



CALIFORNIA STATE BOARD OF
OPTOMETRY

**Legislation & Regulation
Committee Meeting**

May 10, 2011





STATE BOARD OF OPTOMETRY
 2420 DEL PASO ROAD, SUITE 255, SACRAMENTO, CA 95834
 P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov



MEETING NOTICE
BOARD OF OPTOMETRY
LEGISLATION AND REGULATION COMMITTEE
MAY 10, 2011

10:00 a.m. – 12:00 p.m.

Department of Consumer Affairs
 1625 North Market Boulevard
 Third Floor, San Francisco Room
 Sacramento, CA 95834

AND

Via Telephone Conference Call

26160 Enterprise Way
 Lake Forest, CA 92630

4580 Electronics Place
 Los Angeles, CA 90030

818 Oak Park Rd
 Covina, CA 91724

1. Welcome and Introductions
2. Regulation Update
3. Discussion and Possible Recommendation to Refer to the Full Board Staff Recommendations to Revise the Fictitious Name Permit (FNP) Application and Amend Title 16, California Code of Regulations, section 1518 Fictitious or Group Names
4. Discussion and Consideration of Legislative Proposals that May Impact the Practice of Optometry
 - Senate Bill (SB) 100 (Price) Health practitioner name designations
 - Assembly Bill (AB) 675 (Huff) Continuing Education (CE) to promote labor organizing
 - SB 709 (DeLeon) Pupil comprehensive eye exams
 - AB 761 (Hernandez) CLIA Testing
 - SB 690 (Ed Hernandez) Eliminate health plan discrimination
 - AB 778 (Atkins) Co-location (Lenscrafters)
 - SB 544 (Price) (New SB1111)
 - AB 958 (Berryhill) Regulatory Boards: limitations (enforcement related)
 - SB 541 (Price) Expert consultants (Urgency Bill)
5. Public Comment for Items Not on the Agenda
6. Suggestions for Future Agenda Items
7. Adjournment

Public comments will be taken on agenda items at the time the specific item is raised. The Committee 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 facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Krista Eklund at the Board of Optometry, 2420 Del Paso Road, Suite 255, Sacramento, CA 95834, or by phone at (916) 575-7172, no later than one week prior to the meeting.

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To: Legislation & Regulation Committee

Date: May 10, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 1– Welcome and Introductions

Legislation & Regulation Committee Members:

Lee Goldstein, O.D., M.P.A., Board President

Monica Johnson, Secretary

Edward J. Rendon, M.A.

Susy Yu, O.D., M.B.A., F.A.A.O.

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To: Legislation & Regulation Committee

Date: May 10, 2011

From: Andrea Leiva
Policy Analyst

Telephone: (916) 575-7182

Subject: Agenda Item 2 – Regulation Update

1536 Continuing Optometric Education

Updates the regulation with current information and offers new CE opportunities.

Status

Submitted to the Office of Administrative Law (OAL) on April 6, 2011. OAL has 30 business days to review this file.

Please see Attachment 1 for the final proposed language submitted to OAL.

1525.1 Fingerprint Requirements

Updates the regulation to further clarify who is required to meet the Board's fingerprinting requirements.

1513 Registered Name Only

Further clarifies the use of an optometrist's name in advertising.

1514 Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern

Further clarifies that distinct signage is required at commercial/mercantile locations.

Status

Submitted to OAL today, May 10, 2011 for notice in the California Regulatory Notice Register on May 20, 2011. The 45-day comment period ends on July 4, 2011 and a hearing to receive oral comments will be held on July 5, 2011.

Please see Attachment 2 for the proposed language, notice of regulatory action and initial statement of reasons.

Sponsored Free Health Care Events

Background: Assembly Bill 2699 (Bass, Ch. 270, 2011) added Business and Professions Code (BPC) section 901 which requires an out-of-state optometrist to obtain authorization from the Board prior to providing eye care services through a sponsored free health care event in this state. Care can only be

provided free of charge to uninsured/underinsured persons, on a short-term voluntary basis, and in association with a sponsoring entity registered with the Board and the county health department in which the health care services will be provided.

This law can only be implemented with the development of regulations. With the assistance of the Department of Consumer Affairs, the Board has prepared proposed regulations, the registration form for the sponsoring entity and the authorization request form for the out-of-state optometrist.

This proposal will add the following article and regulations to Division 15 of Title 16 of the California Code of Regulations:

Article 2.1 Sponsored Free Health Care Events – Requirements for Exemption

1508. Definitions

1508.1. Sponsoring Entity Registration and Recordkeeping

1508.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event

1508.3. Termination of Authorization and Appeal

1508.4. Additional Practice Requirements for Out-of-State Practitioners Authorized to Participate in Sponsored Free Health Care Events

Please see Attachment 3 for the proposed language, Attachment 4 for the sponsoring entity registration form, and Attachment 5 for the out-of-state optometrist authorization request form.

Action Requested: Staff requests that the legislation & regulation committee review the language and forms, and make changes if necessary. These regulations will be presented at the Board's August Board meeting for final approval to begin an official rulemaking.

BOARD OF OPTOMETRY

ORDER OF ADOPTION

Amend section 1536 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1536. Continuing Optometric Education; Purpose and Requirements

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the ~~renewal deadline~~ license expiration date. Such course work shall be subject to Board approval. ~~No more than Up to eight hours of course work may shall be in the area of patient care management or ethics in the practice of optometry. Courses dealing with business management shall not be approved.~~ Business management courses are not accepted by the Board.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of ~~continuing education~~ continuing optometric education every two years in order to renew his or her ~~certificate license~~. Thirty-five of the required 50 hours of continuing education continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (f).

(c) Up to 20 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self study through correspondence or an electronic medium.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

(4) A full day's attendance at a California State Board of Optometry Board meeting. Up to two credit hours shall be granted for a full day.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, the American Heart Association, or other association approved by the Board. Up to four credit hours shall be granted for this course.

(d) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education ~~offerings courses~~ officially sponsored or accredited recognized by any accredited school or college of optometry.

(2) Continuing optometric education offerings courses provided by of any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education offerings courses approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education).

(f) Other ~~educational programs~~ continuing optometric education courses approved by the Board as meeting the criteria as set forth in paragraph (g) below, after submission of a ~~program~~ course, schedule, topical outline of subject matter, and curriculum vitae of all instructors or lecturers involved, to the ~~Executive Officer of the Board~~ not less than 45 days prior to the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve ~~of an educational program~~ a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

(g) The criteria for judging and approving ~~education programs~~ continuing education courses by the Board for continuing optometric education credit will be determined on the following basis:

(1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry.

(2) Whether the ~~speakers~~ instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content and attendance as the Board requires, for a period of at least three years from the date of course presentation.

(h) Proof of continuing optometric education course attendance ~~at continuing education programs~~ shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this State. Certification of continuing optometric education course attendance ~~at continuing education courses~~ shall be submitted by the licensee to the ~~Executive Officer or his/her designee~~ Board upon request, and shall contain the following minimal information:

(1) ~~The~~ n Name of the sponsoring organization.

(2) ~~The~~ n Name, signature, practice address, and license number of the attending licensee.

(3) ~~The~~ s Subject or title of the educational ~~program~~ course.

(4) ~~The~~ n Number of continuing optometric education hours ~~in actual attendance~~ provided for attending the course.

(5) ~~The~~ d Date of the educational ~~program~~ course was provided.

(6) ~~The~~ l Location of the educational ~~program~~ where the course was provided.

(7) ~~The~~ n Name(s) and signatures of the course instructor(s).

(8) Such other evidence of course content or attendance as the Board may deem necessary.

Use of a ~~Board-specified certificate form~~ certificate of course completion provided by the Board is recommended for any educational ~~programs~~ continuing optometric education course

approved by the Board pursuant to the above. Such forms will be furnished by the ~~Executive Officer on Board~~ upon request.

The Board will also recognize and utilize the Association of Regulatory Boards in Optometry's online Optometric Education (OE) Tracker system as proof of continuing education course attendance.

(i) The following licensees shall be exempt from the requirements of this section:

(1) Any licensee serving in the regular armed forces of the United States during any part of the ~~24 months~~ two years immediately preceding the ~~annual license renewal~~ license expiration date.

(2) Those licensees as the Board, in its discretion, determines were unable to ~~attend~~ complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.

(3) Any licensee who is renewing an active license for the first time, if ~~he/she~~ he or she graduated from an accredited school or college of optometry less than one year from the date of initial licensure.

(j) The Board may conduct an audit of any licensee's attendance ~~at continuing education programs~~ of a continuing optometric education course as a means of verifying compliance with this section.

~~(k) As a condition of license renewal, all licensees are required to maintain current certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, American Heart Association, or other association approved by the Board. Training required for the CPR certificate shall not be credited toward the requirements of subdivision (a). Exemptions will be made for licensees as the Board, in its discretion, determines were unable to maintain current CPR certification due to physical impairment, illness, incapacity, or other unavoidable circumstances.~~

Note: Authority cited: Sections ~~3023.1~~ and 3059, Business and Professions Code. Reference: Section 3059, Business and Professions Code.

BOARD OF OPTOMETRY

PROPOSED LANGUAGE

Amend sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations to read as follows:

§1513. REGISTERED NAME ONLY

All signs, cards, stationery or other advertising must clearly and prominently identify the individual optometrist or optometrists: as listed on their registration or certification.

Note: Authority cited: Sections 651 and 3025, Business and Professions Code.
Reference: Sections 651 and 3125, Business and Professions Code.

§1514. RENTING SPACE FROM AND PRACTICING ON PREMISES OF COMMERCIAL (MERCANTILE) CONCERN

Where an optometrist rents or leases space from and practices optometry on the premises of a commercial (mercantile) concern, all of the following conditions shall be met:

(a) The practice shall be owned by the optometrist and in every phase be under his/her exclusive control. The patient records shall be the sole property of the optometrist and free from any involvement with a person unlicensed to practice optometry. The optometrist shall make every effort to provide for emergency referrals.

(b) The rented space shall be definite and apart from space occupied by other occupants of the premises.

(c) The practice shall contain All signs, and advertising, ~~and that display shall likewise be the practice as~~ separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed in connection therewith.

(d) There shall be no legends as "Optical Department," "Optometrical Department," "Optical Shoppe," or others of similar import, displayed on any part of the premises or in any advertising.

(e) There shall be no linking of the optometrist's name, or practice, in advertising or in any other manner with that of the commercial (mercantile) concern from whom he/she is leasing space.

Note: Authority cited: Sections 3025 and 3025.5, Business and Professions Code.
Reference: Sections 651 and 3025, Business and Professions Code.

§ 1525.1, FINGERPRINT REQUIREMENTS

(a) As a condition of renewal for a licensee who was initially licensed prior to ~~January~~ April 1, 1998 2007, ~~or for whom an electronic record of the submission of fingerprints no longer exists,~~ such licensee shall furnish to the Department of Justice a full set of fingerprints for the purpose

of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints to the Department of Justice and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(3) This requirement is waived if the license is renewed in an inactive status, or if the licensee is actively serving in the military outside the country. The board shall not return a license to active status until the licensee has complied with subsection (a).

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state and, the United States, and its territories, military court, or other country, omitting traffic infractions under \$300 not involving alcohol, dangerous drugs, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

Note: Authority cited: Sections 144, 3010.1, 3010.5, 3024 and 3025, Business and Professions Code.

Reference: Section 3110, Business and Professions Code; and Section 11105, Penal Code.

TITLE 16. BOARD OF OPTOMETRY

NOTICE IS HEREBY GIVEN that the Board of Optometry (hereafter “Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice must be received by the Board at its office not later than 5:00 p.m. on July 4, 2011 or must be received by the Board at the hearing.

A hearing in this matter has been scheduled for July 5, 2011 from 10:00 a.m. to 12:00 p.m., in the Yosemite Room, at 2420 Del Paso Road, Sacramento, California 95834. All interested parties will be heard at that time.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text with the exception of technical or grammatical changes. The full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 144, 651, 3010.1, 3024, 3025 and 3025.5 of the Business and Professions Code, and to implement, interpret or make specific Sections 651, 3025, 3110, 3010.5 and 3125 of said Code, and Section 11105 of the Penal Code, the Board of Optometry is considering changes to Division 15 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Amend sections 1513, 1514 and 1525.1.

Pursuant to Business and Professions Code (BPC) section 3025 the Board may promulgate rules and regulations governing procedures of the Board, the admission of applicants for examination for certificates of registration as optometrists, and the practice of optometry.

1513. Registered Name Only and

1514. Renting Space From and Practicing on Premises of Commercial (Mercantile) Concern

According to BPC section 651, it is unlawful for an optometrist to disseminate any information that is false or misleading in connection with their professional practice or business. Any person that violates this restriction is guilty of a misdemeanor which could result in the loss of their license to practice optometry.

The proposed amendments to the regulation are non-substantive and would further clarify the use of an optometrist’s name in advertising and that signage is required at commercial/mercantile locations.

1525.1. Fingerprint Requirements

BPC section 144 requires the Board’s licensees who have not been fingerprinted as a condition of licensure to furnish to the agency a full set of fingerprints for the purposes of conducting criminal history record checks by the Department of Justice and the Federal Bureau of Investigation

The proposed amendments to the regulation would further clarify which licensees are required to submit fingerprints during the license renewal process.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Cost/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: None

The Board of Optometry has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

There are no costs associated with the proposed regulatory action. The proposed amendments only clarify the fingerprint requirements that licensees need to meet in order to maintain their license in active status, and how a licensee must advertise in order to stay in compliance with the Board.

AND

The following studies/relevant data were relied upon in making the above determination:
None

Impact on Jobs/New Businesses:

The Board of Optometry has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulation would not affect small businesses. The proposed amendments to the regulation are only clarifying what is required of optometrists in order to remain in compliance with the Board.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this notice.

Any interested person may present written statements relevant to the above determinations to the Board of Optometry at the address referred to below.

INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulations, and any document incorporated by reference, of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Optometry at 2420 Del Paso Road, Suite 255, Sacramento, California 95834, or from the Board of Optometry web-site at www.optometry.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web-site listed below.

CONTACT PERSON:

Any inquiries or comments concerning the proposed rulemaking action may be Addressed to:

Name: Andrea Leiva
Policy Analyst
Address: 2420 Del Paso Road, Suite 255
Sacramento, CA 95834
Telephone Number: (916) 575-7182
Fax Number: (916) 575-7292
E-mail Address: andrea.leiva@dca.ca.gov

The backup contact person is:

Name: Mona Maggio
Executive Officer
Address: 2420 Del Paso Road, Suite 255
Sacramento, CA 95834

Telephone Number: (916) 575-7176
Fax Number: (916) 575-7292
E-mail Address: mona.maggio@dca.ca.gov

Optometry Board web-site access: Information regarding this proposal can be found at www.optometry.ca.gov, click on "Laws and Regulations", then "Proposed Regulations".

BOARD OF OPTOMETRY
INITIAL STATEMENT OF REASONS

Hearing Date: July 5, 2011

Subject Matter of Proposed Regulations: Registered Name, Renting Space and Fingerprints

Sections Affected: Sections 1513, 1514 and 1525.1 in Division 15 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose of each Adoption, Amendment, or Repeal:

Amend Section 1513. Registered Name Only

To further clarify the use of an optometrist's name in advertising.

Amend Section 1514. Renting Space From and Practicing on Premises of Commercial (Mercantile) Concern

To further clarify that signage is required at commercial/mercantile locations.

Amend Section 1525.1. Fingerprint Requirements

To further clarify which licensees are required to submit fingerprints during the license renewal process.

Factual Basis/Necessity:

The amendments to Title 16, CCR sections 1513, 1514 and 1525.1 are necessary for the following reasons:

Section 1513. Registered Name Only

According to BPC section 651, it is unlawful for an optometrist to disseminate any information that is false or misleading in connection with their professional practice or business. Any person that violates this restriction is guilty of a misdemeanor which could result in the loss of their license to practice optometry.

The existing regulation requires that all signs, cards, stationery or other advertising clearly and prominently identify an optometrist. Upon the Board's review of various optometry websites, signage and other advertising, it was found that it has become a common practice for optometrists to alter their names by either shortening their Fictitious Name Permit, or their first name (such as Stephen to Steve). This is a violation of BPC section 651.

Although the title of this regulation explicitly states "Registered Name Only," it is still unclear to many licensees how they must use their name in their advertising. The proposed amendments to the regulation adds language specifying further that advertising must identify optometrists "as listed on their registration or certification." The changes are non-substantive in nature and for clarification purpose only.

Section 1514. Renting Space from and Practicing on Premises of Commercial (Mercantile) Concern

According to BPC section 651, it is unlawful for an optometrist to disseminate any information that is false or misleading in connection with their professional practice or business. Any person that violates this restriction is guilty of a misdemeanor which could result in the loss of their license to practice optometry.

The existing regulation requires that an optometrist who is practicing in a rented space at a commercial location display all advertising in such a way that it will be clear that the optometrist is separate and distinct from the other occupants. Upon the Board's investigation of office locations or other mercantile locations, it was noted that some locations do not have proper signage indicating who owns the business or who is providing services at the location. This is a violation of BPC section 651.

The proposed amendments to the regulation would further clarify that signage is required at commercial/mercantile locations to indicate that it is owned by an optometrist and the practice is separate and distinct from other occupants. The changes are non-substantive and grammatical in nature in order to clarify what is intended and what is required of the Board's licensees.

Section 1525.1. Fingerprint Requirements

The existing regulation requires optometrists initially licensed prior to January 1, 1998, or for whom an electronic record of the submission of fingerprints no longer exists, to submit fingerprints to the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) as a condition of license renewal. The cut-off date of January 1, 1998 does not capture all the licensees that need to meet the fingerprint submission requirement. Further, the additional wording regarding the "existence of records" is not necessary.

After a random review of approximately 100 licensee files, the Board of Optometry (hereafter "Board") found that most of them dated prior to 2007 did not have fingerprints sent to the FBI, only to the DOJ. Thus, in order to fully comply with the fingerprint submission requirement, the proposed amendments to the regulation would change the January 1, 1998 date to April 1, 2007. Changing the date will cover a larger range of licensees who may not be aware that they need to submit fingerprints to the FBI. This proposed amendment to the regulation is necessary to ensure that all Board licensees submit fingerprints to both law enforcement agencies for the purpose of a state and federal criminal records check in order for the Board to implement Business and Professions Code (BPC) section 3110 (k) to protect the public from unethical and possibly incompetent practitioners.

The proposed amendments to the regulation would also remove the language in subsection (a) stating:

..."for whom an electronic record of the submission of fingerprints no longer exists..."

Removing this language would be beneficial for clarity purposes because; 1) if a licensee has never submitted fingerprints as a condition of licensure, there would be no electronic record of the submission of fingerprints in the DOJ's criminal offender record identification database in the first place; and 2) if a licensee only partially completed the fingerprint submission requirement, again there would be no complete electronic record of the submission of fingerprints to both agencies in the DOJ's criminal offender record identification database.

This language confuses licensees and leads them to incorrectly believe that they have fully met the submission of fingerprints requirement when they have not. Because the current regulation is unclear, many licensees are using their incorrect interpretation as an argument to bypass the

fingerprint submission requirement. It has become necessary to make a regulatory change in order for the Board to enforce this statutorily mandated requirement (BPC section 144) and carry out its charge of protecting the public.

Underlying Data:

None

Business Impact

The Board has made an initial determination that the proposed regulatory actions will not have any significant adverse economic impact on businesses.

Specific Technologies or Equipment

The adoption of these regulations does not mandate the use of specific technologies or equipment.

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 regulations.

**BOARD OF OPTOMETRY
PROPOSED LANGUAGE**

Highlighted text different than DCA's sample but may fit optometry's needs or are topics of discussion.

Add Article 2.5 and Sections 1508, 1508.1, 1508.2, 1508.3 and 1508.4 to Division 15 of Title 16 of the California Code of Regulations to read as follows:

Article 2.5 Sponsored Free Health Care Events - Requirements for Exemption

§1508. Definitions

For the purposes of Section 901 of the Code:

(a) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of optometry but who holds a current valid license or certificate in good standing in another state, district, or territory of the United States to practice optometry.

(c) "In good standing" means that a person:

- (1) **Is not currently the subject of any investigation by any governmental entity** or has not been charged with an offense for any act substantially related to the practice of optometry by any public agency.
- (2) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon the person's professional conduct or practice, including any voluntary surrender of license; or,
- (3) Has not been the subject of an adverse judgment resulting from the practice of optometry that the Board determines constitutes evidence of a pattern of incompetence or negligence.

Note: Authority cited: Sections 901 and 3025, Business and Professions Code.

Reference: Section 901, Business and Professions Code.

§1508.1. Sponsoring Entity Registration and Recordkeeping Requirements.

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the Board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the Board by submitting to the Board a completed Form 901-A (05/2011), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The Board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form 901-A on behalf of the Board. The Board or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of Form 901-A in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The Board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by Section 901 as well as a copy of the authorization for participation issued by the Board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services, after the date on which a sponsored event ended. (strikethrough doesn't match BPC 901) The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the Board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by Section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the Board. In addition, the sponsoring entity shall provide copies of any record required to be maintained by Section 901 of the Code to any representative of the Board within 15 calendar days of the request.

(d) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the Board.

(e) Report. Within 15 calendar days following the provision of health care services, after a sponsored event has concluded, (strikethrough doesn't match BPC 901) the sponsoring entity shall file a report with the Board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

- (1) The date(s) of the sponsored event;
- (2) The location(s) of the sponsored event;

- (3) The type(s) and general description of all health care services provided at the sponsored event; and
- (4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

Note: Authority cited: Sections 901 and 3025, Business and Professions Code.
Reference: Section 901, Business and Professions Code.

§1508.2. Out-of-State Practitioner Authorization to Participate in Sponsored Event

(a) Request for Authorization to Participate. An out-of-state practitioner (“applicant”) may request authorization from the Board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the Board to provide those services. Authorization must be obtained for each sponsored event in which the applicant seeks to participate.

(1) An applicant shall request authorization by submitting to the Board a completed Form 901-B (05/2011), which is hereby incorporated by reference, accompanied by a non-refundable processing fee of \$100.

(2) The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry, with the associated fees, to establish the identity of the applicant and to permit the Board to conduct a criminal history record check. This requirement shall apply only to the first application for authorization that is submitted by the applicant.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the Board shall notify the sponsoring entity whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

(1) The board shall deny a request for authorization to participate if:

(A) The submitted Form 901-B is incomplete and the applicant has not responded within seven calendar days to the Board’s request for additional information.

(B) The applicant has not graduated from a school or college of optometry approved or recognized by the Board.

(C) The applicant does not possess a current valid license in good standing.

(D) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial under Section 480 of the Code of an application for licensure by the Board.

(2) The board may deny a request for authorization to participate if:

(A) The request is received less than 20 calendars days before the date on which the sponsored event will begin.

(B) The applicant has been previously denied a request for authorization by the Board to participate in a sponsored event.

(C) The applicant has previously had an authorization to participate in a sponsored event terminated by the Board.

(D) The applicant has participated in three or more sponsored events during the 12 month period immediately preceding the current application.

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1508.3.

Note: Authority cited: Sections 144, 901, and 3025, Business and Professions Code.
Reference: Sections 144, 480 and 901, Business and Professions Code.

§1508.3. Termination of Authorization and Appeal.

(a) Grounds for Termination. The Board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

(1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the Board.

(2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the Board.

(3) The Board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The Board shall provide both the sponsoring entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the Board

may provide the notice to any representative of the sponsored event on the premises of the event.

(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the Board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) Appeal of Termination. An out-of-state practitioner may appeal the Board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act. **Not in BPC 901. Should we keep?**

(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer or his or her designee may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn. **Not in BPC 901**

Note: Authority cited: Sections 901, and 3025, Business and Professions Code.
Reference: Section 901, Business and Professions Code.

Language below like Dental Board...do we want to add this? Medical Board does not have the below language. I like it.

§1508.4. Additional Practice Requirements for Out-of-State Practitioners Authorized to Participate in Sponsored Free Health Care Events.

(a) Each out-of-state practitioner authorized to participate in a sponsored event and provide optometric services at the sponsored event pursuant to Section 1508.2 shall provide a written notice to each patient or prospective patient prior to performing any services. This notice may be in a form of the out-of-state practitioner's choosing, but shall be in at least 12 point font and include, at a minimum, the following information:

(1) The state, district, or territory where the out-of-state practitioner is licensed in good standing;

(2) The name of each governmental agency that is issued the out-of-state practitioner a license to practice optometry and the effective dates of each license;

(3) The out-of-state practitioner's license number(s);

(4) The dates the out-of-state practitioner is authorized to practice by the Board; and,

(5) A disclosure that states: "The California State Board of Optometry has only authorized me to provide services under my license from another state and only at this free health care event for a period not to exceed ten days."

(b) This notice by this Section shall be provided separate and apart from all other notices or authorizations that a patient may be given or required to sign and shall be retained by the patient.

Note: Authority cited: Section 2035, and 901, Business and Professions Code.

Reference: Section 901, Business and Professions Code.



SPONSORED FREE HEALTH CARE EVENTS

REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901

In accordance with California Business and Professions Code Section 901(d), a non-government organization administering an event to provide health care services to uninsured and underinsured individuals at no cost may include participation by certain health care practitioners licensed outside of California if the organization registers with the California licensing authorities having jurisdiction over those professions. This form shall be completed and submitted by the sponsoring organization **at least 90 calendar days prior to the sponsored event.** *Note that the information required by Business and Professions Code Section 901(d) must also be provided to the county health department having jurisdiction in each county in which the sponsored event will take place.*

[Only one form (per event) should be completed and submitted to the Department of Consumer Affairs. The Department of Consumer Affairs will forward a copy of the completed registration form to each of the licensing authorities indicated on this form.]

PART 1 – ORGANIZATIONAL INFORMATION

1. Organization Name: _____

2. Organization Contact Information (use principal office address):

Address Line 1

Phone Number of Principal Office

Address Line 2

Alternate Phone

City, State, Zip

Website

County

Organization Contact Information in California (if different):

Address Line 1

Phone Number of Principal Office

Address Line 2

Alternate Phone

City, State, Zip

Website

County

3. Type of Organization:

Is the organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code?

_____ Yes _____ No

If not, is the organization a community-based organization*?

_____ Yes _____ No

Organization's Tax Identification Number: _____

Please describe the mission, goals and activities of the organization (*attach separate sheet(s) if necessary*): _____

* A "community based organization" means a public or private nonprofit (including a church or religious entity) that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

PART 2 – RESPONSIBLE ORGANIZING OFFICIALS

Please list the following information for each of the principal individual(s) who are the officers or officials of the organization responsible for operation of the sponsoring entity.

Individual 1:

Name

Address Line 1

Address Line 2

City, State, Zip

County

Title

Phone

Alternate Phone

E-mail address

Individual 2:

Name

Address Line 1

Address Line 2

City, State, Zip

County

Title

Phone

Alternate Phone

E-mail address

Individual 3:

Name

Address Line 1

Title

Phone

Address Line 2

Alternate Phone

City, State, Zip

E-mail address

County

(Attach additional sheets to list additional principal organizational individuals)

PART 3 – EVENT DETAILS

1. Name of event, if any: _____

2. Date(s) of event (not to exceed ten calendar days): _____

3. Location(s) of the event (be as specific as possible, including address):

4. Describe the intended event, including a list of all types of healthcare services intended to be provided (*attach additional sheet(s) if necessary*): _____

5. Attach a list of all out-of-state health care practitioners intending to apply for authorization to participate in the event, as known by the organization at the time of submittal of this form. The list should include the name, profession, and state of licensure of each identified individual.

___ *Check here to indicate that list is attached.*

6. Please check each licensing authority that will have jurisdiction over an out-of-state licensed health practitioner that intends to participate in the event:

- | | |
|-------------------------------------|---|
| ___ Acupuncture Board | ___ Physician Assistant Committee |
| ___ Board of Behavioral Sciences | ___ Physical Therapy Board |
| ___ Board of Chiropractic Examiners | ___ Board of Podiatric Medicine |
| ___ Dental Board | ___ Board of Psychology |
| ___ Dental Hygiene Committee | ___ Board of Registered Nursing |
| ___ Medical Board | ___ Respiratory Care Board |
| ___ Naturopathic Medicine Committee | ___ Speech-Language Pathology,
Audiology & Hearing Aid Dispensers
Board |
| ___ Board of Occupational Therapy | ___ Veterinary Medical Board |
| ___ Board of Optometry | ___ Board of Vocational Nursing &
Psychiatric Technicians |
| ___ Osteopathic Medical Board | |
| ___ Board of Pharmacy | |

Note:

- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application (Form 901-B) to the applicable licensing Board/Committee.
- The organization shall be notified in writing as to whether or not authorization for an individual out-of-state practitioner has been granted.
- I understand the organization must maintain copies of the following records at the event, and for a period of five years thereafter, which shall be provided to an applicable Board/Committee upon request:
 - a list of all practitioners providing health care services at the sponsored event;
 - an attestation in writing by each practitioner, signed by that practitioner prior to providing services at the sponsored event, that his or her license to practice optometry has not been suspended or revoked pursuant to disciplinary proceedings in any jurisdiction; and
 - copies of all authorizations for participation by out-of-state practitioners issued by the Board to the sponsoring entity.
- I understand that our organization must file a report with each applicable Board/Committee within fifteen (15) calendar days following the provision of health care services of the completion of the event that includes:
 - the date(s) of the sponsored event;
 - the location(s) of the sponsored event.
 - the type(s) and general description of all health care services provided at the sponsored event; and
 - a list of all practitioners, licensed by the Board or granted authorization

This form, and any attachments, and all related questions shall be submitted to:

Department of Consumer Affairs
Attn: Sponsored Free Health Care Events
1625 North Market Blvd.
Sacramento, CA 95834

Questions regarding the completion of this form should be directed to:

The California State Board of Optometry

Phone: 916-575-7170

E-mai: optometry@dca.ca.gov

I certify under penalty of perjury that the information provided on this form and any attachment is true and current and that I am authorized to sign this form on behalf of the organization:

Name Printed

Title

Signature

Date



STATE BOARD OF OPTOMETRY
 2420 DEL PASO ROAD, SUITE 255, SACRAMENTO, CA 95834
 P (916) 575-7170 F (916) 575-7292 www.optometry.ca.gov



Agenda Item 2, Attachment 5

REQUEST BY NON-CALIFORNIA LICENSED OPTOMETRIST TO PARTICIPATE IN SPONSORED FREE HEALTH CARE EVENT

In accordance with California Business and Professions Code Section 901 any optometrist licensed/certified and in good standing in another state, district, or territory in the United States may request authorization from the California State Board of Optometry (Board) to participate in a free health care event offered by a sponsoring entity, registered with the Board pursuant to Section 901, for a period not to exceed ten (10) days.

PART 1 - APPLICATION INSTRUCTIONS

Applicants must complete all parts of this form and enclose the following:

- A processing fee of \$100, made payable to the California State Board of Optometry. **Note:** If submitting fingerprint cards instead of using Live Scan, please submit an additional \$51 fee, payable to the California State Board of Optometry, to process your fingerprint cards for a total fee of \$151. See additional information below.
- A copy of all valid and current licenses and/or certificates authorizing the applicant to practice optometry issued by any state, district, or territory of the United States.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- A copy of a valid transcript to prove you graduated from a school or college of optometry that is approved or recognized by the Board.
- A full set of fingerprints or a Live Scan inquiry and the associated fee; this will be used to establish your identity and to conduct a criminal history record check. However, this requirement shall apply only to the first application for authorization that you submit.

Live Scan is only available in California for residents or visitors. A listing of California Live Scan sites can be found at <http://aq.ca.gov/fingerprints/publications/contact.htm>. Only Live Scan fingerprints completed in California can be accepted. You must fill out a *Request for Live Scan Service* form, which can be obtained from the Board's website at www.optometry.ca.gov.

Procedure: You must take the completed form to the service location, pay a fee and your fingerprints will be taken on a glass without ink. The fingerprints will then be transmitted electronically to the DOJ, who then forwards a report to the Board. There is a low rate of rejection with this method and it will take two days to complete.

Ink on Fingerprint Cards (hard cards). If you are unable to get your fingerprints completed in California via Live Scan, you may contact the Board in writing to obtain an "8X8" fingerprint card (FD-258). Other States' resident hard cards will not be accepted. **Be sure to type or print legibly in black ink in all the areas on the card asking for personal information, that the card is dated and signed by the official taking the fingerprints, and that your signature is on the card.**

Procedure: You must take the hard card to a qualified fingerprint office, e.g., law enforcement, where they will roll your prints, and pay a fee. From the Board's website, obtain a *Fingerprint Certification Form*, complete the form, sign and date it. Include the completed card and certification in your application to participate in a sponsored free health care event with a \$51 non-refundable processing fee. Reports from the DOJ on some hard cards are received within a month after submission. If you need to repeat the

fingerprinting process because of unreadable prints or factors beyond the Board's control, this process may take multiple months, so please plan accordingly.

The Board shall not grant authorization until this form has:

- (1) been completed in its entirety,
- (2) all required enclosures have been received by the Board,
- (3) any additional information requested by the Board has been provided by the applicant and received by the Board; and
- (4) the Board has reviewed the form and all required enclosures/requested information.

The Board shall process this request and notify the sponsoring entity listed in this form if the request is approved or denied within 20 calendar days of receipt. If the Board requires additional or clarifying information, the Board will contact the applicant directly, but **all written approvals or denials of requests will be provided directly to the sponsoring entity.** It is the applicant's responsibility to maintain contact with their sponsoring entity.

PART 2 – NAME AND CONTACT INFORMATION

1. Applicant Name: _____
 First Middle Last

2. Social Security Number: _____ - _____ - _____ **Date of Birth:** _____

Note: The applicant's social security number shall be kept confidential in accordance with all applicable California and federal law.

3. Applicant's Contact Information*:

Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address

(*If an authorization is issued, this address information will be considered your "address of record" with the Board and will be made available to the public upon request.)

4. Applicant's Employer: _____

Employer's Contact Information:

Address Line 1	Phone
Address Line 2	Facsimile
City, State, Zip	E-mail address (if available)

5. Name and Location of school/college of optometry from which Applicant Graduated:

PART 3 – LICENSURE INFORMATION

1. Do you hold a current license, certification, or registration in good standing issued by a state, district, or territory of the United States authorizing the unrestricted practice of optometry in your jurisdiction(s)? The term “good standing” means you:

- Is not currently the subject of any investigation by any governmental entity or has not been charged with an offense for any act substantially related to the practice of for which the applicant is licensed by any public agency;
- Have not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant’s professional conduct or practice, including any voluntary surrender of license; and
- Have not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the Board determines constitutes evidence of a pattern of negligence or incompetence.

No If no, you are not eligible to participate as an out-of-state practitioner in the sponsored event.

Yes If yes, list all current licenses, certificates, and registrations authorizing the practice of optometry in the following table. If there are not enough boxes to include all the relevant information please attach an addendum to this form. Please also attach a copy of each of your current licenses, certificates, and registrations.

State/ Jurisdiction	Issuing Agency/Authority	License Number	Expiration Date

2. Have you ever had a license or certification to practice optometry revoked or suspended?
 ___ Yes ___ No

3. Have you ever been subject to any disciplinary action or proceeding by an applicable licensing body?
 ___ Yes ___ No

4. Have you ever allowed any license or certification to practice optometry expire without renewal?
 ___ Yes ___ No

5. Have you ever committed any act or been convicted of a crime constituting ground for denial of licensure?
 ___ Yes ___ No

6. If you answered “Yes” to any of questions 2-5, please explain (*attach additional page(s) if necessary*): _____

PART 4 – SPONSORED EVENT

1. Name of non-profit or community-based organization hosting the free healthcare event (the “sponsoring entity”): _____

2. Name of event: _____

3. Date(s) & Location(s) of the event: _____

4. Date(s) & Location(s) Applicant will be performing healthcare services (if different):

5. Please specify the healthcare services you intend to provide: _____

6. Name and phone number of contact person with sponsoring entity: _____

PART 5 – ACKNOWLEDGMENT/CERTIFICATION

I, the undersigned, certify and acknowledge that:

- I have not committed any act or been convicted of a crime constituting grounds for denial of licensure by the Board.
- I am in good standing with the licensing authority or authorities of all jurisdictions in which I hold licensure and/or certification to practice optometry.
- I will comply with all applicable practice requirements required of licensed optometrists by the California Business and Professions Code and all regulations of the Board.
- In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed optometrists.
- I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.
- I will provide the services authorized by this request and Business and Professions Code Section 901 only in association with the sponsoring entity listed herein and only on the dates and at the locations listed herein for a period not to exceed 10 calendar days.

- I am responsible for knowing and complying with California law and practice standards while participating in a sponsored event located in California.
- Practice of a regulated profession in California without proper licensure and/or authorization will subject the practitioner to potential administrative, civil and/or criminal penalties.
- The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.
- All information provided by me in this application is true and complete to the best of my knowledge and the Board may, at its discretion, audit and/or verify any information provided by me. By submitting this application and signing below, I am granting permission to the Board to perform such verification and background investigation pertaining to the information I have provided as the Board deems necessary.

My signature on this application, or copy thereof, authorizes the National Practitioner Data Bank and the Federal Drug Enforcement Agency to release any and all information required by the California State Board of Optometry.

Signature

Date

Name Printed: _____

Note: Authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

Should the highlighted items on this page be included like Dental Board? Or is it to much? Medical Board does not have this language.

NOTICE OF COLLECTION OF PERSONAL INFORMATION

Disclosure of your personal information is mandatory. The information on this application is required pursuant to Title 16, California Code of Regulations Section 1023.17 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete or denied. The information provided will be used to determine compliance with Article 8 of Division 10 of Title 16 of the California Code of Regulations (beginning at Section 1023.15). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Board at the address and telephone number listed above.

2420 Del Paso Road, Suite 255
Sacramento, CA 95834
(916) 575-7170, (916) 575-7292 Fax
www.optometry.ca.gov

To: Legislation & Regulation Committee
Date: May 10, 2011

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

Subject: Agenda Item 3 – Discussion and Possible Recommendation to Refer to the Full Board Staff Recommendations to Revise the Fictitious Name Permit (FNP) Application and Amend Title 16, California Code of Regulations (CCR), Section 1518 Fictitious or Group Names

Background: Business and Professions Code (BPC) Section 3078 makes it unlawful for optometrists to practice under a false or assumed name. However, the law does provide for the Board to issue a Fictitious Name Permit (FNP) permitting the optometrist to use a name specified in the permit, if and only if, the Board finds to its satisfaction that:

- 1) The name under which the applicant or applicants propose to operate is in the judgment of the Board not deceptive or inimical (harmful) to enabling a rational choice for the consumer public and contains at least one of the following designations: "optometry" or "optometric."
- 2) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.
- 3) No charges which could result in revocation or suspension of an optometrist's license to practice optometry are pending against any optometrist practice at the location.

BPC Section 17910 requires every person who regularly transacts business in this state for profit under a FNP to file a FNP statement not later than 40 days from the time he or she commences to transact such business. The statement must be filed with the county clerk in the county where the principal place of business is located. Within 30 days thereafter, it must be published once a week for four successive weeks, with at least five days between each date of publication, in a newspaper of general circulation in the county where the principal place of business is located. Pursuant to BPC Section 17924, an affidavit of publication must be filed with the county clerk within 30 days after the completion of the publication. The statement is valid for five years. This legal requirement is necessary so the public is able to locate individuals who transact business under any name other than their own.

BPC Sections 14411, 14412, 14415, 14416 require the filing of articles of incorporation with the state or a fictitious business name statement in the county establishes a rebuttable presumption in that county that the registrant or corporation has the exclusive right to use that business name, as well as any confusingly similar name, if the registrant or corporation is the first to register such name and is actively engaged in a business utilizing the name. The rebuttable presumption shall be applicable until the statement is abandoned or otherwise expires and no new statement has been filed by the registrant.

Problem Areas: Staff has found that the FNP application is not clear and that requiring applicants to comply with BPC Sections, 14411, 14412, 14415, 14416, 17910, 17915, 17971, 17924, which are the county and Secretary of State requirements for FNPs, as a condition to approve the application is an underground regulation. These two issues cause delays in processing the FNP application for months.

Because there is nothing in optometry's law mandating that licensees meet the county and Secretary of State requirements first, this makes it difficult for staff to regulate the names optometrists use in connection to their practice.

Unless the problem is addressed, there exists the opportunity for legal challenges such as:

- 1) It should not be the responsibility of the Board to protect, assign or facilitate the creation of a business name.
- 2) According to the FNP application, if BPC Sections 11411 et. seq. and 17900 et. seq. are not complied with, then the Board can deny the FNP application. This is an underground regulation.
- 3) There is a perception that FNP's are issued to protect a business name rather than protect the consumer public.
- 4) Board staff must use a great deal of discretion when considering whether to approve an applicant for a FNP. The need to use other sections of law outside of the optometry authority demonstrates a need for additional guidance and the ability to enforce the submittal of additional information.

Recommended Solution: In order to alleviate confusion among applicants, ensure compliance with all regulatory entities involved with FNPs and shorten FNP application processing time frames, staff recommends regulatory changes and revisions to the FNP application.

Regulatory Change: Amend CCR Section 1518 Fictitious or Group Names to include language requiring that applicants for FNPs comply with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7, and Article 1.5 (commencing with Section 14411) of Chapter 3 of Division 6 prior to completing the Board's application for a FNP. Adding a reference to these laws will give the Board authority to collect the information necessary for the issuance of an FNP.

Also, this change will eliminate confusion and avoid duplication of efforts, in the event a person is granted an FNP by the Board, but the FNP is denied at the county level.

Please see Attachment 1 for proposed language.

Action Requested: Staff requests that the legislation & regulation committee review this proposal and make changes if necessary to the proposed language. If the committee agrees with the recommend solution, these regulations will be presented for final approval to begin an official rulemaking at the Board's August Board meeting along with a revised FNP Application.

**BOARD OF OPTOMETRY
PROPOSED LANGUAGE**

§ 1518. Fictitious or Group Names.

(a) Applications for a permit to use a fictitious or group name shall be submitted on a form provided by the Board containing such information as is required therein, and accompanied by the initial permit fee of \$50. The permit shall be renewed annually with a renewal fee of \$50 due on January 31 each year. Failure to renew a fictitious name permit in a timely manner will result in a \$25 delinquency fee added to the renewal fee.

(b) No permit shall be issued authorizing the use of a name which is deceptive or inimical to enabling a rational choice for the consumer public and which does not contain at least one of the following designations: "optometry" or "optometric." In considering whether a name is deceptive or inimical to enabling a rational choice for the consumer public the Board may consider, among other things, the following: whether it has a tendency to deceive the public or is so similar to a name previously authorized in the same geographical area as to be deceptive or misleading.

(1) If the name has a tendency to deceive the public;

(2) If the name is so similar to a name previously authorized in the same geographical area as to be deceptive or misleading;

(3) If the applicant complied with Article 1.5 (commencing with Section 14411) of Chapter 3 of Division 6 prior to completing the Board's application for a permit to use a fictitious or group name;

(4) If the applicant complied with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 prior to completing the Board's application for a permit to use a fictitious or group name.

(c) When an optometrist or optometrists acquire the ownership in an optometric practice of another optometrist or other optometrists, the successor optometrist or optometrists may use in connection with such practice the name or names of the predecessor optometrist or optometrists for a reasonable time not in excess of two years thereafter providing:

(1) The acquisition of the ownership in the practice of the predecessor optometrist or optometrists includes permission to use his/her or their names.

(2) The acquisition of the ownership includes the active patient records and prescription files of the practice.

(3) In any signs, professional cards, envelopes, billheads, letterheads, or advertising of any nature, the name or names of the successor optometrist or optometrists shall appear first and be followed by the term "succeeding," "successor to," or "formerly" and then the name or names of the predecessor optometrist or optometrists which shall not appear in letters larger than the letters in the name or names of the successor optometrist or optometrists.

Note: Authority cited: Section 3078, Business and Professions Code. Reference: Sections 3078, 3152, and 3163, 1411, 14412, 14415, 17910 and 17915 Business and Professions Code.

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To: Legislation & Regulation Committee **Date:** May 10, 2011

From: Mona Maggio **Telephone:** (916) 575-7182
Executive Officer

Subject: **Agenda Item 4 – Discussion and Consideration of Legislative Proposals that
may Impact the Practice of Optometry**

Senate Bill (SB) 100 (Price) Health Practitioner Name Designations

This bill was amended and no longer pertains to the practice of optometry. It's focus has shifted solely to the Medical Board of California.

SB 541 (Price) Expert Consultants (Urgency Bill):

This bill would authorize the Department of Consumer Affairs' boards to enter into an agreement with an expert consultant to provide enforcement and examination assistance without a contract. The bill would require each board to establish policies and procedures for the selection and use of these consultants. This bill would declare that it is to take effect immediately as an urgency statute.

Status:

Passed the Senate Committee on Business Professions and Economic Development on May 2, 2011 and re-referred to the Committee on Appropriations.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 1 for language of the bill, Attachment 2 for a bill analysis and Attachment 3 for a draft letter of support.

SB 544 (Price) New SB 1111:

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.

Status:

In the Senate Committee on Business Professions and Economic Development. No hearing date at this time.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 4 for language of the bill, Attachment 5 for a bill analysis.

SB 690 (Ed Hernandez) Eliminate Health Plan Discrimination

This bill would prohibit a health care service plan contract or health insurance policy that is issued, amended, renewed, or delivered on or after January 1, 2014, from discriminating against any health care provider who is acting within the scope of that provider's license, as specified.

Status:

Senate Health Committee. Set for hearing May 4, 2011.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 6 for language of the bill and Attachment 7 for a bill analysis.

SB 709 (DeLeon) Pupil Comprehensive Eye Exams

This bill would create the Voluntary Children's Vision Educational Fund in the State Treasury for the purposes of funding projects that help educate parents and guardians about the need for children to receive comprehensive eye examinations prior to entering school. The bill would require the fund to consist of specified money received by the state on a voluntary basis and would provide that all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for expenditure by the Superintendent of Public Instruction for carrying out the purposes of this act.

Status:

Amended and re-referred to Senate Committee on Education.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 8 for language of the bill. There is no analysis on this bill from the legislature at this time.

Assembly Bill (AB) 675 (Huff) Continuing Education (CE) to Promote Labor Organizing and Other

This bill would provide that continuing education courses that advance or promote labor organizing on behalf of a union or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a provider that violates that requirement for no less than five years.

Status:

Hearing postponed by Assembly on Business, Professions and Consumer Protection.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 9 for language of the bill and Attachment 10 for a bill analysis.

AB 761 (Roger Hernández) CLIA Testing

This bill expands the category of persons who may perform clinical laboratory tests or examinations that are classified as waived to include licensed optometrists if the results of the tests can be lawfully utilized within their practice, and would provide that a laboratory director may include a licensed optometrist, as specified for purposes of waived examinations.

Status:

Double referred to the Assembly Business & Professions Committee and Assembly Health Committee. No hearing date set.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 11 for language of the bill and Attachment 12 for a bill analysis.

AB 778 (Atkins) Co-Location – Lenscrafters

This bill would authorize a dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a non-optometric corporation to do the following:

1. own a health care service plan that provides vision care services,
2. share profits with the health care service plan,
3. contract for specified business services with the health care service plan, and
4. jointly advertise vision care services with the health care service plan.

The bill would prohibit those persons or entities from engaging in conduct designed to influence or interfere with the medical decisions of an optometrist, as specified. A violation of this provision would be a crime.

Status:

Passed Assembly Business, Professions & Consumer Protection Committee on May 3, 2011 and re-referred to the Committee on Appropriations.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 13 for language of the bill. Attachment 14 for a bill analysis and Attachment 15 for Lens Crafters information materials.

AB 958 (Berryhill) Regulatory Boards: Limitations (enforcement related)

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs (DCA). Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board. This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the DCA. Optometry affected in BPC section 3137. The main changes are as follows:

- (1) Would reduce the amount of time to file an accusation from three years to one year after the board discovers the act or omission alleged as grounds for disciplinary action,

- (2) Would reduce the amount of time to file an accusation from seven years to four years after the act or omission alleged as the ground for disciplinary action occurs.
- (3) Deletes specification that accusations alleging fraud or willful misrepresentation are not subject to the limitations in (1) and (2) above.
- (4) Deletes the specification that accusations alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitations in (1) and (2) above upon proof that the licensee intentionally concealed from discovery his/her incompetence etc. This language is replaced with a description of these acts as “wrongdoing” and imposes that the four-year limitation period in (2) above shall be tolled during the period of concealment.
- (5) Deletes the reference to BPC section 726 pertaining to acts on minors and adults.
- (6) Deletes the 10-year limitation period pertaining to minors and replaces it with the four-year limitation in (2) above.
- (7) Deletes the three-year limitation for accusations filed for conduct described in section 726 pertaining to adult patients.
- (8) Deletes the specification that any allegation, accusation, or proceeding described in BPC section 3137 shall be tolled during the time that the Board cannot obtain the necessary evidence for prosecution or is unavailable due to an ongoing criminal investigation.

Status:

Referred to Assembly Business, Professions & Consumer Protection Committee on March 10, 2011.

Action Requested:

Staff requests that the committee review and discuss the bill. If a position is established, direct staff to write a letter of support or opposition, or take no action and continue to monitor the bill.

See Attachment 16 for language of the bill. There is no analysis on this bill from the legislature at this time.

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL

No. 541

Introduced by Senator Price

February 17, 2011

An act to amend Sections 7000.5 and 7011 of *add Section 40 to the Business and Professions Code, relating to ~~contractors~~ profession and vocations, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License ~~Board~~. *Regulatory boards: expert consultants.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department 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. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

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

SB 541

— 2 —

Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and would specify that the board would be subject to review by the appropriate policy committees of the Legislature.

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

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

1 SECTION 1. Section 40 is added to the Business and
2 Professions Code, to read:

3 40. (a) Subject to the standards described in Section 19130
4 of the Government Code, any board, as defined in Section 22, the
5 State Board of Chiropractic Examiners, or the Osteopathic Medical
6 Board of California may enter into an agreement with an expert
7 consultant to do any of the following:

8 (1) Provide an expert opinion on enforcement-related matters,
9 including providing testimony at an administrative hearing.

10 (2) Assist the board as a subject matter expert in examination
11 development, examination validation, or occupational analyses.

12 (3) Evaluate the mental or physical health of a licensee or an
13 applicant for a license as may be necessary to protect the public
14 health and safety.

15 (b) An executed contract between a board and an expert
16 consultant shall be exempt from the provisions of Part 2
17 (commencing with Section 10100) of Division 2 of the Public
18 Contract Code.

19 (c) Each board shall establish policies and procedures for the
20 selection and use of expert consultants.

21 SEC. 2. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 To ensure that licensees engaging in certain professions and
26 vocations are adequately regulated at the earliest possible time

1 *in order to protect and safeguard consumers and the public in this*
2 *state, it is necessary that this act take effect immediately.*

3 ~~SECTION 1. Section 7000.5 of the Business and Professions~~
4 ~~Code is amended to read:~~

5 ~~7000.5. (a) There is in the Department of Consumer Affairs~~
6 ~~a Contractors' State License Board, which consists of 15 members.~~

7 ~~(b) Notwithstanding any other provision of law, the repeal of~~
8 ~~this section renders the board subject to review by the appropriate~~
9 ~~policy committees of the Legislature.~~

10 ~~(c) This section shall remain in effect only until January 1, 2016,~~
11 ~~and as of that date is repealed, unless a later enacted statute, that~~
12 ~~is enacted before January 1, 2016, deletes or extends that date.~~

13 ~~SEC. 2. Section 7011 of the Business and Professions Code is~~
14 ~~amended to read:~~

15 ~~7011. (a) The board, by and with the approval of the director,~~
16 ~~shall appoint a registrar of contractors and fix his or her~~
17 ~~compensation.~~

18 ~~(b) The registrar shall be the executive officer and secretary of~~
19 ~~the board and shall carry out all of the administrative duties as~~
20 ~~provided in this chapter and as delegated to him or her by the~~
21 ~~board.~~

22 ~~(c) For the purpose of administration of this chapter, there may~~
23 ~~be appointed a deputy registrar, a chief reviewing and hearing~~
24 ~~officer, and, subject to Section 159.5, other assistants and~~
25 ~~subordinates as may be necessary.~~

26 ~~(d) Appointments shall be made in accordance with the~~
27 ~~provisions of civil service laws.~~

28 ~~(e) This section shall remain in effect only until January 1, 2016,~~
29 ~~and as of that date is repealed, unless a later enacted statute, that~~
30 ~~is enacted before January 1, 2016, deletes or extends that date.~~

SB 541
BILL ANALYSIS

Hearing Date: May 2, 2011

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT**

Senator Curren D. Price, Jr., Chair

As Amended: April 13, 2011 Fiscal: Yes

SUBJECT: Regulatory boards: expert consultants.

SUMMARY: Urgency measure which authorizes the boards and bureaus within the Department of Consumer Affairs, as well as the State Board of Chiropractic Examiners, and the Osteopathic Medical Board to continue to utilize expert consultants, as done in the past, without having to go through the formal contracting process.

Existing law:

- 1) Provides for the licensing and regulation of various professions and businesses by some 23 boards, 4 committees, 7 bureaus, and 1 commission within the Department of Consumer Affairs (DCA) under various licensing acts within the Business and Professions Code (BPC).
- 2) Licenses and regulates chiropractors by State Board of Chiropractic Examiners under the Chiropractic Act the, enacted by initiative.
- 3) Licenses and regulates osteopathic physicians and surgeons by the Osteopathic Medical Board under the Osteopathic Act.
- 4) Generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law.
- 5) Establishes standards relating to personal service contracts in state employment, and authorizes their use under specified circumstances, including:
 - a) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.
 - b) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system.

- c) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose. (Government Code § 19130)
- 6) Requires, under the State Contract Act, state agencies to meet certain conditions before entering into a consulting services contract (personal services contract). (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code)

This bill:

- 1) Authorizes any board, within DCA, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to enter into an agreement, as specified, with an expert consultant to do any of the following:
 - a) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.
 - b) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.
 - c) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.
- 2) Specifies that an executed contract between a board and an expert consultant shall be exempt from the State Contract Act.
- 3) Requires each board to establish policies and procedures for the selection and use of these consultants.
- 4) Makes its provisions operative as an Urgency measure.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

- 1. Purpose. This bill is sponsored by the Contractors State License Board and the Medical Board of California (Sponsors) in order to enable all boards and bureaus to continue to utilize expert consultants, as has been done in the past, without having to go through the formal contracting process.

The Sponsors state that the Department of Consumer Affairs (DCA) issued a memo on November 10, 2010, which stated that all boards and bureaus must enter into a formal consulting services contract with each expert consultant they use to provide an opinion in an

enforcement matter (from the initial review through testifying at a hearing). The memo further stated that each board would need to go through the required contracting process for each consultant utilized, according to the Sponsors.

The Sponsors state that going through the formal contracting process in order to utilize the services of an expert consultant would create an enormous backlog for both DCA and for each board and would significantly impact the time required to complete the initial review and investigate complaints filed with boards. In addition, the Sponsors indicate that this would severely limit a board's ability to take disciplinary actions against licensees and result in tremendous case delays. This could also mean cases would be lost due to the statute of limitations expiring.

2. Background. DCA boards and bureaus regularly enlist the expertise of their own licensees to assist with evaluating investigative documents, applications, educational and examination materials. Rather than placing these "subject matter experts" on payroll, they are hired as consultants on an as-needed basis. Subject matter experts are paid an hourly fee for the services they provide, which typically include:

- Providing expert opinion in enforcement matter from the initial review through testifying at a hearing.

- Evaluating applications for applicant licensure.

- Evaluating curriculum content and other requirements for school or program approval.

- Developing professional licensing exams.

For years, these consultants were not required to enter into formal contract agreements, which can be laborious, cumbersome and time-consuming to execute. The boards and bureaus operated with customized agreements that did not require the review or approval of oversight entities. This process allowed the boards and bureaus to select a consultant and get them started on the services in a matter of days, rather than weeks or months. However, on November 10, 2010, DCA issued a memorandum instructing the boards and bureaus that they are now required to enter into formal consulting services contracts that follow all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public Contract Code.

The memo states that DCA recognized the potential for delays in obtaining consulting services and indicated that a rollout plan will be developed to minimize the impact to licensing and enforcement units.

Difficulties in identifying, hiring and training subject matter experts were identified as a problem and a reason for delays in

completing enforcement cases by DCA's own Consumer Protection Enforcement Initiative (CPEI) in June 2010. The CPEI is a comprehensive plan to address long-standing enforcement backlogs, including an intense review of pending cases at the Division of Investigation, recommended regulatory changes, and an enhanced tracking of pending cases. CPEI was created in direct response to a series of articles that ran in the Los Angeles Times, beginning in July 2009, which highlighted extreme delays in investigating and prosecuting enforcement cases at the Board of Registered Nursing (BRN). When developing CPEI, DCA conducted a review of existing enforcement processes which identified systemic problems for all of the DCA boards, not just BRN, that limits the boards' abilities to investigate and act on cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. The CPEI is designed to overhaul the enforcement process at the healing arts boards and to address the following three specific areas: administrative improvements, staffing and information technology improvements, and legislative changes.

DCA and this Committee have spent considerable time and effort the past two years in a joint effort to reduce the time it takes to process complaints, investigation and to carry out discipline. There is a concern that this new contracting requirement is adding an unnecessary and superfluous level of paperwork that will further delay the closure of cases.

1. Use of Expert Consultants. During the past calendar year, the Medical Board of California referred approximately 2,900 cases to expert consultants pertaining the initial or triage review to determine the need to move the case forward for investigation. The MBC utilized 281 expert consultants in one quarter to review completed investigations, which translates to 457 cases. Under the new DCA policy, the MBC would be required to go through the contracting process for each expert consultant, even if the expert only reviews one case. The contract would need to be approved before the MBC could utilize the expert's services and the MBC would have to encumber the funding for the expert consultant once the contract is approved (again, before the expert's services are utilized).

When investigating consumer complaints, Contractors State License Board may ask a member of its Industry Expert Program to inspect a project and render opinions on specific items of complaint. They provide expert opinion and testimony about specific complaint items and accepted trade standards. Industry experts participate in complaint investigations, mandatory arbitration, voluntary arbitration, on-site negotiation, administrative hearings and license exam development. On an annual basis, CSLB utilizes the service of industry experts a total of approximately 700 times to assist in the review and development of examinations, and nearly

900 times for enforcement matters.

2. Committee Oversight Hearings. The issue of the use of expert consultants was considered by this Committee during its March 14, oversight hearing of the Department of Consumer Affairs and its licensing boards, and was specifically covered in the Committee's background paper titled: Issues To Be Addressed By The Department of Consumer Affairs.

The Committee conducted oversight hearings to review 9 boards: the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the Dental Board of California, the State Athletic Commission, the Board of Accountancy, Professional Fiduciaries Bureau, the Contractors State License Board, the Board for Professional Engineers, Land Surveyors and Geologists, the California Architects Board, the Landscape Architects Technical Committee. The Committee also conducted oversight hearings of the Department of Real Estate and the Office of Real Estate Appraisers.

The Committee began its review of these licensing agencies in March with three days of hearings.

3. Related Legislation This Session. This bill is one of 7 "sunset bills" authored by the Chair of the Business Professions and Economic Development Committee. They are intended to implement legislative changes as recommended in the Committee's Background Papers for several licensing boards reviewed by the Committee in 2011.

Other sunset bills to be presented before the Senate Business and Professions Committee include: SB 538 which deals with the Board of Registered Nursing, SB 539 which deals with the Board of Vocational Nursing and Psychiatric Technicians, SB 540 which deals with the Dental Board of California, SB 541 which deals with Expert Consultants, SB 542 which deals with the Board of Accountancy and the Professional Fiduciaries Bureau, SB 543 which deals with the Contractors State License Board, the Board for Professional Engineers, Land Surveyors and Geologists, the California Architects Board, and Landscape Architects Technical Committee, and the State Athletic Commission, SB 706 which deals with the Department of Real Estate and the Office of Real Estate Appraisers.

4. Arguments in Support. In sponsoring the bill, the Contractors State License Board writes: "It is critical for CSLB, as well as consumers and licensees, that CSLB have the ability to expeditiously contract for the services of an industry expert. If we are unable to do so, our timeframe for enforcement actions will likely increase, potentially significantly, as we would be required to complete the formal contracting process each time we need the services of an industry expert."

Also sponsoring the bill, the Medical Board of California states that going through the formal contracting process in to utilize an expert reviewer will create enormous backlogs for both DCA and the MBC and will significantly impact the time required to complete the initial review and investigate complaints. In addition, this will severely limit the MBC's ability to take disciplinary actions against physicians, ultimately leading to tremendous case delays. This could mean that cases would be lost due to the statute of limitations expiring.

Court Reporters Board of California (CRB) writes that the bill is a critical component to its mission-critical ongoing examination development process, "We use working court reporters as subject matter experts to develop our license examination. As court reporters' schedules change right up to the last minute, its imperative we have the flexibility to change the attendees right up t to the day of the exam development workshop. To create contracts with hundreds of of potential subject matter experts would not only require endless hours of staff time, it would encumber a huge portion of our small budget."

The Board of Behavioral Sciences (BBS) is unable to take a formal support position on this bill until board meeting on May 18; however BBS staff has offered the following technical input relating to the bill. The BBS utilizes the services of approximately 375 expert consultants per year for exam development and enforcements matters. Requiring the BBS to enter into a contract with each individual expert consultant will require increased staff time to write the contracts and will increase the time needed to develop exams and process complaints from the public against potentially harmful practitioners. SB 541 will allow the BBS to utilize the services of expert consultants for exam development and enforcement related matters without entering into formalized contracts with each provider, thereby allowing the Board to continue enforcing laws related to the competent and safe practice of practitioners under its jurisdiction.

The staff of the California Board of Accountancy (CBA) has indicated their full support of this measure, and expects the CBA to adopt a position of support at its May 2011 meeting. CBA staff states that the bill would allow the board to enter into agreements with expert consultants to provide much needed enforcement assistance to the CBA.

SUPPORT AND OPPOSITION:

Support:

Contractors State License Board (Sponsor)
Medical Board of California (Sponsor)
Court Reporters Board of California

Opposition:

None received as of April 27, 2011.

Consultant:G. V. Ayers



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Agenda Item 4, Attachment 3

May 10, 2011

The Honorable Curren Price
California State Senate
State Capitol
Sacramento, CA 95814

Dear Senator Price:

The California State Board of Optometry (hereafter "Board") would like to inform you of its support for **SB 541** (Price) which has been assigned to the Senate Business, Professions and Economic Development Committee for a hearing. The Board is pleased to co- sponsor this important measure.

SB 541 authorizes the boards within the Department of Consumer Affairs (DCA) to enter into an agreement with an expert consultant to provide enforcement and examination assistance, without having to complete the formal contracting process, and requires each board to establish policies and procedures for the selection and use of these consultants.

When investigating consumer complaints, the Board may ask an optometrist in its Expert Witness Program to inspect a project and render opinions on specific items of complaint. They provide expert opinion and testimony about specific complaint items and accepted trade standards. Industry experts participate in complaint investigations, mandatory arbitration, voluntary arbitration, on-site negotiation, administrative hearings and license exam development.

DCA issued a memo on November 10, 2010, which stated that all boards and bureaus must enter into a formal consulting services contract with each expert consultant they use to provide an opinion in an enforcement matter (from the initial review through testifying at a hearing) and/or provide law examination development assistance. The memo further stated that each board would need to go through the required contracting process for each consultant utilized.

On an annual basis, the Board utilizes the service of industry experts a total of approximately 60 times to assist in the review and development of examinations, and nearly 100 times for enforcement matters.

It is critical for the Board, as well as consumers and licensees, that the Board have the ability to expeditiously contract for the services of an industry expert. If we are unable to do so, our timeframe for enforcement actions and law exam development will likely increase, potentially significantly, as we would be required to complete the formal contracting process each time we need the services of an industry expert.

For the reasons stated above we respectfully request the Committee's support of SB 541. If there are any questions please contact our Policy Analyst, Andrea Leiva, at (916) 575-7182 or andrea.leiva4@dca.ca.gov.

Sincerely,

Mona Maggio
Executive Officer

cc: Members, Senate Business, Professions and Economic Development Committee
Amber Alexander, Senate Republican Caucus

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 544

Introduced by Senator Price

February 17, 2011

~~An act to add Section 1623 to the Business and Professions Code, relating to dentistry.~~ *An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and*

Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Price. ~~Dental Board of California: collection of fees, fines, and cost recovery.~~ *Professions and vocations: regulatory boards.*

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee 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 licensee records to any board within the department 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 prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) 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 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 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 Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The 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.

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, and would further require a report 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.

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 licensee.

The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.

This bill would make it a crime 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. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. 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 board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, 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 or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize 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 the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board 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 healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, 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 require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

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.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.

(5) Existing law establishes 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 authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

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

This bill would provide that 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.

~~Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.~~

~~This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.~~

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

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

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

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

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

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

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

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

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

29 *SEC. 3. Section 40 is added to the Business and Professions*
30 *Code, to read:*

31 *40. (a) Notwithstanding any other provision of law, for*
32 *purposes of a board investigation, a state agency shall, upon*
33 *receiving a request in writing from a board for records about a*
34 *particular licensee, immediately provide to the board all records*
35 *about a licensee in the custody of the state agency, including, but*
36 *not limited to, confidential records, medical records, and records*
37 *related to closed or open investigations.*

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

11 (c) A board shall maintain the confidentiality of any personally
12 identifying information contained in the records maintained
13 pursuant to this section, and shall not share, sell, or transfer the
14 information to any third party unless it is otherwise authorized by
15 federal or state law.

16 SEC. 4. Section 42 is added to the Business and Professions
17 Code, to read:

18 42. Notwithstanding any other provision of law, all local and
19 state law enforcement agencies, state and local governments, state
20 agencies, licensed health care facilities, and employers of a
21 licensee of a board shall provide records to the board upon request
22 prior to receiving payment from the board for the cost of providing
23 the records. These records include, but are not limited to,
24 confidential records, medical records, and records related to closed
25 or open investigations.

26 SEC. 5. Section 44 is added to the Business and Professions
27 Code, to read:

28 44. (a) A licensee of a board shall not include or permit to be
29 included any of the following provisions in an agreement to settle
30 a civil litigation action filed by a consumer arising from the
31 licensee's practice, whether the agreement is made before or after
32 the filing of an action:

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

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

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

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

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

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

5 SEC. 6. Section 116 of the Business and Professions Code is
6 amended to read:

7 116. (a) The director or his or her designee may audit and
8 review, upon his or her own initiative, or upon the request of a
9 consumer or licensee, inquiries and complaints regarding licensees,
10 dismissals of disciplinary cases, the opening, conduct, or closure
11 of investigations, informal conferences, and discipline short of
12 formal accusation by ~~the Medical Board of California, the allied~~
13 ~~health professional boards, and the California Board of Podiatric~~
14 ~~Medicine~~ any of the healing arts boards described in Division 2
15 (commencing with Section 500). The director may make
16 recommendations for changes to the disciplinary system to the
17 appropriate board, the Legislature, or both, for their consideration.

18 (b) The director shall report to the Chairpersons of the Senate
19 Committee on Business and Professions ~~Committee and Economic~~
20 ~~Development~~ and the Assembly Committee on Health ~~Committee~~
21 annually, ~~commencing March 1, 1995~~, regarding his or her findings
22 from any audit, review, or monitoring and evaluation conducted
23 pursuant to this section.

24 SEC. 7. Section 155 of the Business and Professions Code is
25 amended to read:

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

31 (b) It is the intent of the Legislature that inspectors used by
32 boards, bureaus, or commissions in the department shall not be
33 required to be employees of the Division of Investigation, but may
34 either be employees of, or under contract to, the boards, bureaus,
35 or commissions. Contracts for services shall be consistent with
36 Article 4.5 (commencing with Section 19130) of Chapter 6 of Part
37 2 of Division 5 of Title 2 of the Government Code. All civil service
38 employees currently employed as inspectors whose functions are
39 transferred as a result of this section shall retain their positions,
40 status, and rights in accordance with Section 19994.10 of the

1 Government Code and the State Civil Service Act (Part 2
2 (commencing with Section 18500) of Division 5 of Title 2 of the
3 Government Code).

4 (c) *Investigators used by any healing arts board, as described*
5 *in Division 2 (commencing with Section 500), shall not be required*
6 *to be employees of the Division of Investigation and a healing arts*
7 *board may contract for investigative services provided by the*
8 *Department of Justice.*

9 (e)

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

16 *SEC. 8. Section 159.5 of the Business and Professions Code*
17 *is amended to read:*

18 159.5. There is in the department the Division of Investigation.
19 The division is in the charge of a person with the title of chief of
20 the division. *There is in the division the Health Quality*
21 *Enforcement Unit. The primary responsibility of the unit is to*
22 *investigate complaints against licensees and applicants within the*
23 *jurisdiction of the healing arts boards described in Section 720.*

24 ~~Except as provided in Section 160, investigators who have the~~
25 ~~authority of peace officers, 16 of Chapter 1394 of the Statutes of~~
26 ~~1970, all positions for the personnel necessary to provide~~
27 ~~investigative services, as specified in subdivision (a) of Section~~
28 ~~160 Section 160 of this code and in subdivision (a) (b) of Section~~
29 ~~830.3 of the Penal Code, shall be in the division and the personnel~~
30 ~~shall be appointed by the director.~~

31 *SEC. 9. Section 505 is added to the Business and Professions*
32 *Code, to read:*

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

36 (1) *The total number of complaints closed or resolved without*
37 *discipline, prior to accusation.*

38 (2) *The total number of complaints and reports referred for*
39 *formal investigation.*

1 (3) *The total number of accusations filed and the final*
2 *disposition of accusations through the board and court review,*
3 *respectively.*

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

7 (5) *The total number of final licensee disciplinary actions taken,*
8 *by category.*

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

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

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

19 (9) *The total number of probation violation reports and*
20 *probation revocation filings, and their dispositions.*

21 (10) *The total number of petitions for reinstatement, and their*
22 *dispositions.*

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

27 (c) *A board that complies with Section 2313 shall not be subject*
28 *to the requirements of this section.*

29 (d) *A report to be submitted pursuant to this section shall be*
30 *submitted in compliance with Section 9795 of the Government*
31 *Code.*

32 (e) *This section shall become inoperative on October 1, 2016.*

33 *SEC. 10. Section 726 of the Business and Professions Code is*
34 *amended to read:*

35 726. (a) *The commission of any act of sexual abuse,*
36 *misconduct, or relations with a patient, client, or customer*
37 *constitutes unprofessional conduct and grounds for disciplinary*
38 *action for any person licensed under this division; and under any*
39 *initiative act referred to in this division and under Chapter 17*
40 *(commencing with Section 9000) of Division 3.*

1 (b) For purposes of Division 1.5 (commencing with Section
2 475), the commission of, and conviction for, any act of sexual
3 abuse, sexual misconduct, or attempted sexual misconduct, whether
4 or not with a patient, or conviction of a felony requiring
5 registration pursuant to Section 290 of the Penal Code, shall be
6 considered a crime substantially related to the qualifications,
7 functions, or duties of a licensee of a healing arts board described
8 in this division.

9 ~~This~~

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

16 SEC. 11. Section 734 is added to the Business and Professions
17 Code, to read:

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

25 (b) Discipline may be ordered against a licensee in accordance
26 with the laws and regulations of the healing arts board or the
27 board may order the denial of the license when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on
29 appeal, or when an order granting probation is made suspending
30 the imposition of sentence, irrespective of a subsequent order under
31 the provisions of Section 1203.4 of the Penal Code allowing that
32 person to withdraw his or her plea of guilty and to enter a plea of
33 not guilty, or setting aside the verdict of guilty, or dismissing the
34 accusation, complaint, information, or indictment.

35 SEC. 12. Section 735 is added to the Business and Professions
36 Code, to read:

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

1 *SEC. 13. Section 736 is added to the Business and Professions*
2 *Code, to read:*

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

15 (b) *A plea or verdict of guilty or a conviction following a plea*
16 *of nolo contendere is deemed to be a conviction within the meaning*
17 *of this section. Discipline may be ordered against a licensee in*
18 *accordance with the laws and regulations of the healing arts board*
19 *or the board may order the denial of the license when the time for*
20 *appeal has elapsed or the judgment of conviction has been affirmed*
21 *on appeal or when an order granting probation is made suspending*
22 *imposition of sentence, irrespective of a subsequent order under*
23 *the provisions of Section 1203.4 of the Penal Code allowing that*
24 *person to withdraw his or her plea of guilty and to enter a plea of*
25 *not guilty, or setting aside the verdict of guilty, or dismissing the*
26 *accusation, complaint, information, or indictment.*

27 (c) *A violation of subdivision (a) is a misdemeanor, and upon*
28 *conviction shall be punished by a fine of up to ten thousand dollars*
29 *(\$10,000), or by imprisonment in the county jail of up to six*
30 *months, or by both that fine and imprisonment.*

31 *SEC. 14. Section 737 is added to the Business and Professions*
32 *Code, to read:*

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

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

38 (b) *Cooperate and participate in any investigation or other*
39 *regulatory or disciplinary proceeding pending against the licensee.*
40 *However, this subdivision shall not be construed to deprive a*

1 licensee of any privilege guaranteed by the Fifth Amendment to
 2 the Constitution of the United States, or any other constitutional
 3 or statutory privileges. This subdivision shall not be construed to
 4 require a licensee to cooperate with a request that requires him
 5 or her to waive any constitutional or statutory privilege or to
 6 comply with a request for information or other matters within an
 7 unreasonable period of time in light of the time constraints of the
 8 licensee's practice. Any exercise by a licensee of any constitutional
 9 or statutory privilege shall not be used against the licensee in a
 10 regulatory or disciplinary proceeding against the licensee.

11 *SEC. 15. Section 802.1 of the Business and Professions Code*
 12 *is amended to read:*

13 802.1. (a) (1) ~~A physician and surgeon, osteopathic physician~~
 14 ~~and surgeon, and a doctor of podiatric medicine shall report either~~
 15 *licensee of a healing arts board described in this division shall*
 16 *report any of the following to the entity that issued his or her*
 17 *license:*

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

20 (B) The conviction of the licensee, including any verdict of
 21 guilty, or plea of guilty or no contest, of any felony or
 22 misdemeanor.

23 (C) *Any disciplinary action taken by another licensing entity or*
 24 *authority of this state or of another state or an agency of the federal*
 25 *government.*

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

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

33 *SEC. 16. Section 803 of the Business and Professions Code is*
 34 *amended to read:*

35 803. (a) Except as provided in subdivision (b), within 10 days
 36 after a judgment by a court of this state that a person who holds a
 37 license, certificate, or other similar authority from ~~the Board of~~
 38 ~~Behavioral Sciences or from an agency mentioned in subdivision~~
 39 ~~(a) of Section 800 (except a person licensed pursuant to Chapter~~
 40 ~~3 (commencing with Section 1200)) a healing arts board described~~

1 *in this division*, has committed a crime, or is liable for any death
2 or personal injury resulting in a judgment for an amount in excess
3 of thirty thousand dollars (\$30,000) caused by his or her
4 negligence, error or omission in practice, or his or her rendering
5 unauthorized professional services, the clerk of the court that
6 rendered the judgment shall report that fact to the agency that
7 issued the license, certificate, or other similar authority.

8 (b) For purposes of a physician and surgeon, osteopathic
9 physician and surgeon, or doctor of podiatric medicine, who is
10 liable for any death or personal injury resulting in a judgment of
11 any amount caused by his or her negligence, error or omission in
12 practice, or his or her rendering unauthorized professional services,
13 the clerk of the court that rendered the judgment shall report that
14 fact to the ~~agency~~ *board* that issued the license.

15 *SEC. 17. Section 803.5 of the Business and Professions Code*
16 *is amended to read:*

17 803.5. (a) The district attorney, city attorney, or other
18 prosecuting agency shall notify the ~~Medical Board of California,~~
19 ~~the Osteopathic Medical Board of California, the California Board~~
20 ~~of Podiatric Medicine, the State Board of Chiropractic Examiners,~~
21 ~~or other appropriate allied health board,~~ *appropriate healing arts*
22 *board described in this division* and the clerk of the court in which
23 the charges have been filed, of any filings against a licensee of
24 that board charging a felony immediately upon obtaining
25 information that the defendant is a licensee of the board. The notice
26 shall identify the licensee and describe the crimes charged and the
27 facts alleged. The prosecuting agency shall also notify the clerk
28 of the court in which the action is pending that the defendant is a
29 licensee, and the clerk shall record prominently in the file that the
30 defendant holds a license from one of the boards described above.

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

35 *SEC. 18. Section 803.6 of the Business and Professions Code*
36 *is amended to read:*

37 803.6. (a) The clerk of the court shall transmit any felony
38 preliminary hearing transcript concerning a defendant licensee to
39 the ~~Medical Board of California, the Osteopathic Medical Board~~
40 ~~of California, the California Board of Podiatric Medicine, or other~~

1 ~~appropriate allied health board, as applicable,~~ *appropriate healing*
2 *arts board described in this division* where the total length of the
3 transcript is under 800 pages and shall notify the appropriate board
4 of any proceeding where the transcript exceeds that length.

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

9 *SEC. 19. Section 803.7 is added to the Business and Professions*
10 *Code, to read:*

11 *803.7. The Department of Justice shall ensure that subsequent*
12 *reports and subsequent disposition information authorized to be*
13 *issued to any board identified in Section 101 are submitted to that*
14 *board within 30 days from notification of subsequent arrests,*
15 *convictions, or other updates.*

16 *SEC. 20. Section 803.8 is added to the Business and Professions*
17 *Code, to read:*

18 *803.8. (a) The office of the Attorney General shall serve, or*
19 *submit to a healing arts board for service, an accusation within*
20 *60 calendar days of receipt from the healing arts board.*

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

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

29 *SEC. 21. Section 822 of the Business and Professions Code is*
30 *amended to read:*

31 822. If a licensing agency determines that its licentiate's ability
32 to practice his or her profession safely is impaired because the
33 licentiate is mentally ill, or physically ill affecting competency,
34 the licensing agency may take action by any one of the following
35 methods:

36 (a) Revoking the licentiate's certificate or license.

37 (b) Suspending the licentiate's right to practice.

38 (c) Placing the licentiate on probation.

1 (d) Taking such other action in relation to the licentiate as the
2 licensing agency in its discretion deems proper, *including issuing*
3 *a limited or restricted license.*

4 The licensing agency shall not reinstate a revoked or suspended
5 certificate or license *or lift any restrictions or limitations* until it
6 has received competent evidence of the absence or control of the
7 condition which caused its action and until it is satisfied that with
8 due regard for the public health and safety the person's right to
9 practice his or her profession may be safely reinstated.

10 *SEC. 22. Section 857 is added to the Business and Professions*
11 *Code, to read:*

12 *857. (a) Each healing arts board, the State Board of*
13 *Chiropractic Examiners, and the Osteopathic Medical Board of*
14 *California shall query the federal National Practitioner Data Bank*
15 *prior to any of the following:*

16 *(1) Granting a license to an applicant who is currently residing*
17 *in another state.*

18 *(2) Granting a license to an applicant who is currently or has*
19 *ever been licensed as a health care practitioner in California or*
20 *another state.*

21 *(3) Granting a petition for reinstatement of a revoked or*
22 *surrendered license.*

23 *(b) Notwithstanding subdivision (a), a healing arts board, the*
24 *State Board of Chiropractic Examiners, and the Osteopathic*
25 *Medical Board of California may query the federal National*
26 *Practitioner Data Bank prior to issuing any license.*

27 *(c) A healing arts board shall charge a fee to cover the actual*
28 *cost to conduct the queries described in this section.*

29 *SEC. 23. Article 16 (commencing with Section 880) is added*
30 *to Chapter 1 of Division 2 of the Business and Professions Code,*
31 *to read:*

32
33 *Article 16. Unlicensed Practice*
34

35 *880. (a) (1) It is a public offense, punishable by a fine not to*
36 *exceed one hundred thousand dollars (\$100,000), by imprisonment*
37 *in a county jail not to exceed one year, or by both that fine and*
38 *imprisonment, for:*

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

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

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

11 (b) Notwithstanding any other provision of law, any person who
12 is licensed under this division, and who supervises the practice of
13 a healing art by any person who does not hold a current and valid
14 license to practice that healing art under this division, is guilty of
15 a public crime, punishable by a fine not to exceed one hundred
16 thousand dollars (\$100,000), by imprisonment in a county jail not
17 to exceed one year, or by both that fine and imprisonment.

18 SEC. 24. Section 1688 is added to the Business and Professions
19 Code, to read:

20 1688. (a) The board may delegate to its executive officer the
21 authority to adopt a proposed default decision where an
22 administrative action to revoke a license has been filed and the
23 licensee has failed to file a notice of defense or to appear at the
24 hearing and a proposed default decision revoking the license has
25 been issued.

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

31 (c) The executive officer shall, at scheduled board meetings,
32 report to the board the number of proposed default decisions or
33 proposed settlement agreements adopted pursuant to this section.

34 SEC. 25. Section 1688.1 is added to the Business and
35 Professions Code, to read:

36 1688.1. (a) Notwithstanding Section 11415.60 of the
37 Government Code, the board may enter into a settlement with a
38 licensee or applicant in lieu of the issuance of an accusation or
39 statement of issues against that licensee or applicant, as applicable.

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

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

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

14 (e) The executive officer shall, at scheduled board meetings,
15 report to the board the number of proposed settlement agreements
16 adopted pursuant to this section.

17 SEC. 26. Section 1688.2 is added to the Business and
18 Professions Code, to read:

19 1688.2. (a) The license of a licensee shall be suspended
20 automatically during any time that the licensee is incarcerated
21 after conviction of a felony, regardless of whether the conviction
22 has been appealed. The board shall, immediately upon receipt of
23 the certified copy of the record of conviction, determine whether
24 the license of the licensee has been automatically suspended by
25 virtue of his or her incarceration, and if so, the duration of that
26 suspension. The board shall notify the licensee in writing of the
27 license suspension and of his or her right to elect to have the issue
28 of penalty heard as provided in subdivision (d).

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

38 (c) Notwithstanding subdivision (b), a conviction of a charge
39 of violating any federal statute or regulation or any statute or
40 regulation of this state, regulating dangerous drugs or controlled

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

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

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

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

1 SEC. 27. Section 1688.3 is added to the Business and
2 Professions Code, to read:

3 1688.3. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision shall not
11 contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such an act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 28. Section 1688.4 is added to the Business and
27 Professions Code, to read:

28 1688.4. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 Code. The board shall not stay the revocation and place the license
2 on probation.

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

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

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

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

19 (3) Any administrative adjudication proceeding under Chapter
20 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
21 2 of the Government Code that is fully adjudicated prior to January
22 1, 2008. A petition for reinstatement of a revoked or surrendered
23 license shall be considered a new proceeding for purposes of this
24 paragraph, and the prohibition against reinstating a license to an
25 individual who is required to register as a sex offender shall be
26 applicable.

27 SEC. 29. Section 1688.5 is added to the Business and
28 Professions Code, to read:

29 1688.5. Unless otherwise provided, on or after July 1, 2013,
30 the board shall post on its Internet Web site the following
31 information, including the name and license number, in its
32 possession, custody, or control regarding every licensee for which
33 the board licenses:

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

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

5 (c) Any felony conviction of a licensee reported to the board.

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

12 (e) Any malpractice judgment or arbitration award imposed
13 against a licensee and reported to the board.

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

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

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

26 (i) The information provided on the Internet shall be in
27 accordance with the California Public Records Act (Chapter 3.5
28 (commencing with Section 6250) of Division 7 of Title 1 of the
29 Government Code) and the Information Practices Act of 1977
30 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
31 of Division 3 of the Civil Code) and shall comply with the
32 Department of Consumer Affairs Guidelines for Access to Public
33 Records.

34 (j) Information provided on the Internet may not include
35 personal information, unless otherwise provided pursuant to this
36 chapter, including the home telephone number, date of birth, or
37 social security number. The information may not include the
38 licensee’s address, but may include the city and county of the
39 licensee’s address of record.

1 SEC. 30. Section 1688.6 is added to the Business and
2 Professions Code, to read:

3 1688.6. (a) Unless otherwise provided, if a licensee possesses
4 a license or is otherwise authorized to practice in any state other
5 than California or by any agency of the federal government and
6 that license or authority is suspended or revoked outright, the
7 California license of the licensee shall be suspended automatically
8 for the duration of the suspension or revocation, unless terminated
9 or rescinded as provided in subdivision (c). The board shall notify
10 the licensee of the license suspension and of his or her right to
11 have the issue of penalty heard as provided in this section.

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

17 (c) The issue of penalty shall be heard by an administrative law
18 judge sitting alone or with a panel of the board, in the discretion
19 of the board. A licensee may request a hearing on the penalty and
20 that hearing shall be held within 90 days from the date of the
21 request. If the order suspending or revoking the license or authority
22 to practice is overturned on appeal, any discipline ordered
23 pursuant to this section shall automatically cease. Upon a showing
24 to the administrative law judge or panel by the licensee that the
25 out-of-state action is not a basis for discipline in California, the
26 suspension shall be rescinded. If an accusation for permanent
27 discipline is not filed within 90 days of the suspension imposed
28 pursuant to this section, the suspension shall automatically
29 terminate.

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

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

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

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

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

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

19 SEC. 31. Section 1947.1 is added to the Business and
20 Professions Code, to read:

21 1947.1. (a) The board may delegate to its executive officer the
22 authority to adopt a proposed default decision where an
23 administrative action to revoke a license has been filed and the
24 licensee has failed to file a notice of defense or to appear at the
25 hearing and a proposed default decision revoking the license has
26 been issued.

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

32 (c) The executive officer shall, at scheduled board meetings,
33 report to the board the number of proposed default decisions or
34 proposed settlement agreements adopted pursuant to this section.

35 SEC. 32. Section 1947.2 is added to the Business and
36 Professions Code, to read:

37 1947.2. (a) Notwithstanding Section 11415.60 of the
38 Government Code, the board may enter into a settlement with a
39 licensee or applicant in lieu of the issuance of an accusation or
40 statement of issues against that licensee or applicant, as applicable.

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

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

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

14 (e) The executive officer shall, at scheduled board meetings,
15 report to the board the number of proposed settlement agreements
16 adopted pursuant to this section.

17 SEC. 33. Section 1947.3 is added to the Business and
18 Professions Code, to read:

19 1947.3. (a) The license of a licensee shall be suspended
20 automatically during any time that the licensee is incarcerated
21 after conviction of a felony, regardless of whether the conviction
22 has been appealed. The board shall, immediately upon receipt of
23 the certified copy of the record of conviction, determine whether
24 the license of the licensee has been automatically suspended by
25 virtue of his or her incarceration, and if so, the duration of that
26 suspension. The board shall notify the licensee in writing of the
27 license suspension and of his or her right to elect to have the issue
28 of penalty heard as provided in subdivision (d).

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

38 (c) Notwithstanding subdivision (b), a conviction of a charge
39 of violating any federal statute or regulation or any statute or
40 regulation of this state, regulating dangerous drugs or controlled

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

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

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

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

1 SEC. 34. Section 1947.4 is added to the Business and
2 Professions Code, to read:

3 1947.4. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision or decision
11 shall not contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 35. Section 1947.5 is added to the Business and
27 Professions Code, to read:

28 1947.5. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

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

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

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

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

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 36. Section 1947.6 is added to the Business and*
28 *Professions Code, to read:*

29 *1947.6. (a) Notwithstanding any other provision of law, any*
30 *employer of a licensee shall report to the board the suspension or*
31 *termination for cause, or any resignation in lieu of suspension or*
32 *termination for cause, of any licensee in its employ within 15*
33 *business days. The report shall not be made until after the*
34 *conclusion of the review process specified in Section 52.3 of Title*
35 *2 of the California Code of Regulations and Skelly v. State*
36 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
37 *required reporting shall not constitute a waiver of confidentiality*
38 *of medical records. The information reported or disclosed shall*
39 *be kept confidential except as provided in subdivision (c) of Section*
40 *800 and shall not be subject to discovery in civil cases.*

1 (b) The information to be reported by the employer shall include
2 the name and license number of the licensee involved, a
3 description of the facts and circumstances of the suspension or
4 termination for cause, any resignation in lieu of suspension or
5 termination for cause, and any other relevant information deemed
6 appropriate by the employer.

7 (c) The board shall be entitled to inspect and copy the following
8 documents in the record for any suspension or termination for
9 cause, or any resignation in lieu of suspension or termination for
10 cause, resulting in action that is required to be reported pursuant
11 to this section:

12 (1) Any statement for suspension or termination of the licensee.

13 (2) Any document or exhibits relevant to the suspension or
14 termination.

15 (d) If, during the investigation by the board of the cause for the
16 termination or suspension or resignation of the licensee, it is found
17 that there has been a violation of existing state or federal law, the
18 board shall report the violation to the appropriate agency.

19 (e) For purposes of this section, “suspension or termination for
20 cause” or “resignation in lieu of suspension or termination for
21 cause” is defined as resignation, suspension, or termination from
22 employment for any of the following reasons:

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

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

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

29 (4) Gross negligence or incompetence.

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

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

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

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

4 (3) “Willful” means a knowing and intentional violation of a
5 known legal duty.

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

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

12 (h) The board shall investigate the circumstances underlying
13 any report received pursuant to this section within 30 days to
14 determine if an interim suspension order or temporary restraining
15 order should be issued. The board shall otherwise provide timely
16 disposition of the reports received pursuant to this section.

17 (i) The board shall send to the licentiate a copy of the report
18 along with the reasons for the filing of the report and notice
19 advising the licentiate of his or her right to submit additional
20 statements or other information to the board.

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

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

26 SEC. 37. Section 1947.7 is added to the Business and
27 Professions Code, to read:

28 1947.7. Unless otherwise provided, on or after July 1, 2013,
29 the board shall post on its Internet Web site the following
30 information, including the name and license number, in its
31 possession, custody, or control regarding every licensee for which
32 the board licenses:

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

39 (b) With regard to prior discipline of a licensee, whether or not
40 the licensee or former licensee has been subject to discipline by

1 *the board or by the board of another state or jurisdiction, as*
 2 *described in Section 803.1.*

3 *(c) Any felony conviction of a licensee reported to the board.*

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

10 *(e) Any malpractice judgment or arbitration award imposed*
 11 *against a licensee and reported to the board.*

12 *(f) Any hospital disciplinary action imposed against a licensee*
 13 *that resulted in the termination or revocation of a licensee’s*
 14 *hospital staff privileges for a medical disciplinary cause or reason*
 15 *pursuant to Section 805.*

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

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

24 *(i) The information provided on the Internet shall be in*
 25 *accordance with the California Public Records Act (Chapter 3.5*
 26 *commencing with Section 6250) of Division 7 of Title 1 of the*
 27 *Government Code) and the Information Practices Act of 1977*
 28 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
 29 *of Division 3 of the Civil Code) and shall comply with the*
 30 *Department of Consumer Affairs Guidelines for Access to Public*
 31 *Records.*

32 *(j) Information provided on the Internet may not include*
 33 *personal information, unless otherwise provided pursuant to this*
 34 *chapter, including the home telephone number, date of birth, or*
 35 *social security number. The information may not include the*
 36 *licensee’s address, but may include the city and county of the*
 37 *licensee’s address of record.*

38 *SEC. 38. Section 1947.8 is added to the Business and*
 39 *Professions Code, to read:*

1 1947.8. (a) Unless otherwise provided, if a licensee possesses
2 a license or is otherwise authorized to practice in any state other
3 than California or by any agency of the federal government and
4 that license or authority is suspended or revoked outright, the
5 California license of the licensee shall be suspended automatically
6 for the duration of the suspension or revocation, unless terminated
7 or rescinded as provided in subdivision (c). The board shall notify
8 the licensee of the license suspension and of his or her right to
9 have the issue of penalty heard as provided in this section.

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

15 (c) The issue of penalty shall be heard by an administrative law
16 judge sitting alone or with a panel of the board, in the discretion
17 of the board. A licensee may request a hearing on the penalty and
18 that hearing shall be held within 90 days from the date of the
19 request. If the order suspending or revoking the license or authority
20 to practice is overturned on appeal, any discipline ordered
21 pursuant to this section shall automatically cease. Upon a showing
22 to the administrative law judge or panel by the licensee that the
23 out-of-state action is not a basis for discipline in California, the
24 suspension shall be rescinded. If an accusation for permanent
25 discipline is not filed within 90 days of the suspension imposed
26 pursuant to this section, the suspension shall automatically
27 terminate.

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

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

38 (f) This section shall not apply to a licensee whose license has
39 been surrendered, whose only discipline is a medical staff
40 disciplinary action at a federal hospital and not for medical

1 *disciplinary cause or reason as that term is defined in Section 805,*
2 *or whose revocation or suspension has been stayed, even if the*
3 *licensee remains subject to terms of probation or other discipline.*

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

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

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

16 *SEC. 39. Section 2246 of the Business and Professions Code*
17 *is amended to read:*

18 *2246. (a) Any proposed decision or decision issued under this*
19 *article that contains any finding of fact that the licensee engaged*
20 *in any act of sexual exploitation, as described in paragraphs (3) to*
21 *(5), inclusive, of subdivision (b) of Section 729, with a patient*
22 *shall contain an order of revocation. The revocation shall not be*
23 *stayed by the administrative law judge.*

24 *(b) Except as otherwise provided, any proposed decision or*
25 *decision issued under this article in accordance with the*
26 *procedures set forth in Chapter 5 (commencing with Section 11500)*
27 *of Part 1 of Division 3 of Title 2 of the Government Code, that*
28 *contains any finding of fact that the licensee has committed a sex*
29 *offense, shall contain an order revoking the license. The proposed*
30 *decision or decision shall not contain any order staying the*
31 *revocation of the licensee.*

32 *(c) As used in this section, the term sex offense shall mean any*
33 *of the following:*

34 *(1) Any offense for which registration is required by Section*
35 *290 of the Penal Code or a finding that a person committed such*
36 *an act.*

37 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
38 *or 647(a) or (d) of the Penal Code or a finding that a person*
39 *committed such an act.*

1 (3) Any attempt to commit any of the offenses specified in this
2 section.

3 (4) Any offense committed or attempted in any other state or
4 against the laws of the United States which, if committed or
5 attempted in this state, would have been punishable as one or more
6 of the offenses specified in this section.

7 SEC. 40. Section 2533.5 is added to the Business and
8 Professions Code, to read:

9 2533.5. (a) The board may delegate to its executive officer the
10 authority to adopt a proposed default decision where an
11 administrative action to revoke a license has been filed and the
12 licensee has failed to file a notice of defense or to appear at the
13 hearing and a proposed default decision revoking the license has
14 been issued.

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

20 (c) The executive officer shall, at scheduled board meetings,
21 report to the board the number of proposed default decisions or
22 proposed settlement agreements adopted pursuant to this section.

23 SEC. 41. Section 2533.6 is added to the Business and
24 Professions Code, to read:

25 2533.6. (a) Notwithstanding Section 11415.60 of the
26 Government Code, the board may enter into a settlement with a
27 licensee or applicant in lieu of the issuance of an accusation or
28 statement of issues against that licensee or applicant, as applicable.

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

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

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

1 shall be considered a public record and shall be posted on the
2 applicable board's Internet Web site.

3 (e) The executive officer shall, at scheduled board meetings,
4 report to the board the number of proposed settlement agreements
5 adopted pursuant to this section.

6 SEC. 42. Section 2533.7 is added to the Business and
7 Professions Code, to read:

8 2533.7. (a) The license of a licensee shall be suspended
9 automatically during any time that the licensee is incarcerated
10 after conviction of a felony, regardless of whether the conviction
11 has been appealed. The board shall, immediately upon receipt of
12 the certified copy of the record of conviction, determine whether
13 the license of the licensee has been automatically suspended by
14 virtue of his or her incarceration, and if so, the duration of that
15 suspension. The board shall notify the licensee in writing of the
16 license suspension and of his or her right to elect to have the issue
17 of penalty heard as provided in subdivision (d).

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

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

38 (d) (1) Discipline may be ordered against a licensee in
39 accordance with the statutes and regulations of the board when
40 the time for appeal has elapsed, the judgment of conviction has

1 *been affirmed on appeal, or an order granting probation is made*
2 *suspending the imposition of sentence, irrespective of a subsequent*
3 *order under Section 1203.4 of the Penal Code allowing the person*
4 *to withdraw his or her plea of guilty and to enter a plea of not*
5 *guilty, setting aside the verdict of guilty, or dismissing the*
6 *accusation, complaint, information, or indictment.*

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

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

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

29 *SEC. 43. Section 2533.8 is added to the Business and*
30 *Professions Code, to read:*

31 *2533.8. (a) Except as otherwise provided, any proposed*
32 *decision or decision issued in accordance with the procedures set*
33 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
34 *Division 3 of Title 2 of the Government Code, that contains any*
35 *finding of fact that the licensee engaged in any act of sexual contact*
36 *with a patient, as defined in subdivision (c) of Section 729, or any*
37 *finding that the licensee has committed a sex offense, shall contain*
38 *an order revoking the license. The proposed decision shall not*
39 *contain any order staying the revocation of the licensee.*

1 (b) As used in this section, the term sex offense shall mean any
2 of the following:

3 (1) Any offense for which registration is required by Section
4 290 of the Penal Code or a finding that a person committed such
5 an act.

6 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
7 or 647(a) or (d) of the Penal Code or a finding that a person
8 committed such act.

9 (3) Any attempt to commit any of the offenses specified in this
10 section.

11 (4) Any offense committed or attempted in any other state or
12 against the laws of the United States which, if committed or
13 attempted in this state, would have been punishable as one or more
14 of the offenses specified in this Section.

15 SEC. 44. Section 2533.9 is added to the Business and
16 Professions Code, to read:

17 2533.9. (a) Except as otherwise provided, with regard to an
18 individual who is required to register as a sex offender pursuant
19 to Section 290 of the Penal Code, or the equivalent in another
20 state or territory, under military law, or under federal law, the
21 board shall be subject to the following requirements:

22 (1) The board shall deny an application by the individual for
23 licensure in accordance with the procedures set forth in Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code.

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

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

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

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

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

8 (3) *Any administrative adjudication proceeding under Chapter*
9 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
10 *2 of the Government Code that is fully adjudicated prior to January*
11 *1, 2008. A petition for reinstatement of a revoked or surrendered*
12 *license shall be considered a new proceeding for purposes of this*
13 *paragraph, and the prohibition against reinstating a license to an*
14 *individual who is required to register as a sex offender shall be*
15 *applicable.*

16 *SEC. 45. Section 2533.10 is added to the Business and*
17 *Professions Code, to read:*

18 *2533.10. (a) Notwithstanding any other provision of law*
19 *making a communication between a licensee and his or her patients*
20 *a privileged communication, those provisions shall not apply to*
21 *investigations or proceedings conducted by the board. Members*
22 *of the board, deputies, employees, agents, the office of the Attorney*
23 *General, and representatives of the board shall keep in confidence*
24 *during the course of investigations the names of any patients whose*
25 *records are reviewed and may not disclose or reveal those names,*
26 *except as is necessary during the course of an investigation, unless*
27 *and until proceedings are instituted. The authority under this*
28 *subdivision to examine records of patients in the office of a licensee*
29 *is limited to records of patients who have complained to the board*
30 *about that licensee.*

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

1 (1) Any document relevant to an investigation may be inspected,
2 and copies may be obtained, where a patient provides written
3 authorization.

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

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

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

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

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

35 (g) This section shall not apply to a licensee who does not have
36 access to, and control over, certified medical records or other
37 types of documents that belong to or are controlled by a health
38 facility or clinic.

39 SEC. 46. Section 2533.11 is added to the Business and
40 Professions Code, to read:

1 2533.11. (a) (1) Notwithstanding any other provision of law,
 2 a licensee who fails or refuses to comply with a request for the
 3 certified medical records of a patient that is accompanied by that
 4 patient's written authorization for release of records to a board
 5 together with a notice citing this section and describing the
 6 penalties for failure to comply with this section shall be required
 7 to pay to the board a civil penalty of up to one thousand dollars
 8 (\$1,000) per day for each day that the documents have not been
 9 produced after the 15th day, up to ten thousand dollars (\$10,000),
 10 unless the licensee is unable to provide the documents within this
 11 time period for good cause.

12 (2) A health care facility shall comply with a request for the
 13 certified medical records of a patient that is accompanied by that
 14 patient's written authorization for release of records to a board
 15 together with a notice citing this section and describing the
 16 penalties for failure to comply with this section. Failure to provide
 17 the authorizing patient's certified medical records to the board
 18 within 15 days of receiving the request, authorization, and notice
 19 shall subject the health care facility to a civil penalty, payable to
 20 the board, of up to one thousand dollars (\$1,000) per day for each
 21 day that the documents have not been produced after the 15th day,
 22 up to ten thousand dollars (\$10,000), unless the health care facility
 23 is unable to provide the documents within this time period for good
 24 cause. This paragraph shall not require health care facilities to
 25 assist the board in obtaining the patient's authorization. The board
 26 shall pay the reasonable costs of copying the certified medical
 27 records, but shall not be required to make that payment prior to
 28 the production of the medical records.

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

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

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

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

33 (c) Multiple acts by a licensee in violation of subdivision (b)
34 shall be punishable by a fine not to exceed five thousand dollars
35 (\$5,000) or by imprisonment in a county jail not exceeding six
36 months, or by both that fine and imprisonment. Multiple acts by
37 a health care facility in violation of subdivision (b) shall be
38 punishable by a fine not to exceed five thousand dollars (\$5,000),
39 shall be reported to the State Department of Public Health, and
40 shall be considered as grounds for disciplinary action with respect

1 to licensure, including suspension or revocation of the license or
2 certificate.

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

8 (e) Imposition of the civil penalties authorized by this section
9 shall be in accordance with the Administrative Procedure Act
10 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
11 2 of the Government Code). Any civil penalties paid to, or received
12 by, the board pursuant to this section shall be deposited into the
13 fund administered by the board.

14 (f) For purposes of this section, “certified medical records”
15 means a copy of the patient’s medical records authenticated by
16 the licensee or health care facility, as appropriate, on a form
17 prescribed by the licensee’s board.

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

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

24 (i) This section shall not apply to a licensee who does not have
25 access to, or control over, certified medical records or other types
26 of documents that belong to or are controlled by a health facility
27 or clinic.

28 SEC. 47. Section 2533.12 is added to the Business and
29 Professions Code, to read:

30 2533.12. (a) Notwithstanding any other provision of law, any
31 employer of a licensee shall report to the board the suspension or
32 termination for cause, or any resignation in lieu of suspension or
33 termination for cause, of any licensee in its employ within 15
34 business days. The report shall not be made until after the
35 conclusion of the review process specified in Section 52.3 of Title
36 2 of the California Code of Regulations and *Skelly v. State*
37 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
38 required reporting shall not constitute a waiver of confidentiality
39 of medical records. The information reported or disclosed shall

1 *be kept confidential except as provided in subdivision (c) of Section*
 2 *800 and shall not be subject to discovery in civil cases.*

3 *(b) The information to be reported by the employer shall include*
 4 *the name and license number of the licentiate involved, a*
 5 *description of the facts and circumstances of the suspension or*
 6 *termination for cause, any resignation in lieu of suspension or*
 7 *termination for cause, and any other relevant information deemed*
 8 *appropriate by the employer.*

9 *(c) The board shall be entitled to inspect and copy the following*
 10 *documents in the record for any suspension or termination for*
 11 *cause, or any resignation in lieu of suspension or termination for*
 12 *cause, resulting in action that is required to be reported pursuant*
 13 *to this section:*

14 *(1) Any statement for suspension or termination of the licensee.*

15 *(2) Any document or exhibits relevant to the suspension or*
 16 *termination.*

17 *(d) If, during the investigation by the board of the cause for the*
 18 *termination or suspension or resignation of the licensee, it is found*
 19 *that there has been a violation of existing state or federal law, the*
 20 *board shall report the violation to the appropriate agency.*

21 *(e) For purposes of this section, “suspension or termination for*
 22 *cause” or “resignation in lieu of suspension or termination for*
 23 *cause” is defined as resignation, suspension, or termination from*
 24 *employment for any of the following reasons:*

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

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

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

31 *(4) Gross negligence or incompetence.*

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

34 *(f) As used in this section, the following definitions apply:*

35 *(1) “Gross negligence” means a substantial departure from the*
 36 *standard of care, which, under similar circumstances, would have*
 37 *ordinarily been exercised by a competent licensee, and which has*
 38 *or could have resulted in harm to the consumer. An exercise of so*
 39 *slight a degree of care as to justify the belief that there was a*
 40 *conscious disregard or indifference for the health, safety, or*

1 *welfare of the consumer shall be considered a substantial departure*
2 *from the standard of care.*

3 (2) *“Incompetence” means the lack of possession of, and the*
4 *failure to exercise that degree of learning, skill, care, and*
5 *experience ordinarily possessed by, a responsible licensee.*

6 (3) *“Willful” means a knowing and intentional violation of a*
7 *known legal duty.*

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

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

14 (h) *The board shall investigate the circumstances underlying*
15 *any report received pursuant to this section within 30 days to*
16 *determine if an interim suspension order or temporary restraining*
17 *order should be issued. The board shall otherwise provide timely*
18 *disposition of the reports received pursuant to this section.*

19 (i) *The board shall send to the licentiate a copy of the report*
20 *along with the reasons for the filing of the report and notice*
21 *advising the licentiate of his or her right to submit additional*
22 *statements or other information to the board.*

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

26 (k) *No report is required under this section where a report of*
27 *the action taken is already required under Section 805.*

28 SEC. 48. *Section 2533.13 is added to the Business and*
29 *Professions Code, to read:*

30 2533.13. *Unless otherwise provided, on or after July 1, 2013,*
31 *the board shall post on its Internet Web site the following*
32 *information including the name and license number in its*
33 *possession, custody, or control regarding every licensee for which*
34 *the board licenses:*

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

- 1 **(b)** *With regard to prior discipline of a licensee, whether or not*
2 *the licensee or former licensee has been subject to discipline by*
3 *the board or by the board of another state or jurisdiction, as*
4 *described in Section 803.1.*
- 5 **(c)** *Any felony conviction of a licensee reported to the board.*
- 6 **(d)** *All current accusations filed by the Attorney General,*
7 *including those accusations that are on appeal. For purposes of*
8 *this paragraph, “current accusation” means an accusation that*
9 *has not been dismissed, withdrawn, or settled, and has not been*
10 *finally decided upon by an administrative law judge and the board*
11 *unless an appeal of that decision is pending.*
- 12 **(e)** *Any malpractice judgment or arbitration award imposed*
13 *against a licensee and reported to the board.*
- 14 **(f)** *Any hospital disciplinary action imposed against a licensee*
15 *that resulted in the termination or revocation of a licensee’s*
16 *hospital staff privileges for a medical disciplinary cause or reason*
17 *pursuant to Section 2533.11 or 805.*
- 18 **(g)** *Any misdemeanor conviction of a licensee that results in a*
19 *disciplinary action or an accusation that is not subsequently*
20 *withdrawn or dismissed.*
- 21 **(h)** *Appropriate disclaimers and explanatory statements to*
22 *accompany the above information, including an explanation of*
23 *what types of information are not disclosed. These disclaimers*
24 *and statements shall be developed by the board and shall be*
25 *adopted by regulation.*
- 26 **(i)** *The information provided on the Internet shall be in*
27 *accordance with the California Public Records Act (Chapter 3.5*
28 *(commencing with Section 6250) of Division 7 of Title 1 of the*
29 *Government Code) and the Information Practices Act of 1977*
30 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
31 *of Division 3 of the Civil Code) and shall comply with the*
32 *Department of Consumer Affairs Guidelines for Access to Public*
33 *Records.*
- 34 **(j)** *Information provided on the Internet may not include*
35 *personal information, unless otherwise provided pursuant to this*
36 *chapter, including the home telephone number, date of birth, or*
37 *social security number. The information may not include the*
38 *licensee’s address, but may include the city and county of the*
39 *licensee’s address of record.*

1 SEC. 49. Section 2533.14 is added to the Business and
2 Professions Code, to read:

3 2533.14. (a) Unless otherwise provided, if a licensee possesses
4 a license or is otherwise authorized to practice in any state other
5 than California or by any agency of the federal government and
6 that license or authority is suspended or revoked outright, the
7 California license of the licensee shall be suspended automatically
8 for the duration of the suspension or revocation, unless terminated
9 or rescinded as provided in subdivision (c). The healing arts board
10 shall notify the licensee of the license suspension and of his or her
11 right to have the issue of penalty heard as provided in this section.

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

17 (c) The issue of penalty shall be heard by an administrative law
18 judge sitting alone or with a panel of the board, in the discretion
19 of the board. A licensee may request a hearing on the penalty and
20 that hearing shall be held within 90 days from the date of the
21 request. If the order suspending or revoking the license or authority
22 to practice is overturned on appeal, any discipline ordered
23 pursuant to this section shall automatically cease. Upon a showing
24 to the administrative law judge or panel by the licensee that the
25 out-of-state action is not a basis for discipline in California, the
26 suspension shall be rescinded. If an accusation for permanent
27 discipline is not filed within 90 days of the suspension imposed
28 pursuant to this section, the suspension shall automatically
29 terminate.

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

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

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

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

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

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

19 SEC. 50. Section 2570.38 is added to the Business and
20 Professions Code, to read:

21 2570.38. (a) The board may delegate to its executive officer
22 the authority to adopt a proposed default decision where an
23 administrative action to revoke a license has been filed and the
24 licensee has failed to file a notice of defense or to appear at the
25 hearing and a proposed default decision revoking the license has
26 been issued.

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

32 (c) The executive officer shall, at scheduled board meetings,
33 report to the board the number of proposed default decisions or
34 proposed settlement agreements adopted pursuant to this section.

35 SEC. 51. Section 2570.39 is added to the Business and
36 Professions Code, to read:

37 2570.39. (a) Notwithstanding Section 11415.60 of the
38 Government Code, the board may enter into a settlement with a
39 licensee or applicant in lieu of the issuance of an accusation or
40 statement of issues against that licensee or applicant, as applicable.

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

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

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

14 (e) The executive officer shall, at scheduled board meetings,
15 report to the board the number of proposed settlement agreements
16 adopted pursuant to this section.

17 SEC. 52. Section 2570.40 is added to the Business and
18 Professions Code, to read:

19 2570.40. (a) The license of a licensee shall be suspended
20 automatically during any time that the licensee is incarcerated
21 after conviction of a felony, regardless of whether the conviction
22 has been appealed. The board shall, immediately upon receipt of
23 the certified copy of the record of conviction, determine whether
24 the license of the licensee has been automatically suspended by
25 virtue of his or her incarceration, and if so, the duration of that
26 suspension. The board shall notify the licensee in writing of the
27 license suspension and of his or her right to elect to have the issue
28 of penalty heard as provided in subdivision (d).

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

38 (c) Notwithstanding subdivision (b), a conviction of a charge
39 of violating any federal statute or regulation or any statute or
40 regulation of this state, regulating dangerous drugs or controlled

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

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

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

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

1 SEC. 53. Section 2570.41 is added to the Business and
2 Professions Code, to read:

3 2570.41. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision shall not
11 contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such an act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 54. Section 2570.42 is added to the Business and
27 Professions Code, to read:

28 2570.42. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

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

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

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

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

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 55. Section 2570.43 is added to the Business and*
28 *Professions Code, to read:*

29 *2570.43. (a) Notwithstanding any other provision of law*
30 *making a communication between a licensee and his or her patients*
31 *a privileged communication, those provisions shall not apply to*
32 *investigations or proceedings conducted by the board. Members*
33 *of the board, deputies, employees, agents, the office of the Attorney*
34 *General, and representatives of the board shall keep in confidence*
35 *during the course of investigations the names of any patients whose*
36 *records are reviewed and may not disclose or reveal those names,*
37 *except as is necessary during the course of an investigation, unless*
38 *and until proceedings are instituted. The authority under this*
39 *subdivision to examine records of patients in the office of a licensee*

1 *is limited to records of patients who have complained to the board*
2 *about that licensee.*

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

11 *(1) Any document relevant to an investigation may be inspected,*
12 *and copies may be obtained, where a patient provides written*
13 *authorization.*

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

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

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

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

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

5 (g) *This section shall not apply to a licensee who does not have*
6 *access to, and control over, certified medical records or other*
7 *types of documents that belong to or are controlled by a health*
8 *facility or clinic.*

9 *SEC. 56. Section 2570.44 is added to the Business and*
10 *Professions Code, to read:*

11 2570.44. (a) (1) *Notwithstanding any other provision of law,*
12 *a licensee who fails or refuses to comply with a request for the*
13 *certified medical records of a patient that is accompanied by that*
14 *patient's written authorization for release of records to a board*
15 *together with a notice citing this section and describing the*
16 *penalties for failure to comply with this section shall be required*
17 *to pay to the board a civil penalty of up to one thousand dollars*
18 *(\$1,000) per day for each day that the documents have not been*
19 *produced after the 15th day, up to ten thousand dollars (\$10,000),*
20 *unless the licensee is unable to provide the documents within this*
21 *time period for good cause.*

22 (2) *A health care facility shall comply with a request for the*
23 *certified medical records of a patient that is accompanied by that*
24 *patient's written authorization for release of records to a board*
25 *together with a notice citing this section and describing the*
26 *penalties for failure to comply with this section. Failure to provide*
27 *the authorizing patient's certified medical records to the board*
28 *within 15 days of receiving the request, authorization, and notice*
29 *shall subject the health care facility to a civil penalty, payable to*
30 *the board, of up to one thousand dollars (\$1,000) per day for each*
31 *day that the documents have not been produced after the 15th day,*
32 *up to ten thousand dollars (\$10,000), unless the health care facility*
33 *is unable to provide the documents within this time period for good*
34 *cause. This paragraph shall not require health care facilities to*
35 *assist the board in obtaining the patient's authorization. The board*
36 *shall pay the reasonable costs of copying the certified medical*
37 *records, but shall not be required to make that payment prior to*
38 *the production of the medical records.*

39 (b) (1) *A licensee who fails or refuses to comply with a court*
40 *order, issued in the enforcement of a subpoena, mandating the*

1 *release of records to the board, shall pay to the board a civil*
2 *penalty of up to one thousand dollars (\$1,000) per day for each*
3 *day that the documents have not been produced after the date by*
4 *which the court order requires the documents to be produced, up*
5 *to ten thousand dollars (\$10,000), unless it is determined that the*
6 *order is unlawful or invalid. Any statute of limitations applicable*
7 *to the filing of an accusation by the board shall be tolled during*
8 *the period the licensee is out of compliance with the court order*
9 *and during any related appeals.*

10 (2) *Any licensee who fails or refuses to comply with a court*
11 *order, issued in the enforcement of a subpoena, mandating the*
12 *release of records to a board is guilty of a misdemeanor punishable*
13 *by a fine payable to the board not to exceed five thousand dollars*
14 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
15 *it is not paid by the next succeeding renewal date. Any statute of*
16 *limitations applicable to the filing of an accusation by the board*
17 *shall be tolled during the period the licensee is out of compliance*
18 *with the court order and during any related appeals.*

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

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

1 (c) Multiple acts by a licensee in violation of subdivision (b)
 2 shall be punishable by a fine not to exceed five thousand dollars
 3 (\$5,000) or by imprisonment in a county jail not exceeding six
 4 months, or by both that fine and imprisonment. Multiple acts by
 5 a health care facility in violation of subdivision (b) shall be
 6 punishable by a fine not to exceed five thousand dollars (\$5,000),
 7 shall be reported to the State Department of Public Health, and
 8 shall be considered as grounds for disciplinary action with respect
 9 to licensure, including suspension or revocation of the license or
 10 certificate.

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

16 (e) Imposition of the civil penalties authorized by this section
 17 shall be in accordance with the Administrative Procedure Act
 18 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
 19 2 of the Government Code). Any civil penalties paid to, or received
 20 by, the board pursuant to this section shall be deposited into the
 21 fund administered by the board.

22 (f) For purposes of this section, “certified medical records”
 23 means a copy of the patient’s medical records authenticated by
 24 the licensee or health care facility, as appropriate, on a form
 25 prescribed by the licensee’s board.

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

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

32 (i) This section shall not apply to a licensee who does not have
 33 access to, or control over, certified medical records or other types
 34 of documents that belong to or are controlled by a health facility
 35 or clinic.

36 SEC. 57. Section 2570.45 is added to the Business and
 37 Professions Code, to read:

38 2570.45. (a) Notwithstanding any other provision of law, any
 39 employer of a licensee shall report to the board the suspension or
 40 termination for cause, or any resignation in lieu of suspension or

1 *termination for cause, of any licensee in its employ within 15*
2 *business days. The report shall not be made until after the*
3 *conclusion of the review process specified in Section 52.3 of Title*
4 *2 of the California Code of Regulations and Skelly v. State*
5 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
6 *required reporting shall not constitute a waiver of confidentiality*
7 *of medical records. The information reported or disclosed shall*
8 *be kept confidential except as provided in subdivision (c) of Section*
9 *800 and shall not be subject to discovery in civil cases.*

10 *(b) The information to be reported by the employer shall include*
11 *the name and license number of the licensee involved, a*
12 *description of the facts and circumstances of the suspension or*
13 *termination for cause, any resignation in lieu of suspension or*
14 *termination for cause, and any other relevant information deemed*
15 *appropriate by the employer.*

16 *(c) The board shall be entitled to inspect and copy the following*
17 *documents in the record for any suspension or termination for*
18 *cause, or any resignation in lieu of suspension or termination for*
19 *cause, resulting in action that is required to be reported pursuant*
20 *to this section:*

21 *(1) Any statement for suspension or termination of the licensee.*

22 *(2) Any document or exhibits relevant to the suspension or*
23 *termination.*

24 *(d) If, during the investigation by the board of the cause for the*
25 *termination or suspension or resignation of the licensee, it is found*
26 *that there has been a violation of existing state or federal law, the*
27 *board shall report the violation to the appropriate agency.*

28 *(e) For purposes of this section, “suspension or termination for*
29 *cause” or “resignation in lieu of suspension or termination for*
30 *cause” is defined as resignation, suspension, or termination from*
31 *employment for any of the following reasons:*

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

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

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

38 *(4) Gross negligence or incompetence.*

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

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

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

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

13 (3) “Willful” means a knowing and intentional violation of a
14 known legal duty.

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

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

21 (h) The board shall investigate the circumstances underlying
22 any report received pursuant to this section within 30 days to
23 determine if an interim suspension order or temporary restraining
24 order should be issued. The board shall otherwise provide timely
25 disposition of the reports received pursuant to this section.

26 (i) The board shall send to the licentiate a copy of the report
27 along with the reasons for the filing of the report and notice
28 advising the licentiate of his or her right to submit additional
29 statements or other information to the board.

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

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

35 SEC. 58. Section 2570.46 is added to the Business and
36 Professions Code, to read:

37 2570.46. Unless otherwise provided, on or after July 1, 2013,
38 the board shall post on its Internet Web site the following
39 information, including the name and license number, in its

1 *possession, custody, or control regarding every licensee for which*
2 *the board licenses:*

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

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

13 *(c) Any felony conviction of a licensee reported to the board.*

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

20 *(e) Any malpractice judgment or arbitration award imposed*
21 *against a licensee and reported to the healing arts board.*

22 *(f) Any hospital disciplinary action imposed against a licensee*
23 *that resulted in the termination or revocation of a licensee’s*
24 *hospital staff privileges for a medical disciplinary cause or reason*
25 *pursuant to Section 2570.44 or 805.*

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

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

34 *(i) The information provided on the Internet shall be in*
35 *accordance with the California Public Records Act (Chapter 3.5*
36 *(commencing with Section 6250) of Division 7 of Title 1 of the*
37 *Government Code) and the Information Practices Act of 1977*
38 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
39 *of Division 3 of the Civil Code) and shall comply with the*

1 *Department of Consumer Affairs Guidelines for Access to Public*
2 *Records.*

3 *(j) Information provided on the Internet may not include*
4 *personal information, unless otherwise provided pursuant to this*
5 *chapter, including the home telephone number, date of birth, or*
6 *social security number. The information may not include the*
7 *licensee's address, but may include the city and county of the*
8 *licensee's address of record.*

9 *SEC. 59. Section 2570.47 is added to the Business and*
10 *Professions Code, to read:*

11 *2570.47. (a) Unless otherwise provided, if a licensee possesses*
12 *a license or is otherwise authorized to practice in any state other*
13 *than California or by any agency of the federal government and*
14 *that license or authority is suspended or revoked outright, the*
15 *California license of the licensee shall be suspended automatically*
16 *for the duration of the suspension or revocation, unless terminated*
17 *or rescinded as provided in subdivision (c). The board shall notify*
18 *the licensee of the license suspension and of his or her right to*
19 *have the issue of penalty heard as provided in this section.*

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

25 *(c) The issue of penalty shall be heard by an administrative law*
26 *judge sitting alone or with a panel of the board, in the discretion*
27 *of the board. A licensee may request a hearing on the penalty and*
28 *that hearing shall be held within 90 days from the date of the*
29 *request. If the order suspending or revoking the license or authority*
30 *to practice is overturned on appeal, any discipline ordered*
31 *pursuant to this section shall automatically cease. Upon a showing*
32 *to the administrative law judge or panel by the licensee that the*
33 *out-of-state action is not a basis for discipline in California, the*
34 *suspension shall be rescinded. If an accusation for permanent*
35 *discipline is not filed within 90 days of the suspension imposed*
36 *pursuant to this section, the suspension shall automatically*
37 *terminate.*

38 *(d) The record of the proceedings that resulted in the suspension*
39 *or revocation of the licensee's out-of-state license or authority to*

1 *practice, including a transcript of the testimony therein, may be*
2 *received in evidence.*

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

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

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

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

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

27 *SEC. 60. Section 2608.5 of the Business and Professions Code*
28 *is repealed.*

29 ~~2608.5. Each member of the board, or any licensed physical~~
30 ~~therapist appointed by the board, may inspect, or require reports~~
31 ~~from, a general or specialized hospital or any other facility~~
32 ~~providing physical therapy care, treatment or services and the~~
33 ~~physical therapy staff thereof, with respect to the physical therapy~~
34 ~~care, treatment, services, or facilities provided therein, and may~~
35 ~~inspect physical therapy patient records with respect to the care,~~
36 ~~treatment, services, or facilities. The authority to make inspections~~
37 ~~and to require reports as provided by this section shall not be~~
38 ~~delegated by a member of the board to any person other than a~~
39 ~~physical therapist and shall be subject to the restrictions against~~
40 ~~disclosure described in Section 2263.~~

1 *SEC. 61. Section 2660.5 of the Business and Professions Code*
2 *is repealed.*

3 ~~2660.5. The board shall deny a physical therapist license or~~
4 ~~physical therapist assistant approval to an applicant who is required~~
5 ~~to register pursuant to Section 290 of the Penal Code. This section~~
6 ~~does not apply to an applicant who is required to register as a sex~~
7 ~~offender pursuant to Section 290 of the Penal Code solely because~~
8 ~~of a misdemeanor conviction under Section 314 of the Penal Code.~~

9 *SEC. 62. Section 2661.8 is added to the Business and*
10 *Professions Code, to read:*

11 2661.8. (a) *The board may delegate to its executive officer the*
12 *authority to adopt a proposed default decision where an*
13 *administrative action to revoke a license has been filed and the*
14 *licensee has failed to file a notice of defense or to appear at the*
15 *hearing and a proposed default decision revoking the license has*
16 *been issued.*

17 (b) *The board may delegate to its executive officer the authority*
18 *to adopt a proposed settlement agreement where an administrative*
19 *action to revoke a license has been filed by the board and the*
20 *licensee has agreed to the revocation or surrender of his or her*
21 *license.*

22 (c) *The executive officer shall, at scheduled board meetings,*
23 *report to the board the number of proposed default decisions or*
24 *proposed settlement agreements adopted pursuant to this section.*

25 *SEC. 63. Section 2661.9 is added to the Business and*
26 *Professions Code, to read:*

27 2661.9. (a) *Notwithstanding Section 11415.60 of the*
28 *Government Code, the board may enter into a settlement with a*
29 *licensee or applicant in lieu of the issuance of an accusation or*
30 *statement of issues against that licensee or applicant, as applicable.*

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

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

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

1 settlement against an applicant executed pursuant to this section
2 shall be considered a public record and shall be posted on the
3 applicable board's Internet Web site.

4 (e) The executive officer shall, at scheduled board meetings,
5 report to the board the number of proposed settlement agreements
6 adopted pursuant to this section.

7 SEC. 64. Section 2661.10 is added to the Business and
8 Professions Code, to read:

9 2661.10. (a) The license of a licensee shall be suspended
10 automatically during any time that the licensee is incarcerated
11 after conviction of a felony, regardless of whether the conviction
12 has been appealed. The board shall, immediately upon receipt of
13 the certified copy of the record of conviction, determine whether
14 the license of the licensee has been automatically suspended by
15 virtue of his or her incarceration, and if so, the duration of that
16 suspension. The board shall notify the licensee in writing of the
17 license suspension and of his or her right to elect to have the issue
18 of penalty heard as provided in subdivision (d).

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

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

39 (d) (1) Discipline may be ordered against a licensee in
40 accordance with the statutes and regulations of the board when

1 *the time for appeal has elapsed, the judgment of conviction has*
2 *been affirmed on appeal, or an order granting probation is made*
3 *suspending the imposition of sentence, irrespective of a subsequent*
4 *order under Section 1203.4 of the Penal Code allowing the person*
5 *to withdraw his or her plea of guilty and to enter a plea of not*
6 *guilty, setting aside the verdict of guilty, or dismissing the*
7 *accusation, complaint, information, or indictment.*

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

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

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

30 SEC. 65. *Section 2661.11 is added to the Business and*
31 *Professions Code, to read:*

32 2661.11. (a) *Except as otherwise provided, any proposed*
33 *decision or decision issued in accordance with the procedures set*
34 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
35 *Division 3 of Title 2 of the Government Code, that contains any*
36 *finding of fact that the licensee engaged in any act of sexual contact*
37 *with a patient, as defined in subdivision (c) of Section 729, or any*
38 *finding that the licensee has committed a sex offense, shall contain*
39 *an order revoking the license. The proposed decision shall not*
40 *contain any order staying the revocation of the licensee.*

1 (b) As used in this section, the term sex offense shall mean any
2 of the following:

3 (1) Any offense for which registration is required by Section
4 290 of the Penal Code or a finding that a person committed such
5 an act.

6 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
7 or 647(a) or (d) of the Penal Code or a finding that a person
8 committed such an act.

9 (3) Any attempt to commit any of the offenses specified in this
10 section.

11 (4) Any offense committed or attempted in any other state or
12 against the laws of the United States which, if committed or
13 attempted in this state, would have been punishable as one or more
14 of the offenses specified in this section.

15 SEC. 66. Section 2661.12 is added to the Business and
16 Professions Code, to read:

17 2661.12. (a) Except as otherwise provided, with regard to an
18 individual who is required to register as a sex offender pursuant
19 to Section 290 of the Penal Code, or the equivalent in another
20 state or territory, under military law, or under federal law, the
21 board shall be subject to the following requirements:

22 (1) The board shall deny an application by the individual for
23 licensure in accordance with the procedures set forth in Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code.

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

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

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

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

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

8 (3) *Any administrative adjudication proceeding under Chapter*
9 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
10 *2 of the Government Code that is fully adjudicated prior to January*
11 *1, 2008. A petition for reinstatement of a revoked or surrendered*
12 *license shall be considered a new proceeding for purposes of this*
13 *paragraph, and the prohibition against reinstating a license to an*
14 *individual who is required to register as a sex offender shall be*
15 *applicable.*

16 SEC. 67. *Section 2661.13 is added to the Business and*
17 *Professions Code, to read:*

18 2661.13. (a) *Notwithstanding any other provision of law*
19 *making a communication between a licensee and his or her patients*
20 *a privileged communication, those provisions shall not apply to*
21 *investigations or proceedings conducted by the board. Members*
22 *of the board, deputies, employees, agents, the office of the Attorney*
23 *General, and representatives of the board shall keep in confidence*
24 *during the course of investigations the names of any patients whose*
25 *records are reviewed and may not disclose or reveal those names,*
26 *except as is necessary during the course of an investigation, unless*
27 *and until proceedings are instituted. The authority under this*
28 *subdivision to examine records of patients in the office of a licensee*
29 *is limited to records of patients who have complained to the board*
30 *about that licensee.*

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

1 (1) Any document relevant to an investigation may be inspected,
2 and copies may be obtained, where a patient provides written
3 authorization.

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

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

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

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

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

35 (g) This section shall not apply to a licensee who does not have
36 access to, and control over, certified medical records or other
37 types of documents that belong to or are controlled by a health
38 facility or clinic.

39 SEC. 68. Section 2661.14 is added to the Business and
40 Professions Code, to read:

1 2661.14. (a) (1) Notwithstanding any other provision of law,
2 a licensee who fails or refuses to comply with a request for the
3 certified medical records of a patient that is accompanied by that
4 patient's written authorization for release of records to a board
5 together with a notice citing this section and describing the
6 penalties for failure to comply with this section shall be required
7 to pay to the board a civil penalty of up to one thousand dollars
8 (\$1,000) per day for each day that the documents have not been
9 produced after the 15th day, up to ten thousand dollars (\$10,000),
10 unless the licensee is unable to provide the documents within this
11 time period for good cause.

12 (2) A health care facility shall comply with a request for the
13 certified medical records of a patient that is accompanied by that
14 patient's written authorization for release of records to a board
15 together with a notice citing this section and describing the
16 penalties for failure to comply with this section. Failure to provide
17 the authorizing patient's certified medical records to the board
18 within 15 days of receiving the request, authorization, and notice
19 shall subject the health care facility to a civil penalty, payable to
20 the board, of up to one thousand dollars (\$1,000) per day for each
21 day that the documents have not been produced after the 15th day,
22 up to ten thousand dollars (\$10,000), unless the health care facility
23 is unable to provide the documents within this time period for good
24 cause. This paragraph shall not require health care facilities to
25 assist the board in obtaining the patient's authorization. The board
26 shall pay the reasonable costs of copying the certified medical
27 records, but shall not be required to make that payment prior to
28 the production of the medical records.

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

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

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

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

31 (c) Multiple acts by a licensee in violation of subdivision (b)
32 shall be punishable by a fine not to exceed five thousand dollars
33 (\$5,000) or by imprisonment in a county jail not exceeding six
34 months, or by both that fine and imprisonment. Multiple acts by
35 a health care facility in violation of subdivision (b) shall be
36 punishable by a fine not to exceed five thousand dollars (\$5,000),
37 shall be reported to the State Department of Public Health, and
38 shall be considered as grounds for disciplinary action with respect
39 to licensure, including suspension or revocation of the license or
40 certificate.

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

5 (e) Imposition of the civil penalties authorized by this section
 6 shall be in accordance with the Administrative Procedure Act
 7 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
 8 2 of the Government Code). Any civil penalties paid to, or received
 9 by, the board pursuant to this section shall be deposited into the
 10 fund administered by the board.

11 (f) For purposes of this section, “certified medical records”
 12 means a copy of the patient’s medical records authenticated by
 13 the licensee or health care facility, as appropriate, on a form
 14 prescribed by the licensee’s board.

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

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

21 (i) This section shall not apply to a licensee who does not have
 22 access to, or control over, certified medical records or other types
 23 of documents that belong to or are controlled by a health facility
 24 or clinic.

25 SEC. 69. Section 2661.15 is added to the Business and
 26 Professions Code, to read:

27 2661.15. (a) Notwithstanding any other provision of law, any
 28 employer of a licensee shall report to the board the suspension or
 29 termination for cause, or any resignation in lieu of suspension or
 30 termination for cause, of any licensee in its employ within 15
 31 business days. The report shall not be made until after the
 32 conclusion of the review process specified in Section 52.3 of Title
 33 2 of the California Code of Regulations and *Skelly v. State*
 34 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
 35 required reporting shall not constitute a waiver of confidentiality
 36 of medical records. The information reported or disclosed shall
 37 be kept confidential except as provided in subdivision (c) of Section
 38 800 and shall not be subject to discovery in civil cases.

39 (b) The information to be reported by the employer shall include
 40 the name and license number of the licentiate involved, a

1 *description of the facts and circumstances of the suspension or*
2 *termination for cause, any resignation in lieu of suspension or*
3 *termination for cause, and any other relevant information deemed*
4 *appropriate by the employer.*

5 *(c) The board shall be entitled to inspect and copy the following*
6 *documents in the record for any suspension or termination for*
7 *cause, or any resignation in lieu of suspension or termination for*
8 *cause, resulting in action that is required to be reported pursuant*
9 *to this section:*

10 *(1) Any statement for suspension or termination of the licensee.*

11 *(2) Any document or exhibits relevant to the suspension or*
12 *termination.*

13 *(d) If, during the investigation by the board of the cause for the*
14 *termination or suspension or resignation of the licensee, it is found*
15 *that there has been a violation of existing state or federal law, the*
16 *board shall report the violation to the appropriate agency.*

17 *(e) For purposes of this section, “suspension or termination for*
18 *cause” or “resignation in lieu of suspension or termination for*
19 *cause” is defined as resignation, suspension, or termination from*
20 *employment for any of the following reasons:*

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

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

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

27 *(4) Gross negligence or incompetence.*

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

30 *(f) As used in this section, the following definitions apply:*

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

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

4 (3) “Willful” means a knowing and intentional violation of a
5 known legal duty.

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

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

12 (h) The board shall investigate the circumstances underlying
13 any report received pursuant to this section within 30 days to
14 determine if an interim suspension order or temporary restraining
15 order should be issued. The board shall otherwise provide timely
16 disposition of the reports received pursuant to this section.

17 (i) The board shall send to the licentiate a copy of the report
18 along with the reasons for the filing of the report and notice
19 advising the licentiate of his or her right to submit additional
20 statements or other information to the board.

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

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

26 SEC. 70. Section 2661.16 is added to the Business and
27 Professions Code, to read:

28 2661.16. Unless otherwise provided, on or after July 1, 2013,
29 the board shall post on its Internet Web site the following
30 information including the name and license number in its
31 possession, custody, or control regarding every licensee for which
32 the board licenses:

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

39 (b) With regard to prior discipline of a licensee, whether or not
40 the licensee or former licensee has been subject to discipline by

1 *the board or by the board of another state or jurisdiction, as*
2 *described in Section 803.1.*

3 *(c) Any felony conviction of a licensee reported to the board.*

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

10 *(e) Any malpractice judgment or arbitration award imposed*
11 *against a licensee and reported to the board.*

12 *(f) Any hospital disciplinary action imposed against a licensee*
13 *that resulted in the termination or revocation of a licensee’s*
14 *hospital staff privileges for a medical disciplinary cause or reason*
15 *pursuant to Section 2661.14 or 805.*

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

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

24 *(i) The information provided on the Internet shall be in*
25 *accordance with the California Public Records Act (Chapter 3.5*
26 *commencing with Section 6250) of Division 7 of Title 1 of the*
27 *Government Code) and the Information Practices Act of 1977*
28 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
29 *of Division 3 of the Civil Code) and shall comply with the*
30 *Department of Consumer Affairs Guidelines for Access to Public*
31 *Records.*

32 *(j) Information provided on the Internet may not include*
33 *personal information, unless otherwise provided pursuant to this*
34 *chapter, including the home telephone number, date of birth, or*
35 *social security number. The information may not include the*
36 *licensee’s address, but may include the city and county of the*
37 *licensee’s address of record.*

38 *SEC. 71. Section 2661.17 is added to the Business and*
39 *Professions Code, to read:*

1 2661.17. (a) Unless otherwise provided, if a licensee possesses
2 a license or is otherwise authorized to practice in any state other
3 than California or by any agency of the federal government and
4 that license or authority is suspended or revoked outright, the
5 California license of the licensee shall be suspended automatically
6 for the duration of the suspension or revocation, unless terminated
7 or rescinded as provided in subdivision (c). The board shall notify
8 the licensee of the license suspension and of his or her right to
9 have the issue of penalty heard as provided in this section.

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

15 (c) The issue of penalty shall be heard by an administrative law
16 judge sitting alone or with a panel of the board, in the discretion
17 of the board. A licensee may request a hearing on the penalty and
18 that hearing shall be held within 90 days from the date of the
19 request. If the order suspending or revoking the license or authority
20 to practice is overturned on appeal, any discipline ordered
21 pursuant to this section shall automatically cease. Upon a showing
22 to the administrative law judge or panel by the licensee that the
23 out-of-state action is not a basis for discipline in California, the
24 suspension shall be rescinded. If an accusation for permanent
25 discipline is not filed within 90 days of the suspension imposed
26 pursuant to this section, the suspension shall automatically
27 terminate.

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

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

38 (f) This section shall not apply to a licensee whose license has
39 been surrendered, whose only discipline is a medical staff
40 disciplinary action at a federal hospital and not for medical

1 *disciplinary cause or reason as that term is defined in Section 805,*
2 *or whose revocation or suspension has been stayed, even if the*
3 *licensee remains subject to terms of probation or other discipline.*

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

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

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

16 *SEC. 72. Section 2766 is added to the Business and Professions*
17 *Code, to read:*

18 *2766. (a) The board may delegate to its executive officer the*
19 *authority to adopt a proposed default decision where an*
20 *administrative action to revoke a license has been filed and the*
21 *licensee has failed to file a notice of defense or to appear at the*
22 *hearing and a proposed default decision revoking the license has*
23 *been issued.*

24 *(b) The board may delegate to its executive officer the authority*
25 *to adopt a proposed settlement agreement where an administrative*
26 *action to revoke a license has been filed by the board and the*
27 *licensee has agreed to the revocation or surrender of his or her*
28 *license.*

29 *(c) The executive officer shall, at scheduled board meetings,*
30 *report to the board the number of proposed default decisions or*
31 *proposed settlement agreements adopted pursuant to this section.*

32 *SEC. 73. Section 2766.1 is added to the Business and*
33 *Professions Code, to read:*

34 *2766.1. (a) Notwithstanding Section 11415.60 of the*
35 *Government Code, the board may enter into a settlement with a*
36 *licensee or applicant in lieu of the issuance of an accusation or*
37 *statement of issues against that licensee or applicant, as applicable.*

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

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

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

11 (e) The executive officer shall, at scheduled board meetings,
12 report to the board the number of proposed settlement agreements
13 adopted pursuant to this section.

14 SEC. 74. Section 2766.2 is added to the Business and
15 Professions Code, to read:

16 2766.2. (a) The license of a licensee shall be suspended
17 automatically during any time that the licensee is incarcerated
18 after conviction of a felony, regardless of whether the conviction
19 has been appealed. The board shall, immediately upon receipt of
20 the certified copy of the record of conviction, determine whether
21 the license of the licensee has been automatically suspended by
22 virtue of his or her incarceration, and if so, the duration of that
23 suspension. The board shall notify the licensee in writing of the
24 license suspension and of his or her right to elect to have the issue
25 of penalty heard as provided in subdivision (d).

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

35 (c) Notwithstanding subdivision (b), a conviction of a charge
36 of violating any federal statute or regulation or any statute or
37 regulation of this state, regulating dangerous drugs or controlled
38 substances, or a conviction of Section 187, 261, 262, or 288 of the
39 Penal Code, shall be conclusively presumed to be substantially
40 related to the qualifications, functions, or duties of a licensee and

1 *no hearing shall be held on this issue. However, upon its own*
2 *motion or for good cause shown, the board may decline to impose*
3 *or may set aside the suspension when it appears to be in the interest*
4 *of justice to do so, with due regard to maintaining the integrity of,*
5 *and confidence in, the practice regulated by the board.*

6 *(d) (1) Discipline may be ordered against a licensee in*
7 *accordance with the statutes and regulations of the board when*
8 *the time for appeal has elapsed, the judgment of conviction has*
9 *been affirmed on appeal, or an order granting probation is made*
10 *suspending the imposition of sentence, irrespective of a subsequent*
11 *order under Section 1203.4 of the Penal Code allowing the person*
12 *to withdraw his or her plea of guilty and to enter a plea of not*
13 *guilty, setting aside the verdict of guilty, or dismissing the*
14 *accusation, complaint, information, or indictment.*

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

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

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

37 *SEC. 75. Section 2766.3 is added to the Business and*
38 *Professions Code, to read:*

39 *2766.3. (a) Except as otherwise provided, any proposed*
40 *decision or decision issued in accordance with the procedures set*

1 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
2 *Division 3 of Title 2 of the Government Code, that contains any*
3 *finding of fact that the licensee engaged in any act of sexual contact*
4 *with a patient, as defined in subdivision (c) of Section 729, or any*
5 *finding that the licensee has committed a sex offense, shall contain*
6 *an order revoking the license. The proposed decision shall not*
7 *contain any order staying the revocation of the licensee.*

8 *(b) As used in this section, the term sex offense shall mean any*
9 *of the following:*

10 *(1) Any offense for which registration is required by Section*
11 *290 of the Penal Code or a finding that a person committed such*
12 *an act.*

13 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
14 *or 647(a) or (d) of the Penal Code or a finding that a person*
15 *committed such an act.*

16 *(3) Any attempt to commit any of the offenses specified in this*
17 *section.*

18 *(4) Any offense committed or attempted in any other state or*
19 *against the laws of the United States which, if committed or*
20 *attempted in this state, would have been punishable as one or more*
21 *of the offenses specified in this section.*

22 *SEC. 76. Section 2766.4 is added to the Business and*
23 *Professions Code, to read:*

24 *2766.4. (a) Except as otherwise provided, with regard to an*
25 *individual who is required to register as a sex offender pursuant*
26 *to Section 290 of the Penal Code, or the equivalent in another*
27 *state or territory, under military law, or under federal law, the*
28 *board shall be subject to the following requirements:*

29 *(1) The board shall deny an application by the individual for*
30 *licensure in accordance with the procedures set forth in Chapter*
31 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
32 *2 of the Government Code.*

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

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

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

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

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

17 (3) *Any administrative adjudication proceeding under Chapter*
18 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
19 *2 of the Government Code that is fully adjudicated prior to January*
20 *1, 2008. A petition for reinstatement of a revoked or surrendered*
21 *license shall be considered a new proceeding for purposes of this*
22 *paragraph, and the prohibition against reinstating a license to an*
23 *individual who is required to register as a sex offender shall be*
24 *applicable.*

25 SEC. 77. *Section 2766.5 is added to the Business and*
26 *Professions Code, to read:*

27 2766.5. (a) *Notwithstanding any other provision of law making*
28 *a communication between a licensee and his or her patients a*
29 *privileged communication, those provisions shall not apply to*
30 *investigations or proceedings conducted by the board. Members*
31 *of the board, deputies, employees, agents, the office of the Attorney*
32 *General, and representatives of the board shall keep in confidence*
33 *during the course of investigations the names of any patients whose*
34 *records are reviewed and may not disclose or reveal those names,*
35 *except as is necessary during the course of an investigation, unless*
36 *and until proceedings are instituted. The authority under this*
37 *subdivision to examine records of patients in the office of a licensee*
38 *is limited to records of patients who have complained to the board*
39 *about that licensee.*

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

9 (1) Any document relevant to an investigation may be inspected,
10 and copies may be obtained, where a patient provides written
11 authorization.

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

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

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

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

39 (f) The licensee shall cooperate with the board in furnishing
40 information or assistance as may be required, including, but not

1 limited to, participation in an interview with investigators or
2 representatives of the board.

3 (g) This section shall not apply to a licensee who does not have
4 access to, and control over, certified medical records or other
5 types of documents that belong to or are controlled by a health
6 facility or clinic.

7 SEC. 78. Section 2766.6 is added to the Business and
8 Professions Code, to read:

9 2766.6. (a) (1) Notwithstanding any other provision of law,
10 a licensee who fails or refuses to comply with a request for the
11 certified medical records of a patient that is accompanied by that
12 patient's written authorization for release of records to a board
13 together with a notice citing this section and describing the
14 penalties for failure to comply with this section shall be required
15 to pay to the board a civil penalty of up to one thousand dollars
16 (\$1,000) per day for each day that the documents have not been
17 produced after the 15th day, up to ten thousand dollars (\$10,000),
18 unless the licensee is unable to provide the documents within this
19 time period for good cause.

20 (2) A health care facility shall comply with a request for the
21 certified medical records of a patient that is accompanied by that
22 patient's written authorization for release of records to a board
23 together with a notice citing this section and describing the
24 penalties for failure to comply with this section. Failure to provide
25 the authorizing patient's certified medical records to the board
26 within 15 days of receiving the request, authorization, and notice
27 shall subject the health care facility to a civil penalty, payable to
28 the board, of up to one thousand dollars (\$1,000) per day for each
29 day that the documents have not been produced after the 15th day,
30 up to ten thousand dollars (\$10,000), unless the health care facility
31 is unable to provide the documents within this time period for good
32 cause. This paragraph shall not require health care facilities to
33 assist the board in obtaining the patient's authorization. The board
34 shall pay the reasonable costs of copying the certified medical
35 records, but shall not be required to make that payment prior to
36 the production of the medical records.

37 (b) (1) A licensee who fails or refuses to comply with a court
38 order, issued in the enforcement of a subpoena, mandating the
39 release of records to the board, shall pay to the board a civil
40 penalty of up to one thousand dollars (\$1,000) per day for each

1 day that the documents have not been produced after the date by
2 which the court order requires the documents to be produced, up
3 to ten thousand dollars (\$10,000), unless it is determined that the
4 order is unlawful or invalid. Any statute of limitations applicable
5 to the filing of an accusation by the board shall be tolled during
6 the period the licensee is out of compliance with the court order
7 and during any related appeals.

8 (2) Any licensee who fails or refuses to comply with a court
9 order, issued in the enforcement of a subpoena, mandating the
10 release of records to a board is guilty of a misdemeanor punishable
11 by a fine payable to the board not to exceed five thousand dollars
12 (\$5,000). The fine shall be added to the licensee's renewal fee if
13 it is not paid by the next succeeding renewal date. Any statute of
14 limitations applicable to the filing of an accusation by the board
15 shall be tolled during the period the licensee is out of compliance
16 with the court order and during any related appeals.

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

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

39 (c) Multiple acts by a licensee in violation of subdivision (b)
40 shall be punishable by a fine not to exceed five thousand dollars

1 (\$5,000) or by imprisonment in a county jail not exceeding six
 2 months, or by both that fine and imprisonment. Multiple acts by
 3 a health care facility in violation of subdivision (b) shall be
 4 punishable by a fine not to exceed five thousand dollars (\$5,000),
 5 shall be reported to the State Department of Public Health, and
 6 shall be considered as grounds for disciplinary action with respect
 7 to licensure, including suspension or revocation of the license or
 8 certificate.

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

13 (e) Imposition of the civil penalties authorized by this section
 14 shall be in accordance with the Administrative Procedure Act
 15 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
 16 2 of the Government Code). Any civil penalties paid to, or received
 17 by, the board pursuant to this section shall be deposited into the
 18 fund administered by the board.

19 (f) For purposes of this section, “certified medical records”
 20 means a copy of the patient’s medical records authenticated by
 21 the licensee or health care facility, as appropriate, on a form
 22 prescribed by the licensee’s board.

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

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

29 (i) This section shall not apply to a licensee who does not have
 30 access to, or control over, certified medical records or other types
 31 of documents that belong to or are controlled by a health facility
 32 or clinic.

33 SEC. 79. Section 2766.7 is added to the Business and
 34 Professions Code, to read:

35 2766.7. (a) Unless otherwise provided, on or after July 1,
 36 2013, the board shall post on the Internet the following
 37 information, including the name and license number, in its
 38 possession, custody, or control regarding every licensee for which
 39 the board licenses:

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

7 (2) *With regard to prior discipline of a licensee, whether or not*
8 *the licensee or former licensee has been subject to discipline by*
9 *the board or by the board of another state or jurisdiction, as*
10 *described in Section 803.1.*

11 (3) *Any felony conviction of a licensee reported to the board.*

12 (4) *All current accusations filed by the Attorney General,*
13 *including those accusations that are on appeal. For purposes of*
14 *this paragraph, “current accusation” means an accusation that*
15 *has not been dismissed, withdrawn, or settled, and has not been*
16 *finally decided upon by an administrative law judge and the board*
17 *unless an appeal of that decision is pending.*

18 (5) *Any malpractice judgment or arbitration award imposed*
19 *against a licensee and reported to the healing arts board.*

20 (6) *Any misdemeanor conviction of a licensee that results in a*
21 *disciplinary action or an accusation that is not subsequently*
22 *withdrawn or dismissed.*

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

28 (b) *The information provided on the Internet shall be in*
29 *accordance with the California Public Records Act (Chapter 3.5*
30 *(commencing with Section 6250) of Division 7 of Title 1 of the*
31 *Government Code) and the Information Practices Act of 1977*
32 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
33 *of Division 3 of the Civil Code) and shall comply with the*
34 *Department of Consumer Affairs Guidelines for Access to Public*
35 *Records.*

36 (c) *Information provided on the Internet may not include*
37 *personal information, unless otherwise provided pursuant to this*
38 *chapter, including the home telephone number, date of birth, or*
39 *social security number. The information may not include the*

1 licensee's address, nor the city and county of the licensee's address
2 of record.

3 SEC. 80. Section 2766.8 is added to the Business and
4 Professions Code, to read:

5 2766.8. (a) Unless otherwise provided, if a licensee possesses
6 a license or is otherwise authorized to practice in any state other
7 than California or by any agency of the federal government and
8 that license or authority is suspended or revoked outright, the
9 California license of the licensee shall be suspended automatically
10 for the duration of the suspension or revocation, unless terminated
11 or rescinded as provided in subdivision (c). The healing arts board
12 shall notify the licensee of the license suspension and of his or her
13 right to have the issue of penalty heard as provided in this section.

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

19 (c) The issue of penalty shall be heard by an administrative law
20 judge sitting alone or with a panel of the board, in the discretion
21 of the board. A licensee may request a hearing on the penalty and
22 that hearing shall be held within 90 days from the date of the
23 request. If the order suspending or revoking the license or authority
24 to practice is overturned on appeal, any discipline ordered
25 pursuant to this section shall automatically cease. Upon a showing
26 to the administrative law judge or panel by the licensee that the
27 out-of-state action is not a basis for discipline in California, the
28 suspension shall be rescinded. If an accusation for permanent
29 discipline is not filed within 90 days of the suspension imposed
30 pursuant to this section, the suspension shall automatically
31 terminate.

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

36 (e) This section shall not apply to a licensee who maintains his
37 or her primary practice in California, as evidenced by having
38 maintained a practice in this state for not less than one year
39 immediately preceding the date of suspension or revocation.

1 *Nothing in this section shall preclude a licensee's license from*
2 *being suspended pursuant to any other provision of law.*

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

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

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

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

21 *SEC. 81. Section 2879.1 is added to the Business and*
22 *Professions Code, to read:*

23 *2879.1. (a) The board may delegate to its executive officer the*
24 *authority to adopt a proposed default decision where an*
25 *administrative action to revoke a license has been filed and the*
26 *licensee has failed to file a notice of defense or to appear at the*
27 *hearing and a proposed default decision revoking the license has*
28 *been issued.*

29 *(b) The board may delegate to its executive officer the authority*
30 *to adopt a proposed settlement agreement where an administrative*
31 *action to revoke a license has been filed by the board and the*
32 *licensee has agreed to the revocation or surrender of his or her*
33 *license.*

34 *(c) The executive officer shall, at scheduled board meetings,*
35 *report to the board the number of proposed default decisions or*
36 *proposed settlement agreements adopted pursuant to this section.*

37 *SEC. 82. Section 2879.2 is added to the Business and*
38 *Professions Code, to read:*

39 *2879.2. (a) Notwithstanding Section 11415.60 of the*
40 *Government Code, the board may enter into a settlement with a*

1 licensee or applicant in lieu of the issuance of an accusation or
2 statement of issues against that licensee or applicant, as applicable.

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

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

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

16 (e) The executive officer shall, at scheduled board meetings,
17 report to the board the number of proposed settlement agreements
18 adopted pursuant to this section.

19 SEC. 83. Section 2879.3 is added to the Business and
20 Professions Code, to read:

21 2879.3. (a) The license of a licensee shall be suspended
22 automatically during any time that the licensee is incarcerated
23 after conviction of a felony, regardless of whether the conviction
24 has been appealed. The board shall, immediately upon receipt of
25 the certified copy of the record of conviction, determine whether
26 the license of the licensee has been automatically suspended by
27 virtue of his or her incarceration, and if so, the duration of that
28 suspension. The board shall notify the licensee in writing of the
29 license suspension and of his or her right to elect to have the issue
30 of penalty heard as provided in subdivision (d).

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

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

12 (d) (1) Discipline may be ordered against a licensee in
13 accordance with the statutes and regulations of the board when
14 the time for appeal has elapsed, the judgment of conviction has
15 been affirmed on appeal, or an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent
17 order under Section 1203.4 of the Penal Code allowing the person
18 to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, setting aside the verdict of guilty, or dismissing the
20 accusation, complaint, information, or indictment.

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

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

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

4 SEC. 84. Section 2879.4 is added to the Business and
5 Professions Code, to read:

6 2879.4. (a) Except as otherwise provided, any proposed
7 decision or decision issued in accordance with the procedures set
8 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
9 Division 3 of Title 2 of the Government Code, that contains any
10 finding of fact that the licensee engaged in any act of sexual contact
11 with a patient, as defined in subdivision (c) of Section 729, or any
12 finding that the licensee has committed a sex offense, shall contain
13 an order revoking the license. The proposed decision shall not
14 contain any order staying the revocation of the license.

15 (b) As used in this section, the term sex offense shall mean any
16 of the following:

17 (1) Any offense for which registration is required by Section
18 290 of the Penal Code or a finding that a person committed such
19 an act.

20 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
21 or 647(a) or (d) of the Penal Code or a finding that a person
22 committed such an act.

23 (3) Any attempt to commit any of the offenses specified in this
24 section.

25 (4) Any offense committed or attempted in any other state or
26 against the laws of the United States which, if committed or
27 attempted in this state, would have been punishable as one or more
28 of the offenses specified in this section.

29 SEC. 85. Section 2879.5 is added to the Business and
30 Professions Code, to read:

31 2879.5. (a) Except as otherwise provided, with regard to an
32 individual who is required to register as a sex offender pursuant
33 to Section 290 of the Penal Code, or the equivalent in another
34 state or territory, under military law, or under federal law, the
35 board shall be subject to the following requirements:

36 (1) The board shall deny an application by the individual for
37 licensure in accordance with the procedures set forth in Chapter
38 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
39 2 of the Government Code.

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

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

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

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

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

23 (3) Any administrative adjudication proceeding under Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code that is fully adjudicated prior to January
26 1, 2008. A petition for reinstatement of a revoked or surrendered
27 license shall be considered a new proceeding for purposes of this
28 paragraph, and the prohibition against reinstating a license to an
29 individual who is required to register as a sex offender shall be
30 applicable.

31 SEC. 86. Section 2879.6 is added to the Business and
32 Professions Code, to read:

33 2879.6. (a) Notwithstanding any other provision of law making
34 a communication between a licensee and his or her patients a
35 privileged communication, those provisions shall not apply to
36 investigations or proceedings conducted by the board. Members
37 of the board, deputies, employees, agents, the office of the Attorney
38 General, and representatives of the board shall keep in confidence
39 during the course of investigations the names of any patients whose
40 records are reviewed and may not disclose or reveal those names,

1 *except as is necessary during the course of an investigation, unless*
2 *and until proceedings are instituted. The authority under this*
3 *subdivision to examine records of patients in the office of a licensee*
4 *is limited to records of patients who have complained to the board*
5 *about that licensee.*

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

14 *(1) Any document relevant to an investigation may be inspected,*
15 *and copies may be obtained, where a patient provides written*
16 *authorization.*

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

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

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

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

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

9 (g) This section shall not apply to a licensee who does not have
10 access to, and control over, certified medical records or other
11 types of documents that belong to or are controlled by a health
12 facility or clinic.

13 SEC. 87. Section 2879.7 is added to the Business and
14 Professions Code, to read:

15 2879.7. (a) (1) Notwithstanding any other provision of law,
16 a licensee who fails or refuses to comply with a request for the
17 certified medical records of a patient that is accompanied by that
18 patient's written authorization for release of records to a board
19 together with a notice citing this section and describing the
20 penalties for failure to comply with this section shall be required
21 to pay to the board a civil penalty of up to one thousand dollars
22 (\$1,000) per day for each day that the documents have not been
23 produced after the 15th day, up to ten thousand dollars (\$10,000),
24 unless the licensee is unable to provide the documents within this
25 time period for good cause.

26 (2) A health care facility shall comply with a request for the
27 certified medical records of a patient that is accompanied by that
28 patient's written authorization for release of records to a board
29 together with a notice citing this section and describing the
30 penalties for failure to comply with this section. Failure to provide
31 the authorizing patient's certified medical records to the board
32 within 15 days of receiving the request, authorization, and notice
33 shall subject the health care facility to a civil penalty, payable to
34 the healing arts board, of up to one thousand dollars (\$1,000) per
35 day for each day that the documents have not been produced after
36 the 15th day, up to ten thousand dollars (\$10,000), unless the
37 health care facility is unable to provide the documents within this
38 time period for good cause. This paragraph shall not require health
39 care facilities to assist the board in obtaining the patient's
40 authorization. The board shall pay the reasonable costs of copying

1 *the certified medical records, but shall not be required to make*
2 *that payment prior to the production of the medical records.*

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

14 *(2) Any licensee who fails or refuses to comply with a court*
15 *order, issued in the enforcement of a subpoena, mandating the*
16 *release of records to a board is guilty of a misdemeanor punishable*
17 *by a fine payable to the board not to exceed five thousand dollars*
18 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
19 *it is not paid by the next succeeding renewal date. Any statute of*
20 *limitations applicable to the filing of an accusation by the board*
21 *shall be tolled during the period the licensee is out of compliance*
22 *with the court order and during any related appeals.*

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

36 *(4) Any health care facility that fails or refuses to comply with*
37 *a court order, issued in the enforcement of a subpoena, mandating*
38 *the release of records to the board is guilty of a misdemeanor*
39 *punishable by a fine payable to the board not to exceed five*
40 *thousand dollars (\$5,000). Any statute of limitations applicable*

1 to the filing of an accusation by the board against a licensee shall
2 be tolled during the period the health care facility is out of
3 compliance with the court order and during any related appeals.

4 (c) Multiple acts by a licensee in violation of subdivision (b)
5 shall be punishable by a fine not to exceed five thousand dollars
6 (\$5,000) or by imprisonment in a county jail not exceeding six
7 months, or by both that fine and imprisonment. Multiple acts by
8 a health care facility in violation of subdivision (b) shall be
9 punishable by a fine not to exceed five thousand dollars (\$5,000),
10 shall be reported to the State Department of Public Health, and
11 shall be considered as grounds for disciplinary action with respect
12 to licensure, including suspension or revocation of the license or
13 certificate.

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

18 (e) Imposition of the civil penalties authorized by this section
19 shall be in accordance with the Administrative Procedure Act
20 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
21 2 of the Government Code). Any civil penalties paid to, or received
22 by, the board pursuant to this section shall be deposited into the
23 fund administered by the board.

24 (f) For purposes of this section, “certified medical records”
25 means a copy of the patient’s medical records authenticated by
26 the licensee or health care facility, as appropriate, on a form
27 prescribed by the licensee’s board.

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

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

34 (i) This section shall not apply to a licensee who does not have
35 access to, or control over, certified medical records or other types
36 of documents that belong to or are controlled by a health facility
37 or clinic.

38 SEC. 88. Section 2879.8 is added to the Business and
39 Professions Code, to read:

1 2879.8. Unless otherwise provided, on or after July 1, 2013,
2 the board shall post on its Internet Web site the following
3 information, including the name and license number, in its
4 possession, custody, or control regarding every licensee for which
5 the board licenses:

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

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

16 (c) Any felony conviction of a licensee reported to the board.

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

23 (e) Any malpractice judgment or arbitration award imposed
24 against a licensee and reported to the board.

25 (f) Any hospital disciplinary action imposed against a licensee
26 that resulted in the termination or revocation of a licensee's
27 hospital staff privileges for a medical disciplinary cause or reason
28 pursuant to Section 2879.7 or 805.

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

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

37 (i) The information provided on the Internet shall be in
38 accordance with the California Public Records Act (Chapter 3.5
39 (commencing with Section 6250) of Division 7 of Title 1 of the
40 Government Code) and the Information Practices Act of 1977

1 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
2 of Division 3 of the Civil Code) and shall comply with the
3 Department of Consumer Affairs Guidelines for Access to Public
4 Records.

5 (j) Information provided on the Internet may not include
6 personal information, unless otherwise provided pursuant to this
7 chapter, including the home telephone number, date of birth, or
8 social security number. The information may not include the
9 licensee's address, but may include the city and county of the
10 licensee's address of record.

11 SEC. 89. Section 2879.10 is added to the Business and
12 Professions Code, to read:

13 2879.10. (a) Unless otherwise provided, if a licensee possesses
14 a license or is otherwise authorized to practice in any state other
15 than California or by any agency of the federal government and
16 that license or authority is suspended or revoked outright, the
17 California license of the licensee shall be suspended automatically
18 for the duration of the suspension or revocation, unless terminated
19 or rescinded as provided in subdivision (c). The healing arts board
20 shall notify the licensee of the license suspension and of his or her
21 right to have the issue of penalty heard as provided in this section.

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

27 (c) The issue of penalty shall be heard by an administrative law
28 judge sitting alone or with a panel of the board, in the discretion
29 of the board. A licensee may request a hearing on the penalty and
30 that hearing shall be held within 90 days from the date of the
31 request. If the order suspending or revoking the license or authority
32 to practice is overturned on appeal, any discipline ordered
33 pursuant to this section shall automatically cease. Upon a showing
34 to the administrative law judge or panel by the licensee that the
35 out-of-state action is not a basis for discipline in California, the
36 suspension shall be rescinded. If an accusation for permanent
37 discipline is not filed within 90 days of the suspension imposed
38 pursuant to this section, the suspension shall automatically
39 terminate.

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

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

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

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

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

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

29 *SEC. 90. Section 2960.1 of the Business and Professions Code*
30 *is amended to read:*

31 2960.1. (a) *Notwithstanding Section 2960, any proposed*
32 *decision or decision issued under this chapter in accordance with*
33 *the procedures set forth in Chapter 5 (commencing with Section*
34 *11500) of Part 1 of Division 3 of Title 2 of the Government Code,*
35 *that contains any finding of fact that the licensee or registrant*
36 *engaged in any act of sexual contact, as defined in Section 728,*
37 *when that act is with a patient, or with a former patient within two*
38 *years following termination of therapy, shall contain an order of*
39 *revocation. The revocation shall not be stayed by the administrative*
40 *law judge.*

1 (b) Except as otherwise provided, any proposed decision or
2 decision issued under this chapter in accordance with the
3 procedures set forth in Chapter 5 (commencing with Section 11500)
4 of Part 1 of Division 3 of Title 2 of the Government Code, that
5 contains any finding of fact that the licensee has committed a sex
6 offense, shall contain an order revoking the license. The proposed
7 decision or decision shall not contain any order staying the
8 revocation of the licensee.

9 (c) As used in this section, the term sex offense shall mean any
10 of the following:

11 (1) Any offense for which registration is required by Section
12 290 of the Penal Code or a finding that a person committed such
13 an act.

14 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
15 or 647(a) or (d) of the Penal Code or a finding that a person
16 committed such an act.

17 (3) Any attempt to commit any of the offenses specified in this
18 section.

19 (4) Any offense committed or attempted in any other state or
20 against the laws of the United States which, if committed or
21 attempted in this state, would have been punishable as one or more
22 of the offenses specified in this section.

23 SEC. 91. Section 2969.1 is added to the Business and
24 Professions Code, to read:

25 2969.1. (a) The board may delegate to its executive officer the
26 authority to adopt a proposed default decision where an
27 administrative action to revoke a license has been filed and the
28 licensee has failed to file a notice of defense or to appear at the
29 hearing and a proposed default decision revoking the license has
30 been issued.

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

36 (c) The executive officer shall, at scheduled board meetings,
37 report to the board the number of proposed default decisions or
38 proposed settlement agreements adopted pursuant to this section.

39 SEC. 92. Section 2969.2 is added to the Business and
40 Professions Code, to read:

1 2969.2. (a) Notwithstanding Section 11415.60 of the
2 Government Code, the board may enter into a settlement with a
3 licensee or applicant in lieu of the issuance of an accusation or
4 statement of issues against that licensee or applicant, as applicable.

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

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

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

18 (e) The executive officer shall, at scheduled board meetings,
19 report to the board the number of proposed settlement agreements
20 adopted pursuant to this section.

21 SEC. 93. Section 2969.3 is added to the Business and
22 Professions Code, to read:

23 2969.3. Unless otherwise provided, on or after July 1, 2013,
24 the board shall post on its Internet Web site the following
25 information, including the name and license number, in its
26 possession, custody, or control regarding every licensee for which
27 the board licenses:

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

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

38 (c) Any felony conviction of a licensee reported to the board.

39 (d) All current accusations filed by the Attorney General,
40 including those accusations that are on appeal. For purposes of

1 *this paragraph, “current accusation” means an accusation that*
2 *has not been dismissed, withdrawn, or settled, and has not been*
3 *finally decided upon by an administrative law judge and the board*
4 *unless an appeal of that decision is pending.*

5 *(e) Any malpractice judgment or arbitration award imposed*
6 *against a licensee and reported to the board.*

7 *(f) Any hospital disciplinary action imposed against a licensee*
8 *that resulted in the termination or revocation of a licensee’s*
9 *hospital staff privileges for a medical disciplinary cause or reason*
10 *pursuant to Section 805.*

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

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

19 *(i) The information provided on the Internet shall be in*
20 *accordance with the California Public Records Act (Chapter 3.5*
21 *(commencing with Section 6250) of Division 7 of Title 1 of the*
22 *Government Code) and the Information Practices Act of 1977*
23 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
24 *of Division 3 of the Civil Code) and shall comply with the*
25 *Department of Consumer Affairs Guidelines for Access to Public*
26 *Records.*

27 *(j) Information provided on the Internet may not include*
28 *personal information, unless otherwise provided pursuant to this*
29 *chapter, including the home telephone number, date of birth, or*
30 *social security number. The information may not include the*
31 *licensee’s address, but may include the city and county of the*
32 *licensee’s address of record.*

33 *SEC. 94. Section 2969.4 is added to the Business and*
34 *Professions Code, to read:*

35 *2969.4. (a) Unless otherwise provided, if a licensee possesses*
36 *a license or is otherwise authorized to practice in any state other*
37 *than California or by any agency of the federal government and*
38 *that license or authority is suspended or revoked outright, the*
39 *California license of the licensee shall be suspended automatically*
40 *for the duration of the suspension or revocation, unless terminated*

1 or rescinded as provided in subdivision (c). The board shall notify
2 the licensee of the license suspension and of his or her right to
3 have the issue of penalty heard as provided in this section.

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

9 (c) The issue of penalty shall be heard by an administrative law
10 judge sitting alone or with a panel of the board, in the discretion
11 of the board. A licensee may request a hearing on the penalty and
12 that hearing shall be held within 90 days from the date of the
13 request. If the order suspending or revoking the license or authority
14 to practice is overturned on appeal, any discipline ordered
15 pursuant to this section shall automatically cease. Upon a showing
16 to the administrative law judge or panel by the licensee that the
17 out-of-state action is not a basis for discipline in California, the
18 suspension shall be rescinded. If an accusation for permanent
19 discipline is not filed within 90 days of the suspension imposed
20 pursuant to this section, the suspension shall automatically
21 terminate.

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

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

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

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

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

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

10 SEC. 95. Section 3112 is added to the Business and Professions
11 Code, to read:

12 3112. (a) The board may delegate to its executive officer the
13 authority to adopt a proposed default decision where an
14 administrative action to revoke a certificate of registration has
15 been filed and the registrant has failed to file a notice of defense
16 or to appear at the hearing and a proposed default decision
17 revoking the certificate of registration has been issued.

18 (b) The board may delegate to its executive officer the authority
19 to adopt a proposed settlement agreement where an administrative
20 action to revoke a certificate of registration has been filed by the
21 board and the registrant has agreed to the revocation or surrender
22 of his or her certificate of registration.

23 (c) The executive officer shall, at scheduled board meetings,
24 report to the board the number of proposed default decisions or
25 proposed settlement agreements adopted pursuant to this section.

26 SEC. 96. Section 3112.1 is added to the Business and
27 Professions Code, to read:

28 3112.1. (a) Notwithstanding Section 11415.60 of the
29 Government Code, the board may enter into a settlement with a
30 registrant or applicant in lieu of the issuance of an accusation or
31 statement of issues against that registrant or applicant, as
32 applicable.

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

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

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

7 (e) The executive officer shall, at scheduled board meetings,
8 report to the board the number of proposed settlement agreements
9 adopted pursuant to this section.

10 SEC. 97. Section 3112.2 is added to the Business and
11 Professions Code, to read:

12 3112.2. (a) The certificate of registration of a registrant shall
13 be suspended automatically during any time that the registrant is
14 incarcerated after conviction of a felony, regardless of whether
15 the conviction has been appealed. The board shall, immediately
16 upon receipt of the certified copy of the record of conviction,
17 determine whether the certificate of registration of the registrant
18 has been automatically suspended by virtue of his or her
19 incarceration, and if so, the duration of that suspension. The board
20 shall notify the registrant in writing of the certificate of registration
21 suspension and of his or her right to elect to have the issue of
22 penalty heard as provided in subdivision (d).

23 (b) Upon receipt of the certified copy of the record of conviction,
24 if after a hearing before an administrative law judge from the
25 Office of Administrative Hearings it is determined that the felony
26 for which the registrant was convicted was substantially related
27 to the qualifications, functions, or duties of a registrant, the board
28 shall suspend the certificate of registration until the time for appeal
29 has elapsed, if no appeal has been taken, or until the judgment of
30 conviction has been affirmed on appeal or has otherwise become
31 final, and until further order of the board.

32 (c) Notwithstanding subdivision (b), a conviction of a charge
33 of violating any federal statute or regulation or any statute or
34 regulation of this state, regulating dangerous drugs or controlled
35 substances, or a conviction of Section 187, 261, 262, or 288 of the
36 Penal Code, shall be conclusively presumed to be substantially
37 related to the qualifications, functions, or duties of a registrant
38 and no hearing shall be held on this issue. However, upon its own
39 motion or for good cause shown, the board may decline to impose
40 or may set aside the suspension when it appears to be in the interest

1 of justice to do so, with due regard to maintaining the integrity of,
2 and confidence in, the practice regulated by the board.

3 (d) (1) Discipline may be ordered against a registrant in
4 accordance with the statutes and regulations of the board when
5 the time for appeal has elapsed, the judgment of conviction has
6 been affirmed on appeal, or an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent
8 order under Section 1203.4 of the Penal Code allowing the person
9 to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, setting aside the verdict of guilty, or dismissing the
11 accusation, complaint, information, or indictment.

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

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

31 (f) Any other provision of law setting forth a procedure for the
32 suspension or revocation of a certificate of registration issued by
33 the board shall not apply to proceedings conducted pursuant to
34 this section.

35 SEC. 98. Section 3112.3 is added to the Business and
36 Professions Code, to read:

37 3112.3. (a) Except as otherwise provided, any proposed
38 decision or decision issued in accordance with the procedures set
39 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
40 Division 3 of Title 2 of the Government Code, that contains any

1 *finding of fact that the registrant engaged in any act of sexual*
2 *contact with a patient, as defined in subdivision (c) of Section 729,*
3 *or any finding that the licensee has committed a sex offense, shall*
4 *contain an order revoking the license. The proposed decision shall*
5 *not contain any order staying the revocation of the certificate.*

6 *(b) As used in this section, the term sex offense shall mean any*
7 *of the following:*

8 *(1) Any offense for which registration is required by Section*
9 *290 of the Penal Code or a finding that a person committed such*
10 *an act.*

11 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
12 *or 647(a) or (d) of the Penal Code or a finding that a person*
13 *committed such an act.*

14 *(3) Any attempt to commit any of the offenses specified in this*
15 *section.*

16 *(4) Any offense committed or attempted in any other state or*
17 *against the laws of the United States which, if committed or*
18 *attempted in this state, would have been punishable as one or more*
19 *of the offenses specified in this section.*

20 *SEC. 99. Section 3112.4 is added to the Business and*
21 *Professions Code, to read:*

22 *3112.4. (a) Except as otherwise provided, with regard to an*
23 *individual who is required to register as a sex offender pursuant*
24 *to Section 290 of the Penal Code, or the equivalent in another*
25 *state or territory, under military law, or under federal law, the*
26 *board shall be subject to the following requirements:*

27 *(1) The board shall deny an application by the individual for*
28 *registration in accordance with the procedures set forth in Chapter*
29 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
30 *2 of the Government Code.*

31 *(2) If the individual is registered under this chapter, the board*
32 *shall promptly revoke the certificate of registration of the*
33 *individual in accordance with the procedures set forth in Chapter*
34 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
35 *2 of the Government Code. The board shall not stay the revocation*
36 *and place the certificate of registration on probation.*

37 *(3) The board shall not reinstate or reissue the individual's*
38 *certificate of registration. The board shall not issue a stay of*
39 *certificate of registration denial nor place the certificate of*
40 *registration on probation.*

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

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

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

14 (3) Any administrative adjudication proceeding under Chapter
15 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
16 2 of the Government Code that is fully adjudicated prior to January
17 1, 2008. A petition for reinstatement of a revoked or surrendered
18 license shall be considered a new proceeding for purposes of this
19 paragraph, and the prohibition against reinstating a certificate of
20 registration to an individual who is required to register as a sex
21 offender shall be applicable.

22 SEC. 100. Section 3112.5 is added to the Business and
23 Professions Code, to read:

24 3112.5. (a) Notwithstanding any other provision of law making
25 a communication between a registrant and his or her patients a
26 privileged communication, those provisions shall not apply to
27 investigations or proceedings conducted by the board. Members
28 of the board, deputies, employees, agents, the office of the Attorney
29 General, and representatives of the board shall keep in confidence
30 during the course of investigations the names of any patients whose
31 records are reviewed and may not disclose or reveal those names,
32 except as is necessary during the course of an investigation, unless
33 and until proceedings are instituted. The authority under this
34 subdivision to examine records of patients in the office of a licensee
35 is limited to records of patients who have complained to the board
36 about that licensee.

37 (b) Notwithstanding any other provision of law, the Attorney
38 General and his or her investigative agents, and the board and its
39 investigators and representatives may inquire into any alleged
40 violation of the laws under the jurisdiction of the board or any

1 *other federal or state law, regulation, or rule relevant to the*
2 *practice regulated by the board, whichever is applicable, and may*
3 *inspect documents relevant to those investigations in accordance*
4 *with the following procedures:*

5 *(1) Any document relevant to an investigation may be inspected,*
6 *and copies may be obtained, where a patient provides written*
7 *authorization.*

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

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

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

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

35 *(f) The registrant shall cooperate with the board in furnishing*
36 *information or assistance as may be required, including, but not*
37 *limited to, participation in an interview with investigators or*
38 *representatives of the board.*

39 *(g) This section shall not apply to a licensee who does not have*
40 *access to, and control over, certified medical records or other*

1 types of documents that belong to or are controlled by a health
2 facility or clinic.

3 SEC. 101. Section 3112.6 is added to the Business and
4 Professions Code, to read:

5 3112.6. (a) (1) Notwithstanding any other provision of law,
6 a registrant who fails or refuses to comply with a request for the
7 certified medical records of a patient that is accompanied by that
8 patient's written authorization for release of records to a board
9 together with a notice citing this section and describing the
10 penalties for failure to comply with this section shall be required
11 to pay to the board a civil penalty of up to one thousand dollars
12 (\$1,000) per day for each day that the documents have not been
13 produced after the 15th day, up to ten thousand dollars (\$10,000),
14 unless the registrant is unable to provide the documents within
15 this time period for good cause.

16 (2) A health care facility shall comply with a request for the
17 certified medical records of a patient that is accompanied by that
18 patient's written authorization for release of records to a board
19 together with a notice citing this section and describing the
20 penalties for failure to comply with this section. Failure to provide
21 the authorizing patient's certified medical records to the board
22 within 15 days of receiving the request, authorization, and notice
23 shall subject the health care facility to a civil penalty, payable to
24 the board, of up to one thousand dollars (\$1,000) per day for each
25 day that the documents have not been produced after the 15th day,
26 up to ten thousand dollars (\$10,000), unless the health care facility
27 is unable to provide the documents within this time period for good
28 cause. This paragraph shall not require health care facilities to
29 assist the board in obtaining the patient's authorization. The board
30 shall pay the reasonable costs of copying the certified medical
31 records, but shall not be required to make that payment prior to
32 the production of the medical records.

33 (b) (1) A registrant who fails or refuses to comply with a court
34 order, issued in the enforcement of a subpoena, mandating the
35 release of records to the board, shall pay to the board a civil
36 penalty of up to one thousand dollars (\$1,000) per day for each
37 day that the documents have not been produced after the date by
38 which the court order requires the documents to be produced, up
39 to ten thousand dollars (\$10,000), unless it is determined that the
40 order is unlawful or invalid. Any statute of limitations applicable

1 to the filing of an accusation by the board shall be tolled during
2 the period the licensee is out of compliance with the court order
3 and during any related appeals.

4 (2) Any licensee who fails or refuses to comply with a court
5 order, issued in the enforcement of a subpoena, mandating the
6 release of records to a board is guilty of a misdemeanor punishable
7 by a fine payable to the board not to exceed five thousand dollars
8 (\$5,000). The fine shall be added to the licensee's renewal fee if
9 it is not paid by the next succeeding renewal date. Any statute of
10 limitations applicable to the filing of an accusation by the board
11 shall be tolled during the period the licensee is out of compliance
12 with the court order and during any related appeals.

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

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

34 (c) Multiple acts by a licensee in violation of subdivision (b)
35 shall be punishable by a fine not to exceed five thousand dollars
36 (\$5,000) or by imprisonment in a county jail not exceeding six
37 months, or by both that fine and imprisonment. Multiple acts by
38 a health care facility in violation of subdivision (b) shall be
39 punishable by a fine not to exceed five thousand dollars (\$5,000),
40 shall be reported to the State Department of Public Health, and

1 shall be considered as grounds for disciplinary action with respect
2 to licensure, including suspension or revocation of the certificate.

3 (d) A failure or refusal of a registrant to comply with a court
4 order, issued in the enforcement of a subpoena, mandating the
5 release of records to the board constitutes unprofessional conduct
6 and is grounds for suspension or revocation of his or her
7 certificate.

8 (e) Imposition of the civil penalties authorized by this section
9 shall be in accordance with the Administrative Procedure Act
10 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
11 2 of the Government Code). Any civil penalties paid to, or received
12 by, the board pursuant to this section shall be deposited into the
13 fund administered by the board.

14 (f) For purposes of this section, “certified medical records”
15 means a copy of the patient’s medical records authenticated by
16 the licensee or health care facility, as appropriate, on a form
17 prescribed by the licensee’s board.

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

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

24 (i) This section shall not apply to a registrant who does not have
25 access to, or control over, certified medical records or other types
26 of documents that belong to or are controlled by a health facility
27 or clinic.

28 SEC. 102. Section 3112.7 is added to the Business and
29 Professions Code, to read:

30 3112.7. (a) Notwithstanding any other provision of law, any
31 employer of a licensee shall report to the board the suspension or
32 termination for cause, or any resignation in lieu of suspension or
33 termination for cause, of any licensee in its employ within 15
34 business days. The report shall not be made until after the
35 conclusion of the review process specified in Section 52.3 of Title
36 2 of the California Code of Regulations and *Skelly v. State*
37 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
38 required reporting shall not constitute a waiver of confidentiality
39 of medical records. The information reported or disclosed shall

1 *be kept confidential except as provided in subdivision (c) of Section*
2 *800 and shall not be subject to discovery in civil cases.*

3 *(b) The information to be reported by the employer shall include*
4 *the name and license number of the licentiate involved, a*
5 *description of the facts and circumstances of the suspension or*
6 *termination for cause, any resignation in lieu of suspension or*
7 *termination for cause, and any other relevant information deemed*
8 *appropriate by the employer.*

9 *(c) The board shall be entitled to inspect and copy the following*
10 *documents in the record for any suspension or termination for*
11 *cause, or any resignation in lieu of suspension or termination for*
12 *cause, resulting in action that is required to be reported pursuant*
13 *to this section:*

14 *(1) Any statement for suspension or termination of the registrant.*

15 *(2) Any document or exhibits relevant to the suspension or*
16 *termination.*

17 *(d) If, during the investigation by the board of the cause for the*
18 *termination or suspension or resignation of the registrant, it is*
19 *found that there has been a violation of existing state or federal*
20 *law, the board shall report the violation to the appropriate agency.*

21 *(e) For purposes of this section, “suspension or termination for*
22 *cause” or “resignation in lieu of suspension or termination for*
23 *cause” is defined as resignation, suspension, or termination from*
24 *employment for any of the following reasons:*

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

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

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

31 *(4) Gross negligence or incompetence.*

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

34 *(f) As used in this section, the following definitions apply:*

35 *(1) “Gross negligence” means a substantial departure from the*
36 *standard of care, which, under similar circumstances, would have*
37 *ordinarily been exercised by a competent licensee, and which has*
38 *or could have resulted in harm to the consumer. An exercise of so*
39 *slight a degree of care as to justify the belief that there was a*
40 *conscious disregard or indifference for the health, safety, or*

1 *welfare of the consumer shall be considered a substantial departure*
2 *from the standard of care.*

3 (2) *“Incompetence” means the lack of possession of, and the*
4 *failure to exercise that degree of learning, skill, care, and*
5 *experience ordinarily possessed by, a responsible licensee.*

6 (3) *“Willful” means a knowing and intentional violation of a*
7 *known legal duty.*

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

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

14 (h) *The board shall investigate the circumstances underlying*
15 *any report received pursuant to this section within 30 days to*
16 *determine if an interim suspension order or temporary restraining*
17 *order should be issued. The board shall otherwise provide timely*
18 *disposition of the reports received pursuant to this section.*

19 (i) *The board shall send to the licentiate a copy of the report*
20 *along with the reasons for the filing of the report and notice*
21 *advising the licentiate of his or her right to submit additional*
22 *statements or other information to the board.*

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

26 (k) *No report is required under this section where a report of*
27 *the action taken is already required under Section 805.*

28 SEC. 103. *Section 3112.8 is added to the Business and*
29 *Professions Code, to read:*

30 3112.8. *Unless otherwise provided, on or after July 1, 2013,*
31 *the board shall post on its Internet Web site the following*
32 *information, including the name and license number, in its*
33 *possession, custody, or control regarding every registrant for*
34 *which the board licenses:*

35 (a) *With regard to the status of every registrant, whether or not*
36 *the registrant or former registrant is in good standing, subject to*
37 *a temporary restraining order, subject to an interim suspension*
38 *order, subject to a restriction or cease practice ordered pursuant*
39 *to Section 23 of the Penal Code, or subject to any of the*
40 *enforcement actions described in Section 803.1.*

1 (b) With regard to prior discipline of a registrant, whether or
2 not the registrant or former registrant has been subject to discipline
3 by the board or by the board of another state or jurisdiction, as
4 described in Section 803.1.

5 (c) Any felony conviction of a registrant reported to the board.

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

12 (e) Any malpractice judgment or arbitration award imposed
13 against a licensee and reported to the board.

14 (f) Any hospital disciplinary action imposed against a registrant
15 that resulted in the termination or revocation of a registrant’s
16 hospital staff privileges for a medical disciplinary cause or reason
17 pursuant to Section 3112.6 or 805.

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

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

26 (i) The information provided on the Internet shall be in
27 accordance with the California Public Records Act (Chapter 3.5
28 (commencing with Section 6250) of Division 7 of Title 1 of the
29 Government Code) and the Information Practices Act of 1977
30 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
31 of Division 3 of the Civil Code) and shall comply with the
32 Department of Consumer Affairs Guidelines for Access to Public
33 Records.

34 (j) Information provided on the Internet may not include
35 personal information, unless otherwise provided pursuant to this
36 chapter, including the home telephone number, date of birth, or
37 social security number. The information may not include the
38 licensee’s address, but may include the city and county of the
39 licensee’s address of record.

1 SEC. 104. Section 3112.9 is added to the Business and
2 Professions Code, to read:

3 3112.9. (a) Unless otherwise provided, if a registrant possesses
4 a license or is otherwise authorized to practice in any state other
5 than California or by any agency of the federal government and
6 that license or authority is suspended or revoked outright, the
7 California license of the licensee shall be suspended automatically
8 for the duration of the suspension or revocation, unless terminated
9 or rescinded as provided in subdivision (c). The board shall notify
10 the licensee of the license suspension and of his or her right to
11 have the issue of penalty heard as provided in this section.

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

17 (c) The issue of penalty shall be heard by an administrative law
18 judge sitting alone or with a panel of the board, in the discretion
19 of the board. A licensee may request a hearing on the penalty and
20 that hearing shall be held within 90 days from the date of the
21 request. If the order suspending or revoking the certificate or
22 authority to practice is overturned on appeal, any discipline
23 ordered pursuant to this section shall automatically cease. Upon
24 a showing to the administrative law judge or panel by the licensee
25 that the out-of-state action is not a basis for discipline in
26 California, the suspension shall be rescinded. If an accusation for
27 permanent discipline is not filed within 90 days of the suspension
28 imposed pursuant to this section, the suspension shall automatically
29 terminate.

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

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

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

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

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

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

19 SEC. 105. Section 3405 is added to the Business and
20 Professions Code, to read:

21 3405. (a) The board may delegate to its executive officer the
22 authority to adopt a proposed default decision where an
23 administrative action to revoke a license has been filed and the
24 licensee has failed to file a notice of defense or to appear at the
25 hearing and a proposed default decision revoking the license has
26 been issued.

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

32 (c) The executive officer shall, at scheduled board meetings,
33 report to the board the number of proposed default decisions or
34 proposed settlement agreements adopted pursuant to this section.

35 SEC. 106. Section 3405.1 is added to the Business and
36 Professions Code, to read:

37 3405.1. (a) Notwithstanding Section 11415.60 of the
38 Government Code, the board may enter into a settlement with a
39 licensee or applicant in lieu of the issuance of an accusation or
40 statement of issues against that licensee or applicant, as applicable.

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

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

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

14 (e) The executive officer shall, at scheduled board meetings,
15 report to the board the number of proposed settlement agreements
16 adopted pursuant to this section.

17 SEC. 107. Section 3405.2 is added to the Business and
18 Professions Code, to read:

19 3405.2. (a) The license of a licensee shall be suspended
20 automatically during any time that the licensee is incarcerated
21 after conviction of a felony, regardless of whether the conviction
22 has been appealed. The board shall, immediately upon receipt of
23 the certified copy of the record of conviction, determine whether
24 the license of the licensee has been automatically suspended by
25 virtue of his or her incarceration, and if so, the duration of that
26 suspension. The board shall notify the licensee in writing of the
27 license suspension and of his or her right to elect to have the issue
28 of penalty heard as provided in subdivision (d).

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

38 (c) Notwithstanding subdivision (b), a conviction of a charge
39 of violating any federal statute or regulation or any statute or
40 regulation of this state, regulating dangerous drugs or controlled

1 substances, or a conviction of Section 187, 261, 262, or 288 of the
2 Penal Code, shall be conclusively presumed to be substantially
3 related to the qualifications, functions, or duties of a licensee and
4 no hearing shall be held on this issue. However, upon its own
5 motion or for good cause shown, the board may decline to impose
6 or may set aside the suspension when it appears to be in the interest
7 of justice to do so, with due regard to maintaining the integrity of,
8 and confidence in, the practice regulated by the board.

9 (d) (1) Discipline may be ordered against a licensee in
10 accordance with the statutes and regulations of the board when
11 the time for appeal has elapsed, the judgment of conviction has
12 been affirmed on appeal, or an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent
14 order under Section 1203.4 of the Penal Code allowing the person
15 to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, setting aside the verdict of guilty, or dismissing the
17 accusation, complaint, information, or indictment.

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

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

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

1 SEC. 108. Section 3405.3 is added to the Business and
2 Professions Code, to read:

3 3405.3. (a) Except as otherwise provided, any proposed
4 decision or decision issued in accordance with the procedures set
5 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
6 Division 3 of Title 2 of the Government Code, that contains any
7 finding of fact that the licensee engaged in any act of sexual contact
8 with a patient, as defined in subdivision (c) of Section 729, or any
9 finding that the licensee has committed a sex offense, shall contain
10 an order revoking the license. The proposed decision shall not
11 contain any order staying the revocation of the licensee.

12 (b) As used in this section, the term sex offense shall mean any
13 of the following:

14 (1) Any offense for which registration is required by Section
15 290 of the Penal Code or a finding that a person committed such
16 an act.

17 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
18 or 647(a) or (d) of the Penal Code or a finding that a person
19 committed such an act.

20 (3) Any attempt to commit any of the offenses specified in this
21 section.

22 (4) Any offense committed or attempted in any other state or
23 against the laws of the United States which, if committed or
24 attempted in this state, would have been punishable as one or more
25 of the offenses specified in this section.

26 SEC. 109. Section 3405.4 is added to the Business and
27 Professions Code, to read:

28 3405.4. (a) Except as otherwise provided, with regard to an
29 individual who is required to register as a sex offender pursuant
30 to Section 290 of the Penal Code, or the equivalent in another
31 state or territory, under military law, or under federal law, the
32 board shall be subject to the following requirements:

33 (1) The board shall deny an application by the individual for
34 licensure in accordance with the procedures set forth in Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (2) If the individual is licensed under this chapter, the board
38 shall promptly revoke the license of the individual in accordance
39 with the procedures set forth in Chapter 5 (commencing with
40 Section 11500) of Part 1 of Division 3 of Title 2 of the Government

1 *Code. The board shall not stay the revocation and place the license*
2 *on probation.*

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

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

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

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

19 *(3) Any administrative adjudication proceeding under Chapter*
20 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
21 *2 of the Government Code that is fully adjudicated prior to January*
22 *1, 2008. A petition for reinstatement of a revoked or surrendered*
23 *license shall be considered a new proceeding for purposes of this*
24 *paragraph, and the prohibition against reinstating a license to an*
25 *individual who is required to register as a sex offender shall be*
26 *applicable.*

27 *SEC. 110. Section 3405.5 is added to the Business and*
28 *Professions Code, to read:*

29 *3405.5. (a) Notwithstanding any other provision of law making*
30 *a communication between a licensee and his or her patients a*
31 *privileged communication, those provisions shall not apply to*
32 *investigations or proceedings conducted by the board. Members*
33 *of the board, deputies, employees, agents, the office of the Attorney*
34 *General, and representatives of the board shall keep in confidence*
35 *during the course of investigations the names of any patients whose*
36 *records are reviewed and may not disclose or reveal those names,*
37 *except as is necessary during the course of an investigation, unless*
38 *and until proceedings are instituted. The authority under this*
39 *subdivision to examine records of patients in the office of a licensee*

1 *is limited to records of patients who have complained to the board*
2 *about that licensee.*

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

11 *(1) Any document relevant to an investigation may be inspected,*
12 *and copies may be obtained, where a patient provides written*
13 *authorization.*

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

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

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

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

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

5 (g) *This section shall not apply to a licensee who does not have*
6 *access to, and control over, certified medical records or other*
7 *types of documents that belong to or are controlled by a health*
8 *facility or clinic.*

9 *SEC. 111. Section 3405.6 is added to the Business and*
10 *Professions Code, to read:*

11 *3405.6. (a) (1) Notwithstanding any other provision of law,*
12 *a licensee who fails or refuses to comply with a request for the*
13 *certified medical records of a patient that is accompanied by that*
14 *patient's written authorization for release of records to the board*
15 *together with a notice citing this section and describing the*
16 *penalties for failure to comply with this section shall be required*
17 *to pay to the board a civil penalty of up to one thousand dollars*
18 *(\$1,000) per day for each day that the documents have not been*
19 *produced after the 15th day, up to ten thousand dollars (\$10,000),*
20 *unless the licensee is unable to provide the documents within this*
21 *time period for good cause.*

22 (2) *A health care facility shall comply with a request for the*
23 *certified medical records of a patient that is accompanied by that*
24 *patient's written authorization for release of records to the board*
25 *together with a notice citing this section and describing the*
26 *penalties for failure to comply with this section. Failure to provide*
27 *the authorizing patient's certified medical records to the board*
28 *within 15 days of receiving the request, authorization, and notice*
29 *shall subject the health care facility to a civil penalty, payable to*
30 *the board, of up to one thousand dollars (\$1,000) per day for each*
31 *day that the documents have not been produced after the 15th day,*
32 *up to ten thousand dollars (\$10,000), unless the health care facility*
33 *is unable to provide the documents within this time period for good*
34 *cause. This paragraph shall not require health care facilities to*
35 *assist a board in obtaining the patient's authorization. The board*
36 *shall pay the reasonable costs of copying the certified medical*
37 *records, but shall not be required to make that payment prior to*
38 *the production of the medical records.*

39 (b) (1) *A licensee who fails or refuses to comply with a court*
40 *order, issued in the enforcement of a subpoena, mandating the*

1 *release of records to the board, shall pay to the board a civil*
2 *penalty of up to one thousand dollars (\$1,000) per day for each*
3 *day that the documents have not been produced after the date by*
4 *which the court order requires the documents to be produced, up*
5 *to ten thousand dollars (\$10,000), unless it is determined that the*
6 *order is unlawful or invalid. Any statute of limitations applicable*
7 *to the filing of an accusation by the board shall be tolled during*
8 *the period the licensee is out of compliance with the court order*
9 *and during any related appeals.*

10 (2) *Any licensee who fails or refuses to comply with a court*
11 *order, issued in the enforcement of a subpoena, mandating the*
12 *release of records to a board is guilty of a misdemeanor punishable*
13 *by a fine payable to the board not to exceed five thousand dollars*
14 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
15 *it is not paid by the next succeeding renewal date. Any statute of*
16 *limitations applicable to the filing of an accusation by the board*
17 *shall be tolled during the period the licensee is out of compliance*
18 *with the court order and during any related appeals.*

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

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

1 (c) Multiple acts by a licensee in violation of subdivision (b)
2 shall be punishable by a fine not to exceed five thousand dollars
3 (\$5,000) or by imprisonment in a county jail not exceeding six
4 months, or by both that fine and imprisonment. Multiple acts by
5 a health care facility in violation of subdivision (b) shall be
6 punishable by a fine not to exceed five thousand dollars (\$5,000),
7 shall be reported to the State Department of Public Health, and
8 shall be considered as grounds for disciplinary action with respect
9 to licensure, including suspension or revocation of the license or
10 certificate.

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

15 (e) Imposition of the civil penalties authorized by this section
16 shall be in accordance with the Administrative Procedure Act
17 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
18 2 of the Government Code). Any civil penalties paid to, or received
19 by, a board pursuant to this section shall be deposited into the
20 fund administered by the board.

21 (f) For purposes of this section, “certified medical records”
22 means a copy of the patient’s medical records authenticated by
23 the licensee or health care facility, as appropriate, on a form
24 prescribed by the licensee’s board.

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

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

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

33 SEC. 112. Section 3405.7 is added to the Business and
34 Professions Code, to read:

35 3405.7. (a) Notwithstanding any other provision of law, any
36 employer of a licensee shall report to the board the suspension or
37 termination for cause, or any resignation in lieu of suspension or
38 termination for cause, of any licensee in its employ within 15
39 business days. The report shall not be made until after the
40 conclusion of the review process specified in Section 52.3 of Title

1 2 of the California Code of Regulations and *Skelly v. State*
2 *Personnel Bd. (1975) 15 Cal.3d 194*, for public employees. This
3 required reporting shall not constitute a waiver of confidentiality
4 of medical records. The information reported or disclosed shall
5 be kept confidential except as provided in subdivision (c) of Section
6 800 and shall not be subject to discovery in civil cases.

7 (b) The information to be reported by the employer shall include
8 the name and license number of the licensee involved, a
9 description of the facts and circumstances of the suspension or
10 termination for cause, any resignation in lieu of suspension or
11 termination for cause, and any other relevant information deemed
12 appropriate by the employer.

13 (c) The board shall be entitled to inspect and copy the following
14 documents in the record for any suspension or termination for
15 cause, or any resignation in lieu of suspension or termination for
16 cause, resulting in action that is required to be reported pursuant
17 to this section:

18 (1) Any statement for suspension or termination of the licensee.

19 (2) Any document or exhibits relevant to the suspension or
20 termination.

21 (d) If, during the investigation by the board of the cause for the
22 termination or suspension or resignation of the licensee, it is found
23 that there has been a violation of existing state or federal law, the
24 board shall report the violation to the appropriate agency.

25 (e) For purposes of this section, “suspension or termination for
26 cause” or “resignation in lieu of suspension or termination for
27 cause” is defined as resignation, suspension, or termination from
28 employment for any of the following reasons:

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

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

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

35 (4) Gross negligence or incompetence.

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

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

39 (1) “Gross negligence” means a substantial departure from the
40 standard of care, which, under similar circumstances, would have

1 ordinarily been exercised by a competent licensee, and which has
2 or could have resulted in harm to the consumer. An exercise of so
3 slight a degree of care as to justify the belief that there was a
4 conscious disregard or indifference for the health, safety, or
5 welfare of the consumer shall be considered a substantial departure
6 from the standard of care.

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

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

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

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

18 (h) The board shall investigate the circumstances underlying
19 any report received pursuant to this section within 30 days to
20 determine if an interim suspension order or temporary restraining
21 order should be issued. The board shall otherwise provide timely
22 disposition of the reports received pursuant to this section.

23 (i) The board shall send to the licentiate a copy of the report
24 along with the reasons for the filing of the report and notice
25 advising the licentiate of his or her right to submit additional
26 statements or other information to the board.

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

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

32 SEC. 113. Section 3405.8 is added to the Business and
33 Professions Code, to read:

34 3405.8. Unless otherwise provided, on or after July 1, 2013,
35 the board shall post on its Internet Web site the following
36 information, including the name and license number, in its
37 possession, custody, or control regarding every licensee for which
38 the board licenses:

39 (a) With regard to the status of every license, whether or not
40 the licensee or former licensee is in good standing, subject to a

1 *temporary restraining order, subject to an interim suspension*
2 *order, subject to a restriction or cease practice ordered pursuant*
3 *to Section 23 of the Penal Code, or subject to any of the*
4 *enforcement actions described in Section 803.1.*

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

9 *(c) Any felony conviction of a licensee reported to the board.*

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

16 *(e) Any malpractice judgment or arbitration award imposed*
17 *against a licensee and reported to the healing arts board.*

18 *(f) Any hospital disciplinary action imposed against a licensee*
19 *that resulted in the termination or revocation of a licensee’s*
20 *hospital staff privileges for a medical disciplinary cause or reason*
21 *pursuant to Section 3405.6 or 805.*

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

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

30 *(i) The information provided on the Internet shall be in*
31 *accordance with the California Public Records Act (Chapter 3.5*
32 *(commencing with Section 6250) of Division 7 of Title 1 of the*
33 *Government Code) and the Information Practices Act of 1977*
34 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
35 *of Division 3 of the Civil Code) and shall comply with the*
36 *Department of Consumer Affairs Guidelines for Access to Public*
37 *Records.*

38 *(j) Information provided on the Internet may not include*
39 *personal information, unless otherwise provided pursuant to this*
40 *chapter, including the home telephone number, date of birth, or*

1 *social security number. The information may not include the*
 2 *licensee’s address, but may include the city and county of the*
 3 *licensee’s address of record.*

4 *SEC. 114. Section 3405.9 is added to the Business and*
 5 *Professions Code, to read:*

6 *3405.9. (a) Unless otherwise provided, if a licensee possesses*
 7 *a license or is otherwise authorized to practice in any state other*
 8 *than California or by any agency of the federal government and*
 9 *that license or authority is suspended or revoked outright, the*
 10 *California license of the licensee shall be suspended automatically*
 11 *for the duration of the suspension or revocation, unless terminated*
 12 *or rescinded as provided in subdivision (c). The healing arts board*
 13 *shall notify the licensee of the license suspension and of his or her*
 14 *right to have the issue of penalty heard as provided in this section.*

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

20 *(c) The issue of penalty shall be heard by an administrative law*
 21 *judge sitting alone or with a panel of the board, in the discretion*
 22 *of the board. A licensee may request a hearing on the penalty and*
 23 *that hearing shall be held within 90 days from the date of the*
 24 *request. If the order suspending or revoking the license or authority*
 25 *to practice is overturned on appeal, any discipline ordered*
 26 *pursuant to this section shall automatically cease. Upon a showing*
 27 *to the administrative law judge or panel by the licensee that the*
 28 *out-of-state action is not a basis for discipline in California, the*
 29 *suspension shall be rescinded. If an accusation for permanent*
 30 *discipline is not filed within 90 days of the suspension imposed*
 31 *pursuant to this section, the suspension shall automatically*
 32 *terminate.*

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

37 *(e) This section shall not apply to a licensee who maintains his*
 38 *or her primary practice in California, as evidenced by having*
 39 *maintained a practice in this state for not less than one year*
 40 *immediately preceding the date of suspension or revocation.*

1 *Nothing in this section shall preclude a licensee's license from*
2 *being suspended pursuant to any other provision of law.*

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

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

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

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

21 *SEC. 115. Section 3531.1 is added to the Business and*
22 *Professions Code, to read:*

23 *3531.1. (a) The committee may delegate to its executive officer*
24 *the authority to adopt a proposed default decision where an*
25 *administrative action to revoke a license has been filed and the*
26 *licensee has failed to file a notice of defense or to appear at the*
27 *hearing and a proposed default decision revoking the license has*
28 *been issued.*

29 *(b) The committee may delegate to its executive officer the*
30 *authority to adopt a proposed settlement agreement where an*
31 *administrative action to revoke a license has been filed by the*
32 *committee and the licensee has agreed to the revocation or*
33 *surrender of his or her license.*

34 *(c) The executive officer shall, at scheduled committee meetings,*
35 *report to the committee the number of proposed default decisions*
36 *or proposed settlement agreements adopted pursuant to this*
37 *section.*

38 *SEC. 116. Section 3531.2 is added to the Business and*
39 *Professions Code, to read:*

1 3531.2. (a) Notwithstanding Section 11415.60 of the
2 Government Code, the committee may enter into a settlement with
3 a licensee or applicant in lieu of the issuance of an accusation or
4 statement of issues against that licensee or applicant, as applicable.

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

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

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

18 (e) The executive officer shall, at scheduled committee meetings,
19 report to the committee the number of proposed settlement
20 agreements adopted pursuant to this section.

21 SEC. 117. Section 3531.3 is added to the Business and
22 Professions Code, to read:

23 3531.3. (a) The license of a licensee shall be suspended
24 automatically during any time that the licensee is incarcerated
25 after conviction of a felony, regardless of whether the conviction
26 has been appealed. The committee shall, immediately upon receipt
27 of the certified copy of the record of conviction, determine whether
28 the license of the licensee has been automatically suspended by
29 virtue of his or her incarceration, and if so, the duration of that
30 suspension. The committee shall notify the licensee in writing of
31 the license suspension and of his or her right to elect to have the
32 issue of penalty heard as provided in subdivision (d).

33 (b) Upon receipt of the certified copy of the record of conviction,
34 if after a hearing before an administrative law judge from the
35 Office of Administrative Hearings it is determined that the felony
36 for which the licensee was convicted was substantially related to
37 the qualifications, functions, or duties of a licensee, the committee
38 shall suspend the license until the time for appeal has elapsed, if
39 no appeal has been taken, or until the judgment of conviction has

1 *been affirmed on appeal or has otherwise become final, and until*
2 *further order of the committee.*

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

15 *(d) (1) Discipline may be ordered against a licensee in*
16 *accordance with the statutes and regulations of the committee*
17 *when the time for appeal has elapsed, the judgment of conviction*
18 *has been affirmed on appeal, or an order granting probation is*
19 *made suspending the imposition of sentence, irrespective of a*
20 *subsequent order under Section 1203.4 of the Penal Code allowing*
21 *the person to withdraw his or her plea of guilty and to enter a plea*
22 *of not guilty, setting aside the verdict of guilty, or dismissing the*
23 *accusation, complaint, information, or indictment.*

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

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

4 (f) *Any other provision of law setting forth a procedure for the*
5 *suspension or revocation of a license issued by the committee shall*
6 *not apply to proceedings conducted pursuant to this section.*

7 *SEC. 118. Section 3531.4 is added to the Business and*
8 *Professions Code, to read:*

9 *3531.4. (a) Except as otherwise provided, any proposed*
10 *decision or decision issued in accordance with the procedures set*
11 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
12 *Division 3 of Title 2 of the Government Code, that contains any*
13 *finding of fact that the licensee engaged in any act of sexual contact*
14 *with a patient, as defined in subdivision (c) of Section 729, or any*
15 *finding that the licensee has committed a sex offense, shall contain*
16 *an order revoking the license. The proposed decision shall not*
17 *contain any order staying the revocation of the licensee.*

18 (b) *As used in this section, the term sex offense shall mean any*
19 *of the following:*

20 (1) *Any offense for which registration is required by Section*
21 *290 of the Penal Code or a finding that a person committed such*
22 *an act.*

23 (2) *Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
24 *or 647(a) or (d) of the Penal Code or a finding that a person*
25 *committed such an act.*

26 (3) *Any attempt to commit any of the offenses specified in this*
27 *section.*

28 (4) *Any offense committed or attempted in any other state or*
29 *against the laws of the United States which, if committed or*
30 *attempted in this state, would have been punishable as one or more*
31 *of the offenses specified in this section.*

32 *SEC. 119. Section 3531.5 is added to the Business and*
33 *Professions Code, to read:*

34 *3531.5. (a) Except as otherwise provided, with regard to an*
35 *individual who is required to register as a sex offender pursuant*
36 *to Section 290 of the Penal Code, or the equivalent in another*
37 *state or territory, under military law, or under federal law, the*
38 *committee shall be subject to the following requirements:*

39 (1) *The committee shall deny an application by the individual*
40 *for licensure in accordance with the procedures set forth in*

1 Chapter 5 (commencing with Section 11500) of Part 1 of Division
2 3 of Title 2 of the Government Code.

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

9 (3) The committee shall not reinstate or reissue the individual's
10 license. The committee shall not issue a stay of license denial nor
11 place the license on probation.

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

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

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

25 (3) Any administrative adjudication proceeding under Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code that is fully adjudicated prior to January
28 1, 2008. A petition for reinstatement of a revoked or surrendered
29 license shall be considered a new proceeding for purposes of this
30 paragraph, and the prohibition against reinstating a license to an
31 individual who is required to register as a sex offender shall be
32 applicable.

33 SEC. 120. Section 3531.6 is added to the Business and
34 Professions Code, to read:

35 3531.6. (a) Notwithstanding any other provision of law making
36 a communication between a licensee and his or her patients a
37 privileged communication, those provisions shall not apply to
38 investigations or proceedings conducted by the committee.
39 Members of the committee, deputies, employees, agents, the office
40 of the Attorney General, and representatives of the committee shall

1 *keep in confidence during the course of investigations the names*
2 *of any patients whose records are reviewed and may not disclose*
3 *or reveal those names, except as is necessary during the course*
4 *of an investigation, unless and until proceedings are instituted.*
5 *The authority under this subdivision to examine records of patients*
6 *in the office of a licensee is limited to records of patients who have*
7 *complained to the committee about that licensee.*

8 *(b) Notwithstanding any other provision of law, the Attorney*
9 *General and his or her investigative agents, and the committee*
10 *and its investigators and representatives may inquire into any*
11 *alleged violation of the laws under the jurisdiction of the committee*
12 *or any other federal or state law, regulation, or rule relevant to*
13 *the practice regulated by the committee, whichever is applicable,*
14 *and may inspect documents relevant to those investigations in*
15 *accordance with the following procedures:*

16 *(1) Any document relevant to an investigation may be inspected,*
17 *and copies may be obtained, where a patient provides written*
18 *authorization.*

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

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

28 *(d) Where certified documents are lawfully requested from*
29 *licensees in accordance with this section by the Attorney General*
30 *or his or her agents or deputies, or investigators of the committee,*
31 *the documents shall be provided within 10 business days of receipt*
32 *of the request, unless the licensee is unable to provide the certified*
33 *documents within this time period for good cause, including, but*
34 *not limited to, physical inability to access the records in the time*
35 *allowed due to illness or travel. Failure to produce requested*
36 *certified documents or copies thereof, after being informed of the*
37 *required deadline, shall constitute unprofessional conduct. The*
38 *committee may use its authority to cite and fine a licensee for any*
39 *violation of this section. This remedy is in addition to any other*

1 authority of the committee to sanction a licensee for a delay in
2 producing requested records.

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

7 (f) The licensee shall cooperate with the committee in furnishing
8 information or assistance as may be required, including, but not
9 limited to, participation in an interview with investigators or
10 representatives of the committee.

11 (g) This section shall not apply to a licensee who does not have
12 access to, and control over, certified medical records or other
13 types of documents that belong to or are controlled by a health
14 facility or clinic.

15 SEC. 121. Section 3531.7 is added to the Business and
16 Professions Code, to read:

17 3531.7. (a) (1) Notwithstanding any other provision of law,
18 a licensee who fails or refuses to comply with a request for the
19 certified medical records of a patient that is accompanied by that
20 patient's written authorization for release of records to the
21 committee together with a notice citing this section and describing
22 the penalties for failure to comply with this section shall be
23 required to pay to the committee a civil penalty of up to one
24 thousand dollars (\$1,000) per day for each day that the documents
25 have not been produced after the 15th day, up to ten thousand
26 dollars (\$10,000), unless the licensee is unable to provide the
27 documents within this time period for good cause.

28 (2) A health care facility shall comply with a request for the
29 certified medical records of a patient that is accompanied by that
30 patient's written authorization for release of records to the
31 committee together with a notice citing this section and describing
32 the penalties for failure to comply with this section. Failure to
33 provide the authorizing patient's certified medical records to the
34 committee within 15 days of receiving the request, authorization,
35 and notice shall subject the health care facility to a civil penalty,
36 payable to the committee, of up to one thousand dollars (\$1,000)
37 per day for each day that the documents have not been produced
38 after the 15th day, up to ten thousand dollars (\$10,000), unless
39 the health care facility is unable to provide the documents within
40 this time period for good cause. This paragraph shall not require

1 health care facilities to assist the committee in obtaining the
2 patient's authorization. The committee shall pay the reasonable
3 costs of copying the certified medical records, but shall not be
4 required to make that payment prior to the production of the
5 medical records.

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

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

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

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

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

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

24 (e) Imposition of the civil penalties authorized by this section
25 shall be in accordance with the Administrative Procedure Act
26 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
27 2 of the Government Code). Any civil penalties paid to, or received
28 by, the committee pursuant to this section shall be deposited into
29 the fund administered by the committee.

30 (f) For purposes of this section, “certified medical records”
31 means a copy of the patient’s medical records authenticated by
32 the licensee or health care facility, as appropriate, on a form
33 prescribed by the committee.

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

38 (h) If the committee complies with Section 1684.1, 2225.5, or
39 2969, the committee shall not be subject to the requirements of
40 this section.

1 (i) This section shall not apply to a licensee who does not have
2 access to, or control over, certified medical records or other types
3 of documents that belong to or are controlled by a health facility
4 or clinic.

5 SEC. 122. Section 3531.8 is added to the Business and
6 Professions Code, to read:

7 3531.8. (a) Notwithstanding any other provision of law, any
8 employer of a licensee shall report to the committee the suspension
9 or termination for cause, or any resignation in lieu of suspension
10 or termination for cause, of any licensee in its employ within 15
11 business days. The report shall not be made until after the
12 conclusion of the review process specified in Section 52.3 of Title
13 2 of the California Code of Regulations and *Skelly v. State*
14 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
15 required reporting shall not constitute a waiver of confidentiality
16 of medical records. The information reported or disclosed shall
17 be kept confidential except as provided in subdivision (c) of Section
18 800 and shall not be subject to discovery in civil cases.

19 (b) The information to be reported by the employer shall include
20 the name and license number of the licensee involved, a
21 description of the facts and circumstances of the suspension or
22 termination for cause, any resignation in lieu of suspension or
23 termination for cause, and any other relevant information deemed
24 appropriate by the employer.

25 (c) The committee shall be entitled to inspect and copy the
26 following documents in the record for any suspension or
27 termination for cause, or any resignation in lieu of suspension or
28 termination for cause, resulting in action that is required to be
29 reported pursuant to this section:

30 (1) Any statement for suspension or termination of the licensee.

31 (2) Any document or exhibits relevant to the suspension or
32 termination.

33 (d) If, during the investigation by the committee of the cause
34 for the termination or suspension or resignation of the licensee,
35 it is found that there has been a violation of existing state or federal
36 law, the committee shall report the violation to the appropriate
37 agency.

38 (e) For purposes of this section, “suspension or termination for
39 cause” or “resignation in lieu of suspension or termination for

1 *cause*” is defined as resignation, suspension, or termination from
2 *employment for any of the following reasons:*

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

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

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

9 (4) *Gross negligence or incompetence.*

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

12 (f) *As used in this section, the following definitions apply:*

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

21 (2) *“Incompetence” means the lack of possession of, and the*
22 *failure to exercise that degree of learning, skill, care, and*
23 *experience ordinarily possessed by, a responsible licensee.*

24 (3) *“Willful” means a knowing and intentional violation of a*
25 *known legal duty.*

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

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

32 (h) *The committee shall investigate the circumstances underlying*
33 *any report received pursuant to this section within 30 days to*
34 *determine if an interim suspension order or temporary restraining*
35 *order should be issued. The committee shall otherwise provide*
36 *timely disposition of the reports received pursuant to this section.*

37 (i) *The committee shall send to the licentiate a copy of the report*
38 *along with the reasons for the filing of the report and notice*
39 *advising the licentiate of his or her right to submit additional*
40 *statements or other information to the committee.*

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

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

6 SEC. 123. Section 3531.9 is added to the Business and
7 Professions Code, to read:

8 3531.9. Unless otherwise provided, on or after July 1, 2013,
9 the committee shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the committee licenses:

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

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

23 (c) Any felony conviction of a licensee reported to the committee.

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

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the committee.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 3531.7 or 805.

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

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 *what types of information are not disclosed. These disclaimers*
2 *and statements shall be developed by the committee and shall be*
3 *adopted by regulation.*

4 *(i) The information provided on the Internet shall be in*
5 *accordance with the California Public Records Act (Chapter 3.5*
6 *(commencing with Section 6250) of Division 7 of Title 1 of the*
7 *Government Code) and the Information Practices Act of 1977*
8 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
9 *of Division 3 of the Civil Code) and shall comply with the*
10 *Department of Consumer Affairs Guidelines for Access to Public*
11 *Records.*

12 *(j) Information provided on the Internet may not include*
13 *personal information, unless otherwise provided pursuant to this*
14 *chapter, including the home telephone number, date of birth, or*
15 *social security number. The information may not include the*
16 *licensee's address, but may include the city and county of the*
17 *licensee's address of record.*

18 *SEC. 124. Section 3531.10 is added to the Business and*
19 *Professions Code, to read:*

20 *3531.10. (a) Unless otherwise provided, if a licensee possesses*
21 *a license or is otherwise authorized to practice in any state other*
22 *than California or by any agency of the federal government and*
23 *that license or authority is suspended or revoked outright, the*
24 *California license of the licensee shall be suspended automatically*
25 *for the duration of the suspension or revocation, unless terminated*
26 *or rescinded as provided in subdivision (c). The committee shall*
27 *notify the licensee of the license suspension and of his or her right*
28 *to have the issue of penalty heard as provided in this section.*

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

34 *(c) The issue of penalty shall be heard by an administrative law*
35 *judge sitting alone or with a panel of the committee, in the*
36 *discretion of the committee. A licensee may request a hearing on*
37 *the penalty and that hearing shall be held within 90 days from the*
38 *date of the request. If the order suspending or revoking the license*
39 *or authority to practice is overturned on appeal, any discipline*
40 *ordered pursuant to this section shall automatically cease. Upon*

1 a showing to the administrative law judge or panel by the licensee
2 that the out-of-state action is not a basis for discipline in
3 California, the suspension shall be rescinded. If an accusation for
4 permanent discipline is not filed within 90 days of the suspension
5 imposed pursuant to this section, the suspension shall automatically
6 terminate.

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

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

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

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

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

33 (i) If the committee complies with Section 2310 it shall not be
34 subject to the requirements of this section.

35 SEC. 125. Section 3665 is added to the Business and
36 Professions Code, to read:

37 3665. (a) The committee may delegate to its executive officer
38 the authority to adopt a proposed default decision where an
39 administrative action to revoke a license has been filed and the
40 licensee has failed to file a notice of defense or to appear at the

1 hearing and a proposed default decision revoking the license has
2 been issued.

3 (b) The committee may delegate to its executive officer the
4 authority to adopt a proposed settlement agreement where an
5 administrative action to revoke a license has been filed by the
6 committee and the licensee has agreed to the revocation or
7 surrender of his or her license.

8 (c) The executive officer shall, at scheduled committee meetings,
9 report to the committee the number of proposed default decisions
10 or proposed settlement agreements adopted pursuant to this
11 section.

12 SEC. 126. Section 3665.1 is added to the Business and
13 Professions Code, to read:

14 3665.1. (a) Notwithstanding Section 11415.60 of the
15 Government Code, the committee may enter into a settlement with
16 a licensee or applicant in lieu of the issuance of an accusation or
17 statement of issues against that licensee or applicant, as applicable.

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

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

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

31 (e) The executive officer shall, at scheduled committee meetings,
32 report to the committee the number of proposed settlement
33 agreements adopted pursuant to this section.

34 SEC. 127. Section 3665.2 is added to the Business and
35 Professions Code, to read:

36 3665.2. (a) The license of a licensee shall be suspended
37 automatically during any time that the licensee is incarcerated
38 after conviction of a felony, regardless of whether the conviction
39 has been appealed. The committee shall, immediately upon receipt
40 of the certified copy of the record of conviction, determine whether

1 *the license of the licensee has been automatically suspended by*
2 *virtue of his or her incarceration, and if so, the duration of that*
3 *suspension. The committee shall notify the licensee in writing of*
4 *the license suspension and of his or her right to elect to have the*
5 *issue of penalty heard as provided in subdivision (d).*

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

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

27 *(d) (1) Discipline may be ordered against a licensee in*
28 *accordance with the statutes and regulations of the committee*
29 *when the time for appeal has elapsed, the judgment of conviction*
30 *has been affirmed on appeal, or an order granting probation is*
31 *made suspending the imposition of sentence, irrespective of a*
32 *subsequent order under Section 1203.4 of the Penal Code allowing*
33 *the person to withdraw his or her plea of guilty and to enter a plea*
34 *of not guilty, setting aside the verdict of guilty, or dismissing the*
35 *accusation, complaint, information, or indictment.*

36 *(2) The issue of penalty shall be heard by an administrative law*
37 *judge from the Office of Administrative Hearings. The hearing*
38 *shall not be had until the judgment of conviction has become final*
39 *or, irrespective of a subsequent order under Section 1203.4 of the*
40 *Penal Code, an order granting probation has been made*

1 *suspending the imposition of sentence; except that a licensee may,*
2 *at his or her option, elect to have the issue of penalty decided*
3 *before those time periods have elapsed. Where the licensee so*
4 *elects, the issue of penalty shall be heard in the manner described*
5 *in subdivision (b) at the hearing to determine whether the*
6 *conviction was substantially related to the qualifications, functions,*
7 *or duties of a licensee. If the conviction of a licensee who has made*
8 *this election is overturned on appeal, any discipline ordered*
9 *pursuant to this section shall automatically cease. Nothing in this*
10 *subdivision shall prohibit the board from pursuing disciplinary*
11 *action based on any cause other than the overturned conviction.*

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

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

18 *SEC. 128. Section 3665.3 is added to the Business and*
19 *Professions Code, to read:*

20 *3665.3. (a) Except as otherwise provided, any proposed*
21 *decision or decision issued in accordance with the procedures set*
22 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
23 *Division 3 of Title 2 of the Government Code, that contains any*
24 *finding of fact that the licensee engaged in any act of sexual contact*
25 *with a patient, as defined in subdivision (c) of Section 729, or any*
26 *finding that the licensee has committed a sex offense, shall contain*
27 *an order revoking the license. The proposed decision shall not*
28 *contain any order staying the revocation of the licensee.*

29 *(b) As used in this section, the term sex offense shall mean any*
30 *of the following:*

31 *(1) Any offense for which registration is required by Section*
32 *290 of the Penal Code or a finding that a person committed such*
33 *an act.*

34 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
35 *or 647(a) or (d) of the Penal Code or a finding that a person*
36 *committed such an act.*

37 *(3) Any attempt to commit any of the offenses specified in this*
38 *section.*

39 *(4) Any offense committed or attempted in any other state or*
40 *against the laws of the United States which, if committed or*

1 attempted in this state, would have been punishable as one or more
2 of the offenses specified in this section.

3 SEC. 129. Section 3665.4 is added to the Business and
4 Professions Code, to read:

5 3665.4. (a) Except as otherwise provided, with regard to an
6 individual who is required to register as a sex offender pursuant
7 to Section 290 of the Penal Code, or the equivalent in another
8 state or territory, under military law, or under federal law, the
9 committee shall be subject to the following requirements:

10 (1) The committee shall deny an application by the individual
11 for licensure in accordance with the procedures set forth in
12 Chapter 5 (commencing with Section 11500) of Part 1 of Division
13 3 of Title 2 of the Government Code.

14 (2) If the individual is licensed under this chapter, the committee
15 shall promptly revoke the license of the individual in accordance
16 with the procedures set forth in Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
18 Code. The committee shall not stay the revocation and place the
19 license on probation.

20 (3) The committee shall not reinstate or reissue the individual's
21 license. The board shall not issue a stay of license denial nor place
22 the license on probation.

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

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

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

36 (3) Any administrative adjudication proceeding under Chapter
37 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
38 2 of the Government Code that is fully adjudicated prior to January
39 1, 2008. A petition for reinstatement of a revoked or surrendered
40 license shall be considered a new proceeding for purposes of this

1 *paragraph, and the prohibition against reinstating a license to an*
2 *individual who is required to register as a sex offender shall be*
3 *applicable.*

4 *SEC. 130. Section 3665.5 is added to the Business and*
5 *Professions Code, to read:*

6 *3665.5. (a) Notwithstanding any other provision of law making*
7 *a communication between a licensee and his or her patients a*
8 *privileged communication, those provisions shall not apply to*
9 *investigations or proceedings conducted by the board. Members*
10 *of the board, deputies, employees, agents, the office of the Attorney*
11 *General, and representatives of the board shall keep in confidence*
12 *during the course of investigations the names of any patients whose*
13 *records are reviewed and may not disclose or reveal those names,*
14 *except as is necessary during the course of an investigation, unless*
15 *and until proceedings are instituted. The authority under this*
16 *subdivision to examine records of patients in the office of a licensee*
17 *is limited to records of patients who have complained to the board*
18 *about that licensee.*

19 *(b) Notwithstanding any other provision of law, the Attorney*
20 *General and his or her investigative agents, and the committee*
21 *and its investigators and representatives may inquire into any*
22 *alleged violation of the laws under the jurisdiction of the committee*
23 *or any other federal or state law, regulation, or rule relevant to*
24 *the practice regulated by the committee, whichever is applicable,*
25 *and may inspect documents relevant to those investigations in*
26 *accordance with the following procedures:*

27 *(1) Any document relevant to an investigation may be inspected,*
28 *and copies may be obtained, where a patient provides written*
29 *authorization.*

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

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

39 *(d) Where certified documents are lawfully requested from*
40 *licensees in accordance with this section by the Attorney General*

1 or his or her agents or deputies, or investigators of any board, the
2 documents shall be provided within 10 business days of receipt of
3 the request, unless the licensee is unable to provide the certified
4 documents within this time period for good cause, including, but
5 not limited to, physical inability to access the records in the time
6 allowed due to illness or travel. Failure to produce requested
7 certified documents or copies thereof, after being informed of the
8 required deadline, shall constitute unprofessional conduct. The
9 committee may use its authority to cite and fine a licensee for any
10 violation of this section. This remedy is in addition to any other
11 authority of the committee to sanction a licensee for a delay in
12 producing requested records.

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

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

21 (g) This section shall not apply to a licensee who does not have
22 access to, and control over, certified medical records or other
23 types of documents that belong to or are controlled by a health
24 facility or clinic.

25 SEC. 131. Section 3665.6 is added to the Business and
26 Professions Code, to read:

27 3665.6. (a) (1) Notwithstanding any other provision of law,
28 a licensee who fails or refuses to comply with a request for the
29 certified medical records of a patient that is accompanied by that
30 patient's written authorization for release of records to the
31 committee together with a notice citing this section and describing
32 the penalties for failure to comply with this section shall be
33 required to pay to the board a civil penalty of up to one thousand
34 dollars (\$1,000) per day for each day that the documents have not
35 been produced after the 15th day, up to ten thousand dollars
36 (\$10,000), unless the licensee is unable to provide the documents
37 within this time period for good cause.

38 (2) A health care facility shall comply with a request for the
39 certified medical records of a patient that is accompanied by that
40 patient's written authorization for release of records to the

1 committee together with a notice citing this section and describing
2 the penalties for failure to comply with this section. Failure to
3 provide the authorizing patient's certified medical records to the
4 board within 15 days of receiving the request, authorization, and
5 notice shall subject the health care facility to a civil penalty,
6 payable to the committee, of up to one thousand dollars (\$1,000)
7 per day for each day that the documents have not been produced
8 after the 15th day, up to ten thousand dollars (\$10,000), unless
9 the health care facility is unable to provide the documents within
10 this time period for good cause. This paragraph shall not require
11 health care facilities to assist the committee in obtaining the
12 patient's authorization. The committee shall pay the reasonable
13 costs of copying the certified medical records, but shall not be
14 required to make that payment prior to the production of the
15 medical records.

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

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

36 (3) A health care facility that fails or refuses to comply with a
37 court order, issued in the enforcement of a subpoena, mandating
38 the release of patient records to the committee, that is accompanied
39 by a notice citing this section and describing the penalties for
40 failure to comply with this section, shall pay to the committee a

1 civil penalty of up to one thousand dollars (\$1,000) per day for
2 each day that the documents have not been produced, up to ten
3 thousand dollars (\$10,000), after the date by which the court order
4 requires the documents to be produced, unless it is determined
5 that the order is unlawful or invalid. Any statute of limitations
6 applicable to the filing of an accusation by the committee against
7 a licensee shall be tolled during the period the health care facility
8 is out of compliance with the court order and during any related
9 appeals.

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

19 (c) Multiple acts by a licensee in violation of subdivision (b)
20 shall be punishable by a fine not to exceed five thousand dollars
21 (\$5,000) or by imprisonment in a county jail not exceeding six
22 months, or by both that fine and imprisonment. Multiple acts by
23 a health care facility in violation of subdivision (b) shall be
24 punishable by a fine not to exceed five thousand dollars (\$5,000),
25 shall be reported to the State Department of Public Health, and
26 shall be considered as grounds for disciplinary action with respect
27 to licensure, including suspension or revocation of the license or
28 certificate.

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

34 (e) Imposition of the civil penalties authorized by this section
35 shall be in accordance with the Administrative Procedure Act
36 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
37 2 of the Government Code). Any civil penalties paid to, or received
38 by, the committee pursuant to this section shall be deposited into
39 the fund administered by the committee.

1 (f) For purposes of this section, “certified medical records”
2 means a copy of the patient’s medical records authenticated by
3 the licensee or health care facility, as appropriate, on a form
4 prescribed by the licensee’s board.

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

9 (h) If the committee complies with Section 1684.1, 2225.5, or
10 2969, the committee shall not be subject to the requirements of
11 this section.

12 (i) This section shall not apply to a licensee who does not have
13 access to, or control over, certified medical records or other types
14 of documents that belong to or are controlled by a health facility
15 or clinic.

16 SEC. 132. Section 3665.7 is added to the Business and
17 Professions Code, to read:

18 3665.7. (a) Notwithstanding any other provision of law, any
19 employer of a licensee shall report to the committee the suspension
20 or termination for cause, or any resignation in lieu of suspension
21 or termination for cause, of any licensee in its employ within 15
22 business days. The report shall not be made until after the
23 conclusion of the review process specified in Section 52.3 of Title
24 2 of the California Code of Regulations and *Skelly v. State*
25 *Personnel Bd. (1975) 15 Cal.3d 194*, for public employees. This
26 required reporting shall not constitute a waiver of confidentiality
27 of medical records. The information reported or disclosed shall
28 be kept confidential except as provided in subdivision (c) of Section
29 800 and shall not be subject to discovery in civil cases.

30 (b) The information to be reported by the employer shall include
31 the name and license number of the licensee involved, a
32 description of the facts and circumstances of the suspension or
33 termination for cause, any resignation in lieu of suspension or
34 termination for cause, and any other relevant information deemed
35 appropriate by the employer.

36 (c) The committee shall be entitled to inspect and copy the
37 following documents in the record for any suspension or
38 termination for cause, or any resignation in lieu of suspension or
39 termination for cause, resulting in action that is required to be
40 reported pursuant to this section:

1 (1) Any statement for suspension or termination of the licensee.

2 (2) Any document or exhibits relevant to the suspension or
3 termination.

4 (d) If, during the investigation by the committee of the cause
5 for the termination or suspension or resignation of the licensee,
6 it is found that there has been a violation of existing state or federal
7 law, the committee shall report the violation to the appropriate
8 agency.

9 (e) For purposes of this section, “suspension or termination for
10 cause” or “resignation in lieu of suspension or termination for
11 cause” is defined as resignation, suspension, or termination from
12 employment for any of the following reasons:

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

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

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

19 (4) Gross negligence or incompetence.

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

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

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

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

34 (3) “Willful” means a knowing and intentional violation of a
35 known legal duty.

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

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

4 (h) The committee shall investigate the circumstances underlying
5 any report received pursuant to this section within 30 days to
6 determine if an interim suspension order or temporary restraining
7 order should be issued. The board shall otherwise provide timely
8 disposition of the reports received pursuant to this section.

9 (i) The committee shall send to the licentiate a copy of the report
10 along with the reasons for the filing of the report and notice
11 advising the licentiate of his or her right to submit additional
12 statements or other information to the board.

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

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

18 SEC. 133. Section 3665.8 is added to the Business and
19 Professions Code, to read:

20 3665.8. Unless otherwise provided, on or after July 1, 2013,
21 the committee shall post on its Internet Web site the following
22 information, including the name and license number, in its
23 possession, custody, or control regarding every licensee for which
24 the committee licenses:

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

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

35 (c) Any felony conviction of a licensee reported to the board.

36 (d) All current accusations filed by the Attorney General,
37 including those accusations that are on appeal. For purposes of
38 this paragraph, "current accusation" means an accusation that
39 has not been dismissed, withdrawn, or settled, and has not been

1 *finally decided upon by an administrative law judge and the board*
2 *unless an appeal of that decision is pending.*

3 *(e) Any malpractice judgment or arbitration award imposed*
4 *against a licensee and reported to the committee.*

5 *(f) Any hospital disciplinary action imposed against a licensee*
6 *that resulted in the termination or revocation of a licensee's*
7 *hospital staff privileges for a medical disciplinary cause or reason*
8 *pursuant to Section 3665.8 or 805.*

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

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

17 *(i) The information provided on the Internet shall be in*
18 *accordance with the California Public Records Act (Chapter 3.5*
19 *(commencing with Section 6250) of Division 7 of Title 1 of the*
20 *Government Code) and the Information Practices Act of 1977*
21 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
22 *of Division 3 of the Civil Code) and shall comply with the*
23 *Department of Consumer Affairs Guidelines for Access to Public*
24 *Records.*

25 *(j) Information provided on the Internet may not include*
26 *personal information, unless otherwise provided pursuant to this*
27 *chapter, including the home telephone number, date of birth, or*
28 *social security number. The information may not include the*
29 *licensee's address, but may include the city and county of the*
30 *licensee's address of record.*

31 *SEC. 134. Section 3665.9 is added to the Business and*
32 *Professions Code, to read:*

33 *3665.9. (a) Unless otherwise provided, if a licensee possesses*
34 *a license or is otherwise authorized to practice in any state other*
35 *than California or by any agency of the federal government and*
36 *that license or authority is suspended or revoked outright, the*
37 *California license of the licensee shall be suspended automatically*
38 *for the duration of the suspension or revocation, unless terminated*
39 *or rescinded as provided in subdivision (c). The committee shall*

1 *notify the licensee of the license suspension and of his or her right*
2 *to have the issue of penalty heard as provided in this section.*

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

8 *(c) The issue of penalty shall be heard by an administrative law*
9 *judge sitting alone or with a panel of the committee, in the*
10 *discretion of the board. A licensee may request a hearing on the*
11 *penalty and that hearing shall be held within 90 days from the*
12 *date of the request. If the order suspending or revoking the license*
13 *or authority to practice is overturned on appeal, any discipline*
14 *ordered pursuant to this section shall automatically cease. Upon*
15 *a showing to the administrative law judge or panel by the licensee*
16 *that the out-of-state action is not a basis for discipline in*
17 *California, the suspension shall be rescinded. If an accusation for*
18 *permanent discipline is not filed within 90 days of the suspension*
19 *imposed pursuant to this section, the suspension shall automatically*
20 *terminate.*

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

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

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

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

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

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

10 SEC. 135. *Section 3769.4 is added to the Business and*
11 *Professions Code, to read:*

12 3769.4. (a) *The board may delegate to its executive officer the*
13 *authority to adopt a proposed default decision where an*
14 *administrative action to revoke a license has been filed and the*
15 *licensee has failed to file a notice of defense or to appear at the*
16 *hearing and a proposed default decision revoking the license has*
17 *been issued.*

18 (b) *The board may delegate to its executive officer the authority*
19 *to adopt a proposed settlement agreement where an administrative*
20 *action to revoke a license has been filed by the board and the*
21 *licensee has agreed to the revocation or surrender of his or her*
22 *license.*

23 (c) *The executive officer shall, at scheduled board meetings,*
24 *report to the board the number of proposed default decisions or*
25 *proposed settlement agreements adopted pursuant to this section.*

26 SEC. 136. *Section 3769.5 is added to the Business and*
27 *Professions Code, to read:*

28 3769.5. (a) *Notwithstanding Section 11415.60 of the*
29 *Government Code, the board may enter into a settlement with a*
30 *licensee or applicant in lieu of the issuance of an accusation or*
31 *statement of issues against that licensee or applicant, as applicable.*

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

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

39 (d) *Any settlement against a licensee executed pursuant to this*
40 *section shall be considered discipline and a public record and*

1 shall be posted on the applicable board's Internet Web site. Any
2 settlement against an applicant executed pursuant to this section
3 shall be considered a public record and shall be posted on the
4 applicable board's Internet Web site.

5 (e) The executive officer shall, at scheduled board meetings,
6 report to the board the number of proposed settlement agreements
7 adopted pursuant to this section.

8 SEC. 137. Section 3769.6 is added to the Business and
9 Professions Code, to read:

10 3769.6. (a) The license of a licensee shall be suspended
11 automatically during any time that the licensee is incarcerated
12 after conviction of a felony, regardless of whether the conviction
13 has been appealed. The board shall, immediately upon receipt of
14 the certified copy of the record of conviction, determine whether
15 the license of the licensee has been automatically suspended by
16 virtue of his or her incarceration, and if so, the duration of that
17 suspension. The board shall notify the licensee in writing of the
18 license suspension and of his or her right to elect to have the issue
19 of penalty heard as provided in subdivision (d).

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

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

1 (d) (1) Discipline may be ordered against a licensee in
 2 accordance with the statutes and regulations of the board when
 3 the time for appeal has elapsed, the judgment of conviction has
 4 been affirmed on appeal, or an order granting probation is made
 5 suspending the imposition of sentence, irrespective of a subsequent
 6 order under Section 1203.4 of the Penal Code allowing the person
 7 to withdraw his or her plea of guilty and to enter a plea of not
 8 guilty, setting aside the verdict of guilty, or dismissing the
 9 accusation, complaint, information, or indictment.

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

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

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

32 SEC. 138. Section 3769.7 is added to the Business and
 33 Professions Code, to read:

34 3769.7. (a) Except as otherwise provided, any proposed
 35 decision or decision issued in accordance with the procedures set
 36 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
 37 Division 3 of Title 2 of the Government Code, that contains any
 38 finding of fact that the licensee engaged in any act of sexual contact
 39 with a patient, as defined in subdivision (c) of Section 729, or any
 40 finding that the licensee has committed a sex offense, shall contain

1 *an order revoking the license. The proposed decision shall not*
2 *contain any order staying the revocation of the license.*

3 *(b) As used in this section, the term sex offense shall mean any*
4 *of the following:*

5 *(1) Any offense for which registration is required by Section*
6 *290 of the Penal Code or a finding that a person committed such*
7 *an act.*

8 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
9 *or 647(a) or (d) of the Penal Code or a finding that a person*
10 *committed such an act.*

11 *(3) Any attempt to commit any of the offenses specified in this*
12 *section.*

13 *(4) Any offense committed or attempted in any other state or*
14 *against the laws of the United States which, if committed or*
15 *attempted in this state, would have been punishable as one or more*
16 *of the offenses specified in this section.*

17 *SEC. 139. Section 3769.8 is added to the Business and*
18 *Professions Code, to read:*

19 *3769.8. (a) Except as otherwise provided, with regard to an*
20 *individual who is required to register as a sex offender pursuant*
21 *to Section 290 of the Penal Code, or the equivalent in another*
22 *state or territory, under military law, or under federal law, the*
23 *board shall be subject to the following requirements:*

24 *(1) The board shall deny an application by the individual for*
25 *licensure in accordance with the procedures set forth in Chapter*
26 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
27 *2 of the Government Code.*

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

34 *(3) The board shall not reinstate or reissue the individual's*
35 *license. The board shall not issue a stay of license denial nor place*
36 *the license on probation.*

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

38 *(1) An individual who has been relieved under Section 290.5 of*
39 *the Penal Code of his or her duty to register as a sex offender, or*
40 *whose duty to register has otherwise been formally terminated*

1 *under California law or the law of the jurisdiction that requires*
2 *his or her registration as a sex offender.*

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

10 *(3) Any administrative adjudication proceeding under Chapter*
11 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
12 *2 of the Government Code that is fully adjudicated prior to January*
13 *1, 2008. A petition for reinstatement of a revoked or surrendered*
14 *license shall be considered a new proceeding for purposes of this*
15 *paragraph, and the prohibition against reinstating a license to an*
16 *individual who is required to register as a sex offender shall be*
17 *applicable.*

18 *SEC. 140. Section 3769.9 is added to the Business and*
19 *Professions Code, to read:*

20 *3769.9. Unless otherwise provided, on or after July 1, 2013,*
21 *the board shall post on its Internet Web site the following*
22 *information in its possession, custody, or control regarding every*
23 *licensee for which the board licenses:*

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

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

34 *(c) Any felony conviction of a licensee reported to the board.*

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

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

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

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

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

15 (i) The information provided on the Internet shall be in
16 accordance with the California Public Records Act (Chapter 3.5
17 commencing with Section 6250) of Division 7 of Title 1 of the
18 Government Code) and the Information Practices Act of 1977
19 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
20 of Division 3 of the Civil Code) and shall comply with the
21 Department of Consumer Affairs Guidelines for Access to Public
22 Records.

23 (j) Information provided on the Internet may not include
24 personal information, unless otherwise provided pursuant to this
25 chapter, including the home telephone number, date of birth, or
26 social security number. The information may not include the
27 licensee's address, but may include the city and county of the
28 licensee's address of record.

29 SEC. 141. Section 3796.10 is added to the Business and
30 Professions Code, to read:

31 3796.10. (a) Unless otherwise provided, if a licensee possesses
32 a license or is otherwise authorized to practice in any state other
33 than California or by any agency of the federal government and
34 that license or authority is suspended or revoked outright, the
35 California license of the licensee shall be suspended automatically
36 for the duration of the suspension or revocation, unless terminated
37 or rescinded as provided in subdivision (c). The healing arts board
38 shall notify the licensee of the license suspension and of his or her
39 right to have the issue of penalty heard as provided in this section.

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

6 (c) The issue of penalty shall be heard by an administrative law
7 judge sitting alone or with a panel of the board, in the discretion
8 of the board. A licensee may request a hearing on the penalty and
9 that hearing shall be held within 90 days from the date of the
10 request. If the order suspending or revoking the license or authority
11 to practice is overturned on appeal, any discipline ordered
12 pursuant to this section shall automatically cease. Upon a showing
13 to the administrative law judge or panel by the licensee that the
14 out-of-state action is not a basis for discipline in California, the
15 suspension shall be rescinded. If an accusation for permanent
16 discipline is not filed within 90 days of the suspension imposed
17 pursuant to this section, the suspension shall automatically
18 terminate.

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

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

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

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

38 (h) The other provisions of this article setting forth a procedure
39 for the suspension or revocation of a licensee's license or
40 certificate shall not apply to summary suspensions issued pursuant

1 to this section. If a summary suspension has been issued pursuant
2 to this section, the licensee may request that the hearing on the
3 penalty conducted pursuant to subdivision (c) be held at the same
4 time as a hearing on the accusation.

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

7 SEC. 142. Section 4316 is added to the Business and
8 Professions Code, to read:

9 4316. (a) The board may delegate to its executive officer the
10 authority to adopt a proposed default decision where an
11 administrative action to revoke a license has been filed and the
12 licensee has failed to file a notice of defense or to appear at the
13 hearing and a proposed default decision revoking the license has
14 been issued.

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

20 (c) The executive officer shall, at scheduled board meetings,
21 report to the board the number of proposed default decisions or
22 proposed settlement agreements adopted pursuant to this section.

23 SEC. 143. Section 4316.1 is added to the Business and
24 Professions Code, to read:

25 4316.1. (a) Notwithstanding Section 11415.60 of the
26 Government Code, the board may enter into a settlement with a
27 licensee or applicant in lieu of the issuance of an accusation or
28 statement of issues against that licensee or applicant, as applicable.

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

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

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

1 shall be considered a public record and shall be posted on the
2 applicable board's Internet Web site.

3 (e) The executive officer shall, at scheduled board meetings,
4 report to the board the number of proposed settlement agreements
5 adopted pursuant to this section.

6 SEC. 144. Section 4316.2 is added to the Business and
7 Professions Code, to read:

8 4316.2. (a) The license of a licensee shall be suspended
9 automatically during any time that the licensee is incarcerated
10 after conviction of a felony, regardless of whether the conviction
11 has been appealed. The board shall, immediately upon receipt of
12 the certified copy of the record of conviction, determine whether
13 the license of the licensee has been automatically suspended by
14 virtue of his or her incarceration, and if so, the duration of that
15 suspension. The board shall notify the licensee in writing of the
16 license suspension and of his or her right to elect to have the issue
17 of penalty heard as provided in subdivision (d).

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

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

38 (d) (1) Discipline may be ordered against a licensee in
39 accordance with the statutes and regulations of the board when
40 the time for appeal has elapsed, the judgment of conviction has

1 *been affirmed on appeal, or an order granting probation is made*
2 *suspending the imposition of sentence, irrespective of a subsequent*
3 *order under Section 1203.4 of the Penal Code allowing the person*
4 *to withdraw his or her plea of guilty and to enter a plea of not*
5 *guilty, setting aside the verdict of guilty, or dismissing the*
6 *accusation, complaint, information, or indictment.*

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

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

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

29 SEC. 145. *Section 4316.3 is added to the Business and*
30 *Professions Code, to read:*

31 4316.3. (a) *Except as otherwise provided, any proposed*
32 *decision or decision issued in accordance with the procedures set*
33 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
34 *Division 3 of Title 2 of the Government Code, that contains any*
35 *finding of fact that the licensee engaged in any act of sexual contact*
36 *with a patient, as defined in subdivision (c) of Section 729, or any*
37 *finding that the licensee has committed a sex offense, shall contain*
38 *an order revoking the license. The proposed decision shall not*
39 *contain any order staying the revocation of the licensee.*

1 (b) As used in this section, the term sex offense shall mean any
2 of the following:

3 (1) Any offense for which registration is required by Section
4 290 of the Penal Code or a finding that a person committed such
5 an act.

6 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
7 or 647(a) or (d) of the Penal Code or a finding that a person
8 committed such an act.

9 (3) Any attempt to commit any of the offenses specified in this
10 section.

11 (4) Any offense committed or attempted in any other state or
12 against the laws of the United States which, if committed or
13 attempted in this state, would have been punishable as one or more
14 of the offenses specified in this section.

15 SEC. 146. Section 4316.4 is added to the Business and
16 Professions Code, to read:

17 4316.4. (a) Except as otherwise provided, with regard to an
18 individual who is required to register as a sex offender pursuant
19 to Section 290 of the Penal Code, or the equivalent in another
20 state or territory, under military law, or under federal law, the
21 board shall be subject to the following requirements:

22 (1) The board shall deny an application by the individual for
23 licensure in accordance with the procedures set forth in Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code.

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

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

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

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

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

8 (3) Any administrative adjudication proceeding under Chapter
9 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
10 2 of the Government Code that is fully adjudicated prior to January
11 1, 2008. A petition for reinstatement of a revoked or surrendered
12 license shall be considered a new proceeding for purposes of this
13 paragraph, and the prohibition against reinstating a license to an
14 individual who is required to register as a sex offender shall be
15 applicable.

16 SEC. 147. Section 4316.5 is added to the Business and
17 Professions Code, to read:

18 4316.5. Unless otherwise provided, on or after July 1, 2013,
19 the board shall post on its Internet Web site the following
20 information in its possession, custody, or control regarding every
21 licensee for which the board licenses:

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

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

32 (c) Any felony conviction of a licensee reported to the board.

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

39 (e) Any malpractice judgment or arbitration award imposed
40 against a licensee and reported to the healing arts board.

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

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

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

13 (i) The information provided on the Internet shall be in
14 accordance with the California Public Records Act (Chapter 3.5
15 commencing with Section 6250) of Division 7 of Title 1 of the
16 Government Code) and the Information Practices Act of 1977
17 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
18 of Division 3 of the Civil Code) and shall comply with the
19 Department of Consumer Affairs Guidelines for Access to Public
20 Records.

21 (j) Information provided on the Internet may not include
22 personal information, unless otherwise provided pursuant to this
23 chapter, including the home telephone number, date of birth, or
24 social security number. The information may not include the
25 licensee's address, but may include the city and county of the
26 licensee's address of record.

27 SEC. 148. Section 4316.6 is added to the Business and
28 Professions Code, to read:

29 4316.6. (a) Unless otherwise provided, if a licensee possesses
30 a license or is otherwise authorized to practice in any state other
31 than California or by any agency of the federal government and
32 that license or authority is suspended or revoked outright, the
33 California license of the licensee shall be suspended automatically
34 for the duration of the suspension or revocation, unless terminated
35 or rescinded as provided in subdivision (c). The healing arts board
36 shall notify the licensee of the license suspension and of his or her
37 right to have the issue of penalty heard as provided in this section.

38 (b) Upon its own motion or for good cause shown, a healing
39 arts board may decline to impose or may set aside the suspension
40 when it appears to be in the interest of justice to do so, with due

1 regard to maintaining the integrity of, and confidence in, the
2 specific healing art.

3 (c) The issue of penalty shall be heard by an administrative law
4 judge sitting alone or with a panel of the board, in the discretion
5 of the board. A licensee may request a hearing on the penalty and
6 that hearing shall be held within 90 days from the date of the
7 request. If the order suspending or revoking the license or authority
8 to practice is overturned on appeal, any discipline ordered
9 pursuant to this section shall automatically cease. Upon a showing
10 to the administrative law judge or panel by the licensee that the
11 out-of-state action is not a basis for discipline in California, the
12 suspension shall be rescinded. If an accusation for permanent
13 discipline is not filed within 90 days of the suspension imposed
14 pursuant to this section, the suspension shall automatically
15 terminate.

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

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

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

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

35 (h) The other provisions of this article setting forth a procedure
36 for the suspension or revocation of a licensee's license or
37 certificate shall not apply to summary suspensions issued pursuant
38 to this section. If a summary suspension has been issued pursuant
39 to this section, the licensee may request that the hearing on the

1 *penalty conducted pursuant to subdivision (c) be held at the same*
2 *time as a hearing on the accusation.*

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

5 *SEC. 149. Section 4375 is added to the Business and*
6 *Professions Code, to read:*

7 *4375. (a) It is the intent of the Legislature, through a request*
8 *in 2012 from the Joint Legislative Audit Committee, that the Bureau*
9 *of State Audits conduct a thorough performance audit of the*
10 *Pharmacists Recovery Program to evaluate the effectiveness and*
11 *efficiency of the program, and make recommendations regarding*
12 *the continuation of the program and any changes or reforms*
13 *required to ensure that pharmacists and intern pharmacists*
14 *participating in the program are appropriately monitored, and*
15 *the public is protected from pharmacists and intern pharmacists*
16 *who are impaired due to alcohol or drug abuse or mental or*
17 *physical illness. The audit shall be completed by January 1, 2013.*
18 *The board and its staff shall cooperate with the audit, and the*
19 *board shall provide data, information, and case files as requested*
20 *by the auditor to perform all of its duties. The provision of*
21 *confidential data, information, and case files by the board to the*
22 *auditor shall not constitute a waiver of any exemption from*
23 *disclosure or discovery or of any confidentiality protection or*
24 *privilege otherwise provided by law that is applicable to the data,*
25 *information, or case files.*

26 *(b) It is the intent of the Legislature that the audit shall be paid*
27 *for with funds from the Pharmacy Board Contingent Fund.*

28 *SEC. 150. Section 4526 is added to the Business and*
29 *Professions Code, to read:*

30 *4526. (a) The board may delegate to its executive officer the*
31 *authority to adopt a proposed default decision where an*
32 *administrative action to revoke a license has been filed and the*
33 *licensee has failed to file a notice of defense or to appear at the*
34 *hearing and a proposed default decision revoking the license has*
35 *been issued.*

36 *(b) The board may delegate to its executive officer the authority*
37 *to adopt a proposed settlement agreement where an administrative*
38 *action to revoke a license has been filed by the board and the*
39 *licensee has agreed to the revocation or surrender of his or her*
40 *license.*

1 (c) *The executive officer shall, at scheduled board meetings,*
2 *report to the board the number of proposed default decisions or*
3 *proposed settlement agreements adopted pursuant to this section.*

4 *SEC. 151. Section 4526.1 is added to the Business and*
5 *Professions Code, to read:*

6 *4526.1. (a) Notwithstanding Section 11415.60 of the*
7 *Government Code, the board may enter into a settlement with a*
8 *licensee or applicant in lieu of the issuance of an accusation or*
9 *statement of issues against that licensee or applicant, as applicable.*

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

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

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

23 *(e) The executive officer shall, at scheduled board meetings,*
24 *report to the board the number of proposed settlement agreements*
25 *adopted pursuant to this section.*

26 *SEC. 152. Section 4526.2 is added to the Business and*
27 *Professions Code, to read:*

28 *4526.2. (a) The license of a licensee shall be suspended*
29 *automatically during any time that the licensee is incarcerated*
30 *after conviction of a felony, regardless of whether the conviction*
31 *has been appealed. The board shall, immediately upon receipt of*
32 *the certified copy of the record of conviction, determine whether*
33 *the license of the licensee has been automatically suspended by*
34 *virtue of his or her incarceration, and if so, the duration of that*
35 *suspension. The board shall notify the licensee in writing of the*
36 *license suspension and of his or her right to elect to have the issue*
37 *of penalty heard as provided in subdivision (d).*

38 *(b) Upon receipt of the certified copy of the record of conviction,*
39 *if after a hearing before an administrative law judge from the*
40 *Office of Administrative Hearings it is determined that the felony*

1 for which the licensee was convicted was substantially related to
2 the qualifications, functions, or duties of a licensee, the board
3 shall suspend the license until the time for appeal has elapsed, if
4 no appeal has been taken, or until the judgment of conviction has
5 been affirmed on appeal or has otherwise become final, and until
6 further order of the board.

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

18 (d) (1) Discipline may be ordered against a licensee in
19 accordance with the statutes and regulations of the board when
20 the time for appeal has elapsed, the judgment of conviction has
21 been affirmed on appeal, or an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent
23 order under Section 1203.4 of the Penal Code allowing the person
24 to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, setting aside the verdict of guilty, or dismissing the
26 accusation, complaint, information, or indictment.

27 (2) The issue of penalty shall be heard by an administrative law
28 judge from the Office of Administrative Hearings. The hearing
29 shall not be had until the judgment of conviction has become final
30 or, irrespective of a subsequent order under Section 1203.4 of the
31 Penal Code, an order granting probation has been made
32 suspending the imposition of sentence; except that a licensee may,
33 at his or her option, elect to have the issue of penalty decided
34 before those time periods have elapsed. Where the licensee so
35 elects, the issue of penalty shall be heard in the manner described
36 in subdivision (b) at the hearing to determine whether the
37 conviction was substantially related to the qualifications, functions,
38 or duties of a licensee. If the conviction of a licensee who has made
39 this election is overturned on appeal, any discipline ordered
40 pursuant to this section shall automatically cease. Nothing in this

1 subdivision shall prohibit the board from pursuing disciplinary
2 action based on any cause other than the overturned conviction.

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

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

9 SEC. 153. Section 4526.3 is added to the Business and
10 Professions Code, to read:

11 4526.3. (a) Except as otherwise provided, any proposed
12 decision or decision issued in accordance with the procedures set
13 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
14 Division 3 of Title 2 of the Government Code, that contains any
15 finding of fact that the licensee engaged in any act of sexual contact
16 with a patient, as defined in subdivision (c) of Section 729, or any
17 finding that the licensee has committed a sex offense, shall contain
18 an order revoking the license. The proposed decision shall not
19 contain any order staying the revocation of the licensee.

20 (b) As used in this section, the term sex offense shall mean any
21 of the following:

22 (1) Any offense for which registration is required by Section
23 290 of the Penal Code or a finding that a person committed such
24 an act.

25 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
26 or 647(a) or (d) of the Penal Code or a finding that a person
27 committed such an act.

28 (3) Any attempt to commit any of the offenses specified in this
29 section.

30 (4) Any offense committed or attempted in any other state or
31 against the laws of the United States which, if committed or
32 attempted in this state, would have been punishable as one or more
33 of the offenses specified in this section.

34 SEC. 154. Section 4526.4 is added to the Business and
35 Professions Code, to read:

36 4526.4. (a) Except as otherwise provided, with regard to an
37 individual who is required to register as a sex offender pursuant
38 to Section 290 of the Penal Code, or the equivalent in another
39 state or territory, under military law, or under federal law, the
40 board shall be subject to the following requirements:

1 (1) The board shall deny an application by the individual for
2 licensure in accordance with the procedures set forth in Chapter
3 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
4 2 of the Government Code.

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

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

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

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

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

27 (3) Any administrative adjudication proceeding under Chapter
28 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code that is fully adjudicated prior to January
30 1, 2008. A petition for reinstatement of a revoked or surrendered
31 license shall be considered a new proceeding for purposes of this
32 paragraph, and the prohibition against reinstating a license to an
33 individual who is required to register as a sex offender shall be
34 applicable.

35 SEC. 155. Section 4526.5 is added to the Business and
36 Professions Code, to read:

37 4526.5. (a) Notwithstanding any other provision of law making
38 a communication between a licensee and his or her patients a
39 privileged communication, those provisions shall not apply to
40 investigations or proceedings conducted by the board. Members

1 of the board, deputies, employees, agents, the office of the Attorney
2 General, and representatives of the board shall keep in confidence
3 during the course of investigations the names of any patients whose
4 records are reviewed and may not disclose or reveal those names,
5 except as is necessary during the course of an investigation, unless
6 and until proceedings are instituted. The authority under this
7 subdivision to examine records of patients in the office of a licensee
8 is limited to records of patients who have complained to the board
9 about that licensee.

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

18 (1) Any document relevant to an investigation may be inspected,
19 and copies may be obtained, where a patient provides written
20 authorization.

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

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

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

1 of this section. This remedy is in addition to any other authority
2 of the board to sanction a licensee for a delay in producing
3 requested records.

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

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

12 (g) This section shall not apply to a licensee who does not have
13 access to, and control over, certified medical records or other
14 types of documents that belong to or are controlled by a health
15 facility or clinic.

16 SEC. 156. Section 4526.6 is added to the Business and
17 Professions Code, to read:

18 4526.6. (a) (1) Notwithstanding any other provision of law,
19 a licensee who fails or refuses to comply with a request for the
20 certified medical records of a patient that is accompanied by that
21 patient's written authorization for release of records to a board
22 together with a notice citing this section and describing the
23 penalties for failure to comply with this section shall be required
24 to pay to the board a civil penalty of up to one thousand dollars
25 (\$1,000) per day for each day that the documents have not been
26 produced after the 15th day, up to ten thousand dollars (\$10,000),
27 unless the licensee is unable to provide the documents within this
28 time period for good cause.

29 (2) A health care facility shall comply with a request for the
30 certified medical records of a patient that is accompanied by that
31 patient's written authorization for release of records to a board
32 together with a notice citing this section and describing the
33 penalties for failure to comply with this section. Failure to provide
34 the authorizing patient's certified medical records to the board
35 within 15 days of receiving the request, authorization, and notice
36 shall subject the health care facility to a civil penalty, payable to
37 the healing arts board, of up to one thousand dollars (\$1,000) per
38 day for each day that the documents have not been produced after
39 the 15th day, up to ten thousand dollars (\$10,000), unless the
40 health care facility is unable to provide the documents within this

1 *time period for good cause. This paragraph shall not require health*
2 *care facilities to assist the board in obtaining the patient's*
3 *authorization. The board shall pay the reasonable costs of copying*
4 *the certified medical records, but shall not be required to make*
5 *that payment prior to the production of the medical records.*

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

17 *(2) Any licensee who fails or refuses to comply with a court*
18 *order, issued in the enforcement of a subpoena, mandating the*
19 *release of records to a board is guilty of a misdemeanor punishable*
20 *by a fine payable to the board not to exceed five thousand dollars*
21 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
22 *it is not paid by the next succeeding renewal date. Any statute of*
23 *limitations applicable to the filing of an accusation by the board*
24 *shall be tolled during the period the licensee is out of compliance*
25 *with the court order and during any related appeals.*

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

39 *(4) Any health care facility that fails or refuses to comply with*
40 *a court order, issued in the enforcement of a subpoena, mandating*

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

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

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

23 *(e) Imposition of the civil penalties authorized by this section*
24 *shall be in accordance with the Administrative Procedure Act*
25 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
26 *2 of the Government Code). Any civil penalties paid to, or received*
27 *by, the board pursuant to this section shall be deposited into the*
28 *fund administered by the board.*

29 *(f) For purposes of this section, “certified medical records”*
30 *means a copy of the patient’s medical records authenticated by*
31 *the licensee or health care facility, as appropriate, on a form*
32 *prescribed by the licensee’s board.*

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

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

39 *(i) This section shall not apply to a licensee who does not have*
40 *access to, or control over, certified medical records or other types*

1 of documents that belong to or are controlled by a health facility
2 or clinic.

3 SEC. 157. Section 4526.8 is added to the Business and
4 Professions Code, to read:

5 4526.8. Unless otherwise provided, on or after July 1, 2013,
6 the board shall post on its Internet Web site the following
7 information, including the name and the license number, in its
8 possession, custody, or control regarding every licensee for which
9 the board licenses:

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

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

20 (c) Any felony conviction of a licensee reported to the board.

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

27 (e) Any malpractice judgment or arbitration award imposed
28 against a licensee and reported to the board.

29 (f) Any hospital disciplinary action imposed against a licensee
30 that resulted in the termination or revocation of a licensee's
31 hospital staff privileges for a medical disciplinary cause or reason
32 pursuant to Section 4526.6 or 805.

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

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

1 (i) The information provided on the Internet shall be in
2 accordance with the California Public Records Act (Chapter 3.5
3 commencing with Section 6250) of Division 7 of Title 1 of the
4 Government Code) and the Information Practices Act of 1977
5 (Chapter 1 commencing with Section 1798) of Title 1.8 of Part 4
6 of Division 3 of the Civil Code) and shall comply with the
7 Department of Consumer Affairs Guidelines for Access to Public
8 Records.

9 (j) Information provided on the Internet may not include
10 personal information, unless otherwise provided pursuant to this
11 chapter, including the home telephone number, date of birth, or
12 social security number. The information may not include the
13 licensee's address, but may include the city and county of the
14 licensee's address of record.

15 SEC. 158. Section 4526.9 is added to the Business and
16 Professions Code, to read:

17 4526.9. (a) Unless otherwise provided, if a licensee possesses
18 a license or is otherwise authorized to practice in any state other
19 than California or by any agency of the federal government and
20 that license or authority is suspended or revoked outright, the
21 California license of the licensee shall be suspended automatically
22 for the duration of the suspension or revocation, unless terminated
23 or rescinded as provided in subdivision (c). The healing arts board
24 shall notify the licensee of the license suspension and of his or her
25 right to have the issue of penalty heard as provided in this section.

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

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

1 *discipline is not filed within 90 days of the suspension imposed*
2 *pursuant to this section, the suspension shall automatically*
3 *terminate.*

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

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

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

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

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

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

32 *SEC. 159. Section 4888 is added to the Business and*
33 *Professions Code, to read:*

34 *4888. (a) The board may delegate to its executive officer the*
35 *authority to adopt a proposed default decision where an*
36 *administrative action to revoke a license has been filed and the*
37 *licensee has failed to file a notice of defense or to appear at the*
38 *hearing and a proposed default decision revoking the license has*
39 *been issued.*

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

6 (c) The executive officer shall, at scheduled board meetings,
7 report to the board the number of proposed default decisions or
8 proposed settlement agreements adopted pursuant to this section.

9 SEC. 160. Section 4888.1 is added to the Business and
10 Professions Code, to read:

11 4888.1. (a) Notwithstanding Section 11415.60 of the
12 Government Code, the board may enter into a settlement with a
13 licensee or applicant in lieu of the issuance of an accusation or
14 statement of issues against that licensee or applicant, as applicable.

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

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

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

28 (e) The executive officer shall, at scheduled board meetings,
29 report to the board the number of proposed settlement agreements
30 adopted pursuant to this section.

31 SEC. 161. Section 4888.2 is added to the Business and
32 Professions Code, to read:

33 4888.2. (a) The license of a licensee shall be suspended
34 automatically during any time that the licensee is incarcerated
35 after conviction of a felony, regardless of whether the conviction
36 has been appealed. The board shall, immediately upon receipt of
37 the certified copy of the record of conviction, determine whether
38 the license of the licensee has been automatically suspended by
39 virtue of his or her incarceration, and if so, the duration of that
40 suspension. The board shall notify the licensee in writing of the

1 license suspension and of his or her right to elect to have the issue
2 of penalty heard as provided in subdivision (d).

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

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

23 (d) (1) Discipline may be ordered against a licensee in
24 accordance with the statutes and regulations of the board when
25 the time for appeal has elapsed, the judgment of conviction has
26 been affirmed on appeal, or an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent
28 order under Section 1203.4 of the Penal Code allowing the person
29 to withdraw his or her plea of guilty and to enter a plea of not
30 guilty, setting aside the verdict of guilty, or dismissing the
31 accusation, complaint, information, or indictment.

32 (2) The issue of penalty shall be heard by an administrative law
33 judge from the Office of Administrative Hearings. The hearing
34 shall not be had until the judgment of conviction has become final
35 or, irrespective of a subsequent order under Section 1203.4 of the
36 Penal Code, an order granting probation has been made
37 suspending the imposition of sentence; except that a licensee may,
38 at his or her option, elect to have the issue of penalty decided
39 before those time periods have elapsed. Where the licensee so
40 elects, the issue of penalty shall be heard in the manner described

1 in subdivision (b) at the hearing to determine whether the
2 conviction was substantially related to the qualifications, functions,
3 or duties of a licensee. If the conviction of a licensee who has made
4 this election is overturned on appeal, any discipline ordered
5 pursuant to this section shall automatically cease. Nothing in this
6 subdivision shall prohibit the board from pursuing disciplinary
7 action based on any cause other than the overturned conviction.

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

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

14 SEC. 162. Section 4888.3 is added to the Business and
15 Professions Code, to read:

16 4888.3. (a) Except as otherwise provided, any proposed
17 decision or decision issued in accordance with the procedures set
18 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code, that contains any
20 finding of fact that the licensee engaged in any act of sexual contact
21 with a patient, as defined in subdivision (c) of Section 729, or any
22 finding that the licensee has committed a sex offense, shall contain
23 an order revoking the license. The proposed decision shall not
24 contain any order staying the revocation of the licensee.

25 (b) As used in this section, the term sex offense shall mean any
26 of the following:

27 (1) Any offense for which registration is required by Section
28 290 of the Penal Code or a finding that a person committed such
29 an act.

30 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
31 or 647(a) or (d) of the Penal Code or a finding that a person
32 committed such an act.

33 (3) Any attempt to commit any of the offenses specified in this
34 section.

35 (4) Any offense committed or attempted in any other state or
36 against the laws of the United States which, if committed or
37 attempted in this state, would have been punishable as one or more
38 of the offenses specified in this section.

39 SEC. 163. Section 4888.4 is added to the Business and
40 Professions Code, to read:

1 4888.4. (a) Except as otherwise provided, with regard to an
2 individual who is required to register as a sex offender pursuant
3 to Section 290 of the Penal Code, or the equivalent in another
4 state or territory, under military law, or under federal law, the
5 board shall be subject to the following requirements:

6 (1) The board shall deny an application by the individual for
7 licensure in accordance with the procedures set forth in Chapter
8 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code.

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

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

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

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

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

32 (3) Any administrative adjudication proceeding under Chapter
33 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
34 2 of the Government Code that is fully adjudicated prior to January
35 1, 2008. A petition for reinstatement of a revoked or surrendered
36 license shall be considered a new proceeding for purposes of this
37 paragraph, and the prohibition against reinstating a license to an
38 individual who is required to register as a sex offender shall be
39 applicable.

1 SEC. 164. Section 4888.5 is added to the Business and
2 Professions Code, to read:

3 4888.5. (a) Notwithstanding any other provision of law, any
4 employer of a licensee shall report to the board the suspension or
5 termination for cause, or any resignation in lieu of suspension or
6 termination for cause, of any licensee in its employ within 15
7 business days. The report shall not be made until after the
8 conclusion of the review process specified in Section 52.3 of Title
9 2 of the California Code of Regulations and *Skelly v. State*
10 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
11 required reporting shall not constitute a waiver of confidentiality
12 of medical records. The information reported or disclosed shall
13 be kept confidential except as provided in subdivision (c) of Section
14 800 and shall not be subject to discovery in civil cases.

15 (b) The information to be reported by the employer shall include
16 the name and license number of the licentiate involved, a
17 description of the facts and circumstances of the suspension or
18 termination for cause, any resignation in lieu of suspension or
19 termination for cause, and any other relevant information deemed
20 appropriate by the employer.

21 (c) The board shall be entitled to inspect and copy the following
22 documents in the record for any suspension or termination for
23 cause, or any resignation in lieu of suspension or termination for
24 cause, resulting in action that is required to be reported pursuant
25 to this section:

26 (1) Any statement for suspension or termination of the licensee.

27 (2) Any document or exhibits relevant to the suspension or
28 termination.

29 (d) If, during the investigation by the board of the cause for the
30 termination or suspension or resignation of the licensee, it is found
31 that there has been a violation of existing state or federal law, the
32 board shall report the violation to the appropriate agency.

33 (e) For purposes of this section, “suspension or termination for
34 cause” or “resignation in lieu of suspension or termination for
35 cause” is defined as resignation, suspension, or termination from
36 employment for any of the following reasons:

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

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

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

3 (4) *Gross negligence or incompetence.*

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

6 (f) *As used in this section, the following definitions apply:*

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

15 (2) *“Incompetence” means the lack of possession of, and the*
16 *failure to exercise that degree of learning, skill, care, and*
17 *experience ordinarily possessed by, a responsible licensee.*

18 (3) *“Willful” means a knowing and intentional violation of a*
19 *known legal duty.*

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

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

26 (h) *The board shall investigate the circumstances underlying*
27 *any report received pursuant to this section within 30 days to*
28 *determine if an interim suspension order or temporary restraining*
29 *order should be issued. The board shall otherwise provide timely*
30 *disposition of the reports received pursuant to this section.*

31 (i) *The board shall send to the licentiate a copy of the report*
32 *along with the reasons for the filing of the report and notice*
33 *advising the licentiate of his or her right to submit additional*
34 *statements or other information to the board.*

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

38 (k) *No report is required under this section where a report of*
39 *the action taken is already required under Section 805.*

1 SEC. 165. Section 4888.6 is added to the Business and
2 Professions Code, to read:

3 4888.6. Unless otherwise provided, on or after July 1, 2013,
4 the board shall post on its Internet Web site the following
5 information, including the name and license number, in its
6 possession, custody, or control regarding every licensee for which
7 the board licenses:

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

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

18 (c) Any felony conviction of a licensee reported to the board.

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

25 (e) Any malpractice judgment or arbitration award imposed
26 against a licensee and reported to the board.

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

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

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

39 (i) The information provided on the Internet shall be in
40 accordance with the California Public Records Act (Chapter 3.5

1 (commencing with Section 6250) of Division 7 of Title 1 of the
2 Government Code) and the Information Practices Act of 1977
3 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
4 of Division 3 of the Civil Code) and shall comply with the
5 Department of Consumer Affairs Guidelines for Access to Public
6 Records.

7 (j) Information provided on the Internet may not include
8 personal information, unless otherwise provided pursuant to this
9 chapter, including the home telephone number, date of birth, or
10 social security number. The information may not include the
11 licensee's address, but may include the city and county of the
12 licensee's address of record.

13 SEC. 166. Section 4888.7 is added to the Business and
14 Professions Code, to read:

15 4888.7. (a) Unless otherwise provided, if a licensee possesses
16 a license or is otherwise authorized to practice in any state other
17 than California or by any agency of the federal government and
18 that license or authority is suspended or revoked outright, the
19 California license of the licensee shall be suspended automatically
20 for the duration of the suspension or revocation, unless terminated
21 or rescinded as provided in subdivision (c). The board shall notify
22 the licensee of the license suspension and of his or her right to
23 have the issue of penalty heard as provided in this section.

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

29 (c) The issue of penalty shall be heard by an administrative law
30 judge sitting alone or with a panel of the board, in the discretion
31 of the board. A licensee may request a hearing on the penalty and
32 that hearing shall be held within 90 days from the date of the
33 request. If the order suspending or revoking the license or authority
34 to practice is overturned on appeal, any discipline ordered
35 pursuant to this section shall automatically cease. Upon a showing
36 to the administrative law judge or panel by the licensee that the
37 out-of-state action is not a basis for discipline in California, the
38 suspension shall be rescinded. If an accusation for permanent
39 discipline is not filed within 90 days of the suspension imposed

1 pursuant to this section, the suspension shall automatically
2 terminate.

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

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

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

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

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

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

31 SEC. 167. Section 4964.1 is added to the Business and
32 Professions Code, to read:

33 4964.1. (a) The board may delegate to its executive officer the
34 authority to adopt a proposed default decision where an
35 administrative action to revoke a license has been filed and the
36 licensee has failed to file a notice of defense or to appear at the
37 hearing and a proposed default decision revoking the license has
38 been issued.

39 (b) The board may delegate to its executive officer the authority
40 to adopt a proposed settlement agreement where an administrative

1 *action to revoke a license has been filed by the board and the*
2 *licensee has agreed to the revocation or surrender of his or her*
3 *license.*

4 *(c) The executive officer shall, at scheduled board meetings,*
5 *report to the board the number of proposed default decisions or*
6 *proposed settlement agreements adopted pursuant to this section.*

7 *SEC. 168. Section 4964.2 is added to the Business and*
8 *Professions Code, to read:*

9 *4964.2. (a) Notwithstanding Section 11415.60 of the*
10 *Government Code, the board may enter into a settlement with a*
11 *licensee or applicant in lieu of the issuance of an accusation or*
12 *statement of issues against that licensee or applicant, as applicable.*

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

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

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

26 *(e) The executive officer shall, at scheduled board meetings,*
27 *report to the board the number of proposed settlement agreements*
28 *adopted pursuant to this section.*

29 *SEC. 169. Section 4964.3 is added to the Business and*
30 *Professions Code, to read:*

31 *4964.3. (a) The license of a licensee shall be suspended*
32 *automatically during any time that the licensee is incarcerated*
33 *after conviction of a felony, regardless of whether the conviction*
34 *has been appealed. The board shall, immediately upon receipt of*
35 *the certified copy of the record of conviction, determine whether*
36 *the license of the licensee has been automatically suspended by*
37 *virtue of his or her incarceration, and if so, the duration of that*
38 *suspension. The board shall notify the licensee in writing of the*
39 *license suspension and of his or her right to elect to have the issue*
40 *of penalty heard as provided in subdivision (d).*

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

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

21 (d) (1) Discipline may be ordered against a licensee in
22 accordance with the statutes and regulations of the board when
23 the time for appeal has elapsed, the judgment of conviction has
24 been affirmed on appeal, or an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent
26 order under Section 1203.4 of the Penal Code allowing the person
27 to withdraw his or her plea of guilty and to enter a plea of not
28 guilty, setting aside the verdict of guilty, or dismissing the
29 accusation, complaint, information, or indictment.

30 (2) The issue of penalty shall be heard by an administrative law
31 judge from the Office of Administrative Hearings. The hearing
32 shall not be had until the judgment of conviction has become final
33 or, irrespective of a subsequent order under Section 1203.4 of the
34 Penal Code, an order granting probation has been made
35 suspending the imposition of sentence; except that a licensee may,
36 at his or her option, elect to have the issue of penalty decided
37 before those time periods have elapsed. Where the licensee so
38 elects, the issue of penalty shall be heard in the manner described
39 in subdivision (b) at the hearing to determine whether the
40 conviction was substantially related to the qualifications, functions,

1 or duties of a licensee. If the conviction of a licensee who has made
2 this election is overturned on appeal, any discipline ordered
3 pursuant to this section shall automatically cease. Nothing in this
4 subdivision shall prohibit the board from pursuing disciplinary
5 action based on any cause other than the overturned conviction.

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

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

12 SEC. 170. Section 4964.4 is added to the Business and
13 Professions Code, to read:

14 4964.4. (a) Except as otherwise provided, any proposed
15 decision or decision issued in accordance with the procedures set
16 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, that contains any
18 finding of fact that the licensee engaged in any act of sexual contact
19 with a patient, as defined in subdivision (c) of Section 729, or any
20 finding that the licensee has committed a sex offense, shall contain
21 an order revoking the license. The proposed decision shall not
22 contain any order staying the revocation of the licensee.

23 (b) As used in this section, the term sex offense shall mean any
24 of the following:

25 (1) Any offense for which registration is required by Section
26 290 of the Penal Code or a finding that a person committed such
27 an act.

28 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
29 or 647(a) or (d) of the Penal Code or a finding that a person
30 committed such an act.

31 (3) Any attempt to commit any of the offenses specified in this
32 section.

33 (4) Any offense committed or attempted in any other state or
34 against the laws of the United States which, if committed or
35 attempted in this state, would have been punishable as one or more
36 of the offenses specified in this section.

37 SEC. 171. Section 4964.55 is added to the Business and
38 Professions Code, to read:

39 4964.55. (a) Except as otherwise provided, with regard to an
40 individual who is required to register as a sex offender pursuant

1 to Section 290 of the Penal Code, or the equivalent in another
2 state or territory, under military law, or under federal law, the
3 board shall be subject to the following requirements:

4 (1) The board shall deny an application by the individual for
5 licensure in accordance with the procedures set forth in Chapter
6 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code.

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

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

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

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

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

30 (3) Any administrative adjudication proceeding under Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code that is fully adjudicated prior to January
33 1, 2008. A petition for reinstatement of a revoked or surrendered
34 license shall be considered a new proceeding for purposes of this
35 paragraph, and the prohibition against reinstating a license to an
36 individual who is required to register as a sex offender shall be
37 applicable.

38 SEC. 172. Section 4964.6 is added to the Business and
39 Professions Code, to read:

1 4964.6. (a) Notwithstanding any other provision of law making
2 a communication between a licensee and his or her patients a
3 privileged communication, those provisions shall not apply to
4 investigations or proceedings conducted by the board. Members
5 of the board, deputies, employees, agents, the office of the Attorney
6 General, and representatives of the board shall keep in confidence
7 during the course of investigations the names of any patients whose
8 records are reviewed and may not disclose or reveal those names,
9 except as is necessary during the course of an investigation, unless
10 and until proceedings are instituted. The authority under this
11 subdivision to examine records of patients in the office of a licensee
12 is limited to records of patients who have complained to the board
13 about that licensee.

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

22 (1) Any document relevant to an investigation may be inspected,
23 and copies may be obtained, where a patient provides written
24 authorization.

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

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

34 (d) Where certified documents are lawfully requested from
35 licensees in accordance with this section by the Attorney General
36 or his or her agents or deputies, or investigators of any board, the
37 documents shall be provided within 10 business days of receipt of
38 the request, unless the licensee is unable to provide the certified
39 documents within this time period for good cause, including, but
40 not limited to, physical inability to access the records in the time

1 allowed due to illness or travel. Failure to produce requested
2 certified documents or copies thereof, after being informed of the
3 required deadline, shall constitute unprofessional conduct. A board
4 may use its authority to cite and fine a licensee for any violation
5 of this section. This remedy is in addition to any other authority
6 of the healing arts board to sanction a licensee for a delay in
7 producing requested records.

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

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

16 (g) This section shall not apply to a licensee who does not have
17 access to, and control over, certified medical records or other
18 types of documents that belong to or are controlled by a health
19 facility or clinic.

20 SEC. 173. Section 4964.7 is added to the Business and
21 Professions Code, to read:

22 4964.7. (a) (1) Notwithstanding any other provision of law,
23 a licensee who fails or refuses to comply with a request for the
24 certified medical records of a patient that is accompanied by that
25 patient's written authorization for release of records to a board
26 together with a notice citing this section and describing the
27 penalties for failure to comply with this section shall be required
28 to pay to the board a civil penalty of up to one thousand dollars
29 (\$1,000) per day for each day that the documents have not been
30 produced after the 15th day, up to ten thousand dollars (\$10,000),
31 unless the licensee is unable to provide the documents within this
32 time period for good cause.

33 (2) A health care facility shall comply with a request for the
34 certified medical records of a patient that is accompanied by that
35 patient's written authorization for release of records to a board
36 together with a notice citing this section and describing the
37 penalties for failure to comply with this section. Failure to provide
38 the authorizing patient's certified medical records to the board
39 within 15 days of receiving the request, authorization, and notice
40 shall subject the health care facility to a civil penalty, payable to

1 *the healing arts board, of up to one thousand dollars (\$1,000) per*
2 *day for each day that the documents have not been produced after*
3 *the 15th day, up to ten thousand dollars (\$10,000), unless the*
4 *health care facility is unable to provide the documents within this*
5 *time period for good cause. This paragraph shall not require health*
6 *care facilities to assist the board in obtaining the patient's*
7 *authorization. The board shall pay the reasonable costs of copying*
8 *the certified medical records, but shall not be required to make*
9 *that payment prior to the production of the medical records.*

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

21 *(2) Any licensee who fails or refuses to comply with a court*
22 *order, issued in the enforcement of a subpoena, mandating the*
23 *release of records to a board is guilty of a misdemeanor punishable*
24 *by a fine payable to the board not to exceed five thousand dollars*
25 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
26 *it is not paid by the next succeeding renewal date. Any statute of*
27 *limitations applicable to the filing of an accusation by the board*
28 *shall be tolled during the period the licensee is out of compliance*
29 *with the court order and during any related appeals.*

30 *(3) A health care facility that fails or refuses to comply with a*
31 *court order, issued in the enforcement of a subpoena, mandating*
32 *the release of patient records to the board, that is accompanied*
33 *by a notice citing this section and describing the penalties for*
34 *failure to comply with this section, shall pay to the board a civil*
35 *penalty of up to one thousand dollars (\$1,000) per day for each*
36 *day that the documents have not been produced, up to ten thousand*
37 *dollars (\$10,000), after the date by which the court order requires*
38 *the documents to be produced, unless it is determined that the*
39 *order is unlawful or invalid. Any statute of limitations applicable*
40 *to the filing of an accusation by the board against a licensee shall*

1 *be tolled during the period the health care facility is out of*
2 *compliance with the court order and during any related appeals.*

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

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

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

25 (e) *Imposition of the civil penalties authorized by this section*
26 *shall be in accordance with the Administrative Procedure Act*
27 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
28 *2 of the Government Code). Any civil penalties paid to, or received*
29 *by, the board pursuant to this section shall be deposited into the*
30 *fund administered by the board.*

31 (f) *For purposes of this section, “certified medical records”*
32 *means a copy of the patient’s medical records authenticated by*
33 *the licensee or health care facility, as appropriate, on a form*
34 *prescribed by the licensee’s board.*

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

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

1 (i) This section shall not apply to a licensee who does not have
2 access to, or control over, certified medical records or other types
3 of documents that belong to or are controlled by a health facility
4 or clinic.

5 SEC. 174. Section 4964.8 is added to the Business and
6 Professions Code, to read:

7 4964.8. (a) Notwithstanding any other provision of law, any
8 employer of a licensee shall report to the board the suspension or
9 termination for cause, or any resignation in lieu of suspension or
10 termination for cause, of any licensee in its employ within 15
11 business days. The report shall not be made until after the
12 conclusion of the review process specified in Section 52.3 of Title
13 2 of the California Code of Regulations and *Skelly v. State*
14 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
15 required reporting shall not constitute a waiver of confidentiality
16 of medical records. The information reported or disclosed shall
17 be kept confidential except as provided in subdivision (c) of Section
18 800 and shall not be subject to discovery in civil cases.

19 (b) The information to be reported by the employer shall include
20 the name and license number of the licensee involved, a
21 description of the facts and circumstances of the suspension or
22 termination for cause, any resignation in lieu of suspension or
23 termination for cause, and any other relevant information deemed
24 appropriate by the employer.

25 (c) The board shall be entitled to inspect and copy the following
26 documents in the record for any suspension or termination for
27 cause, or any resignation in lieu of suspension or termination for
28 cause, resulting in action that is required to be reported pursuant
29 to this section:

30 (1) Any statement for suspension or termination of the licensee.

31 (2) Any document or exhibits relevant to the suspension or
32 termination.

33 (d) If, during the investigation by the board of the cause for the
34 termination or suspension or resignation of the licensee, it is found
35 that there has been a violation of existing state or federal law, the
36 board shall report the violation to the appropriate agency.

37 (e) For purposes of this section, “suspension or termination for
38 cause” or “resignation in lieu of suspension or termination for
39 cause” is defined as resignation, suspension, or termination from
40 employment for any of the following reasons:

- 1 (1) *Use of controlled substances or alcohol to the extent that it*
2 *impairs the licensee’s ability to safely practice.*
- 3 (2) *Unlawful sale of a controlled substance or other prescription*
4 *items.*
- 5 (3) *Patient or client abuse, neglect, physical harm, or sexual*
6 *contact with a patient or client.*
- 7 (4) *Gross negligence or incompetence.*
- 8 (5) *Theft from a patient or client, any other employee, or the*
9 *employer.*
- 10 (f) *As used in this section, the following definitions apply:*
- 11 (1) *“Gross negligence” means a substantial departure from the*
12 *standard of care, which, under similar circumstances, would have*
13 *ordinarily been exercised by a competent licensee, and which has*
14 *or could have resulted in harm to the consumer. An exercise of so*
15 *slight a degree of care as to justify the belief that there was a*
16 *conscious disregard or indifference for the health, safety, or*
17 *welfare of the consumer shall be considered a substantial departure*
18 *from the standard of care.*
- 19 (2) *“Incompetence” means the lack of possession of, and the*
20 *failure to exercise that degree of learning, skill, care, and*
21 *experience ordinarily possessed by, a responsible licensee.*
- 22 (3) *“Willful” means a knowing and intentional violation of a*
23 *known legal duty.*
- 24 (g) (1) *Willful failure of an employer to make a report required*
25 *by this section is punishable by an administrative fine not to exceed*
26 *one hundred thousand dollars (\$100,000) per violation.*
- 27 (2) *Any failure of an employer, other than willful failure, to*
28 *make a report required by this section is punishable by an*
29 *administrative fine not to exceed fifty thousand dollars (\$50,000).*
- 30 (h) *The board shall investigate the circumstances underlying*
31 *any report received pursuant to this section within 30 days to*
32 *determine if an interim suspension order or temporary restraining*
33 *order should be issued. The board shall otherwise provide timely*
34 *disposition of the reports received pursuant to this section.*
- 35 (i) *The board shall send to the licentiate a copy of the report*
36 *along with the reasons for the filing of the report and notice*
37 *advising the licentiate of his or her right to submit additional*
38 *statements or other information to the board.*

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

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

6 SEC. 175. Section 4964.9 is added to the Business and
7 Professions Code, to read:

8 4964.9. Unless otherwise provided, on or after July 1, 2013,
9 the board shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the board licenses:

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

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

23 (c) Any felony conviction of a licensee reported to the board.

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

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the board.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 4964.7 or 805.

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

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 *what types of information are not disclosed. These disclaimers*
2 *and statements shall be developed by the board and shall be*
3 *adopted by regulation.*

4 *(i) The information provided on the Internet shall be in*
5 *accordance with the California Public Records Act (Chapter 3.5*
6 *(commencing with Section 6250) of Division 7 of Title 1 of the*
7 *Government Code) and the Information Practices Act of 1977*
8 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
9 *of Division 3 of the Civil Code) and shall comply with the*
10 *Department of Consumer Affairs Guidelines for Access to Public*
11 *Records.*

12 *(j) Information provided on the Internet may not include*
13 *personal information, unless otherwise provided pursuant to this*
14 *chapter, including the home telephone number, date of birth, or*
15 *social security number. The information may not include the*
16 *licensee's address, but may include the city and county of the*
17 *licensee's address of record.*

18 *SEC. 176. Section 4964.10 is added to the Business and*
19 *Professions Code, to read:*

20 *4964.10. (a) Unless otherwise provided, if a licensee possesses*
21 *a license or is otherwise authorized to practice in any state other*
22 *than California or by any agency of the federal government and*
23 *that license or authority is suspended or revoked outright, the*
24 *California license of the licensee shall be suspended automatically*
25 *for the duration of the suspension or revocation, unless terminated*
26 *or rescinded as provided in subdivision (c). The board shall notify*
27 *the licensee of the license suspension and of his or her right to*
28 *have the issue of penalty heard as provided in this section.*

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

34 *(c) The issue of penalty shall be heard by an administrative law*
35 *judge sitting alone or with a panel of the board, in the discretion*
36 *of the board. A licensee may request a hearing on the penalty and*
37 *that hearing shall be held within 90 days from the date of the*
38 *request. If the order suspending or revoking the license or authority*
39 *to practice is overturned on appeal, any discipline ordered*
40 *pursuant to this section shall automatically cease. Upon a showing*

1 to the administrative law judge or panel by the licensee that the
2 out-of-state action is not a basis for discipline in California, the
3 suspension shall be rescinded. If an accusation for permanent
4 discipline is not filed within 90 days of the suspension imposed
5 pursuant to this section, the suspension shall automatically
6 terminate.

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

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

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

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

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

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

35 SEC. 177. Section 4982.26 of the Business and Professions
36 Code is amended to read:

37 4982.26. (a) The board shall revoke any license issued under
38 this chapter upon a decision made in accordance with the
39 procedures set forth in Chapter 5 (commencing with Section 11500)
40 of Part 1 of Division 3 of Title 2 of the Government Code, that

1 contains any finding of fact that the licensee or registrant engaged
2 in any act of sexual contact, as defined in Section 729, when that
3 act is with a patient, or with a former patient when the relationship
4 was terminated primarily for the purpose of engaging in that act.
5 The revocation shall not be stayed by the administrative law judge
6 or the board.

7 *(b) Except as otherwise provided, any proposed decision or*
8 *decision issued under this chapter in accordance with the*
9 *procedures set forth in Chapter 5 (commencing with Section 11500)*
10 *of Part 1 of Division 3 of Title 2 of the Government Code, that*
11 *contains any finding of fact that the licensee has committed a sex*
12 *offense, shall contain an order revoking the license. The proposed*
13 *decision or decision shall not contain any order staying the*
14 *revocation of the licensee.*

15 *(c) As used in this section, the term sex offense shall mean any*
16 *of the following:*

17 *(1) Any offense for which registration is required by Section*
18 *290 of the Penal Code or a finding that a person committed such*
19 *an act.*

20 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
21 *or 647(a) or (d) of the Penal Code or a finding that a person*
22 *committed such an act.*

23 *(3) Any attempt to commit any of the offenses specified in this*
24 *section.*

25 *(4) Any offense committed or attempted in any other state or*
26 *against the laws of the United States which, if committed or*
27 *attempted in this state, would have been punishable as one or more*
28 *of the offenses specified in this section.*

29 *SEC. 178. Section 4990.44 is added to the Business and*
30 *Professions Code, to read:*

31 *4990.44. (a) The board may delegate to its executive officer*
32 *the authority to adopt a proposed default decision where an*
33 *administrative action to revoke a license has been filed and the*
34 *licensee has failed to file a notice of defense or to appear at the*
35 *hearing and a proposed default decision revoking the license has*
36 *been issued.*

37 *(b) The board may delegate to its executive officer the authority*
38 *to adopt a proposed settlement agreement where an administrative*
39 *action to revoke a license has been filed by the board and the*

1 licensee has agreed to the revocation or surrender of his or her
2 license.

3 (c) The executive officer shall, at scheduled board meetings,
4 report to the board the number of proposed default decisions or
5 proposed settlement agreements adopted pursuant to this section.

6 SEC. 179. Section 4990.45 is added to the Business and
7 Professions Code, to read:

8 4990.45. (a) Notwithstanding Section 11415.60 of the
9 Government Code, the board may enter into a settlement with a
10 licensee or applicant in lieu of the issuance of an accusation or
11 statement of issues against that licensee or applicant, as applicable.

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

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

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

25 (e) The executive officer shall, at scheduled board meetings,
26 report to the board the number of proposed settlement agreements
27 adopted pursuant to this section.

28 SEC. 180. Section 4990.46 is added to the Business and
29 Professions Code, to read:

30 4990.46. (a) The license of a licensee shall be suspended
31 automatically during any time that the licensee is incarcerated
32 after conviction of a felony, regardless of whether the conviction
33 has been appealed. The board shall, immediately upon receipt of
34 the certified copy of the record of conviction, determine whether
35 the license of the licensee has been automatically suspended by
36 virtue of his or her incarceration, and if so, the duration of that
37 suspension. The board shall notify the licensee in writing of the
38 license suspension and of his or her right to elect to have the issue
39 of penalty heard as provided in subdivision (d).

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

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

21 **(d)** (1) Discipline may be ordered against a licensee in
22 accordance with the statutes and regulations of the board when
23 the time for appeal has elapsed, the judgment of conviction has
24 been affirmed on appeal, or an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent
26 order under Section 1203.4 of the Penal Code allowing the person
27 to withdraw his or her plea of guilty and to enter a plea of not
28 guilty, setting aside the verdict of guilty, or dismissing the
29 accusation, complaint, information, or indictment.

30 (2) The issue of penalty shall be heard by an administrative law
31 judge from the Office of Administrative Hearings. The hearing
32 shall not be had until the judgment of conviction has become final
33 or, irrespective of a subsequent order under Section 1203.4 of the
34 Penal Code, an order granting probation has been made
35 suspending the imposition of sentence; except that a licensee may,
36 at his or her option, elect to have the issue of penalty decided
37 before those time periods have elapsed. Where the licensee so
38 elects, the issue of penalty shall be heard in the manner described
39 in subdivision (b) at the hearing to determine whether the
40 conviction was substantially related to the qualifications, functions,

1 or duties of a licensee. If the conviction of a licensee who has made
2 this election is overturned on appeal, any discipline ordered
3 pursuant to this section shall automatically cease. Nothing in this
4 subdivision shall prohibit the board from pursuing disciplinary
5 action based on any cause other than the overturned conviction.

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

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

12 SEC. 181. Section 4990.47 is added to the Business and
13 Professions Code, to read:

14 4990.47. (a) Except as otherwise provided, any proposed
15 decision or decision issued in accordance with the procedures set
16 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, that contains any
18 finding of fact that the licensee engaged in any act of sexual contact
19 with a patient, as defined in subdivision (c) of Section 729, or any
20 finding that the licensee has committed a sex offense, shall contain
21 an order revoking the license. The proposed decision shall not
22 contain any order staying the revocation of the licensee.

23 (b) As used in this section, the term sex offense shall mean any
24 of the following:

25 (1) Any offense for which registration is required by Section
26 290 of the Penal Code or a finding that a person committed such
27 an act.

28 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
29 or 647(a) or (d) of the Penal Code or a finding that a person
30 committed such an act.

31 (3) Any attempt to commit any of the offenses specified in this
32 section.

33 (4) Any offense committed or attempted in any other state or
34 against the laws of the United States which, if committed or
35 attempted in this state, would have been punishable as one or more
36 of the offenses specified in this section.

37 SEC. 182. Section 4990.48 is added to the Business and
38 Professions Code, to read:

39 4990.48. (a) Except as otherwise provided, with regard to an
40 individual who is required to register as a sex offender pursuant

1 to Section 290 of the Penal Code, or the equivalent in another
2 state or territory, under military law, or under federal law, the
3 board shall be subject to the following requirements:

4 (1) The board shall deny an application by the individual for
5 licensure in accordance with the procedures set forth in Chapter
6 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code.

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

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

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

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

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

30 (3) Any administrative adjudication proceeding under Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code that is fully adjudicated prior to January
33 1, 2008. A petition for reinstatement of a revoked or surrendered
34 license shall be considered a new proceeding for purposes of this
35 paragraph, and the prohibition against reinstating a license to an
36 individual who is required to register as a sex offender shall be
37 applicable.

38 SEC. 183. Section 4990.49 is added to the Business and
39 Professions Code, to read:

1 4990.49. (a) Notwithstanding any other provision of law
2 making a communication between a licensee and his or her patients
3 a privileged communication, those provisions shall not apply to
4 investigations or proceedings conducted by the board. Members
5 of the board, deputies, employees, agents, the office of the Attorney
6 General, and representatives of the board shall keep in confidence
7 during the course of investigations the names of any patients whose
8 records are reviewed and may not disclose or reveal those names,
9 except as is necessary during the course of an investigation, unless
10 and until proceedings are instituted. The authority under this
11 subdivision to examine records of patients in the office of a licensee
12 is limited to records of patients who have complained to the board
13 about that licensee.

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

22 (1) Any document relevant to an investigation may be inspected,
23 and copies may be obtained, where a patient provides written
24 authorization.

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

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

34 (d) Where certified documents are lawfully requested from
35 licensees in accordance with this section by the Attorney General
36 or his or her agents or deputies, or investigators of any board, the
37 documents shall be provided within 10 business days of receipt of
38 the request, unless the licensee is unable to provide the certified
39 documents within this time period for good cause, including, but
40 not limited to, physical inability to access the records in the time

1 allowed due to illness or travel. Failure to produce requested
2 certified documents or copies thereof, after being informed of the
3 required deadline, shall constitute unprofessional conduct. A board
4 may use its authority to cite and fine a licensee for any violation
5 of this section. This remedy is in addition to any other authority
6 of the board to sanction a licensee for a delay in producing
7 requested records.

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

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

16 (g) This section shall not apply to a licensee who does not have
17 access to, and control over, certified medical records or other
18 types of documents that belong to or are controlled by a health
19 facility or clinic.

20 SEC. 184. Section 4990.50 is added to the Business and
21 Professions Code, to read:

22 4990.50. (a) (1) Notwithstanding any other provision of law,
23 a licensee who fails or refuses to comply with a request for the
24 certified medical records of a patient that is accompanied by that
25 patient's written authorization for release of records to a board
26 together with a notice citing this section and describing the
27 penalties for failure to comply with this section shall be required
28 to pay to the board a civil penalty of up to one thousand dollars
29 (\$1,000) per day for each day that the documents have not been
30 produced after the 15th day, up to ten thousand dollars (\$10,000),
31 unless the licensee is unable to provide the documents within this
32 time period for good cause.

33 (2) A health care facility shall comply with a request for the
34 certified medical records of a patient that is accompanied by that
35 patient's written authorization for release of records to a board
36 together with a notice citing this section and describing the
37 penalties for failure to comply with this section. Failure to provide
38 the authorizing patient's certified medical records to the board
39 within 15 days of receiving the request, authorization, and notice
40 shall subject the health care facility to a civil penalty, payable to

1 *the board, of up to one thousand dollars (\$1,000) per day for each*
2 *day that the documents have not been produced after the 15th day,*
3 *up to ten thousand dollars (\$10,000), unless the health care facility*
4 *is unable to provide the documents within this time period for good*
5 *cause. This paragraph shall not require health care facilities to*
6 *assist the board in obtaining the patient's authorization. The board*
7 *shall pay the reasonable costs of copying the certified medical*
8 *records, but shall not be required to make that payment prior to*
9 *the production of the medical records.*

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

21 *(2) Any licensee who fails or refuses to comply with a court*
22 *order, issued in the enforcement of a subpoena, mandating the*
23 *release of records to a board is guilty of a misdemeanor punishable*
24 *by a fine payable to the board not to exceed five thousand dollars*
25 *(\$5,000). The fine shall be added to the licensee's renewal fee if*
26 *it is not paid by the next succeeding renewal date. Any statute of*
27 *limitations applicable to the filing of an accusation by the board*
28 *shall be tolled during the period the licensee is out of compliance*
29 *with the court order and during any related appeals.*

30 *(3) A health care facility that fails or refuses to comply with a*
31 *court order, issued in the enforcement of a subpoena, mandating*
32 *the release of patient records to the board, that is accompanied*
33 *by a notice citing this section and describing the penalties for*
34 *failure to comply with this section, shall pay to the board a civil*
35 *penalty of up to one thousand dollars (\$1,000) per day for each*
36 *day that the documents have not been produced, up to ten thousand*
37 *dollars (\$10,000), after the date by which the court order requires*
38 *the documents to be produced, unless it is determined that the*
39 *order is unlawful or invalid. Any statute of limitations applicable*
40 *to the filing of an accusation by the board against a licensee shall*

1 *be tolled during the period the health care facility is out of*
2 *compliance with the court order and during any related appeals.*

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

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

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

27 (e) *Imposition of the civil penalties authorized by this section*
28 *shall be in accordance with the Administrative Procedure Act*
29 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
30 *2 of the Government Code). Any civil penalties paid to, or received*
31 *by, the board pursuant to this section shall be deposited into the*
32 *fund administered by the board.*

33 (f) *For purposes of this section, “certified medical records”*
34 *means a copy of the patient’s medical records authenticated by*
35 *the licensee or health care facility, as appropriate, on a form*
36 *prescribed by the licensee’s board.*

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

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

3 (i) This section shall not apply to a licensee who does not have
4 access to, or control over, certified medical records or other types
5 of documents that belong to or are controlled by a health facility
6 or clinic.

7 SEC. 185. Section 4990.51 is added to the Business and
8 Professions Code, to read:

9 4990.51. (a) Notwithstanding any other provision of law, any
10 employer of a licensee shall report to the board the suspension or
11 termination for cause, or any resignation in lieu of suspension or
12 termination for cause, of any licensee in its employ within 15
13 business days. The report shall not be made until after the
14 conclusion of the review process specified in Section 52.3 of Title
15 2 of the California Code of Regulations and *Skelly v. State*
16 *Personnel Bd. (1975) 15 Cal.3d 194*, for public employees. This
17 required reporting shall not constitute a waiver of confidentiality
18 of medical records. The information reported or disclosed shall
19 be kept confidential except as provided in subdivision (c) of Section
20 800 and shall not be subject to discovery in civil cases.

21 (b) The information to be reported by the employer shall include
22 the name and license number of the licensee involved, a
23 description of the facts and circumstances of the suspension or
24 termination for cause, any resignation in lieu of suspension or
25 termination for cause, and any other relevant information deemed
26 appropriate by the employer.

27 (c) The board shall be entitled to inspect and copy the following
28 documents in the record for any suspension or termination for
29 cause, or any resignation in lieu of suspension or termination for
30 cause, resulting in action that is required to be reported pursuant
31 to this section:

32 (1) Any statement for suspension or termination of the licensee.

33 (2) Any document or exhibits relevant to the suspension or
34 termination.

35 (d) If, during the investigation by the board of the cause for the
36 termination or suspension or resignation of the licensee, it is found
37 that there has been a violation of existing state or federal law, the
38 board shall report the violation to the appropriate agency.

39 (e) For purposes of this section, "suspension or termination for
40 cause" or "resignation in lieu of suspension or termination for

1 *cause*” is defined as resignation, suspension, or termination from
2 *employment for any of the following reasons:*

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

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

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

9 (4) *Gross negligence or incompetence.*

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

12 (f) *As used in this section, the following definitions apply:*

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

21 (2) *“Incompetence” means the lack of possession of, and the*
22 *failure to exercise that degree of learning, skill, care, and*
23 *experience ordinarily possessed by, a responsible licensee.*

24 (3) *“Willful” means a knowing and intentional violation of a*
25 *known legal duty.*

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

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

32 (h) *The board shall investigate the circumstances underlying*
33 *any report received pursuant to this section within 30 days to*
34 *determine if an interim suspension order or temporary restraining*
35 *order should be issued. The board shall otherwise provide timely*
36 *disposition of the reports received pursuant to this section.*

37 (i) *The board shall send to the licentiate a copy of the report*
38 *along with the reasons for the filing of the report and notice*
39 *advising the licentiate of his or her right to submit additional*
40 *statements or other information to the board.*

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

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

6 SEC. 186. Section 4990.52 is added to the Business and
7 Professions Code, to read:

8 4990.52. Unless otherwise provided, on or after July 1, 2013,
9 the board shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the board licenses:

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

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

23 (c) Any felony conviction of a licensee reported to the board.

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

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the board.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 4990.50 or 805.

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

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 *what types of information are not disclosed. These disclaimers*
2 *and statements shall be developed by the board and shall be*
3 *adopted by regulation.*

4 *(i) The information provided on the Internet shall be in*
5 *accordance with the California Public Records Act (Chapter 3.5*
6 *(commencing with Section 6250) of Division 7 of Title 1 of the*
7 *Government Code) and the Information Practices Act of 1977*
8 *(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4*
9 *of Division 3 of the Civil Code) and shall comply with the*
10 *Department of Consumer Affairs Guidelines for Access to Public*
11 *Records.*

12 *(j) Information provided on the Internet may not include*
13 *personal information, unless otherwise provided pursuant to this*
14 *chapter, including the home telephone number, date of birth, or*
15 *social security number. The information may not include the*
16 *licensee's address, but may include the city and county of the*
17 *licensee's address of record.*

18 *SEC. 187. Section 4990.53 is added to the Business and*
19 *Professions Code, to read:*

20 *4990.53. (a) Unless otherwise provided, if a licensee possesses*
21 *a license or is otherwise authorized to practice in any state other*
22 *than California or by any agency of the federal government and*
23 *that license or authority is suspended or revoked outright, the*
24 *California license of the licensee shall be suspended automatically*
25 *for the duration of the suspension or revocation, unless terminated*
26 *or rescinded as provided in subdivision (c). The board shall notify*
27 *the licensee of the license suspension and of his or her right to*
28 *have the issue of penalty heard as provided in this section.*

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

34 *(c) The issue of penalty shall be heard by an administrative law*
35 *judge sitting alone or with a panel of the board, in the discretion*
36 *of the board. A licensee may request a hearing on the penalty and*
37 *that hearing shall be held within 90 days from the date of the*
38 *request. If the order suspending or revoking the license or authority*
39 *to practice is overturned on appeal, any discipline ordered*
40 *pursuant to this section shall automatically cease. Upon a showing*

1 to the administrative law judge or panel by the licensee that the
2 out-of-state action is not a basis for discipline in California, the
3 suspension shall be rescinded. If an accusation for permanent
4 discipline is not filed within 90 days of the suspension imposed
5 pursuant to this section, the suspension shall automatically
6 terminate.

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

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

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

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

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

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

35 SEC. 188. Section 4992.33 of the Business and Professions
36 Code is amended to read:

37 4992.33. (a) The board shall revoke any license issued under
38 this chapter upon a decision made in accordance with the
39 procedures set forth in Chapter 5 (commencing with Section 11500)
40 of Part 1 of Division 3 of Title 2 of the Government Code, that

1 contains any finding of fact that the licensee or registrant engaged
2 in any act of sexual contact, as defined in Section 729, when that
3 act is with a patient, or with a former patient when the relationship
4 was terminated primarily for the purpose of engaging in that act.
5 The revocation shall not be stayed by the administrative law judge
6 or the board.

7 *(b) Except as otherwise provided, any proposed decision or*
8 *decision issued under this chapter in accordance with the*
9 *procedures set forth in Chapter 5 (commencing with Section 11500)*
10 *of Part 1 of Division 3 of Title 2 of the Government Code, that*
11 *contains any finding of fact that the licensee has committed a sex*
12 *offense, shall contain an order revoking the license. The proposed*
13 *decision or decision shall not contain any order staying the*
14 *revocation of the licensee.*

15 *(c) As used in this section, the term sex offense shall mean any*
16 *of the following:*

17 *(1) Any offense for which registration is required by Section*
18 *290 of the Penal Code or a finding that a person committed such*
19 *an act.*

20 *(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
21 *or 647(a) or (d) of the Penal Code or a finding that a person*
22 *committed such an act.*

23 *(3) Any attempt to commit any of the offenses specified in this*
24 *section.*

25 *(4) Any offense committed or attempted in any other state or*
26 *against the laws of the United States which, if committed or*
27 *attempted in this state, would have been punishable as one or more*
28 *of the offenses specified in this section.*

29 *SEC. 189. Section 12529.8 is added to the Government Code,*
30 *to read:*

31 *12529.8. (a) Any healing arts board described in Division 2*
32 *(commencing with Section 500) of, the Business and Professions*
33 *Code may utilize the model prescribed in Sections 12529 to*
34 *12529.6, inclusive, for the investigation and prosecution of some*
35 *or all of its enforcement actions and may utilize the services of the*
36 *Department of Justice Health Quality Enforcement Section or the*
37 *licensing section. If a board elects to proceed pursuant to this*
38 *section and utilizes the services of the licensing section, the*
39 *Department of Justice shall assign attorneys to work on location*

1 at the licensing unit of the Division of Investigation of the
2 Department of Consumer Affairs.

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

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

8 SEC. 190. (a) It is the intent of the Legislature that the
9 Department of Consumer Affairs shall, on or before December
10 31, 2012, establish an enterprise information technology system
11 necessary to electronically create and update healing arts license
12 information, track enforcement cases, and allocate enforcement
13 efforts pertaining to healing arts licensees. The Legislature intends
14 the system to be designed as an integrated system to support all
15 business automation requirements of the department's licensing
16 and enforcement functions.

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

21 SEC. 191. No reimbursement is required by this act pursuant
22 to Section 6 of Article XIII B of the California Constitution for
23 certain costs that may be incurred by a local agency or school
24 district because, in that regard, this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 However, if the Commission on State Mandates determines that
31 this act contains other costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

35 ~~SECTION 1. Section 1623 is added to the Business and~~
36 ~~Professions Code, to read:~~

37 ~~1623. (a) Notwithstanding any other provision of law, the~~
38 ~~board may contract with a collection agency for the purpose of~~
39 ~~collecting outstanding fees, fines, or cost recovery amounts from~~
40 ~~any person who owes that money to the board, and, for those~~

1 ~~purposes, may provide to the collection agency the personal~~
2 ~~information of that person, including his or her birth date, telephone~~
3 ~~number, and social security number. The contractual agreement~~
4 ~~shall provide that the collection agency may use or release personal~~
5 ~~information only as authorized by the contract, and shall provide~~
6 ~~safeguards to ensure that the personal information is protected~~
7 ~~from unauthorized disclosure. The contractual agreement shall~~
8 ~~hold the collection agency liable for the unauthorized use or~~
9 ~~disclosure of personal information received or collected under this~~
10 ~~section.~~

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

SB 544
BILL ANALYSIS

Hearing Date: May 2, 2011

SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
As Amended: April 14, 2011 Fiscal: Yes

SUBJECT: Professions and vocations: 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) 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.

- 8) 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.
- 9) States that a board or an administrative law judge may issue an interim suspension order suspending any licensee or imposing license restrictions, as specified.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.

- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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.
- 19) 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.
- 20) 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.

- 21) 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.
- 22) 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.
- 23) 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.
- 24) Establishes a drug diversion program for osteopathic physicians and surgeons, registered nurses, dentists, pharmacists, physical therapists, physician assistants, and veterinarians.
- 25) Establishes a vertical enforcement and prosecution model for investigations of cases against physician and surgeons and other healing arts licensees.
- 26) 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) 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.
- 3) Requires a state agency if it has knowledge that a person it is investigating is licensed by a board to notify the board that it is conducting an investigation against one of its licentiates. States that the notification of investigation to the board shall include the name, address, and, if known, the professional 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. Indicates that the state agency shall cooperate with the board in providing any requested information. Requires a board to maintain the confidentiality of any personally identifying information contained

in the records maintained pursuant to this provision, and prohibits a board from sharing, selling, or transferring the information to any third party unless it is otherwise authorized by federal or state law.

- 4) 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 board to provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. States that these records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.
- 5) Prohibits a licensee of a board from including or permitting to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
 - a) A provision that prohibits another party to the dispute from contacting or cooperating with the board; b) A provision that prohibits another party to the dispute from filing a complaint with the board; or c) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board. States that any agreement that contains any of these provisions is void as against public policy, and constitutes unprofessional conduct.
- 6) 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.
- 7) 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.
- 8) Establishes within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards.
- 9) Requires each healing arts board, within DCA, to report annually to the DCA and the Legislature, not later than October 1 of each year on specific information, including information relating to complaints, accusations filed, citations issued, and number of disciplinary actions. Sunsets this report requirement on October 1, 2016.
- 10) Provides 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.
- 11) 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.

12) 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.

13) 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.

14) 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 healing arts board.

15) Requires the AG's Office to ensure that subsequent reports and subsequent disposition information authorized to be issued by any board, as specified, are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

16) 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 of 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 a notice of defense, unless the healing arts board gives the AG instruction otherwise.
- 17)Includes issuing a limited or restricted license in the action that existing law allows a healing arts board to take against a licentiate whose ability to practice may be impaired because of mental or physical illness.
- 18)Requires each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank (NPDB) prior to any of the following:
- a) Granting a license to an applicant who is currently residing in another state.
 - b) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.
 - c) Granting a petition for reinstatement of a revoked or surrendered license.
- 19)Allows a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the NPDB prior to issuing any license.
- 20)Requires a healing arts board to charge a fee to cover the actual cost to conduct the queries.
- 21)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.
- 22)For specified healing arts boards, 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.
- 23)For specified healing arts boards, 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.

- 24) For specified healing arts boards, 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.
- 25) For specified healing arts boards, 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.
- 26) For specified healing arts boards, 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.
- 27) For specified healing arts boards, specifies certain requirements for healing arts board when dealing with any applicant or licensee who is required to register as a sex offender.
- 28) For specified healing arts boards, 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.
- 29) For specified healing arts boards, specifies that where certified documents are requested from licensees in accordance with Item #28) 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.

- 30) For specified healing arts boards, 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.
- 31) For specified healing arts boards, 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, within 15 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.
- 32) For specified healing arts boards, 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 15 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 15th 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.
- 33) For specified healing arts boards, 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.

34) For specified healing arts boards, 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.

35) For specified healing arts boards, 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.

36) For specified healing arts boards, 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.

37) Defines, for purposes of Item #36) above, 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.

38) Defines, for purposes of Item #36) above, gross negligence 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.

- 39) Defines incompetence for purposes of Item #36) 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.
- 40) States that a willful failure of an employer to make a report required in Item #36) 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.
- 41) For specified healing arts boards, 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.
- 42) For specified healing arts boards, provides that 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, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, as specified. Requires the board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard, as provided.
- 43) Specifies that it is the intent of the Legislature, through a request in 2012 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the Pharmacists Recovery Program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that pharmacists and intern pharmacists participating in the program are appropriately monitored, and the public is protected from pharmacists and intern pharmacists who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2013. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not

constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. Provides that it is the intent of the Legislature that the audit shall be paid for with funds from the Pharmacy Board Contingent Fund.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. Purpose. The Author is the Sponsor of this measure. The Author states that this bill provides healing arts boards several tools to improve their enforcement process and ensure patient safety. According to the author, some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner, and are taking an average of three years or more to investigate and prosecute these cases. The author points out that this is an unacceptable timeframe given that the highest priority of these boards is the protection of the public.

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 incompetence 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 recommendations 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 other recommendations proposed by the DCA.

3. Previous Legislation. SB 1111 (Negrete McLeod) of 2010, contained many of the provisions that are codified in this bill. SB 1111 failed passage in this Committee.

4. The Following Provisions have General Application to All the Healing Arts Boards.

a) 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. Requires a healing arts board to maintain the confidentiality of any personal identifying information.

Justification. 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.

b) 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.

Justification. 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.

- c) Prohibition of Gag Clauses in Civil Litigation Action.
Prohibits a healing arts 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.

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. There is no reason why other healing arts 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 healing arts professional.

- d) 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 Medical Board of California (MBC) and the California Board of Podiatric Medicine. This bill allows the Director to audit and review the aforementioned activities for any of the healing arts boards. The Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

Justification. 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.

- e) Allow Health Boards to Contract for Investigative Services provided by the Department of Justice. Allows a healing arts board to contract with the Department of Justice to provide investigative services as determined necessary by the Executive Officer.

Justification. Healing arts boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing healing arts boards to contract with the Department of Justice, or to utilize the investigative services of the DOI, they will be provided with the broadest opportunity to move cases forward in a more expeditious manner. The AG's Office made this recommendation since it also believes that more difficult criminal-type cases could be investigated and prosecuted by their Office.

- f) Create Within the Division of Investigation (DOI) a Health Quality Enforcement Unit. Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on health 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.

Justification. Creating a Health Quality Enforcement Unit to focus on health 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.

- g) 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.

Justification. Currently, the MBC reports annually to the DCA and the Legislature certain enforcement actions taken against physicians and surgeons. There is no reason why other healing arts boards should not be subject to the same requirements in submitting an annual enforcement report both to the DCA and the Legislature.

- h) 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.

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. 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.

- i) 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.

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. 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.

- j) 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.

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.

- aa) Reporting by Licensee of Disciplinary Action. Requires a healing arts licensee to submit a written report for any disciplinary action taken by another licensing authority or authority of this state or of another state or an agency of the federal government and any indictment or information charging a felony against the licensee or any conviction of a crime.

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. There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

- bb) Report of Crime or Personal Injury Judgment by Clerk of Court. Requires that the clerk of the court provide notice to a healing arts board 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.

Justification. 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.

cc) 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.

Justification. 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.

dd) 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.

Justification. 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.

ee) Notification of Subsequent Reports and Subsequent Disposition Information by DOJ. Requires the Department of Justice to provide notification within 30 days of subsequent reports and subsequent disposition information or other updates of licensees to boards.

Justification. 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.

ff) 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.

Justification. 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.

- gg) Clarifies that a board has an option to issue a limited or restricted license to a licensee whose ability to practice may be impaired because of mental or physical illness.

Justification. Existing law allows healing arts 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 or physical illness affecting competency. According to the Legislative Counsel, the Americans with Disabilities Act prohibits discrimination against disabled persons by public entities, and that no qualified individual with a disability shall, by reason of such disability, be excluded from 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. Although healing arts boards are authorized to issue a probationary license to licensees with physical or mental illness, some licensees disfavor the use of the term probationary license because of the negative implication associated with probation. The clarification contained in this bill does not require a healing arts board to issue limited or restricted license, but instead enumerates that these are options for a healing arts board to take against a licensee with physical or mental illness affecting competency to practice.

- hh) Checking Information Maintained by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB). Requires healing arts boards to check the NPDB and the HIPDB under the following conditions: (1) Prior to granting a license to an applicant who is currently residing in another state; (2) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state; (3) Granting a petition for reinstatement of a revoked or surrendered license. Allows a healing arts board to query the NPDB prior to issuing any license. Allows a healing arts board to charge a fee to cover the actual costs to conduct the search.

Justification. 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) 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.

Justification. 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.

- jj) 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.

Justification. 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.

- aaa) Intent Language 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.

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.

Implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's 2011-2012 Budget appropriated funds for the implementation of this system.

5. The Following Provisions Have Been Placed Into Individual Practice Acts of Healing Arts Boards.

- a) Allow Executive Officers (EO) 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. Require the EO to report to the board the number of default decisions and stipulated settlements adopted. Requires that a stipulated settlement give notice to licensees, to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. Allows 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.

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 EO 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.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

Dental Board of California
Dental Hygiene Committee within the Dental Board
of California
Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board
The California Board of Occupational Therapy

Physical Therapy Board of California
Board of Registered Nursing
Board of Vocational Nursing and Psychiatric
Technicians
Psychology Board of California
The State Board of Optometry
The Physician Assistant Committee within the
Medical Board of California
The Naturopathic Medicine Committee within the
Osteopathic Medical Board
Respiratory Care Board of California
California State Board of Pharmacy
The Veterinary Medical Board
The Acupuncture Board
The Board of Behavioral Sciences

- b) Automatic Suspension of License While Incarcerated.
Provides that the license of a healing arts 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.

Justification. Existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated and there is no reason why other healing arts 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 a healing arts licensee 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. There have been instances in which health practitioners had felony records and yet continued to have spotless licenses even while serving time behind bars.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

Dental Board of California
Dental Hygiene Committee within the Dental Board
of California
Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board
The California Board of Occupational Therapy
Physical Therapy Board of California
Board of Registered Nursing
Board of Vocational Nursing and Psychiatric
Technicians
The State Board of Optometry
The Physician Assistant Committee within the
Medical Board of California
The Naturopathic Medicine Committee within the
Osteopathic Medical Board
Respiratory Care Board of California
California State Board of Pharmacy
The Veterinary Medical Board
The Acupuncture Board

The Board of Behavioral Sciences

- c) Mandatory Revocation for Sexual Acts and Registration as Sex Offender. States that a decision issued by an administrative law judge that contains a finding that a healing arts practitioner engaged in any act of sexual contact with a patient, or any finding that the licensee has committed a sex offense, as defined, shall contain an order of revocation. 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.

Justification. 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. There is no reason why these provisions should not apply to other healing arts licensees.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Medical Board of California (Sex Offense Provision Only)
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology (Sex Offense Provision Only)
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

- d) 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. Provides that any document relevant to an investigation may be inspected, and copies may be obtained where patient written authorization is given. 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.

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. 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.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

e) 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), or resignation in lieu of suspension or termination, of any healing arts licensee in its employ. Requires the information reported to be confidential and not subject to discovery in civil cases, and to include the facts and circumstances of the suspension, termination or resignation. Requires a healing arts board to investigate the circumstances underlying the report within 30 days to determine if an interim suspension order or temporary restraining order should be issued.

Justification. 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. There is no reason why the remaining healing arts boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for serious disciplinary reasons.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

f) Information Provided on the Internet. Requires 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. Prohibits the disclosure of personal information, including home telephone number, date of birth, or social security number.

Justification. Although a number of boards, including healing arts boards, are required to post the aforementioned information regarding a licensee, there are other healing arts boards that do not. One of the issues which has been raised by the media 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. They cited instances in which they looked up on the Internet, or on the particular health board's Website and never saw prior disciplinary or criminal convictions of the health care practitioner. This provision ensures the uniformity of information about the status of licensees that are posted on the Internet.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California

Dental Hygiene Committee within the Dental Board
of California
Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board
The California Board of Occupational Therapy
Physical Therapy Board of California
Board of Registered Nursing
Board of Vocational Nursing and Psychiatric
Technicians
The State Board of Psychology
The State Board of Optometry
The Physician Assistant Committee within the
Medical Board of California
The Naturopathic Medicine Committee within the
Osteopathic Medical Board
Respiratory Care Board of California
California State Board of Pharmacy
The Veterinary Medical Board
The Acupuncture Board
The Board of Behavioral Sciences

g) Automatic Suspension of License if Another State or Agency
Revokes or Suspends the Licensee. Requires the automatic
suspension of a licensee if another regulatory/licensing
authority of this state, another state or an agency of the
federal government suspends or revokes the license of a healing
arts practitioner. Specifies due process provisions.

Justification. There are certain health boards which require
automatic suspension of a license base on the action taken by
another jurisdiction or state. To further protect consumers,
all health care boards should be allowed to automatically
suspend the license of anyone whose license with the federal,
state, or another regulatory agency has been suspended or
revoked.

Pertains to the Following Boards: This provision will affect the
following healing arts boards under their specific Practice
Act:

Dental Board of California
Dental Hygiene Committee within the Dental Board
of California
Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board
The California Board of Occupational Therapy
Physical Therapy Board of California
Board of Registered Nursing
Board of Vocational Nursing and Psychiatric
Technicians
The State Board of Psychology
The State Board of Optometry
The Physician Assistant Committee within the
Medical Board of California
The Naturopathic Medicine Committee within the
Osteopathic Medical Board
Respiratory Care Board of California
California State Board of Pharmacy
The Veterinary Medical Board
The Acupuncture Board

The Board of Behavioral Sciences

- h) Bureau of State Audits Review of the Pharmacists Recovery Program in 2012.

Justification. To ensure full implementation of SB 1441 standards and address problems encountered with the Maximus audit and drug testing requirements, this audit ensures that the Pharmacists Recovery Program is protecting the public and rehabilitating licensees.

1. Oppose Unless Amended. The California Nurses Association (CNA) has taken an oppose unless amended position on the following provisions of this bill:

- a) Access to records . CNA states that the bill's proposal to require state agencies, state and local governments, law enforcement agencies, health care facilities, and employers to turn over records pertaining to licensees is broad, and raises privacy concerns.
- b) Reporting of Charges . CNA is concern that licensees are being required to report charges to the board, particularly when there is not a subsequent conviction as this raises due process concerns.
- c) Alcohol and Unprofessional Conduct . CNA's concern is how this bill will be implemented.
- d) Restricted or limited license . CNA states it is unclear as to how or why the board would implement a limited or restricted license for registered nurses.
- e) Required Actions Against Sex offenders . CNA states it is unclear why this bill would give a sex offender who is required to be a sex offender because of a misdemeanor conviction [of indecent exposure] an exemption from the requirement to deny licensure application, or to revoke licensure.
- f) Internet Disclosures . These provisions are overly broad, the necessity of the postings is unclear, and the disclosures would be punitive and unfair toward licensees.
- g) Attorney General Timeframes . It is unclear if the timelines are realistic and can actually be implemented.
- h) Supervising Unlicensed Practice . As employees, registered nurses generally do not make decisions on the hiring of other nurses, and do not generally have control over who the employer requires a nurse to supervise. CNA states that this language should be amended to apply to facilities or independent practitioners who employ persons unlawfully engaging in unlicensed practice, or who knowingly aid and abet unlicensed practice.

SUPPORT AND OPPOSITION:

Support : None on file as of April 27, 2011

Oppose Unless Amended:

California Nurses Association

Oppose :

Non on file as of April 27, 2011.

Consultant: Rosielyn Pulmano

SENATE BILL**No. 690**

Introduced by Senator HernandezFebruary 18, 2011

An act to add Section 1373.15 to the Health and Safety Code, and to add Section 10177.15 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 690, as introduced, Hernandez. Health care coverage: discrimination.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits certain discriminatory acts by health care service plans and health insurers.

This bill would prohibit a health care service plan contract or health insurance policy that is issued, amended, renewed, or delivered on or after January 1, 2014, from discriminating against any health care provider who is acting within the scope of that provider's license, as specified.

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

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

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

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

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

1 SECTION 1. Section 1373.15 is added to the Health and Safety
2 Code, to read:

3 1373.15. (a) No health care service plan contract that is issued,
4 amended, renewed, or delivered on or after January 1, 2014, shall
5 discriminate with respect to provider participation or coverage
6 under the plan against any health care provider who is acting within
7 the scope of that provider's license or certification.

8 (b) Notwithstanding subdivision (a), this section shall not be
9 construed to require that a health care service plan contract with
10 any health care provider willing to abide by the terms and
11 conditions for participation established by the plan or issuer.

12 (c) Nothing in this section shall be construed as preventing a
13 health care service plan from establishing varying reimbursement
14 rates based on quality or performance measures.

15 SEC. 2. Section 10177.15 is added to the Insurance Code, to
16 read:

17 10177.15. (a) No health insurance policy that is issued,
18 amended, renewed, or delivered on or after January 1, 2014, shall
19 discriminate with respect to provider participation or coverage
20 under the policy against any health care provider who is acting
21 within the scope of that provider's license or certification.

22 (b) Notwithstanding subdivision (a), this section shall not be
23 construed to require that a health insurer contract with any health
24 care provider willing to abide by the terms and conditions for
25 participation established by the insurer or issuer.

26 (c) Nothing in this section shall be construed as preventing a
27 health insurer from establishing varying reimbursement rates based
28 on quality or performance measures.

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

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

O

SB 690
BILL ANALYSIS

SENATE HEALTH COMMITTEE ANALYSIS
Senator Ed Hernandez, O.D., Chair

BILL NO: SB 690
AUTHOR: Hernandez
AMENDED: As Introduced
HEARING DATE: May 4, 2011
CONSULTANT: Chan-Sawin

SUBJECT

Health care coverage: discrimination

SUMMARY

Prohibits health care service plan (health plan) contracts and insurance policies issued, amended, renewed, or delivered on or after January 1, 2014, from discriminating, with respect to provider participation or coverage, against any health care provider who is acting within the scope of his or her licensure or certification, as specified. Specifies that the provisions of the bill may not be construed as an "any willing provider" provision or from preventing a plan or insurer from establishing varying reimbursement rates, as specified.

CHANGES TO EXISTING LAW

Existing federal law:

Prohibits, under the federal Patient Protection and Affordable Care Act (the federal health reform act), (Public Law 111-148), among other things, health plans and insurers offering group or individual health insurance coverage from discriminating, with respect to participation, against any health provider acting within the scope of that provider's license or certification under applicable state law.

Specifies that these provisions shall not be construed to:

Require a health plan or insurer to contract with any provider willing to abide by the terms and conditions for participation established by the plan or insurer, or
Prevent a health plan, insurer, or the federal Secretary of Health and Human Services from establishing varying reimbursement rates based on quality or performance measures.

Applies this nondiscrimination provision to new plans, but

exempts grandfathered plans, retiree-only plans, and specialized plans. A "grandfathered plan" is any group or individual health insurance product that was in effect on March 23, 2010.

Existing state law:

Provides for the regulation of health plans by the Department of Managed Health Care (DMHC), and for the regulation of health insurers by the California Department of Insurance (CDI).

Requires health plans, except for specialized plans, and disability insurers who negotiate and enter into contracts with professional providers to provide services at alternative rates of payment, as specified, to give reasonable consideration to timely written proposals for contracting by licensed or certified professional providers.

Defines "reasonable consideration" as a consideration in good faith of the terms of proposals for contracting prior to the time that contracts for alternative rates for payment are entered into or renewed. Allows a plan or insurer to specify the terms and conditions of contracting to assure cost efficiency, qualification of providers, appropriate utilization of services, accessibility, convenience to persons who would receive the provider's services, and consistency with its basic method of operation, but prohibits a plan or insurer from excluding providers because of their category of license.

Prohibits plans or insurers, as specified, from refusing to give reasonable consideration to affiliation with podiatrists for the provision of services solely on the basis that they are podiatrists.

Specifies legislative intent that all persons licensed in the state to practice dentistry be accorded equal professional status and privileges, without regard to the degree earned. Prohibits nonprofit hospital service plans or self-insured employee welfare benefit plans from discriminating, as specified, with respect to employment, against a licensed dentist solely on the basis of the educational degree held by the dentist.

Prohibits a health plan which offers or provides chiropractic services, as specified, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors.

Specifies that health insurers are not required to contract with or reimburse additional medical providers if the geographic area is adequately served by those with which it already contracts.

This bill:

Prohibits health plan contracts and insurance policies issued, amended, renewed, or delivered on or after January 1, 2014, from discriminating, with respect to provider participation or coverage under the plan or policy, against any health care provider who is acting within the scope of his or her licensure or certification.

Specifies that this bill shall not be construed to:

- Require a health plan contract or insurance policy to contract with any provider willing to abide by the terms and conditions for participation established by the plan or insurer, or

- Prevent a health plan or insurer from establishing varying reimbursement rates based on quality or performance measures.

FISCAL IMPACT

This bill has not been analyzed by a fiscal committee.

BACKGROUND AND DISCUSSION

According to the author, health plans and insurers currently have latitude to determine the quantity, type and geographic location of health care professionals they need to ensure availability of health care benefits to their enrollees. Health plans and insurers, including a number of large self-funded employer-sponsored coverage programs authorized under the federal Employee Retirement Income Security Act (ERISA), have policies that require certain services be provided by certain types of providers, even though another type of provider may be authorized to perform that service based on their scope of practice. For example, certain plans or insurers prohibit reimbursement for anesthesia and pain management services provided by certified registered nurse anesthetists and require such services to be provided by anesthesiologists.

The author asserts that such discrimination by plans and insurers against whole classes of qualified licensed health care professionals impairs patient access to care, limits consumer choice, and may result in increased health care costs due to lack of competition. SB 690, which is sponsored by the author, simply enacts federal health reform law by prohibiting health plans and insurers from engaging in blanket exclusions of a class of provider based solely on licensure or certification, and does not impose "any willing provider" requirements on plans or insurers, or prevent plans and insurers from establishing varying reimbursement rates based on performance and quality measures. The author believes that SB 690 promotes access to

care, maintains consumer choice of health care professionals, and reduces health care costs through increased competition, while still maintaining the state's ability to establish scope of practice laws.

The Harkin Amendment

Section 2706 (a) of PPACA, referred to as the Harkin Amendment - sponsored by Senator Tom Harkin (D-Iowa) of the Senate Health, Education, Labor and Pensions Committee - establishes the first-ever federal standard for provider nondiscrimination.

This provision in the federal health reform law, which goes into effect in 2014, bars plans and insurers from discriminating in plan coverage and participation based on provider types. The U.S. Department of Health and Human Services (HHS) is expected to issue guidance on the implementation of this section of PPACA in 2012.

This provision in federal law was supported by a wide range of providers including audiologists, nurse practitioners, nurse anesthetists, chiropractors, nurse-midwives, occupational therapists, optometrists, physical therapists, podiatrists, psychologists, speech-language-hearing therapists, complementary and alternative medicine providers, naturopathic physicians, acupuncturists, massage therapists, and social workers.

Arguments in support

The Coalition for Patients' Rights/California, which includes the American Nurses Association, California, the California Association of Nurse Anesthetists Inc., the California Physical Therapy Association, the Occupational Therapy Association of California, and the California Optometric Association, states that many non-MD providers can reduce costs, improve quality and increase access to care. The coalition states that traditional contracting arrangements exclude these providers from being used to their fullest potential, and such provider discrimination is anti-competitive. As growing demands for health care services add stress to an already overburdened system, efficient utilization of health care professions other than traditional physicians is essential to ensuring access and reigning in costs.

The California Nurse-Midwives Association (CNMA) argues that provider discrimination is wrong, and that it limits or denies patient choice, and can have a negative impact on access to and cost-effectiveness of care. CNMA further points out that, as advanced practice nurses, nurse-midwives work in collaboration with physicians to provide quality health care for women throughout California, it is vital to ensure that Californians have access to the care and expertise that California's nurse-midwives offer.

Arguments in opposition

The California Medical Association (CMA) oppose this bill, stating their strong opposition to the federal health reform provision enacting the health care provider nondiscrimination clause that this bill codifies in state law. CMA points to existing state law that requires plans and insurers to provide reasonable consideration of allied providers when contracting for services. CMA believes it would require insurers to expand coverage for alternative therapies, which is inconsistent with the President's goals to reduce health care costs for medical treatments that are not proven effective. CMA believes SB 690 could potentially open the door for practitioners with less training and expertise, and force unfettered access to unproven therapies, which could increase costs, reduce quality and endanger patient safety.

The California Association of Health Plans (CAHP) states that while they appreciate the desire to ensure that plans do not discriminate against classes of providers, any state legislation must carefully and precisely conform to federal law or the state risks regulatory confusion. Although potential amendments may more closely align this bill to the specific requirements of the federal law, CAHP states that the current version of the bill does not achieve this level of conformity.

COMMENTS

1. Potential impact on classes of providers. It is unclear how many and which provider classes will be affected by SB 690, but it is anticipated that a wide range of non-MD/DO professions, such as audiologists, nurse practitioners, nurse anesthetists, chiropractors, nurse-midwives, occupational therapists, optometrists, physical therapists, podiatrists, psychologists, speech-language-hearing therapists, complementary and alternative medicine providers, naturopathic physicians, acupuncturists, massage therapists, clinical social workers, and other groups of licensed health practitioners, could potentially be affected.
2. Potential impact on access and cost. To the extent that additional classes of providers, who were previously barred from providing a specific service due to their licensure or certification, would be able to provide that service, this bill would increase the supply of providers providing said service. However, it is unclear how many provider classes would be impacted, and how many types of services would fall within the overlap in the scope of practice between two or more classes of providers. The increased competition due to more providers providing the service could potentially lower cost.

3. Definition of "discriminate" is unclear. The standard definition of "discriminate" in state law is based on established classifications such as race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, etc. It is undefined in the Harkin Amendment. The author may wish to provide an alternative definition applicable to the provisions of this bill that defines "discriminate" as discrimination against classifications of medical providers, or provide a cross-reference to federal law and subsequent rules and regulations issued.
4. PPACA exemptions. Federal law provides an exemption to these provisions for grandfathered plans, specialized plans and retiree-only plans. As drafted, the bill does not provide such exemptions. The author may wish to consider providing a similar exemption in order to parallel federal law either explicitly or through a cross-reference.
5. Future changes in federal law. Federal guidance on the implementation of this section of PPACA is expected in 2012. It is unclear what that guidance will entail. The author may wish to consider an amendment that cross-references the bill to the appropriate section in federal law and subsequent federal guidance issued in relation to that section, or provides the departments with regulatory authority to address such changes to ensure conformity with federal law.
6. Suggested technical amendments:
 - a) On page 2, strike out lines 3-4 and insert:
"1373.15. (a) Beginning January 1, 2014, no health care service plan shall"
 - b) On page 2, strike out lines 17-18 and insert:
"10177.15. (a) Beginning January 1, 2014, no health insurer shall"

POSITIONS

Support: American Nurses Association, California
California Association of Marriage and Family
Therapists
California Association of Nurse Anesthetists Inc.
California Chiropractic Association
California Nurse-Midwives Association
California Optometric Association
California Physical Therapy Association
Coalition for Patients' Rights/California

Occupational Therapy Association of California

Oppose: California Association of Health Plans
California Medical Association

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 709

Introduced by Senator De León

February 18, 2011

An act to ~~amend Section 49452 of~~ *add Section 49453 to* the Education Code, relating to pupil health, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 709, as amended, De León. Pupil health: ~~sight and hearing tests.~~ *comprehensive eye examinations.*

Existing law requires the governing board of any school district to provide for the adequate testing of sight and hearing of each pupil enrolled in the schools of the district by specified persons. *Existing law also requires, upon first enrollment in a school district, and at least every 3rd year thereafter until the child has completed 8th grade, a child's vision to be appraised by the school nurse, a qualified supervisor of health, or other specified person, and requires this evaluation to include tests for visual acuity and color vision, as specified. If a defect is noted by the supervisor of health, or his or her assistant, existing law requires a report to be made to the parent or guardian of the child that asks the parent or guardian to take such action as will cure or correct the defect.*

~~This bill would make technical, nonsubstantive changes to that provision.~~

This bill would create the Voluntary Children's Vision Educational Fund in the State Treasury for the purpose of funding projects that help educate parents and guardians about the need for children to receive comprehensive eye examinations prior to entering school. The bill would require the fund to consist of specified money received by the state on

a voluntary basis and would provide that all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for expenditure by the Superintendent of Public Instruction for carrying out the purposes of this act. By establishing a continuously appropriated fund, this bill would make an appropriation.

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

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

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

3 (a) *One in four schoolaged children have some form of vision*
 4 *problem. Without a comprehensive eye examination before they*
 5 *enter school, many children will suffer from undetected vision*
 6 *problems, and some may even be misdiagnosed as having a*
 7 *learning disorder.*

8 (b) *Approximately 80 percent of what a child learns is directly*
 9 *related to vision. Comprehensive eye examinations ensure that*
 10 *children can get the education they need to succeed in life.*
 11 *According to the federal Centers for Disease Control and*
 12 *Prevention, impaired vision can affect a child's cognitive,*
 13 *emotional, neurological, and physical development by potentially*
 14 *limiting the range of experiences and kinds of information to which*
 15 *the child is exposed.*

16 (c) *Studies have demonstrated a clear link between delinquent*
 17 *behavior and uncorrected vision. Pupils may not realize that they*
 18 *cannot see well and instead believe that they are unable to learn,*
 19 *leading them to give up on school. A study at one high school in*
 20 *Maryland found that 98 percent of those classified as juvenile*
 21 *delinquents suffered from a visual condition.*

22 (d) *According to the National Institutes of Health, vision*
 23 *screening methods detected only 40 to 65 percent of children's*
 24 *vision disorders. Comprehensive eye examinations are necessary*
 25 *to detect problems that a simple screening can miss, such as eye*
 26 *coordination, eye diseases, moderate amounts of farsightedness,*
 27 *astigmatism, and the internal health of the eye.*

28 (e) *Obtaining a comprehensive eye examination prior to entering*
 29 *school ensures that California pupils get the eye care they need*

1 *to see well and stay healthy so they can fully participate in their*
2 *education.*

3 *SEC. 2. Section 49453 is added to the Education Code, to read:*
4 *49453. The Voluntary Children's Vision Educational Fund is*
5 *hereby created in the State Treasury for the purpose of funding*
6 *projects that help educate parents and guardians about the need*
7 *for children to receive comprehensive eye examinations prior to*
8 *entering school. The fund shall consist of money received by the*
9 *state on a voluntary basis from the federal government, individuals,*
10 *businesses, organizations, industry, and other sources for the*
11 *purposes of this section. Notwithstanding Section 13340 of the*
12 *Government Code, all money in the fund is continuously*
13 *appropriated to the department without regard to fiscal years for*
14 *expenditure by the Superintendent, in consultation with the*
15 *department, for carrying out the purposes of this section.*

16 ~~SECTION 1. Section 49452 of the Education Code is amended~~
17 ~~to read:~~

18 ~~49452. The governing board of a school district shall, subject~~
19 ~~to Section 49451, provide for the testing of the sight and hearing~~
20 ~~of a pupil enrolled in a school of the district. The test shall be~~
21 ~~adequate in nature and shall be given only by duly qualified~~
22 ~~supervisors of health employed by the district; or by certificated~~
23 ~~employees of the district or of the county superintendent of schools~~
24 ~~who possess the qualifications prescribed by the Commission for~~
25 ~~Teacher Preparation and Licensing; or by contract with an agency~~
26 ~~duly authorized to perform those services by the county~~
27 ~~superintendent of schools of the county in which the district is~~
28 ~~located, under guidelines established by the State Board of~~
29 ~~Education; or accredited schools or colleges of optometry,~~
30 ~~osteopathic medicine, or medicine. The records of the tests shall~~
31 ~~serve as evidence of the need of the pupils for the educational~~
32 ~~facilities provided physically handicapped individuals. The~~
33 ~~equipment necessary to conduct the tests may be purchased or~~
34 ~~rented by governing boards of school districts. The state, any~~
35 ~~agency, or political subdivision thereof may sell or rent any such~~
36 ~~equipment owned by it to the governing board of a school district~~
37 ~~upon terms as may be mutually agreeable.~~

AMENDED IN ASSEMBLY APRIL 5, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 675

Introduced by Assembly Member Hagman
(Coauthors: Assembly Members Garrick, Gorell, Jeffries, and Silva)
~~*(Coauthor: Senator Huff)*~~
(Coauthors: Senators Harman and Huff)

February 17, 2011

An act to add Section 110.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 675, as amended, Hagman. Continuing education.

Existing law provides for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, that continuing education *or competency* courses, as specified, that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education *or competency* course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a

provider that violates that requirement for no less than 5 years, as specified.

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

State-mandated local program: no.

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

1 SECTION 1. Section 110.6 is added to the Business and
2 Professions Code, to read:

3 110.6. Notwithstanding any other provision of law, if a board
4 described in Section 101 requires its licensees to satisfy continuing
5 education *or competency* requirements by pursuing a course of
6 continuing education *or competency*, the following shall apply:

7 (a) Continuing education *or competency* courses shall contain
8 only content relevant to the particular practice regulated by the
9 board pursuant to its laws and regulations. Continuing education
10 *or competency* courses that advance or promote labor organizing
11 on behalf of a union, or that advance or promote statutory or
12 regulatory changes, political candidates, political advocacy, or
13 political strategy shall not be considered content relevant to the
14 practice regulated by the board and shall not be acceptable for
15 meeting continuing education *or competency* requirements. For
16 the purposes of this section, “courses” includes institutes, seminars,
17 lectures, conferences, workshops, and any other public events.

18 (b) (1) To the extent applicable, if an approved provider offers
19 a course described in subdivision (a), the provider shall not
20 represent that the course is acceptable for meeting the continuing
21 education *or competency* requirements. If a provider violates this
22 requirement, the board shall withdraw its approval of the provider,
23 subject to paragraph (2).

24 (2) If, after the board provides the provider notice and an
25 opportunity to be heard, the board finds that the provider violated
26 the requirement in paragraph (1), the board shall withdraw approval
27 of the provider for no less than five years.

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AB 675
BILL ANALYSIS

Date of Hearing: May 3, 2011

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER
PROTECTION

Mary Hayashi, Chair

AB 675 (Hagman) - As Amended: April 5, 2011

SUBJECT : Continuing education.

SUMMARY : Prescribes the content of all continuing education (CE) or competency courses required by any of the boards under the Department of Consumer Affairs (DCA). Specifically, this bill :

Provides that, if a board within DCA requires its licensees to satisfy CE or competency requirements by pursuing a course of CE or competency, the following shall apply:

- 1)CE or competency courses must contain only content relevant to the particular practice regulated by the board. CE or competency courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting CE or competency requirements. The term "courses" includes institutes, seminars, lectures, conferences, workshops, and any other public events.
- 2)To the extent applicable, if an approved provider of CE or competency courses offers a course described above, the provider shall not represent that the course is acceptable for meeting CE or competency requirements. If a provider violates this prohibition, the board shall withdraw its approval of the provider for no less than five years, as specified.

EXISTING LAW

Provides for the licensure and regulation of professions and vocations under DCA via its boards, which may require licensees to satisfy continuing education or competency requirements.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of this bill. According to the author's office, "It has come to my attention, through a complaint from a member of the

California Nurses Association (CNA), that CNA has offered continuing education credits to some members of the association as an inducement to attend CNA political events. In doing independent research on this matter, it's apparent CNA also offers CE credits to nurses attending classes focused upon lobbying and political organizing."

Background . DCA is comprised of nearly 40 boards, bureaus, commissions and programs that regulate the practice of numerous professions and vocations in the state, including: the Dental Board of California; the Medical Board of California; the State Board of Optometry; the California State Board of Pharmacy; the Veterinary Medical Board; the California Board of Accountancy (CBA); the California Architects Board; the Bureau of Barbering and Cosmetology; the Board for Professional Engineers, Land Surveyors and Geologists; the Contractors' State License Board; the Bureau for Private Postsecondary Education; the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation; the Board of Registered Nursing (BRN); the Board of Behavioral Sciences; the State Athletic Commission; the Cemetery and Funeral Bureau; the State Board of Guide Dogs for the Blind; the Bureau of Security and Investigative Services; the Court Reporters Board of California; the Board of Vocational Nursing and Psychiatric Technicians; the Landscape Architects Technical Committee; the Division of Investigation; the Bureau of Automotive Repair; the Respiratory Care Board of California; the Acupuncture Board; the Board of Psychology; the California Board of Podiatric Medicine; the Physical Therapy Board of California; the Arbitration Certification Program; the Physician Assistant Committee; the Speech Language Pathology and Audiology Board; the California Board of Occupational Therapy; the Osteopathic Medical Board of California; the Naturopathic Medicine Committee; the Dental Hygiene Committee of California; the Professional Fiduciaries Bureau; the Acupuncture Board; the Hearing Aid Dispensers Bureau; the Telephone Medical Advice Services Bureau; and, the Structural Pest Control Board.

CE is often required to maintain an active license, particularly with the healing arts boards, and CE requirements are generally set forth in statute and specified in more detail through regulations issued by DCA's various boards and bureaus. However, each of these regulatory bodies has unique CE requirements and oversight. For example, the BRN requires RNs to complete a total of 30 hours of CE biennially in order to renew an active license. The BRN conducts random audits of RNs to check for CE compliance, and approves and conducts random audits of CE providers (CEPs). The CBA requires 80 CE hours every two years, which are self-certified and audited for compliance, but does not approve CE providers. Some boards have no CE requirement, or do not approve CE providers or courses.

This bill is substantially similar to AB 378 (Hagman) of 2010, which required that CE courses for nurses contain only content relevant to the practice of nursing. AB 378 provided that CE courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice of nursing and shall not be acceptable for meeting requirements for licensure renewal. AB 378 was held in Senate Business, Professions and Economic Development Committee.

According to CNA, CNA held a rally at the capitol last year after a CE course for nurses was offered the same day in a nearby location. Allegations were made that CNA conditioned CE credits on attendance at the rally. The provisions of AB 378 were the response to these allegations, which have yet to be substantiated.

This bill significantly expands the provisions of AB 378 to include all of the boards, bureaus and commissions under DCA.

Support . The California Board of Accountancy (CBA) writes, "The CBA believes that this is a good consumer protection bill and is supportive of it for that reason. However, the CBA would like to point out that it does not approve CE providers, and thus would have no approval to withdraw. The requirements of the CBA's CE courses are such that it is unlikely a CE provider could ever represent one of these courses as meeting the CBA's CE requirements."

Opposition . The California Nurses Association (CNA) states, "Under this bill, continuing education providers would not be able to provide thorough education to RNs regarding upcoming health care reform changes, pending legislative or regulatory proposals, or even existing laws and regulations that may impact them for fear that the information could be misconstrued as advancing or promoting an agenda. RNs and other licensees under the Department of Consumer Affairs should not be singled out and denied valuable education about health care and other legislative or regulatory policy that affects their practice and their patients." CNA also points to nurses' duty under the law to advocate for their patients and notes, "Under AB 675, collective patient advocacy would be wrongly labeled as advancing or promoting 'labor organizing on behalf of a union.' In doing so, this bill makes a blatant attempt to stifle valuable continuing education content, thereby disempowering RNs and diminishing safe patient care."

The American Federation of State, County and Municipal Employees (AFSCME) writes, "AB 675 is nothing more than an attack on the ability of working people to unite and collectively participate

in California's legislative and regulatory process. In addition, this bill unduly restricts the ability for professionals to grow, influence, and improve the fields in which they labor."

The Board of Behavioral Sciences (BBS) notes, "regulating the content of continuing education or competency courses is something many Boards have refrained from doing." BBS does not approve specific CE courses and states, "For the BBS to engage in such a time-intensive task would be costly and add to the responsibilities of an already over-burdened board. Given the current fiscal climate in the State of California, the Boards should not be given additional regulatory responsibilities."

Previous legislation . AB 378 (Hagman) of 2010 requires that CE courses for nurses contain only content relevant to the practice of nursing, as specified. CE courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice of nursing and shall not be acceptable for meeting requirements for licensure renewal. This bill was held in Senate Business, Professions and Economic Development Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

_____ California Board of Accountancy (CBA)

Opposition

_____ American Federation of State, County and Municipal Employees (AFSCME)
 American Nurses Association of California (ANA/C)
 California Association of Marriage and Family Therapists (CAMFT)
 California Labor Federation
 California Nurses Association (CNA)
 California Podiatric Medical Association
 California Professional Firefighters
 California Teachers Association (CTA)
 California Teamsters Public Affairs Council
 Service Employees International Union (SEIU) Local 1000
 United Food and Commercial Workers - Western States Conference
 United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP)
 University Professional and Technical Employees - Communications Workers of America Local 9119

_____ Analysis Prepared by : Angela Mapp / B.,P. & C.P. / (916) 319-3301

ASSEMBLY BILL**No. 761****Introduced by Assembly Member Roger Hernández**

February 17, 2011

An act to amend Sections 1206.5 and 1209 of the Business and Professions Code, relating to optometrists.

LEGISLATIVE COUNSEL'S DIGEST

AB 761, as introduced, Roger Hernández. Optometrists.

Existing law provides for the regulation and licensure of clinical laboratories and clinical laboratory personnel by the State Department of Public Health. Existing law prohibits the performance of a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 unless the test or examination is performed under the overall operation and administration of a laboratory director, as defined, and is performed by specified persons, including certain health care personnel. Existing law provides for the licensure and regulation of optometrists by the State Board of Optometry.

This bill would expand the category of persons who may perform clinical laboratory tests or examinations that are classified as waived to include licensed optometrists if the results of the tests can be lawfully utilized within their practice, and would provide that a laboratory director may include a licensed optometrist, as specified for purposes of waived examinations.

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

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

- 1 SECTION 1. Section 1206.5 of the Business and Professions
 2 Code is amended to read:
 3 1206.5. (a) Notwithstanding subdivision (b) of Section 1206
 4 and except as otherwise provided in Section 1241, no person shall
 5 perform a clinical laboratory test or examination classified as
 6 waived under CLIA unless the clinical laboratory test or
 7 examination is performed under the overall operation and
 8 administration of the laboratory director, as described in Section
 9 1209, including, but not limited to, documentation by the laboratory
 10 director of the adequacy of the qualifications and competency of
 11 the personnel, and the test is performed by any of the following
 12 persons:
 13 (1) A licensed physician and surgeon holding a M.D. or D.O.
 14 degree.
 15 (2) A licensed podiatrist, a licensed dentist, *a licensed*
 16 *optometrist*, or a licensed naturopathic doctor, if the results of the
 17 tests can be lawfully utilized within his or her practice.
 18 (3) A person licensed under this chapter to engage in clinical
 19 laboratory practice or to direct a clinical laboratory.
 20 (4) A person authorized to perform tests pursuant to a certificate
 21 issued under Article 5 (commencing with Section 101150) of
 22 Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.
 23 (5) A licensed physician assistant if authorized by a supervising
 24 physician and surgeon in accordance with Section 3502 or 3535.
 25 (6) A person licensed under Chapter 6 (commencing with
 26 Section 2700).
 27 (7) A person licensed under Chapter 6.5 (commencing with
 28 Section 2840).
 29 (8) A perfusionist if authorized by and performed in compliance
 30 with Section 2590.
 31 (9) A respiratory care practitioner if authorized by and
 32 performed in compliance with Chapter 8.3 (commencing with
 33 Section 3700).
 34 (10) A medical assistant, as defined in Section 2069, if the
 35 waived test is performed pursuant to a specific authorization
 36 meeting the requirements of Section 2069.
 37 (11) A pharmacist, as defined in Section 4036, if ordering drug
 38 therapy-related laboratory tests in compliance with clause (ii) of

1 subparagraph (A) of paragraph (5) of, or subparagraph (B) of
2 paragraph (4) of, subdivision (a) of Section 4052, or if performing
3 skin puncture in the course of performing routine patient
4 assessment procedures in compliance with Section 4052.1.

5 (12) A naturopathic assistant, as defined in Sections 3613 and
6 3640.2, if the waived test is performed pursuant to a specific
7 authorization meeting the requirements of Sections 3613 and
8 3640.2.

9 (13) Other health care personnel providing direct patient care.

10 (14) Any other person performing nondiagnostic testing pursuant
11 to Section 1244.

12 (b) Notwithstanding subdivision (b) of Section 1206, no person
13 shall perform clinical laboratory tests or examinations classified
14 as of moderate complexity under CLIA unless the clinical
15 laboratory test or examination is performed under the overall
16 operation and administration of the laboratory director, as described
17 in Section 1209, including, but not limited to, documentation by
18 the laboratory director of the adequacy of the qualifications and
19 competency of the personnel, and the test is performed by any of
20 the following persons:

21 (1) A licensed physician and surgeon holding a M.D. or D.O.
22 degree.

23 (2) A licensed podiatrist or a licensed dentist if the results of
24 the tests can be lawfully utilized within his or her practice.

25 (3) A person licensed under this chapter to engage in clinical
26 laboratory practice or to direct a clinical laboratory.

27 (4) A person authorized to perform tests pursuant to a certificate
28 issued under Article 5 (commencing with Section 101150) of
29 Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

30 (5) A licensed physician assistant if authorized by a supervising
31 physician and surgeon in accordance with Section 3502 or 3535.

32 (6) A person licensed under Chapter 6 (commencing with
33 Section 2700).

34 (7) A perfusionist if authorized by and performed in compliance
35 with Section 2590.

36 (8) A respiratory care practitioner if authorized by and
37 performed in compliance with Chapter 8.3 (commencing with
38 Section 3700).

39 (9) A person performing nuclear medicine technology if
40 authorized by and performed in compliance with Article 6

1 (commencing with Section 107150) of Chapter 4 of Part 1 of
2 Division 104 of the Health and Safety Code.

3 (10) Any person if performing blood gas analysis in compliance
4 with Section 1245.

5 (11) (A) A person certified or licensed as an “Emergency
6 Medical Technician II” or paramedic pursuant to Division 2.5
7 (commencing with Section 1797) of the Health and Safety Code
8 while providing prehospital medical care, a person licensed as a
9 psychiatric technician under Chapter 10 (commencing with Section
10 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5
11 (commencing with Section 2840), or as a midwife licensed pursuant
12 to Article 24 (commencing with Section 2505) of Chapter 5, or
13 certified by the department pursuant to Division 5 (commencing
14 with Section 70001) of Title 22 of the California Code of
15 Regulations as a nurse assistant or a home health aide, who
16 provides direct patient care, if the person is performing the test as
17 an adjunct to the provision of direct patient care by the person, is
18 utilizing a point-of-care laboratory testing device at a site for which
19 a laboratory license or registration has been issued, meets the
20 minimum clinical laboratory education, training, and experience
21 requirements set forth in regulations adopted by the department,
22 and has demonstrated to the satisfaction of the laboratory director
23 that he or she is competent in the operation of the point-of-care
24 laboratory testing device for each analyte to be reported.

25 (B) Prior to being authorized by the laboratory director to
26 perform laboratory tests or examinations, testing personnel
27 identified in subparagraph (A) shall participate in a preceptor
28 program until they are able to perform the clinical laboratory tests
29 or examinations authorized in this section with results that are
30 deemed accurate and skills that are deemed competent by the
31 preceptor. For the purposes of this section, a “preceptor program”
32 means an organized system that meets regulatory requirements in
33 which a preceptor provides and documents personal observation
34 and critical evaluation, including review of accuracy, reliability,
35 and validity, of laboratory testing performed.

36 (12) Any other person within a physician office laboratory if
37 the test is performed under the supervision of the patient’s
38 physician and surgeon or podiatrist who shall be accessible to the
39 laboratory to provide onsite, telephone, or electronic consultation
40 as needed, and shall: (A) ensure that the person is performing test

1 methods as required for accurate and reliable tests; and (B) have
2 personal knowledge of the results of the clinical laboratory testing
3 or examination performed by that person before the test results are
4 reported from the laboratory.

5 (13) A pharmacist, if ordering drug therapy-related laboratory
6 tests in compliance with clause (ii) of subparagraph (A) of
7 paragraph (5) of, or subparagraph (B) of paragraph (4) of,
8 subdivision (a) of Section 4052.

9 (c) Notwithstanding subdivision (b) of Section 1206, no person
10 shall perform clinical laboratory tests or examinations classified
11 as of high complexity under CLIA unless the clinical laboratory
12 test or examination is performed under the overall operation and
13 administration of the laboratory director, as described in Section
14 1209, including, but not limited to, documentation by the laboratory
15 director of the adequacy of the qualifications and competency of
16 the personnel, and the test is performed by any of the following
17 persons:

18 (1) A licensed physician and surgeon holding a M.D. or D.O.
19 degree.

20 (2) A licensed podiatrist or a licensed dentist if the results of
21 the tests can be lawfully utilized within his or her practice.

22 (3) A person licensed under this chapter to engage in clinical
23 laboratory practice or to direct a clinical laboratory if the test or
24 examination is within a specialty or subspecialty authorized by
25 the person's licensure.

26 (4) A person authorized to perform tests pursuant to a certificate
27 issued under Article 5 (commencing with Section 101150) of
28 Chapter 2 of Part 3 of Division 101 of the Health and Safety Code
29 if the test or examination is within a specialty or subspecialty
30 authorized by the person's certification.

31 (5) A licensed physician assistant if authorized by a supervising
32 physician and surgeon in accordance with Section 3502 or 3535.

33 (6) A perfusionist if authorized by and performed in compliance
34 with Section 2590.

35 (7) A respiratory care practitioner if authorized by and
36 performed in compliance with Chapter 8.3 (commencing with
37 Section 3700).

38 (8) A person performing nuclear medicine technology if
39 authorized by and performed in compliance with Article 6

1 (commencing with Section 107150) of Chapter 4 of Part 1 of
2 Division 104 of the Health and Safety Code.

3 (9) Any person if performing blood gas analysis in compliance
4 with Section 1245.

5 (10) Any other person within a physician office laboratory if
6 the test is performed under the onsite supervision of the patient's
7 physician and surgeon or podiatrist who shall: (A) ensure that the
8 person is performing test methods as required for accurate and
9 reliable tests; and (B) have personal knowledge of the results of
10 clinical laboratory testing or examination performed by that person
11 before the test results are reported from the laboratory.

12 (d) Clinical laboratory examinations classified as
13 provider-performed microscopy under CLIA may be personally
14 performed using a brightfield or phase/contrast microscope by one
15 of the following practitioners:

16 (1) A licensed physician and surgeon using the microscope
17 during the patient's visit on a specimen obtained from his or her
18 own patient or from a patient of a group medical practice of which
19 the physician is a member or employee.

20 (2) A nurse midwife holding a certificate as specified by Section
21 2746.5, a licensed nurse practitioner as specified in Section 2835.5,
22 or a licensed physician assistant acting under the supervision of a
23 physician pursuant to Section 3502 using the microscope during
24 the patient's visit on a specimen obtained from his or her own
25 patient or from the patient of a clinic, group medical practice, or
26 other health care provider of which the certified nurse midwife,
27 licensed nurse practitioner, or licensed physician assistant is an
28 employee.

29 (3) A licensed dentist using the microscope during the patient's
30 visit on a specimen obtained from his or her own patient or from
31 a patient of a group dental practice of which the dentist is a member
32 or an employee.

33 SEC. 2. Section 1209 of the Business and Professions Code is
34 amended to read:

35 1209. (a) As used in this chapter, "laboratory director" means
36 any person who is a duly licensed physician and surgeon, or, only
37 for purposes of a clinical laboratory test or examination classified
38 as waived, is a duly licensed naturopathic doctor, *or a duly licensed*
39 *optometrist*, or is licensed to direct a clinical laboratory under this
40 chapter and who substantially meets the laboratory director

1 qualifications under CLIA for the type and complexity of tests
2 being offered by the laboratory. The laboratory director, if qualified
3 under CLIA, may perform the duties of the technical consultant,
4 technical supervisor, clinical consultant, general supervisor, and
5 testing personnel, or delegate these responsibilities to persons
6 qualified under CLIA. If the laboratory director reapportions
7 performance of those responsibilities or duties, he or she shall
8 remain responsible for ensuring that all those duties and
9 responsibilities are properly performed.

10 (b) (1) The laboratory director is responsible for the overall
11 operation and administration of the clinical laboratory, including
12 administering the technical and scientific operation of a clinical
13 laboratory, the selection and supervision of procedures, the
14 reporting of results, and active participation in its operations to
15 the extent necessary to ensure compliance with this act and CLIA.
16 He or she shall be responsible for the proper performance of all
17 laboratory work of all subordinates and shall employ a sufficient
18 number of laboratory personnel with the appropriate education
19 and either experience or training to provide appropriate
20 consultation, properly supervise and accurately perform tests, and
21 report test results in accordance with the personnel qualifications,
22 duties, and responsibilities described in CLIA and this chapter.

23 (2) Where a point-of-care laboratory testing device is utilized
24 and provides results for more than one analyte, the testing
25 personnel may perform and report the results of all tests ordered
26 for each analyte for which he or she has been found by the
27 laboratory director to be competent to perform and report.

28 (c) As part of the overall operation and administration, the
29 laboratory director of a registered laboratory shall document the
30 adequacy of the qualifications (educational background, training,
31 and experience) of the personnel directing and supervising the
32 laboratory and performing the laboratory test procedures and
33 examinations. In determining the adequacy of qualifications, the
34 laboratory director shall comply with any regulations adopted by
35 the department that specify the minimum qualifications for
36 personnel, in addition to any CLIA requirements relative to the
37 education or training of personnel.

38 (d) As part of the overall operation and administration, the
39 laboratory director of a licensed laboratory shall do all of the
40 following:

1 (1) Ensure that all personnel, prior to testing biological
2 specimens, have the appropriate education and experience, receive
3 the appropriate training for the type and complexity of the services
4 offered, and have demonstrated that they can perform all testing
5 operations reliably to provide and report accurate results. In
6 determining the adequacy of qualifications, the laboratory director
7 shall comply with any regulations adopted by the department that
8 specify the minimum qualifications for, and the type of procedures
9 that may be performed by, personnel in addition to any CLIA
10 requirements relative to the education or training of personnel.
11 Any regulations adopted pursuant to this section that specify the
12 type of procedure that may be performed by testing personnel shall
13 be based on the skills, knowledge, and tasks required to perform
14 the type of procedure in question.

15 (2) Ensure that policies and procedures are established for
16 monitoring individuals who conduct preanalytical, analytical, and
17 postanalytical phases of testing to ensure that they are competent
18 and maintain their competency to process biological specimens,
19 perform test procedures, and report test results promptly and
20 proficiently, and, whenever necessary, identify needs for remedial
21 training or continuing education to improve skills.

22 (3) Specify in writing the responsibilities and duties of each
23 individual engaged in the performance of the preanalytic, analytic,
24 and postanalytic phases of clinical laboratory tests or examinations,
25 including which clinical laboratory tests or examinations the
26 individual is authorized to perform, whether supervision is required
27 for the individual to perform specimen processing, test
28 performance, or results reporting, and whether consultant,
29 supervisor, or director review is required prior to the individual
30 reporting patient test results.

31 (e) The competency and performance of staff of a licensed
32 laboratory shall be evaluated and documented by the laboratory
33 director, or by a person who qualifies as a technical consultant or
34 a technical supervisor under CLIA depending on the type and
35 complexity of tests being offered by the laboratory.

36 (1) The procedures for evaluating the competency of the staff
37 shall include, but are not limited to, all of the following:

38 (A) Direct observations of routine patient test performance,
39 including patient preparation, if applicable, and specimen handling,
40 processing, and testing.

- 1 (B) Monitoring the recording and reporting of test results.
- 2 (C) Review of intermediate test results or worksheets, quality
- 3 control records, proficiency testing results, and preventive
- 4 maintenance records.
- 5 (D) Direct observation of performance of instrument
- 6 maintenance and function checks.
- 7 (E) Assessment of test performance through testing previously
- 8 analyzed specimens, internal blind testing samples, or external
- 9 proficiency testing samples.
- 10 (F) Assessment of problem solving skills.
- 11 (2) Evaluation and documentation of staff competency and
- 12 performance shall occur at least semiannually during the first year
- 13 an individual tests biological specimens. Thereafter, evaluations
- 14 shall be performed at least annually unless test methodology or
- 15 instrumentation changes, in which case, prior to reporting patient
- 16 test results, the individual's performance shall be reevaluated to
- 17 include the use of the new test methodology or instrumentation.
- 18 (f) The laboratory director of each clinical laboratory of an acute
- 19 care hospital shall be a physician and surgeon who is a qualified
- 20 pathologist, except as follows:
- 21 (1) If a qualified pathologist is not available, a physician and
- 22 surgeon or a clinical laboratory bioanalyst qualified as a laboratory
- 23 director under subdivision (a) may direct the laboratory. However,
- 24 a qualified pathologist shall be available for consultation at suitable
- 25 intervals to ensure high quality service.
- 26 (2) If there are two or more clinical laboratories of an acute care
- 27 hospital, those additional clinical laboratories that are limited to
- 28 the performance of blood gas analysis, blood electrolyte analysis,
- 29 or both, may be directed by a physician and surgeon qualified as
- 30 a laboratory director under subdivision (a), irrespective of whether
- 31 a pathologist is available.
- 32 As used in this subdivision, a qualified pathologist is a physician
- 33 and surgeon certified or eligible for certification in clinical or
- 34 anatomical pathology by the American Board of Pathology or the
- 35 American Osteopathic Board of Pathology.
- 36 (g) Subdivision (f) does not apply to any director of a clinical
- 37 laboratory of an acute care hospital acting in that capacity on or
- 38 before January 1, 1988.

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— 10 —

- 1 (h) A laboratory director may serve as the director of up to the
- 2 maximum number of laboratories stipulated by CLIA, as defined
- 3 under Section 1202.5.

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AB 761
BILL ANALYSIS

Date of Hearing: April 26, 2011

**ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER
PROTECTION**

Mary Hayashi, Chair

AB 761 (Roger Hernandez) - As Introduced: February 17, 2011

SUBJECT : Optometrists

SUMMARY : Allows optometrists to independently perform waived clinical laboratory tests if the results can be used within the optometrist's scope of practice. Specifically, this bill :

- 1) Allows a licensed optometrist to perform clinical laboratory tests or examinations that are classified as waived under the federal Clinical Laboratory Improvement Amendments (CLIA) of 1988, if the results of the tests can be lawfully utilized within his or her practice.
- 2) Includes licensed optometrists in the definition of "laboratory director" for purposes of clinical laboratory tests or examinations classified as waived under CLIA.

EXISTING LAW

- 1) Establishes CLIA under federal law, which regulates clinical laboratories that perform tests on human specimens and sets standards for facility administration, personnel qualifications and quality control. These standards apply to all settings, including commercial, hospital or physician office laboratories.
- 2) Defines CLIA waived tests as simple laboratory examinations and procedures that are approved by the Food and Drug Administration (FDA) for home use, employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or pose no reasonable risk of harm to the patient if the test is performed incorrectly.
- 3) Provides for the licensure and regulation of clinical laboratories and their personnel by the State Department of Health Services, and requires clinical laboratories to be operated under the supervision of a laboratory director, as specified.

- 4) Defines "laboratory director" to mean any person who is a duly licensed physician and surgeon, or, only for purposes of a clinical laboratory test or examination classified as waived, is a duly licensed naturopathic doctor, or is licensed to direct a clinical laboratory and who substantially meets the laboratory director qualifications under CLIA for the type and complexity of tests being offered by the laboratory.
- 5) Prohibits anyone from performing a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director and the test is performed by specified health care practitioners for specified purposes.
- 6) Establishes the Optometry Practice Act, administered by the State Board of Optometry, to regulate the practice of optometry.
- 7) Defines the practice of optometry to include the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of this bill .

According to the author's office, "Doctors of optometry can already perform waived tests in a lab under the supervision of a laboratory director. The intent of this bill is to improve patient care and public health by allowing optometrists to be laboratory directors and perform the tests independently.

"As new CLIA waived tests are developed, the ability to perform these tests is becoming necessary for any doctor providing primary care?. Sending CLIA waived tests to an outside lab unnecessarily delays appropriate diagnosis and treatment."

Background .

California clinical laboratories are subject to both federal and state oversight. Federal oversight falls under CLIA, which is administered by the Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services. CLIA regulates clinical labs based on the complexity of tests the lab offers.

"Waived" tests are approved by FDA for home use, use simple and accurate methods that make the possibility of error negligible, or pose no significant risk of harm to the patient if incorrectly performed. Clinical labs performing only "waived" tests must register with the CLIA program, pay biennial certificate fees, allow inspections, and perform tests according to manufacturers' instructions.

"Moderate" or "high" tests, which are more complex, may be performed by clinical labs that pay higher fees, undergo biennial inspections, and meet tougher standards for personnel, supervision, quality assurance and proficiency testing.

The California Department of Public Health (DPH) regulates about 19,000 clinical labs and their personnel statewide, monitors proficiency testing, investigates complaints, and sanctions labs that violate the law or regulations.

Like CLIA, DPH licenses or registers clinical labs according to the complexity of testing they perform. Labs must be licensed for moderately or highly complex procedures, and registered for low complexity. About 3,000 clinical labs are licensed for moderate and/or high complexity testing. The remaining are registered labs performing waived tests and/or provider-performed microscopy.

Waived tests can be performed under the supervision of a lab director and other specific conditions by a number of health care practitioners, including physicians, podiatrists, dentists, naturopathic doctors, physician assistants, nurses, respiratory care practitioners, and others. A lab director must be a licensed physician and surgeon or meet other licensure requirements, and is responsible for overseeing the overall operation and administration of the lab.

Podiatrists, dentists, and naturopathic doctors can perform waived tests under a lab director's oversight and if the test results can be lawfully utilized within their practice. This bill extends this authority to optometrists.

Current law also defines "laboratory director" for purposes of waived tests to include a licensed naturopathic doctor. This bill includes optometrists in this definition, thereby allowing optometrists to independently perform waived tests without supervision by a separate lab director.

The CMS issued a memo in September of 2006 to provide clarification regarding optometrists serving as laboratory directors of moderate complexity testing under CLIA. The memo

states, "The Doctor of Optometry (OD) degree is suitable to meet the personnel qualifications for laboratory director of moderate complexity testing provided the testing is limited to tests related to the medical specialty of optometry."

This bill allows optometrists to serve as a lab director for waived tests, which are simpler than the moderate complexity testing that the CMS memo allows. The bill also conforms to the federal requirement that testing be allowed only if test results can be used within the optometrist's scope of practice.

Support . The California Optometric Association states, "Currently, patient safety is compromised because optometrists cannot legally perform (CLIA waived) tests during an office visit. For example, the RPS Adeno Detector can diagnose viral conjunctivitis while the patient is still in the office, which allows the doctor to make an accurate diagnosis and limit spread of disease while simultaneously reducing ocular antibiotic resistance. This legislation would designate optometrists as lab directors for CLIA waived tests only (not for more complex tests). Specifically, it adds optometrists to the category of lab directors that currently includes medical doctors, osteopaths and naturopaths. The bill does not expand the type or number of tests that would be considered waived."

Opposition . The California Society of Pathologists writes, "Current law requires the laboratory director to have education and training on laboratory operation and management and the requirement to oversee and approve personnel who actually perform the waived testing. We are not aware of specific training for optometrists that would justify that designation."

Suggested Committee amendment . The Committee may wish to consider the following amendment to address concerns raised by physician groups:

On page 6, line 38, after "or" insert:

, only for purposes of a clinical laboratory test or examination classified as waived involving conditions related to the eye, is

Previous legislation .

SB 1246 (Negrete McLeod), Chapter 523, Statutes of 2010, includes naturopathic doctors in the list of health care practitioners who can perform a clinical laboratory test or examination classified as waived under CLIA, and designates naturopathic doctors as clinical laboratory directors for CLIA waived tests only.

AB 1442 (Feuer) of 2007, requires clinical laboratories that perform tests to screen for human immunodeficiency virus (HIV) that are classified as waived under CLIA to enroll in a proficiency testing program and to obtain the appropriate license or registration from DPH, as specified. This bill was held on the Assembly Floor.

AB 185 (Dymally) of 2007, expands the duties that unlicensed personnel are authorized to perform in a clinical laboratory and revises the levels of supervision required when unlicensed personnel perform them. This bill was held in Assembly Business and Professions Committee.

AB 1370 (Matthews) of 2005, includes a pharmacist within the definition of laboratory director if the clinical laboratory test or examination is a routine patient assessment procedure, as defined. This bill was held in Assembly Business and Professions Committee.

AB 433 (Nava) of 2005, exempts physician office laboratories from licensure and regulatory requirements governing clinical laboratories and their personnel by the Department of Health Services. This bill was held in Assembly Health Committee.

Double referred . This bill is double-referred to Assembly Health Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Optometric Association (sponsor)

Opposition

California Association for Medical Laboratory Technology
California Society of Pathologists

Analysis Prepared by : Angela Mapp / B.,P. & C.P. / (916)
319-3301

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 778

Introduced by Assembly Member Atkins

February 17, 2011

An act to add Sections 1395.3 and 1395.4 to the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 778, as amended, Atkins. Health care service plans: vision care.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides that health care service plans shall not be deemed to be engaged in the practice of a profession, and may employ, or contract with, any licensed health care professional to deliver professional services, and may directly own, and may directly operate through its professional employees or contracted licensed professionals, offices and subsidiary corporations. Existing law provides that those professionals may not own or control offices or branch offices unless otherwise expressly authorized.

This bill would authorize a registered dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a nonoptometric corporation to own a health care service plan that provides vision care services, share profits with the health care service plan, contract for specified business services with the health care service

AB 778

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plan, and jointly advertise vision care services with the health care service plan. The bill would prohibit those persons or entities from engaging in conduct designed to influence or interfere with the ~~medical~~ *clinical* decisions of an optometrist, as specified. Because a willful violation of that provision would be a crime under the Knox-Keene Act, the bill would impose a state-mandated local program.

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

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

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

State-mandated local program: yes.

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

1 SECTION 1. The Legislature hereby finds and declares the
2 following:

3 (a) Health care service plans, including specialized health care
4 service plans, are regulated by the Department of Managed Health
5 Care.

6 (b) To ensure that quality care and coverage are provided to
7 enrollees, a health care service plan, including a specialized health
8 care service plan, is required to do all of the following:

9 (1) Establish a department-approved quality assurance program
10 to ensure that enrollees are continuously provided the appropriate
11 level of services covered by the health care service plan.

12 (2) Ensure that a separation of fiscal and administrative
13 management from medical services exists within the health care
14 service plan.

15 (3) Periodically submit information to the department to
16 demonstrate delivery of quality care, accessibility of services to
17 enrollees, and prompt resolution of complaints.

18 (4) Establish procedures meeting specified requirements for
19 reviewing the utilization of services and facilities.

20 (5) Participate in comprehensive medical and financial audits
21 conducted by the department.

22 (c) Existing law prohibits an optometrist from engaging in
23 certain business relationships with a registered optical dispenser.

1 (d) Existing law allows a health care service plan to hire and
 2 contract with licensed professionals and to engage in a business
 3 relationship with any entity. However, existing law is unclear about
 4 the relationships between health care service plans that provide
 5 vision services and optical companies.

6 (e) Providing statutory clarity regarding permissible business
 7 relationships between a health care service plan providing vision
 8 services and optical companies will provide certainty and allow
 9 regulating entities to ensure that health care service plans are
 10 engaged in appropriate business relationships.

11 SEC. 2. Section 1395.3 is added to the Health and Safety Code,
 12 to read:

13 1395.3. Notwithstanding any other provision of law, a
 14 registered dispensing optician, an optical company, a manufacturer
 15 or distributor of optical goods, or a nonoptometric corporation
 16 may do all of the following:

17 (a) Own a health care service plan that provides vision care
 18 services and share its profits.

19 (b) Contract for business services with, lease office space or
 20 equipment to or from, or share office space with, a health care
 21 service plan that provides vision care services.

22 (c) Jointly advertise vision care services with a health care
 23 service plan that provides vision care services.

24 SEC. 3. Section 1395.4 is added to the Health and Safety Code,
 25 to read:

26 1395.4. (a) A registered dispensing optician, an optical
 27 company, a manufacturer or distributor of optical goods, or a
 28 nonoptometric corporation shall not engage in conduct designed
 29 to influence or interfere with the ~~medical~~ *clinical* decisions of an
 30 optometrist employed by, or who has contracted with, a specialized
 31 vision care service plan for fiscal or administrative reasons.

32 (b) Pursuant to subdivision (g) of Section 1367, the ~~medical~~
 33 *clinical* decisions of an optometrist who is employed by, or who
 34 has contracted with, a specialized vision care service plan shall be
 35 unhindered by fiscal and administrative management.

36 SEC. 4. No reimbursement is required by this act pursuant to
 37 Section 6 of Article XIII B of the California Constitution because
 38 the only costs that may be incurred by a local agency or school
 39 district will be incurred because this act creates a new crime or
 40 infraction, eliminates a crime or infraction, or changes the penalty

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

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AB 778
BILL ANALYSIS

Date of Hearing: May 3, 2011

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER
PROTECTION

Mary Hayashi, Chair

AB 778 (Atkins) - As Amended: April 27, 2011

SUBJECT : Health care service plans: vision care.

SUMMARY : Specifies the business relationships that are permissible between a health care service plan (health plan) that provides vision care, and an optician, an optical company, optical manufacturers or distributors, or a non-optometric corporation. Specifically, this bill :

- 1)Permits a registered dispensing optician (RDO), an optical company, a manufacturer or distributor of optical goods, or a non-optometric corporation to do all of the following:
 - a) Own a health plan that provides vision care services and share its profits;
 - b) Contract for business services with, lease office space or equipment to or from, or share office space with, a health plan that provides vision care services; and,
 - c) Jointly advertise vision care services with a health plan that provides vision care services.
- 2)Prohibits a RDO, an optical company, a manufacturer or distributor of optical goods, or a non-optometric corporation from engaging in conduct designed to influence or interfere with the clinical decisions of an optometrist employed by, or who has contracted with, a specialized vision care service plan for fiscal or administrative reasons.
- 3)Requires the clinical decisions of an optometrist who is employed by, or who has contracted with, a specialized vision care service plan to be unhindered by fiscal and administrative management, as specified.
- 4)Provides findings and declarations.

EXISTING LAW

- 1)Provides for the regulation of health plans by the Department of Managed Health Care (DMHC) under the Knox-Keene Health Care

Service Plan Act of 1975 (Knox-Keene Act).

- 2) Prohibits health plans from being deemed to be engaged in the practice of a profession, and allows health plans to employ, or contract with, any licensed health care professional to deliver professional services, and directly own and directly operate through its professional employees or contracted licensed professionals, offices, and subsidiary corporations.
- 3) Prohibits licensed health care professionals from owning or controlling offices or branch offices unless otherwise expressly authorized.
- 4) Provides for the licensure and regulation of RDOs by the Medical Board of California (MBC).
- 5) Provides for the licensure and regulation of optometrists by the California Board of Optometry (CBO).
- 6) Pursuant to Business and Professions Code 655:
 - a) Prohibits optometrists and RDOs from having any membership, proprietary interest, co-ownership, landlord-tenant relationship, or any profit-sharing agreement with each other; and,
 - b) Prohibits optometrists from having any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, directly or indirectly, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with those who manufacture, sell, or distribute lenses, frames, optical supplies, optometric appliances or devices or kindred products to physicians and surgeons, optometrists, or dispensing opticians.
- 7) Pursuant to Business and Professions Code 2556, provides that it is unlawful for RDOs to:
 - a) Advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon;
 - b) Directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, and optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or,
 - c) Duplicate or change lenses without a prescription or

order from a person duly licensed to issue the same.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of this bill . According to the author's office, "There are over 100 EYEXAM of California locations throughout the state where close to 400 optometrists are employed, serving their community. EYEXAM of California was licensed in 1986 as a specialized health care service plan providing vision services to its members throughout the state. Regulated by the Department of Managed Health Care, EYEXAM must meet all regulatory requirements of a specialized managed care plan, including quality, fiduciary and geographic requirements. Most EYEXAM locations are within a LensCrafters store and have a partnership with the store. Patients can purchase frames at this location, or at any other eyewear location, should they need prescription eyewear.

"Along with being regulated by DMHC, the optometrists in each location are licensed by the Board of Optometry. In addition, each LensCrafters store is regulated by the California Medical Board as a registered dispensing optician. Current California law does not prohibit a Knox-Keene plan from having a business relationship with an optical dispenser. There is no statutory language that specifically authorizes this relationship either, the law is silent. Current California law does prohibit an optometrist from being directly employed by an optical company, however.

"Unfortunately, the Knox-Keene arrangement has been scrutinized by the courts over the past decade? The proposed legislation would provide a definitive model for optical companies to co-locate (with Knox-Keene health plans)."

Background . In California, there are two eye care service models: an optometrist's private office and a "co-location" office, where an optical retail store is co-located with a DMHC-regulated health plan, also called a Knox-Keene plan, that provides optometry care. At co-location sites, patients receive an eye exam and can fill their prescription for corrective eyewear during the same visit at the co-located optical retail store. At private optometrist offices, patients receive an eye exam and can take a prescription elsewhere or have the optometrist send it out for them. California law provides that prescriptions are mobile, so the patient is not required in either setting to have the prescription filled on site.

All optometrists are licensed by CBO. In a co-location site,

the opticians working at the optical retail store are regulated by MBC, and the optometry office is regulated by two entities: DMHC regulates the Knox-Keene plan, and CBO regulates the optometrists employed by the Knox-Keene plan.

According to CBO, there are approximately 8,000 active optometrist licensees in California. According to information provided by the sponsor of this bill, Californians for Healthy Vision, four companies in California own both a Knox-Keene plan and an optical company.

Under Business and Professions Code Sections 655 and 2556 (B&P 655/2556), optometrists and RDOs cannot have any membership, proprietary interest, co-ownership, landlord-tenant relationship, or any profit-sharing agreement with each other. Optometrists also cannot have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, as specified, with those who manufacture, sell, or distribute lenses, frames, optical supplies, optometric appliances or devices or kindred products to physicians and surgeons, optometrists, or dispensing opticians.

Under these code sections, it is also unlawful for RDOs to do any of the following:

- Advertise the furnishing of, or to furnish, the services of a refractionist, an optometrist, or a physician and surgeon;

- Directly or indirectly employ or maintain on or near the premises used for optical dispensing, a refractionist, and optometrist, a physician and surgeon, or a practitioner of any other profession for the purpose of any examination or treatment of the eyes; or,

- Duplicate or change lenses without a prescription or order from a person duly licensed to issue the same.

In February of 2002, Attorney General (AG) Bill Lockyer brought suit against Pearle Vision (the Pearle case), arguing that the company had violated the Optometry Practice Act. The AG challenged the business relationship between the Knox-Keene plan, Pearle VisionCare, and the optical sister company, Pearle Vision, as well as the ownership of the Knox-Keene plan by an optical company, claiming that such relationships violated B&P 655/2556.

In March 2002, a private plaintiff brought suit against LensCrafters (the Snow case), raising some of the same business relationship issues as those raised in the Pearle case. LensCrafters and others subsequently filed a case in federal

district court (the federal case) to defend their business operations in California, challenging the constitutionality of B&P 655/2556.

On appeal, the Pearle case reached the California Supreme Court, which declared that the Knox-Keene Act does not create an exemption from restrictions that B&P 655/2556 impose on relationships between optometrists and optical companies for Knox-Keene plans that employ optometrists and affiliate with optical companies. The Supreme Court remanded the case to trial court for determination of whether relationships involved in Pearle Vision's Knox-Keene arrangement violate B&P 655/2556. The Pearle case ultimately settled, with no determination on the Knox-Keene/optical company co-location issue. The Snow case also settled, without a determination on the Knox-Keene/optical company co-location issue.

According to information provided by the sponsor, the federal court in December 2006 struck down B&P 655/2556 as unconstitutional, interpreting the California Supreme Court's ruling in the Pearle case as a bar to LensCrafters' Knox-Keene plan arrangement. The federal court determined that "the challenged laws substantially effect and discriminate against interstate commerce." The Court also held that "Ya]lthough California has legitimate interests in regulating the provision of health services, defendants have failed to meet its burden of showing that it has no other means to advance its legitimate interests." The Court noted that the Knox-Keene plan arrangement, if permitted by law, would be a viable means for the State to achieve its legitimate interests with less impact on interstate commerce.

According to the sponsor, although the AG attempted to show that restrictions on co-location were necessary to protect the independent professional judgment of optometrists from the lay control of RDOs and thus to protect patient care, the federal district court judge also found there was no evidence of harm caused during the twenty years that co-location has operated in California.

The federal case has been appealed and remanded back to district court. The sponsor asserts that the federal case could take another two years to conclude and, if LensCrafters loses, another three to five years of litigation could ensue to determine if the co-location model violates prohibitions of B&P 655/2556.

Support . According to LensCrafters, "AB 778?will codify the current business practices of the co-location model. The Legislation will specifically allow a specialty health care plan

to have business relationships with an optical dispenser. This solution is needed in order to provide statutory clarity and stability. AB 778 will not create a new type of business practice or interfere with current business models. The legislation will simply codify the current model used by optical companies and Knox-Keene plans in the state that is regulated by the Department of Managed Health Care (DMHC). All existing regulatory structures will remain intact and in force. Additionally, the legislative solution we are seeking will not allow an optical company to hire an optometrist or ophthalmologist. This proposal is limited to defining rights for licensed Knox-Keene plans."

Opposition . The California Optometric Association writes, "California has a long history of protecting the independence of optometrists and physicians from lay control. This proposed legislation is contrary to that policy. LensCrafters claims this legislation would only maintain the status quo, but we are concerned about complaints that were included in the lawsuit that LensCrafters has been asserting unlawful control over their affiliated doctors' professional judgment. Long standing Knox Keene regulations prohibiting interference in professional judgment was not sufficient to prevent LensCrafters from dictating a doctor's appointment schedule, establishing quotas, the use of LensCrafters employees on both the sales and health care side that share patient information, the mandating of how optometric care and appliances are prescribed and establishing an environment where sales are prioritized over patient care. We strongly believe (that) the legal process should be allowed to run its course and, at the conclusion of the litigation, Luxottica/LensCrafters must comply with the law."

REGISTERED SUPPORT / OPPOSITION :

Support

Californians for Healthy Vision (sponsor)
California Black Chamber of Commerce
California Hispanic Chamber of Commerce
California Retailers Association
EYEXAM of California
LensCrafters
Numerous individuals

Opposition

California Optometric Association
United Nurses Associations of California/Union of Health Care Professionals
VSP Vision Care (VSP)

Several individuals

Analysis Prepared by : Angela Mapp / B.,P. & C.P. / (916)
319-3301

CALIFORNIANS_{FOR} HEALTHY VISION

MEMORANDUM

To: Interested Parties
From: Californians for Healthy Vision
Date: March 1, 2011
Re: AB 778 (Atkins) - To Maintain Californians Health Care Access and Patients Choice

Millions of Californians prefer to get their glasses where and when they see their eye doctor. In this state, there are a few options to take advantage of this type of convenience. The most popular options include going to a private optometrist who also sells frames and lenses; or (2) using a retail optical store that exists in the same location as optometrists who are employed by a separate health plan, which is known as co-location model. On the surface, both look the same to the patient. However, the co-location model provides a one-stop experience with flexible evening and weekend office hours where patients receive quality eye care services and can fill their prescription in the same visit. This arrangement provides patients with exceptional care, broadens eye care access, and creates thousands of jobs in the state.

Unfortunately, due to the vagueness in the law, millions of Californians may find that their optometrists at a co-located office are no longer there. California could become one of only three states in the country to not allow patients to have the option of receiving vision services at a co-location vision office.

Legislative Solution – Assembly Bill 778 (Atkins)

To best ensure that Californians will not be severely limited, *Californians for Healthy Vision* supports AB 778 that will codify the current business practices of the co-location model. The legislation will specifically allow a specialty health care plan to have business relationships with an optical dispenser. This solution is needed in order to provide statutory clarity and stability.

AB 778 will not create a new type of business practice or interfere with current business models. The legislation will simply codify the current model used by optical companies and Knox-Keene plans in the state that is regulated by the Department of Managed Health Care (DMHC). All existing regulatory structures will remain intact and in force. Additionally, the legislative solution we are seeking will not allow an optical company to hire an optometrist or ophthalmologist. This proposal is limited to defining rights for licensed Knox-Keene plans.

AB 778 is needed to preserve a model that hundreds of optometrists prefer and millions of Californians use to access eye care services.



California's Two Major Eye Care Service Models

	Patient Visits an Optometrist at a CO LOCATION OFFICE*	Patient Visits an Optometrist at a PRIVATE OFFICE
Optometrist Licensing Requirements	All optometrists are licensed by the California Board of Optometry.	All optometrists are licensed by the California Board of Optometry.
State Oversight & State Regulations	<p>Regulated by California Department of Managed Health Care (DMHC):</p> <ul style="list-style-type: none"> • Approves health care plan • Ensures financial solvency of plan • Ensures medical competency of all providers • Ensures separation of financial and medical decisions • Responds to consumer complaints about plan <p>Board of Optometry provides oversight and regulation of all licensed optometrists and their practice.</p>	<p>Not directly overseen or regulated by California Department of Managed Health Care (DMHC).</p> <p>Board of Optometry provides oversight and regulation of all licensed optometrists and their practice.</p>
State Audits	DMHC audits regularly all aspects of operation.	No state audits unless there is a complaint to the Board of Optometry. Private plans may perform audits on a limited basis.
Optician Licensing & Regulation	All opticians and optical locations are licensed and regulated by the California Medical Board .	Not required to use licensed opticians.
Patient Options to Fill Prescription	<p>Patients may:</p> <ul style="list-style-type: none"> • Visit ANY eyewear specialist to fill their prescription. • Visit onsite co-location office to fill their prescription, often within one hour. 	<p>Patients may:</p> <ul style="list-style-type: none"> • Visit ANY eyewear specialist to fill their prescription. • May be directed to the doctor's eyewear showroom. The prescription may then be sent out to an optician or crafted in house.

* **Co-Location Offices** is where a separate optical retail store and DMHC-regulated optometry office exist in the same location where patients can receive an eye exam and fill their prescription during the same visit.



Eye care access and thousands of jobs in California are in jeopardy

WHAT ARE THE FACTS – Assembly Bill 778?

There are two major vision care models in California.

The two major eye care models in the state are: (1) offices run by private optometrists who are licensed by the Board of Optometry and (2) co-location offices where a separate optical retail store and optometry office exist in the same location where patients can receive an eye exam and fill their prescription during the same visit. The opticians working at the optical retail store are regulated by the Medical Board and the optometry office is regulated by the DMHC and the Board of Optometry.

For decades, millions of Californians have used the convenient co-location model that provides a one-stop experience where patients receive quality eye care and fill their prescription during the same visit. This arrangement provides patients with exceptional care, broadens eye care access, and creates thousands of jobs in the state. However, due to vagueness in the law, these Californians may find that their optometrists at these stores are no longer there. California could become one of only three states in the country to not allow patients to have the option of receiving vision services at a co-location vision office.

WILL CALIFORNIANS BE FORCED TO HAVE ONLY ONE OPTION FOR EYE CARE?

Vision care choice of Californians could be severely limited.

Optical companies often sublease space to a separate vision health plan (Knox-Keene Specialty Service Plan) that employs optometrists. Due to an ambiguity in the law that regulates these relationships, optometrists, their staff and optical employees may be forced out of their jobs. The result will force California patients and doctors to lose access to the type of care they prefer to give and receive, severely limiting access and affordable vision care services that our state enjoys today.

Assembly Bill 778 (Atkins) - A legislative clarification is needed.

The creators of the original law never intended to prevent vision services that use this model from operating in California. To protect vision care choice, access and quality, the State Legislature needs to clear up the ambiguity and ensure that these companies and optometrists that Californians have used for decades will continue. The legislation will codify into law that companies that use the co-location model can continue to operate in California.

WHAT WILL THE IMPACT BE ON QUALITY AND ACCESS TO EYE CARE?

Working families will be severely limited in accessing eye care services.

Patients regularly cite quality of care and convenience as the two most important factors when choosing a vision care provider. The co-location model allows patients to receive exceptional care and prescribed glasses in just one visit at convenient hours. Many working families need to use these services as they are easily accessible and offer services in the evenings and weekends. Unless the state passes legislation to ensure these eye care services can continue to operate and serve millions of Californians, the optometrists employed by the health care plans could be forced to leave.

Californians will be limited to only one vision care option that requires less oversight.

Companies and optometrists that operate in a co-location model are subject to more oversight and quality control than private optometrists. Under the close oversight of California's Department of Managed Health Care, optometrists employed under a health care plan and providing services at a retail optical store have consistently surpassed all regulatory requirements of a specialized health care service plan, including quality of care, member accessibility, and financial soundness.

WHAT WILL BE THE IMPACT ON CALIFORNIA'S ECONOMY?

Current law has created economic instability and may result in the loss of thousands of quality jobs.

With the vagueness in the current law, it has created instability and a deterrent for companies that use the co-location model to invest in California. If legislation is not passed to clarify the law, quality jobs in the medical field will be lost.

ASSEMBLY BILL**No. 958****Introduced by Assembly Member Bill Berryhill**

February 18, 2011

An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

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

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

- 1 SECTION 1. Section 110.5 is added to the Business and
- 2 Professions Code, to read:
- 3 110.5. (a) Notwithstanding any other provision of law and
- 4 except as provided in subdivisions (b) and (c), any accusation filed

1 against a licensee of a board described in Section 101, pursuant to
2 Section 11503 of the Government Code, shall be filed within one
3 year after the board discovers the act or omission alleged as the
4 ground for disciplinary action, or within four years after the act or
5 omission alleged as the ground for disciplinary action occurs,
6 whichever occurs first.

7 (b) If an alleged act or omission involves a minor, the four-year
8 limitations period provided for by subdivision (a) shall be tolled
9 until the minor reaches the age of majority.

10 (c) If a licensee intentionally conceals evidence of wrongdoing,
11 the four-year limitations period provided for by subdivision (a)
12 shall be tolled during that period of concealment.

13 SEC. 2. Section 1670.2 of the Business and Professions Code
14 is repealed.

15 ~~1670.2. (a) Except as otherwise provided in this section, any~~
16 ~~proceeding initiated by the board against a licensee for the violation~~
17 ~~of any provision of this chapter shall be filed within three years~~
18 ~~after the board discovers the act or omission alleged as the ground~~
19 ~~for disciplinary action, or within seven years after the act or~~
20 ~~omission alleged as the ground for disciplinary action occurs,~~
21 ~~whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~
23 ~~11503 of the Government Code alleging fraud or willful~~
24 ~~misrepresentation is not subject to the limitation in subdivision~~
25 ~~(a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~
27 ~~11503 of the Government Code alleging unprofessional conduct~~
28 ~~based on incompetence, gross negligence, or repeated negligent~~
29 ~~acts of the licensee is not subject to the limitation in subdivision~~
30 ~~(a) upon proof that the licensee intentionally concealed from~~
31 ~~discovery his or her incompetence, gross negligence, or repeated~~
32 ~~negligent acts.~~

33 ~~(d) If an alleged act or omission involves any conduct described~~
34 ~~in subdivision (c) of Section 1680 committed on a minor, the~~
35 ~~seven-year limitations period in subdivision (a) and the 10-year~~
36 ~~limitations period in subdivision (c) shall be tolled until the minor~~
37 ~~reaches the age of majority.~~

38 ~~(e) An accusation filed against a licensee pursuant to Section~~
39 ~~11503 of the Government Code alleging conduct described in~~
40 ~~subdivision (c) of Section 1680 not committed on a minor shall~~

1 be filed within three years after the board discovers the act or
2 omission alleged as the ground for disciplinary action, or within
3 10 years after the act or omission alleged as the ground for
4 disciplinary action occurs, whichever occurs first. This subdivision
5 shall apply to a complaint alleging conduct received by the board
6 on and after January 1, 2005.

7 (f) In any allegation, accusation, or proceeding described in
8 this section, the limitations period in subdivision (a) shall be tolled
9 for the period during which material evidence necessary for
10 prosecuting or determining whether a disciplinary action would
11 be appropriate is unavailable to the board due to an ongoing
12 criminal investigation.

13 SEC. 3. Section 2230.5 of the Business and Professions Code
14 is repealed.

15 2230.5. (a) Except as provided in subdivisions (b), (c), and
16 (e), any accusation filed against a licensee pursuant to Section
17 11503 of the Government Code shall be filed within three years
18 after the board, or a division thereof, discovers the act or omission
19 alleged as the ground for disciplinary action, or within seven years
20 after the act or omission alleged as the ground for disciplinary
21 action occurs, whichever occurs first.

22 (b) An accusation filed against a licensee pursuant to Section
23 11503 of the Government Code alleging the procurement of a
24 license by fraud or misrepresentation is not subject to the limitation
25 provided for by subdivision (a).

26 (c) An accusation filed against a licensee pursuant to Section
27 11503 of the Government Code alleging unprofessional conduct
28 based on incompetence, gross negligence, or repeated negligent
29 acts of the licensee is not subject to the limitation provided for by
30 subdivision (a) upon proof that the licensee intentionally concealed
31 from discovery his or her incompetence, gross negligence, or
32 repeated negligent acts.

33 (d) If an alleged act or omission involves a minor, the seven-year
34 limitations period provided for by subdivision (a) and the 10-year
35 limitations period provided for by subdivision (c) shall be tolled
36 until the minor reaches the age of majority.

37 (e) An accusation filed against a licensee pursuant to Section
38 11503 of the Government Code alleging sexual misconduct shall
39 be filed within three years after the board, or a division thereof,
40 discovers the act or omission alleged as the ground for disciplinary

1 action, or within 10 years after the act or omission alleged as the
2 ground for disciplinary action occurs, whichever occurs first. This
3 subdivision shall apply to a complaint alleging sexual misconduct
4 received by the board on and after January 1, 2002.

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

10 SEC. 4. Section 2960.05 of the Business and Professions Code
11 is repealed.

12 ~~2960.05.—(a) Except as provided in subdivisions (b), (c), and
13 (e), any accusation filed against a licensee pursuant to Section
14 11503 of the Government Code shall be filed within three years
15 from the date the board discovers the alleged act or omission that
16 is the basis for disciplinary action, or within seven years from the
17 date the alleged act or omission that is the basis for disciplinary
18 action occurred, whichever occurs first.~~

19 ~~(b) An accusation filed against a licensee pursuant to Section
20 11503 of the Government Code alleging the procurement of a
21 license by fraud or misrepresentation is not subject to the
22 limitations set forth in subdivision (a).~~

23 ~~(c) The limitation provided for by subdivision (a) shall be tolled
24 for the length of time required to obtain compliance when a report
25 required to be filed by the licensee or registrant with the board
26 pursuant to Article 11 (commencing with Section 800) of Chapter
27 1 is not filed in a timely fashion.~~

28 ~~(d) If an alleged act or omission involves a minor, the seven-year
29 limitations period provided for by subdivision (a) and the 10-year
30 limitations period provided for by subdivision (c) shall be tolled
31 until the minor reaches the age of majority.~~

32 ~~(e) An accusation filed against a licensee pursuant to Section
33 11503 of the Government Code alleging sexual misconduct shall
34 be filed within three years after the board discovers the act or
35 omission alleged as the ground for disciplinary action, or within
36 10 years after the act or omission alleged as the ground for
37 disciplinary action occurs, whichever occurs first. This subdivision
38 shall apply to a complaint alleging sexual misconduct received by
39 the board on and after January 1, 2002.~~

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

6 SEC. 5. Section 3137 of the Business and Professions Code is
 7 repealed.

OPTOMETRY
 BPC Section 3137

8 3137. (a) ~~Except as otherwise provided in this section, any~~
 9 ~~accusation filed against a licensee pursuant to Section 11503 of~~
 10 ~~the Government Code for the violation of any provision of this~~
 11 ~~chapter shall be filed within three years after the board discovers~~
 12 ~~the act or omission alleged as the ground for disciplinary action,~~
 13 ~~or within seven years after the act or omission alleged as the ground~~
 14 ~~for disciplinary action occurs, whichever occurs first.~~

15 (b) ~~An accusation filed against a licensee pursuant to Section~~
 16 ~~11503 of the Government Code alleging fraud or willful~~
 17 ~~misrepresentation is not subject to the limitation in subdivision~~
 18 ~~(a).~~

19 (c) ~~An accusation filed against a licensee pursuant to Section~~
 20 ~~11503 of the Government Code alleging unprofessional conduct~~
 21 ~~based on incompetence, gross negligence, or repeated negligent~~
 22 ~~acts of the licensee is not subject to the limitation in subdivision~~
 23 ~~(a) upon proof that the licensee intentionally concealed from~~
 24 ~~discovery his or her incompetence, gross negligence, or repeated~~
 25 ~~negligent acts.~~

26 (d) ~~If an alleged act or omission involves any conduct described~~
 27 ~~in Section 726 committed on a minor, the 10-year limitations period~~
 28 ~~in subdivision (e) shall be tolled until the minor reaches the age~~
 29 ~~of majority.~~

30 (e) ~~An accusation filed against a licensee pursuant to Section~~
 31 ~~11503 of the Government Code alleging conduct described in~~
 32 ~~Section 726 shall be filed within three years after the board~~
 33 ~~discovers the act or omission alleged as the ground for disciplinary~~
 34 ~~action, or within 10 years after the act or omission alleged as the~~
 35 ~~ground for disciplinary action occurs, whichever occurs first. This~~
 36 ~~subdivision shall apply to a complaint alleging conduct received~~
 37 ~~by the board on and after January 1, 2006.~~

38 (f) ~~In any allegation, accusation, or proceeding described in this~~
 39 ~~section, the limitations period in subdivision (a) shall be tolled for~~
 40 ~~the period during which material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would
2 be appropriate is unavailable to the board due to an ongoing
3 criminal investigation.

4 SEC. 6. Section 3750.51 of the Business and Professions Code
5 is repealed.

6 ~~3750.51. (a) Except as provided in subdivisions (b), (c), and~~
7 ~~(c), any accusation filed against a licensee pursuant to Section~~
8 ~~11503 of the Government Code shall be filed within three years~~
9 ~~from the date the board discovers the alleged act or omission that~~
10 ~~is the basis for disciplinary action, or within seven years from the~~
11 ~~date the alleged act or omission that is the basis for disciplinary~~
12 ~~action occurred, whichever occurs first.~~

13 ~~(b) An accusation filed against a licensee pursuant to Section~~
14 ~~11503 of the Government Code alleging the procurement of a~~
15 ~~license by fraud or misrepresentation is not subject to the~~
16 ~~limitations set forth in subdivision (a).~~

17 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~
18 ~~for the length of time required to obtain compliance when a report~~
19 ~~required to be filed by the licensee or registrant with the board~~
20 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~
21 ~~1 is not filed in a timely fashion.~~

22 ~~(d) If an alleged act or omission involves a minor, the seven-year~~
23 ~~limitations period provided for by subdivision (a) and the 10-year~~
24 ~~limitations period provided for by subdivision (c) shall be tolled~~
25 ~~until the minor reaches the age of majority.~~

26 ~~(e) An accusation filed against a licensee pursuant to Section~~
27 ~~11503 of the Government Code alleging sexual misconduct shall~~
28 ~~be filed within three years after the board discovers the act or~~
29 ~~omission alleged as the ground for disciplinary action, or within~~
30 ~~10 years after the act or omission alleged as the ground for~~
31 ~~disciplinary action occurs, whichever occurs first.~~

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

37 SEC. 7. Section 4982.05 of the Business and Professions Code
38 is repealed.

39 ~~4982.05. (a) Except as provided in subdivisions (b), (c), and~~
40 ~~(e), any accusation filed against a licensee pursuant to Section~~

1 11503 of the Government Code shall be filed within three years
2 from the date the board discovers the alleged act or omission that
3 is the basis for disciplinary action, or within seven years from the
4 date the alleged act or omission that is the basis for disciplinary
5 action occurred, whichever occurs first.

6 (b) ~~An accusation filed against a licensee pursuant to Section
7 11503 of the Government Code alleging the procurement of a
8 license by fraud or misrepresentation is not subject to the
9 limitations set forth in subdivision (a).~~

10 (c) ~~The limitation provided for by subdivision (a) shall be tolled
11 for the length of time required to obtain compliance when a report
12 required to be filed by the licensee or registrant with the board
13 pursuant to Article 11 (commencing with Section 800) of Chapter
14 1 is not filed in a timely fashion.~~

15 (d) ~~If an alleged act or omission involves a minor, the seven-year
16 limitations period provided for by subdivision (a) and the 10-year
17 limitations period provided for by subdivision (c) shall be tolled
18 until the minor reaches the age of majority.~~

19 (e) ~~An accusation filed against a licensee pursuant to Section
20 11503 of the Government Code alleging sexual misconduct shall
21 be filed within three years after the board discovers the act or
22 omission alleged as the grounds for disciplinary action, or within
23 10 years after the act or omission alleged as the grounds for
24 disciplinary action occurs, whichever occurs first. This subdivision
25 shall apply to a complaint alleging sexual misconduct received by
26 the board on and after January 1, 2002.~~

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

32 (g) ~~For purposes of this section, “discovers” means the later of
33 the occurrence of any of the following with respect to each act or
34 omission alleged as the basis for disciplinary action:~~

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

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

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

4 ~~SEC. 8. Section 4990.32 of the Business and Professions Code~~
5 ~~is repealed.~~

6 ~~4990.32.—(a) Except as otherwise provided in this section, an~~
7 ~~accusation filed pursuant to Section 11503 of the Government~~
8 ~~Code against a licensee or registrant under the chapters the board~~
9 ~~administers and enforces shall be filed within three years from the~~
10 ~~date the board discovers the alleged act or omission that is the~~
11 ~~basis for disciplinary action or within seven years from the date~~
12 ~~the alleged act or omission that is the basis for disciplinary action~~
13 ~~occurred, whichever occurs first.~~

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

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

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

29 ~~(e) If an alleged act or omission involves a minor, the seven-year~~
30 ~~limitations period provided for by subdivision (a) and the 10-year~~
31 ~~limitations period provided for by subdivision (d) shall be tolled~~
32 ~~until the minor reaches the age of majority. However, if the board~~
33 ~~discovers an alleged act of sexual contact with a minor under~~
34 ~~Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after~~
35 ~~the limitations periods described in this subdivision have otherwise~~
36 ~~expired, and there is independent evidence that corroborates the~~
37 ~~allegation, an accusation shall be filed within three years from the~~
38 ~~date the board discovers that alleged act.~~

39 ~~(f) The limitations period provided by subdivision (a) shall be~~
40 ~~tolled during any period if material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would
2 be appropriate is unavailable to the board due to an ongoing
3 criminal investigation.

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

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

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

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

16 SEC. 9. Section 5561 of the Business and Professions Code is
17 repealed.

18 ~~5561. All accusations against licensees charging the holder of~~
19 ~~a license issued under this chapter with the commission of any act~~
20 ~~constituting a cause for disciplinary action shall be filed with the~~
21 ~~board within five years after the board discovers, or through the~~
22 ~~use of reasonable diligence should have discovered, the act or~~
23 ~~omission alleged as the ground for disciplinary action, whichever~~
24 ~~occurs first, but not more than 10 years after the act or omission~~
25 ~~alleged as the ground for disciplinary action. However, with respect~~
26 ~~to an accusation alleging a violation of Section 5579, the accusation~~
27 ~~may be filed within three years after the discovery by the board~~
28 ~~of the alleged facts constituting the fraud or misrepresentation~~
29 ~~prohibited by Section 5579.~~

30 SEC. 10. Section 5661 of the Business and Professions Code
31 is repealed.

32 ~~5661. All accusations against a licensee shall be filed within~~
33 ~~three years after the board discovers, or through the use of~~
34 ~~reasonable diligence should have discovered, the act or omission~~
35 ~~alleged as the ground for disciplinary action or within six years~~
36 ~~after the act or omission alleged as the ground for disciplinary~~
37 ~~action, whichever occurs first. However, with respect to an~~
38 ~~accusation alleging a violation of Section 5667, the accusation~~
39 ~~may be filed within three years after the discovery by the board~~

1 of the alleged facts constituting the fraud or misrepresentation
2 prohibited by Section 5667.

3 If any accusation is not filed within the time provided in this
4 section, no action against a licensee shall be commenced under
5 this article.

6 SEC. 11. Section 7686.5 of the Business and Professions Code
7 is repealed.

8 ~~7686.5. All accusations against licensees shall be filed with~~
9 ~~the bureau within two years after the performance of the act or~~
10 ~~omission alleged as the ground for disciplinary action; provided,~~
11 ~~however, that the foregoing provision shall not constitute a defense~~
12 ~~to an accusation alleging fraud or misrepresentation as a ground~~
13 ~~for disciplinary action. The cause for disciplinary action in such~~
14 ~~case shall not be deemed to have accrued until discovery, by the~~
15 ~~bureau, of the facts constituting the fraud or misrepresentation,~~
16 ~~and, in such case, the accusation shall be filed within three years~~
17 ~~after such discovery.~~

18 SEC. 12. Section 9884.20 of the Business and Professions
19 Code is repealed.

20 ~~9884.20. All accusations against automotive repair dealers~~
21 ~~shall be filed within three years after the performance of the act~~
22 ~~or omission alleged as the ground for disciplinary action, except~~
23 ~~that with respect to an accusation alleging fraud or~~
24 ~~misrepresentation as a ground for disciplinary action, the accusation~~
25 ~~may be filed within two years after the discovery, by the bureau,~~
26 ~~of the alleged facts constituting the fraud or misrepresentation.~~

27 SEC. 13. Section 9889.8 of the Business and Professions Code
28 is repealed.

29 ~~9889.8. All accusations against licensees shall be filed within~~
30 ~~three years after the act or omission alleged as the ground for~~
31 ~~disciplinary action, except that with respect to an accusation~~
32 ~~alleging a violation of subdivision (d) of Section 9889.3, the~~
33 ~~accusation may be filed within two years after the discovery by~~
34 ~~the bureau of the alleged facts constituting the fraud or~~
35 ~~misrepresentation prohibited by that section.~~

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To: Legislation & Regulation Committee

Date: May 10, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 5 - Public Comment for Items Not on the Agenda**

The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 11125.7(a)]

Comments from the public:

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To: Legislation & Regulation Committee

Date: May 10, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: **Agenda Item 6– Suggestions for Future Agenda Items**

Committee members and the public may suggest items for staff research and discussion at future meetings.

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To: Legislation & Regulation Committee

Date: May 10, 2011

From: Dr. Lee Goldstein, O.D.
Board President

Telephone: (916) 575-7170

Subject: Agenda Item 7 - Adjournment
