013 sunset date for the diversion programs of the following healing arts licensees: dentists, osteopathic physicians and surgeons, physical therapists, registered nurses, physician assistants, pharmacists and veterinarians.

i) Justification. The sunset of diversion programs will provide sufficient opportunity for these programs to be reviewed and audited by the Legislature to assure they are operating properly and monitoring those practitioners who participate in these programs.

ii) Concerns Raised and Response. ANA/C , CNA , SEIU , and UNAC oppose the sunset of the BRN's diversion programs. The American Psychiatric Nurses Association , the California Association of Marriage and Family Therapists , California Psychiatric Association , California Psychological Association , California Society for Addiction Medicine , California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states be removed.

According to the Author, there is no intent to eliminate diversion programs by placing a sunset date on these programs to assure that prior to their sunset date that the program is evaluated. It has always been the prerogative of the Legislature to include sunset dates to provide both oversight
and a thorough review of programs and agencies under the DCA as a way to provide important changes to these programs or agencies if needed. The continuation of diversion programs and extension of their sunset dates will be included as part of any measure to extend the sunset of their respective boards. This bill will be amended to change the sunset dates of the diversion programs to coincide with the sunset dates of the boards, and allow the Legislature to review the diversion programs in conjunction with the sunset review of the boards.

ffff)Allow Healing Arts Boards to Utilize the Vertical Enforcement and Prosecution Model. Expands the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

i) Justification. According to the Sponsor, allowing healing arts boards to utilize the vertical enforcement and prosecution model that currently applies to physicians and surgeons could be beneficial especially for complex types of actions.

ii) No Concerns Raised.

gggg)Requirement for a New Information Technology System. Provides that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.

i) Justification. DCA's current licensing and enforcement database systems are antiquated and impede the boards' abilities to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. According to the Sponsor, implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-2011.

ii) Concerns Raised and Response. CNA believes a new information technology system is too costly to implement and is concerned about how the system would be funded. However, as indicated the Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-2011.

5.Arguments in Support. The California Board of Podiatric Medicine is in support of this bill and believes this bill provides for better government and consumer protection for Californians.

6.Author's Amendments to be Taken in Judiciary Committee.

a) Makes the following Technical Amendments:

i) On page 17, delete lines 18-20 and insert:
"The contractual agreement shall provide that the collection agency shall use or release the personal information only for the purposes of collecting the outstanding fees, fines, or cost recovery amounts, and shall provide safeguards, consistent with the Information Practices Act, to ensure that the personal information is protected from unauthorized disclosure. A collection service shall be liable to an individual for compensatory damages and reasonable attorney's fees and costs sustained as a result of the unauthorized use or disclosure of an individual's personal information received or collection under this section."

ii) On page 25, delete on line 8-10 "in, and for, the Counties of Sacramento, San Francisco, Los Angeles, or San Diego" and insert: "for the county in which the licensee's address of record is located."

iii) On page 33, line 17, add the following:"A healing arts board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by state or federal law."

iv) Remove Section 720.38 (on page 40, delete lines 35-40 and on page 41, delete lines 1-15) to delete the provisions establishing an Emergency Health Care Enforcement Reserve Fund which was inadvertently not removed from the bill in previous amendments.

NOTE : Double-referral to Judiciary Committee (second.)

SUPPORT AND OPPOSITION:

Support:
Department of Consumer Affairs (Sponsor)
California Board of Podiatric Medicine.

Oppose Unless Amended:
American Psychiatric Nurses Association, California Chapter
California Association of Marriage and Family Therapists
California Dental Association
California Psychiatric Association
California Psychological Association
California Society for Addiction Medicine
California Society for Clinical Social Work
California Nurses Association
National Association of Social Workers (CA Chapter)

Service Employees International Union

Opposition:
None on File as of April 13, 2010

Consultant: Rosielyn Pulmano

SB 1111 (4/12/2010 version) Proposed Changes through Regulations

Business and Professions Code:

1. **§720.2(b) - Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license:** Permit the Board to delegate to the Executive Officer the authority to adopt a "stipulated settlement" if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement. **Recommend: Amend 16 CCR 1403.**

2. **§720.10 - Revocation for sexual misconduct:** Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. **Recommend: Amend regulations/disciplinary guidelines.**

3. **§720.12 - Denial of application for registered sex offender:** Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. **Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.**

4. **§712.14 - Confidentiality agreements regarding settlements:** Confidentiality agreements regarding settlements can cause delay and thwart a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public. **Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.**

5. **§720.16(d) and (f) - Failure to provide documents and 718 (d) - Failure to comply with court order:** Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records. **Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.**

6. **§720.32 - Psychological or medical evaluation of applicant:** Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice. **Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.**

7. **§726(a) & (b) - Sexual misconduct:** Currently defined in B&P Code §726. **Recommend: Define in regulation that sexual misconduct is unprofessional conduct.**

8. **§737 - Failure to provide information or cooperate in an investigation:** Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation. **Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.**

9. **§802.1 - Failure to report an arrest, conviction, etc.:** Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction. **Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.**

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee

Brian J. Stiger, Director

April 2010 (Corrected Version)

November Corrections shown underlined
December Corrections shown double underlined
April Corrections shown *italics and underlined*

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Kim Madsen
Board of Behavioral Sciences

Robert Puleo
Board of Chiropratic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
Hearing Aid Dispensers

Linda Whitney
Medical Board

Heather Martin
Board of Occupational Therapy

Mona Maggio
Board of Optometry

Donald Krpan, D.O.
Osteopathic Medical Board/Naturopathic Medicine

Virginia Herold
Board of Pharmacy,

Steve Hartzell
Physical Therapy Board

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board

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Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians

Table of Contents

#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

~~Any licensee in a board diversion program or whose license is on probation, who the board has reasonable suspicion has a substance abuse problem shall be required to undergo a clinical diagnostic evaluation at the licensee's expense. The following standards apply to the clinical diagnostic evaluation.~~

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

~~1. The clinical diagnostic evaluation shall be paid for by the licensee;~~

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
    - holds a valid, unrestricted license, *which includes scope of practice* to conduct a clinical diagnostic evaluation;
    - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
    - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
    - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
    - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
    - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. ~~His or her license shall be automatically suspended placed on inactive status~~ *The Board shall order the licensee to cease practice* during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.

2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least ~~one (1) month~~ *30 days* of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomnicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.

3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.

3. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

5. The worksite monitor must adhere to the following required methods of monitoring the licensee:

    a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

    b) Interview other staff in the office regarding the licensee's behavior, if applicable.

    c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:

    - the licensee's name;
    - license number;
    - worksite monitor's name and signature;
    - worksite monitor's license number;
    - worksite location(s);
    - dates licensee had face-to-face contact with monitor;
    - staff interviewed, if applicable;
    - attendance report;
    - any change in behavior and/or personal habits;
    - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance~~, the board shall~~:

1. ~~The licensee's license shall be automatically suspended; Place the licensee's license on inactive status~~ *The board shall order the licensee to cease practice*; ~~and~~

2. ~~Immediately~~ The board shall contact the licensee and instruct the licensee to leave work; and

3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall *immediately* lift the ~~suspension of reactivate the license~~ *cease practice order*.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;

2. Communicate with the licensee and/or any physician who is treating the licensee; and

3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. ~~Inactivation Automatic Suspension~~ *Licensee will be ordered to cease practice*.
   a) the licensee must undergo a new clinical diagnostic evaluation, and
   b) the licensee must test *negative* for at least a month of continuous drug testing before being allowed to go back to work. ~~(, and)~~
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

"Petition" as used in this standard is an informal request as opposed to a "Petition for Modification" under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.

2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.

3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

"Petition for Reinstatement" as used in this standard is an informal request (petition) as opposed to a "Petition for Reinstatement" under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.

2. Demonstrated successful completion of recovery program, if required.

3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.

4. Demonstrated that he or she is able to practice safely.

5. Continuous sobriety for three (3) to five (5) year.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.

2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

   Specimen Collectors:

   a) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.

   b) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.

   c) The provider or subcontractor must provide collection sites that are located in areas throughout California.

   d) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.

   e) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.

   f) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

g) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.

h) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

i) Must undergo training as specified in Uniform Standard #4 (6).

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;

b) must be licensed or certified by the state or other nationally certified organization;

c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;

d) shall report any unexcused absence within 24 hours to the board, and,

e) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:

   a) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

   b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.

   c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

d) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

2. The worksite monitor must adhere to the following required methods of monitoring the licensee:

   a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

   b) Interview other staff in the office regarding the licensee's behavior, if applicable.

   c) Review the licensee's work attendance.

3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:

   - the licensee's name;
   - license number;
   - worksite monitor's name and signature;
   - worksite monitor's license number;
   - worksite location(s);
   - dates licensee had face-to-face contact with monitor;
   - staff interviewed, if applicable;
   - attendance report;
   - any change in behavior and/or personal habits;
   - any indicators that can lead to suspected substance abuse.

Treatment Providers

1. Treatment facility staff and services must have:

   a) Licensure and/or accreditation by appropriate regulatory agencies;

   b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;

   c) Professional staff who are competent and experienced members of the clinical staff;

d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;

e) Means to provide treatment/progress documentation to the provider.

2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

a) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations All state policies, guidelines, and requirements apply to all subcontractors.

b) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.

c) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.

3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

California State Board of Optometry

Memo

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Board Members **Date:** May 11, 2010

From: Dr. Lee Goldstein, OD, MPA
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 5 – Public Comment for Items Not on the Agenda**

California State Board of Optometry

Memo

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To: Board Members **Date:** May 11, 2010

From: Dr. Lee Goldstein, OD, MPA
Board President **Telephone:** (916) 575-7170

Subject: **Agenda Item 6 – Adjournment**

The next Board Meeting is scheduled for Wednesday, July 28, 2010 at the:
Department of Consumer Affairs
1625 North Market Blvd. 2nd Floor
El Dorado Room
Sacramento, CA 95834